

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20240000241

APPLICANT REQUESTS:

- Removal of derogatory information in his military personnel records
- Restoration of his rank/grade to sergeant first class (SFC)/E-7
- Retroactive promotion to master sergeant (MSG)/E-8
- Award of constructive service
- Amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 4 June 2015, as follows:
  - Upgrade his under other than honorable conditions discharge to an honorable character of service
  - Revise his separation and reentry codes
  - Add the constructive service mentioned above
- Award of an active duty length of service retirement, or, alternatively, a non-regular retirement with an adjusted eligibility age, based on combat deployments
- Award of all backpay and allowances to which applicant is entitled
- the Army's apology for mislabeling him a criminal

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit 1 – USACID (U.S. Army Criminal Investigation Division) Notice of Insufficient Basis to Title or Index
- Exhibit 2 – Amended USACID Report of Investigation (ROI)
- Exhibit 3 – DD Forms 214
- Exhibit 4 – Indefinite Reenlistment Contract
- Exhibit 5 – Notification of Separations Proceedings
- Exhibit 6 – Receipt of Notification of Separations Proceedings
- Exhibit 7 – Matters in Rebuttal to general officer memorandum of reprimand (GOMOR)
- Exhibit 8 – Election of Rights

- Exhibit 9 – Request to Disapprove Findings of the Administrative Separation Board
- Exhibit 10 – Separation Authority Approval of Separation
- Exhibit 11 – Army Discharge Review Board (ADRB) Packet
- Exhibit 12 – Retirement Points as of 19 April 2023
- Exhibit 13 – Transition Assistance Program (TAP) Checklist
- Exhibit 14 – University Transcripts
- Exhibit 15 – Enlisted Record Brief (ERB)
- Exhibit 16 – Noncommissioned Officer Evaluation Reports (NCOER)
- Exhibit 17 – Photograph

FACTS:

1. Through counsel, the applicant states he is seeking to correct errors and injustices incurred as a result of a CID investigation into allegations of misconduct associated with the Army Reserve Recruiting Assistance Program (AR-RAP).

a. While serving as an enlisted member of the U.S. Army Reserve (USAR), the applicant participated in the AR-RAP, which was a sister program to G-RAP (Guard-Recruiting Assistance Program), the Army National Guard's version of the program.

(1) The RAP was in effect from 2005 until 2012, and it was implemented during a period when the Army was experiencing low recruiting numbers. A civilian contractor managed the program, and the program's intent was to help the Army reach its enlistment goals by paying ARNG and USAR Soldiers to recruit from within their respective communities.

(2) The program became fraught with fraud, and a number of its participants ended up as subjects of CID investigations; while many were appropriately investigated, others, like the applicant, were wrongly titled and their personally identifiable information was added to criminal databases. On 3 November 2022, the CID director announced that the majority of reviewed G-RAP/AR-RAP cases required some form of correction; among those determined to be inappropriately titled was the applicant. (Counsel provides references for additional information about G-RAP).

b. Counsel offers a timeline, which includes the following significant dates and actions:

- 19 June 2012 – Applicant begins his first year in the Active Guard/ Reserve (AGR); he remained in the AGR until his separation
- 1 October 2012 – CID received allegations against the applicant
- 7 January 2015 – GOMOR issued to applicant on matters related to AR-RAP
- 23 January 2015 – Applicant received notice of pending separation action

- 17 February 2015 – Applicant submits GOMOR rebuttal
- 18 February 2015 – Applicant provides his election of rights for his pending separation action and requests an administrative separation board
- 20 April 2015 – Administrative separation board convenes; the board recommends separation
- 14 May 2015 – Sustainment Command Commanding General (CG) recommends the U.S. Army Human Resources Command (HRC) discharge the applicant under other than honorable conditions
- 4 June 2015 – The Army reduces the applicant from SFC to private (PV1)/E-1 and separates him under other than honorable conditions
- 15 September 2016 – CID publishes its final Law Enforcement Report (LER), which states it found probable cause to believe the applicant committed larceny, wire fraud, and identity theft
- 16 August 2017 – Applicant petitions the ADRB for an upgraded character of service
- 15 February 2019 – After the applicant appeared personally before the ADRB, the ADRB denied his upgrade request
- 3 November 2022 – CID director announces that the majority of reviewed G-RAP cases require correction
- 15 November 2022 – CID issues a supplemental ROI affirming the absence of probable cause to believe the applicant committed any crimes
- 18 November 2022 – CID provides the applicant a letter announcing it has removed his name from the LER titling block and withdrew his information from criminal databases

