

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240000205

APPLICANT REQUESTS, in effect:

- Upgrade his under other than honorable conditions discharge
- Based on the upgrade, amend the narrative reason for separation and separation code (SPD) currently listed on his DD Form 214 (Certificate of Release or Discharge from Active Duty)

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

- Online DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Two Department of Veterans Affairs (VA) letters

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (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, in effect, although the Army gave him an under other than honorable conditions character of service, the VA has declared his service was honorable; he asks the Board to amend his DD Form 214 accordingly. In support of his request, he supplies a copy of his DD Form 214 and two VA letters, indicating that, for VA's purposes, it considers the applicant's service as honorable.
3. A review of the applicant's service records shows the following:
  - a. After completing over one year in the U.S. Army Reserve, the applicant enlisted into the Regular Army for 4 years. Effective 10 March 1983, the Army awarded him military occupational specialty 76J (Medical Supply Specialist). In February 1990, Permanent Orders awarded him the Driver and Mechanic Badge.

b. Following an assignment at Fort Devens, MA, orders assigned him to a medical company in Panama; he arrived, on or about 30 April 1990. During his tour in Panama, the applicant completed Primary Leadership Development Course (PLDC). On 22 February 1993, while stationed in Panama, the applicant immediately reenlisted for 2 years.

c. Orders subsequently reassigned the applicant to a field hospital at Fort Sill, OK; he arrived at his new unit, on 23 June 1993. Effective 1 December 1993, his leadership promoted him to sergeant (SGT)/E-5. On 11 August 1994, the applicant immediately reenlisted for 6 years.

d. On 4 November 1994, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for failing to report to formation at the time prescribed.

e. On 22 January 1995, the applicant deployed with his unit to Haiti, in support of Operation Uphold Democracy; (Operation Uphold Democracy was a multinational military intervention designed to remove the military regime led and installed by Raoul Cédras after the 1991 Haitian coup d'état overthrew the elected President Jean-Bertrand Aristide).

f. On 27 April 1995, the applicant accepted NJP for failing to report for guard duty at the time prescribed; the imposing commander's punishment consisted of a forfeiture of \$352 per month for one month, extra duty for 7 days, and 14-days' restriction(suspended until 24 July 1995). The applicant filed an appeal, and the appellate authority decided to mitigate the applicant's forfeiture by reducing it to \$151 per month for one month.

g. On 4 May 1995, the applicant's commander initiated bar to reenlistment action against him, citing his two NJPs. On 11 May 1995, the applicant submitted a rebuttal, arguing that, while the NJP for failing to report to guard duty was justified, barring him from reenlistment was excessive and the command was not fully considering his accomplishments. On 11 May 1995, the field hospital commander approved the applicant's bar to reenlistment.

h. On 12 May 1995, the applicant redeployed to Fort Sill, per the field hospital commander's order. On 25 July 1995, the applicant accepted NJP for failing to report on time for formation; among the punishments, the imposing commander directed the applicant's reduction from sergeant to specialist (SPC)/E-4. The applicant appealed the punishment, but the appellate authority denied his petition.

i. On 18 September 1995, the applicant accepted NJP for using marijuana, at some point between 21 May and 21 June 1995; the imposing commander reduced the

applicant to private first class (PFC)/E-3, and the appellate authority subsequently denied the applicant's appeal.

j. On 17 November 1995, the applicant's command preferred court-martial charges against him for violating the UCMJ, Article 112a (Wrongful possession of a Controlled Substance (Marijuana – Less than 30 grams), UCMJ, because he was found with .03 grams of marijuana.

k. On 17 November 1995, after consulting with counsel, the applicant voluntarily requested separation under the provisions of chapter 10 (Discharge In Lieu of Trial by Court-Martial), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he affirmed no one had subjected him to coercion, and counsel had advised him of the implications of his request. The applicant further acknowledged he was guilty of one or more of the charge against him, and he elected not to submit statements in his own behalf.

l. On 30 November 1995, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; in addition, he directed the applicant's reduction to private (PV1)/E-1. On 15 December 1995, orders discharged the applicant accordingly. The applicant's DD Form 214 shows he completed 7 years, 10 months, and 26 days of net active duty service, of which he served 1 year, 4 month, and 6 days of his last reenlistment. The report additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Pv1/E-1.

(2) Item 12h (Effective Date of Pay Grade) – "1995/11/30."

(3) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Achievement Medal
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar

(4) Item 14 (Military Education) – entry includes "PLDC, 4 WEEKS, 1990"

(5) Item 18 (Remarks) – No entry showing continuous honorable service, from 19880120 UNTIL 19940810.

(6) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, chapter 10
- Item 26 (SPD) – "KFS"
- Item 27 (Reentry (RE) Code – RE-3
- Item 28 (Narrative Reason for Separation) – "In Lieu of Trial by Court-Martial"

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the lack of any mitigation and or clemency evidence provided by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes be completed to more accurately reflect the military service of the applicant.

10/9/2024

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.

ADMINISTRATIVE NOTE(S):

1. The following changes should be completed to the applicant's DD Form 214, for the period ending date 2 May 1987: change the characterization of service (Block 24) to reflect Honorable.
2. The following awards should be added to the applicant's DD Form 214, for the period ending 15 December 1995:
  - Permanent Orders awarded him the Driver and Mechanic Badge (specific vehicle not identified)
  - Noncommissioned Officer Professional Development Ribbon, due to his 1990 successful completion of the Primary Leadership Development Course
  - Armed Forces Expeditionary Medal, based on his deployment to Haiti, from 22 January to 12 May 1995 (a period of 110 days), in support of Operation Uphold Democracy; (Table C-3 (Armed Forces Expeditionary Medal), AR 600-8-22 (Military Awards), authorizes the award for this operation)
3. Add to Item 18 (Remarks) of the applicant's DD Form 214, for the period ending 15 December 1995, the following comment: "CONTINUOUS HONORABLE SERVICE FROM 19880120 UNTIL 19940810."

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed punitive discharges among its maximum punishments for violations of Article 112a (Wrongful possession or use of a Controlled Substance (Marijuana) – Use of Less than 30 grams), UCMJ.

4. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, stated when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the regulation required the separation authority to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Paragraph 3-22 (U.S. Army RE Codes) included the following list of the RE codes:

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

7. AR 635-5-1 (SPD), in effect at the time, stated Soldiers separated under chapter 10, AR 635-200 received an SPD of "KFS"; the associated narrative reason for separation was "In Lieu of Trial by Court-Martial."

8. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "KFS" had a corresponding RE code of "3."

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//