

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20240000325

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different code in item 26 (Separation Code)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he is requesting a change in his separation code. His discharge is preventing him from applying for benefits. His DD Form 214 shows he was honorably discharged; however, separation code shows MDB with the narrative reason for separation listed as, "Hardship."
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 20 April 1984. His DA Form 2-1 (Personnel Qualification Record – Part II) shows following completion of one station unit training (OSUT) he was stationed in Fort Polk, LA as a 13F (Fire Support Specialist).
 - b. A statement from Dr. AC, MD, dated 6 September 1985 noted the applicant's father was diagnosed with advanced renal disease, secondary to adult polycystic kidney disease. Due to the nature of his illness and the natural course of the disease, he would be in need of monthly dialysis maintenance treatment within a period of 12 months. The applicant was his only close relative and it seemed appropriate for him to remain close.

c. A DA Form 3739 (Application for Assignment/Deletion/Deferment for Extreme Family Problems) shows on 12 November 1985, the applicant requested reassignment to Fort Hamilton, NY for the purpose of caring for his father. He believed the problem would be resolved within 8 months. His parents were divorced and had been living apart for over 15 years. His mother's health was also poor and she was unable to assist.

d. Five statements were submitted in support of his request confirming the applicant was an only child and the only available relative to assist in caring for his father. There were no available relatives in the New York area where he resides and the applicant was too far to help. The applicant was not trying to avoid his obligation to the military. The physician offered an update indicating the applicant's father would have to undergo dialysis and/or kidney transplant.

█ [REDACTED]
 █ [REDACTED]
 █ [REDACTED]
 █ [REDACTED]
 █ [REDACTED]

e. On 5 February 1986, the applicant submitted a request for separation due to hardship or dependency. The applicant noted he submitted a request for reassignment due to extreme family problems and his request was disapproved. A request for hardship discharge would allow him to care for his father.

f. A DA Form 4187 (Personnel Action) shows on 10 February 1986 the applicant's commander recommended approval of his request for a hardship discharge. He further noted the applicant's request for reassignment due to extreme family problems had been disapproved. The intermediate chain of command recommended approval.

g. On 14 March 1986, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 6, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), for hardship. He would be issued an Honorable Discharge Certificate.

h. He was honorably released from active duty on 3 April 1986. His DD Form 214 shows he was separated under the provisions of Chapter 6, of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), for hardship. He completed 2 years and 14 days of active service. He was assigned separation code MDB and the narrative reason for separation listed as "Hardship."

i. Orders D-04-030981 dated 18 April 1990, show the applicant was honorably discharged from the U.S. Army Reserve on 19 April 1990.

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
5. By regulation, (AR 15-185) an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.
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. 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 Designators (SPD)).
7. 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 MDB is listed with the narrative reason as, "Hardship" in accordance with AR 635-200, paragraph 6-3b.
8. By regulation, (AR 635-200), hardship exists when in circumstances not involving death or disability of a member of the Soldier's (or spouse's) immediate family, separation from the service will materially affect the care or support of the family by alleviating undue and genuine hardship.
9. 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:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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 submitted a DA Form 4187 for a hardship discharge due to extreme family problems. He was honorably released from active duty on 3 April 1986. His DD Form 214 shows he was assigned separation code MDB and the

narrative reason for separation listed as "Hardship." By regulation in effect at the time, enlisted Soldiers separated for hardship are assigned Separation Code MDB which is correctly listed on his DD Form 214. The Board found no error or injustice.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Separation 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 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 MDB is listed with the narrative reason as, "Hardship" in accordance with AR 635-200, paragraph 6-3b.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. Chapter 6 of the regulation states enlisted members of the Active Army and the Reserve Components service on active duty or active duty training, may be discharged or released because of genuine dependency or hardship.

a. Dependency exists when death or disability of a member of a Soldier's (or spouse's) immediate family causes that member to rely upon the Soldier for principal care or support.

b. Hardship exists when in circumstances not involving death or disability of a member of the Soldier's (or spouse's) immediate family, separation from the service will materially affect the care or support of the family by alleviating undue and genuine hardship.

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//