c. Why the ABCMR should grant the applicant's requested relief.

- CID has provided proof that the separation authority based the applicant's discharge on an inaccurate, flawed, falsified, and incomplete investigation
- The actions by the applicant's chain of command were arbitrary and capricious throughout the separation process

d. Military Records Amendment Requests.

(1) The applicant requests the removal of the following documents from his service record:

- GOMOR, dated 7 January 2015, along with all associated documents
- Applicant's rebuttal to GOMOR, dated 17 February 2015
- All documents pertaining to the applicant's separation
- Applicant's DD Form 293 (Application to the ADRB), dated 16 August 2017
- ADRB's Case Report and Directive, dated 15 February 2019

(2) Immediately reinstate the applicant in the USAR at his former unit of assignment.

(3) Retroactively restore the applicant's rank/grade as an SFC.

(4) In the event the Board opts not to reinstate the applicant in the USAR, he requests the Board award him constructive service for up to "one year after the date when his record is corrected," citing Title 10 (Armed Forces), U.S. Code, section 1552(d) (Correction of Military Records: Claims Incident Thereto). Additionally, the applicant requests all backpay and allowances associated with the constructive service.

(5) Retroactively promote the applicant to MSG.

(a) Were it not for his administrative separation, the applicant would have been promoted to MSG during the period of the requested constructive service.

(b) In 2011, the applicant met the prerequisites for promotion to MSG, and a promotion selection board recommended him and placed him on that year's MSG/E-8 promotion list. As such, the applicant respectfully requests Board show the effective date of promotion as 1 September 2011 and, on that date and thereafter, award him all associated backpay and allowances based on the promoted grade.

(6) Correct the applicant's DD Form 214, ending 4 June 2015 as follows:

- Item 12b (Separation Date This Period) – list the date granted due to the award of constructive credit
- Item 24 (Character of Service) – change "Under Other than Honorable Conditions" to "Honorable"
- Items 25 (Separation Authority), 26 (Separation Code (SPD)), 27 (Reentry (RE) Code), and 28 (Narrative Reason for Separation) – amend based on the type of separation granted by the Board
- If the Board grants the applicant's reinstatement, remove this DD Form 214 from his service record

(7) Award the applicant an active duty length of service retirement or non-regular retirement from the USAR. "In light of any constructive service awarded to [applicant], during which time he would have served on active duty as a member of the AGR, he would have attained enough years of active duty service to qualify for an active-duty retirement. Therefore, we request that [applicant] be awarded an active-duty retirement pursuant to Army Regulation (AR) 600-8-7 (Retirement Services Program), para(graph) 6-4 (High-3 Retired Pay Plan or Reduced Retired Pay Plan (paragraph title assumes counsel is referring to the 20 September 2022 version of the regulation))."

(a) As the applicant's DD Form 214 currently reads, item 12c shows he completed 2 years, 11 months, and 24 days during the period of the report and 8 years, 2 months, and 10 days of prior active duty. Combined, that totals to 11 years, 2 months, and 4 days.

(b) Assuming the Board awards the applicant constructive service from 4 June 2015 through 30 October 2023 (the date of the applicant's DD Form 149), this would add another "8 years, 11 months and 179 (sic) days. Combined with the period of active service in the preceding paragraph, the new combined total active service is 20 years, 2 months, and 180 (sic) days," which would be sufficient for an active duty length of service retirement.

