

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230013709

APPLICANT REQUESTS: reconsideration of his previous requests for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to amend his narrative reason for separation from unacceptable conduct to a more favorable reason.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Summary of Benefits

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130022337 on 20 August 2014 and Docket Number AR20140019585 on 6 August 2015.

2. The applicant states he is requesting a change in the narrative reason for separation to a reason which would allow him to reenter the service. During the time of his separation, he was going through a divorce and had recently returned from a year deployment. He was experiencing a stressful time which affected his career.

3. The applicant provides as new evidence a VA summary of benefits letter dated 27 September 2023 which shows he is totally and permanently disabled and receives 100% combined service-connected disability effective 2 January 2023.

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

a. Having had prior enlisted service in the Army National Guard and Regular Army, he was appointed as a Reserve commissioned warrant officer and executed an oath of office on 12 December 2008 with a concurrent call to active duty.

b. The applicant served in Iraq from approximately 1 June 2009 through 1 July 2010.

c. On 18 August 2001, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for engaging in an adulterous sexual relationship with a woman who was not his wife and for dereliction in the performance of his duties as the Chief of the Fort Bragg Criminal Investigation Division (CID) drug suppression team. He repeatedly targeted civilians without proper authorization, used CID funds to make controlled drug purchases without following proper procedures, and conducted personal business during official drug suppression operations which jeopardized the safety of both civilians and military personnel present during the operations. In addition, the applicant failed to ensure that agents under his authority understood the correct procedures for conducting drug suppression operations against civilian subjects. Finally, his affair with another woman while married had a prejudicial effect on good order and discipline within the Fort Bragg CID office. The applicant acknowledged receipt of the GOMOR on 23 August 2011.

d. The applicant submitted a rebuttal dated 28 August 2011 wherein he requested the GOMOR be filed in his local file. He reflected on his career and actions prior to the GOMOR period, which indicated he was a cut above the rest. He learned from his experiences and mistakes, and it would serve to make him a better Soldier, investigator, and leader. He listed several reasons behind his actions; however, among those reasons and related to his request he noted his wife had an affair while he was deployed which resulted in a pregnancy, she totaled his brand new vehicle, and burned down their new home. They immediately separated upon his return, pending their divorce. He did have a relationship with one woman but ended the relationship and expected his divorce to be final in September. His estranged wife had also provided a statement recanting her prior accusations. The full rebuttal is available for review by the Board, in addition to two character statements provided in support of his rebuttal.

e. On 2 November 2011 and 21 December 2011, after thoroughly reviewing all matters submitted in response to the memorandum of reprimand and after careful consideration, the imposing general officer directed the GOMOR and all related documents, be permanently filed in the applicant's official military personnel file.

f. On 27 March 2012, Major General (MG) DEQ disapproved the recommendation of the Special Agent Review Board (ARB) to retain the applicant and place him on a two year probation period. MG DEQ directed the applicant be eliminated from the CID program and separation proceedings be initiated under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges) based on the applicant's loss of military occupational specialty (MOS) qualifications. The applicant was further required to return the special agent badge and credentials to the Special Agent Accreditation Division for proper disposition.

g. A DA Form 1574 (Report of Proceedings by Investigation Officer (IO)/Board of Officers) shows on 7 September 2012 an investigative board met to consider all

evidence concerning allegations against the applicant of moral and/or professional personal misconduct.

(1) The board determined that a preponderance of the evidence supported a finding that the applicant had engaged in acts of personal misconduct, moral or professional dereliction, and conduct unbecoming an officer by engaging in an adulterous sexual relationship with a woman who was not his wife.

(2) The board further determined that a preponderance of the evidence supported a finding that the applicant failed to ensure agents under his authority understood the correct procedures for conducting drug suppression operations against civilian subjects.

(3) The board recommended the applicant be eliminated from the U.S. Army for misconduct and moral or professional dereliction, with an honorable characterization of service.

h. On 8 April 2013, the Army Board of Review for Eliminations recommended the applicant be involuntarily eliminated from the Army based on misconduct and moral or professional dereliction, with an honorable characterization of service. On 18 April 2013, the appropriate authority approved the recommendation and directed the applicant be discharged based on misconduct and moral or professional dereliction with an honorable characterization of service.

i. On 17 June 2013, the applicant was honorably discharged from active duty. His DD Form 214 shows he completed 4 years, 6 months, and 6 days of active service with 11 years and 10 months of prior active service. He was assigned separation code JNC and the narrative reason for separation listed as "Unacceptable Conduct."

5. On 14 May 2014, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the narrative reason for separation.

6. On 20 August 2014, the ABCMR rendered a decision in Docket Number AR20130022337. The Board found the available evidence indicated the applicant was discharged from the service due to misconduct. The applicant lost his military occupational specialty (MOS) because he failed to maintain acceptable standards of moral and/or professional conduct required for the performance of a CID agent. Therefore, in accordance with the governing regulation the correct narrative reason for separation was entered on his DD Form 214. The Board denied his request for relief.

7. On 6 August 2015, the ABCMR rendered a decision in Docket Number AR20140019585. The Board found the evidence of record confirmed two inquiries found

the applicant committed adultery and was derelict in the performance of his duties. The ARB also determined his actions could have adversely affected the performance of his duties and he lacked the character or moral integrity necessary for the proper performance of CID duties. As a result of his misconduct, MG DEQ directed he be removed from the CID program. His narrative reason for separation was correctly shown on his DD Form 214. There was no error or injustice in his case and his request was denied.

8. By regulation (AR 600-8-24), misconduct includes conduct or actions that result in the loss of a professional status, such as withdrawal, suspension or abandonment of professional license, endorsement, or certification that is directly connected with or is necessary for the performance of one's military duties.

9. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

10. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code JNC is listed with the narrative reason as, "Unacceptable Conduct" in accordance with AR 600-8-24, paragraph 4-2b.

11. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant received a GOMOR for engaging in an adulterous sexual relationship with a woman who was not his wife and for dereliction in the performance of his duties as the Chief of the Fort Bragg CID drug suppression team. As a result, his command removed him from the CID program and initiated elimination action against him due to loss of qualification in his primary specialty. A board of officers determined that a preponderance of the evidence supported a finding that the applicant had

REFERENCES:

1. Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 4-2b, states that misconduct includes conduct or actions that result in the loss of a professional status, such as withdrawal, suspension or abandonment of professional license, endorsement, or certification that is directly connected with or is necessary for the performance of one's military duties.
2. Army Regulation 635-5 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code JNC is listed with the narrative reason as, "Unacceptable Conduct" in accordance with AR 600-8-24, paragraph 4-2b.
4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) 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 based on 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//