

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014163

APPLICANT REQUESTS: reconsideration of his prior request for correction of his DD Form 214 (Report of Separation from Active Duty) and service record to reflect he did not fraudulently enlist and show a more favorable narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190002792 on 11 June 2021.

2. The applicant states, today marijuana is legal, and his discharge should be changed to a higher level of consideration due to his recruiter's negligence.

a. The recruiter failed to input information he gave him regarding his marijuana conviction, which was reduced to a misdemeanor and subsequently, destroyed his career. Additionally, the recruiter made him look negligent upon enlisting. He would never volunteer to join the U.S. Army fraudulently. There was no court martial for him to prove his innocence. The recruiter had the opportunity to complete his term without interruption, after committing the crime upon him.

b. He was in the top 10 in his advanced individual training (AIT) class. He was unable to get his security clearance due to the events that transpired, and he has since been working to upgrade his discharge. As a result of the recruiter's action, he has no credibility, and he is always denied reconsideration for his discharge. He should have never and would have never been discharged if the recruiter had properly obtained a waiver before sending him to basic training. The recruiter told him to just say that he forgot to tell him. The recruiter knew the applicant could be discharged but he did not care about him or his career. He does not have any documentation, except his DD Form 214. He told the truth then and he is telling the truth now. No one should be tricked by a recruiter like he was, it should be illegal. Since it is a considered a crime to

falsify entry documents, he is unable to get a rating for his disability. The applicant marked disability, promotions/rank, and discharge separation as categories on his DD Form 149.

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

a. On 2 September 1976, the applicant completed a DD Form 1966 (Application for Enlistment – Armed Forces of the United States) indicates his signature certified he reviewed the information, and it was correct and true to the best of his knowledge. Block 14 (Involvement with Police or Judicial Authorities) shows the applicant marked "yes" to having been arrested, charged, or cited. The applicant only listed his speeding offense for the explanation.

b. He enlisted in the Regular Army on 14 September 1976.

c. On 27 September 1976, an Entrance National Agency Check (ENTNAC) request was initiated. The Federal Bureau of Investigation (FBI) National Crime Information Center returned a report on 1 November 1976, which indicated the applicant was convicted of possession of marijuana on 19 February 1976 and sentenced to probation for 12 months.

d. The Fort Gordon Acting Security Director recommended the applicant be separated on 14 December 1976, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for fraudulent entry, due to his ENTNAC revealing a prior undisclosed arrest and conviction.

e. On 7 January 1977, the applicant, listed as private (PVT), E-1, was notified by defense counsel as to the nature and effect of the elimination proceedings initiated against him for fraudulent enlistment.

f. On 10 January 1976 [sic], the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for fraudulent entry. The reasons for his proposed action were recruiter connivance. The applicant acknowledged receipt of the notification on 19 January 1977.

g. The service record includes the applicant's medical evaluations, dated 12 January 1977, for the purpose of separation which indicated he was generally in good health. The applicants was marked qualified for separation.

- Report of Medical Examination
- Report of Medical History

h. On 14 January 1977, the applicant underwent a mental status evaluation. The relevant DA Form 3322-R (Report of Mental Status Evaluation) shows he was mentally responsible; able to distinguish right from wrong; able to adhere to the right; had the mental capacity to understand and participate in board proceedings; and met retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3.

i. On 20 January 1977, the immediate commander-initiated separation action against the applicant for recruiter connivance. The intermediate commanders initialed the memorandum to show the separation had been vetted through the leadership.

j. On 27 January 1977, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, for fraudulent enlistment and further noted the enlistment should be voided. The characterization of service is not annotated on the separation processing documents.

k. On 31 January 1977, the applicant was discharged with "not applicable (NA)," listed under Block 9e (Character of Service). Block 6b (Pay Grade) lists the applicant as an E-1. The DD Form 214 shows no time for active service. He was assigned separation code YKG and the authority and reason for separation listed as "Paragraph 14-4a or 14-4d, AR 635-200." It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

4. On 11 June 2023, the ABCMR rendered a decision in Docket Number AR20190002792. The Board found based upon the facts and circumstances leading to the applicant's separation, the available documentation and the findings of the medical advisor, there was insufficient evidence of an error or injustice which would warrant a change to the applicant's narrative reason for separation.

5. There is no evidence the applicant applied to the Army Discharge Review Board within the board's 15-year statute of limitations.

6. By regulation (AR 635-5), 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 reason and authority is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

7. By regulation (AR 635-5-1), provides separation program designator (SPD) codes is used in statistical accounting to represent the reason for separation. The reason and authority for the separation will be entered in the DD Form 214 exactly as listed in the regulation. SPD code YKG is listed with the narrative reason as, "Misconduct – fraudulent entry" in accordance with AR 635-200, Chapter 14.

8. 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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for correction of his DD Form 214 and service record to reflect he did not fraudulently enlist and show a more favorable narrative reason for separation. The Board found the applicant concealed that he had a prior civil conviction. The burden of proof rest on the applicant who stated his recruiter told him to say he forget to tell him about his drug charges. The Board determined 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 reversal of the previous Board decision to correct the applicant's narrative reason. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20190002792 on 11 June 2021.



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:

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 601-210 (Personnel Procurement – Regular Army Enlistment Program), paragraph 3-9, provided that all disqualifications must be revealed by applicants. It further provided that applicants would be advised that all arrests, convictions, or adverse juvenile adjudications are required to be revealed regardless of whether a waiver would be required under this regulation. It prescribed eligibility criteria governing the enlistment from civilian life of persons with or without prior service into the Regular Army.
3. 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. The reason and authority is based on regulatory or other

authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

4. Army Regulation 635-5-1 (Separation Program Designators) 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides separation program designator (SPD) codes are used in statistical accounting to represent the reason for separation. The reason and authority for the separation will be entered in the DD Form 214 exactly as listed in the regulation. SPD code YKG is listed with the narrative reason as, "Misconduct – fraudulent entry" in accordance with AR 635-200, Chapter 14.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14, in effect at the time, provided that a fraudulent entry was the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. For members separated under this chapter, the fraudulent entry was to be voided by issuing orders releasing the member from Army control for fraudulent entry in all cases involving alleged or verified connivance by recruiting officials.

6. 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//