(c) Alternatively, the Board could award the applicant a non-regular retirement, in accordance with chapter 7 (Reserve Component Retirement Services), AR 600-8-7. The applicant accumulated 18 "good years" and a total of 4,568 retirement points. His unjust and improper separation cut short his opportunity to attain non-regular retirement eligibility; as of 18 June 2017, he would have accrued 20 qualifying years of service. Should the Board choose to award him a non-regular retirement, the applicant asks that his combat deployments be taken into account when determining his eligibility age.

e. Apology. Although CID admitted to errors in November 2022, "no one in the Army has ever apologized to [applicant] or other G-RAP/AR-RAP victims for the damage caused to (their) lives by the poorly conducted CID investigations. The damage done to [applicant's] professional career is irreparable, but to an extent it is reversible on paper. However, the damage done to his personal life by placing a felony-level offense on his FBI (Federal Bureau of Investigation) criminal history is unfathomably grave, irreparable, and irreversible. It would mean a lot if someone took the time to say sorry."

f. Conclusion. The applicant was a "top-notch" NCO who was destined for the highest echelons of leadership. "His June 2012 to June 2013 NCOER senior rater comments say that he had 'unlimited potential' and recommended that [applicant] be 'promoted ahead of peers to Master Sergeant now and send to Sergeants Major Academy ASAP (as soon as possible).'" "The Army lost a valuable asset in [applicant] due to the injustice of a poorly managed CID investigation. However, this is our opportunity to finally take care of this Soldier who dedicated so much of his life to the service of this country. The Board has a moral duty to take steps to grant thorough and fitting relief."

2. The applicant provides documents from his service record, his ADRB case (AR20180000947, with a hearing date of 3 December 2018), and his university transcripts. Additionally, he includes the following that he received from CID:

a. CID letter dated 18 November 2022 and signed by the Assistant Director, Investigations and Operations Directorate. The letter states, "In July 2022, the Department of the Army CID began a thorough review of investigations previously initiated and conducted into allegations of wrongdoing in various Army Recruiting Assistance Programs (RAPs). This review has determined that, based upon the information available to CID in relevant files, there is an insufficient basis upon which to title or index you in law enforcement databases for any offense related to RAP. As relates to subject LER, CID has removed your name and identifying information from law enforcement systems, to include the Defense Clearance and Investigations Index (DCII) and the FBI's Interstate Identification Index (III)."

b. CID ROI 1st Final Supplemental, dated 15 November 2022 and pertaining to the alleged offenses of aggravated identity theft, wire fraud, conspiracy, fraud (Federal), and fraud (Uniform Code of Military Justice (UCMJ)).

(1) "A subsequent review of this investigation by a CID Headquarters Review Team and Headquarters Counsel Office determined there was no probable cause to believe [applicant and others] had committed a crime because there was a misunderstanding of the contract requirements and the implementation procedures at the time of the initial work on this investigation, and that an administrative error occurred in the application of the credible information standard of DODI (Department of Defense Instruction) 5505.07 (Titling and Indexing by DOD Law Enforcement Activities) in the initial titling of them."

(2) "Therefore, they are being deleted from the title block of this report."

3. The applicant's online service record is void of the GOMOR and any associated documents cited in the applicant's petition; the service record does show the following:

a. On 19 June 2000, after completing 3 years, 7 months, and 19 days of prior Regular Army enlisted service, the applicant enlisted into the USAR for 6 years.

b. On 21 January 2003, the Army ordered him to active duty in support of Operation Enduring Freedom, and he was deployed to Iraq and Kuwait, from 27 March 2003 to 20 February 2004. On 31 March 2004, the Army honorably released him from active duty and returned him to his USAR Troop Program Unit (TPU). On 1 April 2006, he immediately reenlisted for an indefinite period.

c. Effective 1 November 2009, HRC ordered the applicant to active duty for operational support (ADOS), per Title 10, U.S. Code, section 12301 (d) (Reserve Components Generally – Secretarial Authority to Order Member to Active Duty with His/Her Consent). On 1 January 2010, the Army promoted the applicant to SFC.

