

IN THE CASE OF: ██████████

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230013489

APPLICANT REQUESTS: amendment to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in item 27 (Reentry (RE) Code) an immediately eligible to enlist code.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code, section 1552(b); however, the ABCMR conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states he is requesting his RE code be adjusted to RE 2 to allow him to reenlist as an infantry Soldier. He indicated he received awards and he believes it should be the reason he receives an upgrade. He further noted if allowed to visit an infantry recruiter, his physical shape would be an asset to the infantry.

3. A review of the applicant's service record shows:

a. He enlisted on the Regular Army on 5 May 2014.

b. The applicant's available service record is void of the complete facts and circumstances that led to his separation.

c. On 8 April 2016, the separation authority approved the discharge recommendation for immediate separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs and Chapter 14-12c, Commission of a Serious Offense. He would be issued an under other than honorable conditions discharge.

d. On 26 April 2016, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 11 months, and 22 days of active service. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct (Drug Abuse)" with RE code 4.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes (also known as Separation Codes)), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty and the SPD code to be entered on the DD Form 214. The SPD code "JKK" was the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of "misconduct-commission of a serious offense (abuse of illegal drugs)." The SPD Code/RE Code cross-reference table shows RE Code 4 is to be used with SPD Code "JKK."

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board noted the RE Code assigned to the applicant complied with regulation. Based on a preponderance of the evidence, the Board determined the RE Code assigned to the applicant is not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

11/1/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES The:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that: Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code "JKK" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c (2), by reason of "misconduct-commission of a serious offense (abuse of illegal drugs)". The SPD Code/RE Code cross-reference table shows RE Code 4 is to be used with SPD Code "JKK."

4. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//