On 31 October 2010, the Army honorably released the applicant from active duty, and he returned to his TPU.

d. On 1 February 2011, the applicant reentered ADOS status, under Title 10, U.S. Code, section 12301 (d); on 10 June 2012, he was honorably released from active duty, Effective 11 June 2012, HRC ordered the applicant to active duty for a 3-year term in an AGR status.

e. On 1 October 2012, CID initiated an investigation into allegations that the applicant and others had committed the crimes of aggravated identity theft, wire fraud, conspiracy, and fraud (both under U.S. Code and the UCMJ).

f. On 23 January 2015, the sustainment command CG advised the applicant, via memorandum, of his intent to initiate separation action against the applicant based on the commission of a serious offense; as his authority, the CG cited the provisions of paragraph 14-12c (Commission of a Serious Offense), Chapter 14 (Separation for Misconduct), AR 635-200 (Active Duty Enlisted Administrative Separations). The CG's stated reasons were the following: the applicant wrongfully used the personally identifiable information of more than a dozen service members and wrongfully received monetary compensation in the amount of approximately \$15,000; in addition, he committed wire fraud, larceny and aggravated Identity theft.

g. On 18 February 2015, after consulting with counsel, the applicant acknowledged that counsel had informed him of the basis for the pending separation action and advised him of his rights and the effect of waiving those rights. The applicant elected to appear personally with counsel before an administrative separation board, and he submitted statements in his own behalf, which consisted of the rebuttal to his GOMOR and three letters of support.

h. On 20 April 2015, an administrative separation board convened to determine whether the applicant should be retained or separated from AGR status. A copy of the proceedings are not available in the applicant's service record, but the applicant has provided a copy, minus the board's findings and recommendations.

i. The applicant provides a memorandum, dated 12 May 2015, in which his counsel submitted a request to disapprove the administrative separation board's findings. On 14 May 2015, the sustainment command CG forwarded his separation recommendation to HRC; he noted that he had approved the administrative separation board 's findings and recommendations, and he further recommended the applicant's under other than honorable conditions discharge.

j. On 4 June 2015, HRC approved the sustainment command's separation recommendation and directed the applicant's under other than honorable conditions

discharge; in addition, HRC ordered the applicant's reduction to the lowest enlisted grade. The applicant's DD Form 214 shows that he completed 2 years, 11 months, and 24 days of his 3-year AGR service obligation, with 8 years, 2 months, and 10 days of prior active duty service and 11 years, 9 months, and 16 days of prior inactive service. The report additionally reflects the following:

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

- Iraq Campaign Medal with two bronze service stars
- Joint Service Commendation Medal
- Army Achievement Medal (2nd Award)
- Joint Meritorious Unit Award
- Army Good Conduct Medal (2nd Award)
- Army Reserve Components Achievement Medal
- National Defense Service Medal with one bronze service star
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- NCO Professional Development Ribbon with Numeral "3"
- Army Service Ribbon
- Overseas Service Ribbon
- Army Reserve Components Overseas Training Ribbon
- Armed Forces Reserve Medal with "M" Device (2nd Award)
- Parachutist Badge
- Driver and Mechanic Badge with Mechanic Component Bar
- Expert Marksmanship Qualification Badge with Rifle, Pistol, and Grenade Bars

(2) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c
- Item 26 (SPD) – "JKQ"
- Item 27 (RE Code) – RE-3
- Item 28 – Misconduct (Serious Offense)

k. On 16 August 2017, the applicant requested to appear personally before the ADRB to receive an upgraded character of service. Through counsel, the applicant argued his separation was the result of an inaccurate, flawed, falsified, and incomplete investigation. In support of his request, the applicant submitted 11 exhibits. On 3 December 2018, the applicant appeared with counsel before the ADRB. After considering the applicant's arguments and evidence, the ADRB voted to deny relief.

4. On 3 November 2022, the Army announced it was correcting errors it had made in regard to the submission of names to national criminal databases as part of its investigation of G-RAP and AR-RAP, conducted from 2012 to 2016. On 18 November 2022, CID issued the applicant its letter confirming it had removed the applicant's name from the title block of a CID LER and two law enforcement databases.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct. Specifically, the commander cited wrongfully using personally identifiable information, receiving monetary compensation, committing wire fraud, larceny, and aggravated identify theft. The Board determined these separation proceedings were based on a Criminal Investigation Division (CID) investigation into allegations of criminal wrongdoing in various Army Recruiting Assistance Programs (RAPs) in which the applicant was assigned. The Board determined based on a preponderance of the evidence, the applicant's DD Form 214 should be amended to reflect an honorable characterization of service, a narrative reason for separation as Secretarial Authority with corresponding codes.

2. The Board noted the standard to determine whether a titling action was appropriate has changed under the National Defense Authorization Act, Fiscal Year 2021, section 545, to a higher increased standard of "probable cause." Based on this, the Board noted CID's notification to the applicant on 18 November 2022 that he had been removed from law enforcement systems, to include the Defense Clearance and Investigations Index (DCII) and the Federal Bureau of Investigation's Interstate Identification Index (III). Based on this information, the Board found sufficient evidence the applicant was improperly titled and all derogatory references should be removed from his service record, to include his separation proceedings.

3. Based on the nature of the applicant's separation proceedings, he was automatically reduced from sergeant first class (SFC)/E-7 to private (PVT)/E-1. The Board determined based on their decision to remove the separation proceedings from the applicant's service record, his rank shall be restored to SFC/E-7, with an effective date of 1 October 2010 annotated on his DD Form 214. However, concerning the applicant's request to be retroactively promoted to the rank/grade of master sergeant (MSG)/E-8, the Board

found no basis to grant relief of constructive credit or promotion to MSG/E-8, with associated back pay and allowances.

4. As it relates to the applicant's request for award of a length of service retirement, the Board determined the applicant does not have sufficient time in service to award such a retirement. Alternatively, the applicant's request for a non-regular retirement is also without merit, as he does not have qualifying service in the U.S. Army Reserve to be considered for a non-regular retirement. The Board found no basis to grant relief of constructive credit for the purpose of attaining retirement eligibility, with associated back pay and allowances.

5. The Board noted the applicant's request for an apology. The ABCMR directs or recommends changes in military records to correct an error or injustice. This request is outside the scope of the ABCMR.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. amending the applicant's DD Form 214, for the period ending 4 June 2015 to show in:

- item 4a (Grade, Rate or Rank): SFC
- item 4b (Pay Grade): E07
- item 12i (Effective Date of Pay Grade): 1 October 2010
- item 24 (Character of Service): Honorable

- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

b. removing the Case Files for Approved Separation, dated 14 May 2015 from his Army Military Human Resource Record (AMHRR), and any associated documents.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of the above.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. DODI 5505.07 (Titling and Indexing in Criminal Investigations), in effect at the time, prescribed policies for titling individuals in criminal investigative reports and outlined procedures for a review of such actions.

a. Paragraph 1.2 (Policy).

(1) Subparagraph 1.2a. DOD Components authorized to conduct criminal investigations will title and index subjects of criminal investigations as soon as the investigation determines there is credible information that the subject committed a criminal offense

(2) The DODI's glossary defines "credible information" as, "Information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume the fact or facts in question are true."

(3) Subparagraph 1.2d. Once the person is indexed in the Defense Central Index of Investigations (DCII), he/she will remain, even if the person is found not guilty of the investigated offense, with the following exceptions:

- Cases of mistaken identity
- Subsequent determination finds no credible information existed at the time of titling and indexing
- Judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation

b. Paragraph 3.3 (Correction and Expungement Procedures). When reviewing the appropriateness of a titling and indexing decision, the reviewing official will only consider the investigative information available at the time of the initial titling and indexing decision to determine whether the decision to determine if the decision was made in accordance with paragraph 1.2a above.

2. DODI 5505.07, dated 8 August 2023 and currently in effect, section 3 prescribes current correction and expungement procedures for persons titled in a DOD Law Enforcement Activity (LEA) report or indexed in the DCII. Per paragraph 1.2a, the initial decision to title and index an individual remains based on a credible information standard.

a. Paragraph 3.1 (Basis for Correction or Expungement). A covered person who was titled in a DOD LEA report or indexed in DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion

of their information in the DOD LEA report, DCII, and other related records systems, databases, or repositories in accordance with Section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, the DCII, and Other Records and Databases) of Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021).

b. Paragraph 3.2 (Considerations).

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) Probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred.

(b) Probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense.

(c) Such other circumstances as the DOD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in Paragraphs 3.2.a.(1) and (2).

(2) In accordance with Section 545 of Public Law 116-283, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) The extent or lack of corroborating evidence against the covered person with respect to the offense.

(b) Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense.

(c) The type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. 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. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. An honorable discharge could be furnished when disqualifying entries in the Soldier's military record was outweighed by subsequent honest and faithful service over a greater period of time. 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). 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. 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 12 (Retirement for Length of Service). A Soldier who has completed 20 but less than 30 years of active Federal service in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement. As used in this chapter, active duty means full-time duty in the active military service of the United States. It includes full-time training duty and annual training duty but does not include full-time National Guard duty. Active service means service on active duty or full-time National Guard duty. HRC may approve, disapprove, or delay the requested retirement date of Regular Army Soldiers and USAR AGR Soldiers in the grade of staff sergeant (promotable) and above.

e. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders were required to initiate separation action when they determined a Soldier had committed serious misconduct and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, for which the UCMJ authorized a punitive discharge for the same or similar offense.

4. The Manual for Courts-Martial, in effect at the time, showed punitive discharges among the available maximum punishments for violation of UCMJ Article 132 (Frauds against the U.S. for More Than \$500).

5. AR 135-18 (The Active Guard Reserve Program), currently in effect, states AGR Soldiers who have completed at least 20 years of active Federal service and are otherwise eligible may, upon application and at the discretion of the SECARMY, be retired. The provisions of AR 635–200 (enlisted) apply. AGR Soldiers who are qualified for a non-regular retirement may apply under AR 135–180 (Retirement for Regular and Non-Regular Service).

6. AR 135-180, currently in effect, prescribes policy and procedures governing the granting of retired pay for non-regular service to Soldiers the USAR.

a. Paragraph 2–1 (Age requirements).

(1) Minimum age. To be eligible for retired pay, an individual must have attained the minimum age prescribed by law, which is age 60.

(2) Reduced retirement age.

(a) The eligibility age for receipt of retired pay will be reduced below 60 years of age by 3 months for each aggregate of 90 days for which the Servicemember serves on active duty in any fiscal year after 28 January 2008, or in any 2 consecutive fiscal years after 30 September 2014. A day of qualifying active duty may be included in only one aggregate of 90 days, with qualifying service defined as a call or order to active duty on orders specifying, as the authority for such orders, a provision of law referred to in section 12301(d), Title 10, U.S. Code.

(b) Service while performing AGR duty under Title 10, U.S. Code, section 12310 (Reserves: For Organizing, Administering, etc. Reserve Components) will not be included as qualifying service for reduced eligibility age for retired pay.

(c) In accordance with Title 10, U.S. Code, section 12731 (Age and Service Requirement), the eligibility age for receiving retired pay may not be reduced below 50 years of age.

b. Paragraph 2-2 (Basic Qualifying Service Requirements). To be eligible for retired pay at or after the age specified in paragraph 2–1, an individual need not have military status at the time of application, but must have completed one of the following:

(1) A minimum of 20 creditable years of qualifying service computed under Title 10, U.S. Code, section 12731(f) (Age 60 or Reduced by Qualifying Service); or,

(2) At least 15 and less than 20 years of qualifying service, computed under Title 10, U.S. Code, section 12732 (Entitlement to Retired Pay: Computation of Years of Service) if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service.

7. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge.

b. Regarding the narrative reason for separation, the regulation stated it 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 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

8. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-12c, AR 635-200 were to receive an SPD of "JKQ" and have, "Misconduct (Serious Offense)" entered in item 28 of their DD Form 214.

9. AR 601-210, in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Table 3-1 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

b. Paragraph 4-13 (Prior Military Service). Any prior service applicant enlisting from any Service with a separation or reentry code requiring a waiver could not process until 90 days had elapsed from separation date. A waiver could not be submitted until a 24-month waiting period had elapsed since applicant was separated or discharged from any component of the Armed Forces for misconduct or major misconduct.

10. Title 10, U.S. Code:

a. Section 1552 (Correction of Military Records: Claims Incident Thereto):

(1) Subsection (a) (1) states, "The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice."

(2) Subsection (c) states, "The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his (or her) or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his (or her) or another's service as a civilian employee." "A claimant's acceptance of a settlement under this section fully satisfies the claim concerned."

(3) Subsection (d) states, "Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his (or her) military record, is entitled to those benefits, but for not longer than one year after the date when his (or her) record is corrected under this section if he (or she) is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate."

b. Section 12731. To receive retired pay, the person must have attained age eligibility, performed at least 20 years of qualifying service, and applied for retired pay.

c. Section 12732. The person's years of service are computed by adding the following: Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points, based on one point for each day of active service and one point for each attendance at a drill or equivalent instruction. Additionally, the person will receive 15 points per year for membership in a Reserve Component.

11. AR 600-37 (Unfavorable Information), in effect at the time, prescribed policies and procedures for the placement and removal of unfavorable information in individual official personnel files. Paragraph 7-2 (Policies and Standards) stated that once an official document was properly filed in the official military personnel file (OMPF), it was presumed to be administratively correct and to have been filed pursuant to an objective decision made by a competent authority. Thereafter, the burden of proof rested on the individual concerned to provide proof of a clear and convincing nature that the document was untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

12. AR 600-8-19 (Enlisted Promotions and Reductions), currently in effect, outlines policies and procedures for SFC promotions in chapter 4 (Centralized Promotions (Evaluation Boards for Promotion to SFC, MSG, and Sergeant Major (SGM))).

a. Paragraph 4-1 (Overview).

(1) To standardize promotions across Regular Army and USAR units, evaluation boards will convene annually to evaluate NCOs (staff sergeant (SSG) through MSG/1SG) who are eligible for consideration by the board with a mission to produce OMLs to qualify and identify the best-qualified NCOs for potential promotion selection (pin-on).

(2) The board will evaluate the performance and potential of all eligible NCOs based on Army doctrine and proponent guidance for the purpose of voting records to create an order of merit list (OML). OMLs rank order Soldiers from most qualified to least qualified; resulting in merit-based rosters for each Army skill and pay grade. The OML provides the Army a means to inform multiple merit-based decisions to include selection to attend their respective Professional Military Education (PME) course, selection for promotion pin-on for the purpose of satisfying valid vacancy requirements (by skill and pay grade), selection for assignments and appointment to CSM positions, and potential denial of continued service.

b. Paragraph 4-2 (Eligibility Criteria). Eligibility criteria for consideration by an NCO Evaluation Board is established and announced in a board announcement message. Soldiers are required to meet the eligibility criteria as of the date specified in the message and in all instances, must have a minimum high school diploma equivalent.

c. Paragraph 4-3 (Evaluation Boards). HQDA will convene consolidated NCO evaluation boards for Regular Army and USAR (AGR and Individual Mobilization Augmentees (IMA)) members at HRC.

d. Paragraph 4-7 (Board Results). HRC will announce board results for Regular Army and USAR (AGR/IMA) Soldiers.

e. Paragraph 4-9 (Appeals of OML Modifications). Soldiers removed from the OML may appeal when the underlying basis is subsequently determined to be erroneous.

13. AR 15-185 (ABCMR) states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.

14. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs (Discharge Review Boards) and BCM/NRs (Boards

for Correction of Military Records/Naval Records) 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//