

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20240000759

APPLICANT REQUESTS: issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- 3-Page Listing of Leave and Earnings Statements from April 1992 – June 2001
- Leave and Earnings Statements for April 1992 and June 2001
- Letter, U.S. Army Human Resources Command (AHRC), 2 June 2023

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, he did not receive a DD Form 214 because he was never out-processed.
3. The applicant's Official Military Personnel File contains:
  - a. DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) that shows he enlisted into the Regular Army (RA) on 18 February 1992, for a period of 3 years.
  - b. DD Form 4 that shows he reenlisted in the RA on 27 July 1994, for a period of 2 years.
  - c. Permanent Orders 12-77, 3rd Personnel Group, 546th Personnel Service Battalion, Fort Hood, TX, dated 23 January 1995, which shows he was awarded the Army Good Conduct Medal (1st Award), for the period 18 February 1992 to 17 February 1995.

d. DD Forms 4 that shows he reenlisted in the RA on 30 January 1996, for a period of 2 years; on 14 May 1997, for a period of 3 years; and on 23 June 1999 for a period of 3 years.

e. Permanent Orders 197-04, Headquarters, 3rd Battalion, 15th Infantry (Mech), Fort Stewart, GA, which shows he was awarded the Army Good Conduct Medal (2nd Award) for the period 18 February 1995 to 17 February 1998.

f. DA Form 1059 (Service School Academic Evaluation Report) that shows he attended and achieve the course standards of the Food Service Specialist Basic Noncommissioned Officer Course 2-99 at Fort Lewis, VA, from 11 January 1999 to 26 March 1999.

g. Permanent Order Number 010-35, Headquarters, 3rd Battalion, 15th Infantry (Mech), which awarded him the Army Achievement Medal for exceptionally meritorious achievement from 19 November 1999 to 21 December 1999.

h. Permanent Order Number 053-06, Headquarters, 3rd Battalion, 15th Infantry (Mech), which awarded him the Army Achievement Medal for exceptionally meritorious service from 15 March 1998 to 24 February 2000.

i. DA Form 2166-7 (Noncommissioned Officer Evaluation Report) for the period July 2000 thru March 2001.

j. Corrected Copy of General Court-Martial Order Number 19, Headquarters, U.S. Army Infantry Center and Fort Benning, dated 12 October 2001, which shows his sentence was adjudged on 30 March 2001.

m. General Court-Martial Order Number 7, Headquarters, U.S. Army Infantry Center and Fort Benning, dated 29 April 2003, which shows in the general court-martial case of [the applicant], U.S. Army, Headquarters and Headquarters Company, 2nd Battalion, 69th Armor, 3rd Brigade, 3rd Infantry Division (Mechanized), U.S. Army Infantry Center and Fort Benning, GA 31905, the sentence to reduction to the grade of Private (E 1), confinement for 60 days, and a Bad-Conduct Discharge, adjudged on 30 March 2001, as promulgated in General Court-Martial Order Number 19, this headquarters, dated 12 October 2001, has been finally affirmed. The automatic forfeitures of pay and allowances as required by Article 58b, Uniform Code of Military Justice, were waived, effective 13 April 2001 until 12 June 2001, with direction that these funds be paid to the accused's spouse. Article 71(c) having been complied with; the Bad-Conduct Discharge will be executed. That part of the sentence extending to confinement has been served.

4. The applicant provides a/an:

a. 3-page document from the Defense Finance and Accounting Service listing LES' from April 1992 through June 2001.

b. Leave and Earnings Statements for April 1992 and June 2001.

c. Letter from AHRC dated 2 June 2023, to a U.S. Representative.

5. Army Regulation 635-8 (Separation Processing and Documents), 17 September 2019, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for preparing and distributing the DD Form 214. Paragraph 8-2 (Rules for Reissuing DD Form 214) states do not reissue DD Form 214 to replace copies or DD Forms 214 lost by the Soldier. If no DD Form 214 is available, issue a DA Form 1569 (Transcript of Military Record).

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined that the applicant's separation was unduly harsh, particularly given the absence of a formal discharge documented on a DD Form 214. The incident leading to separation was the applicant's first infraction following a commendable military career. The record reflects that the applicant completed three prior enlistments, totaling seven years of honorable service, and was awarded two Army Good Conduct Medals in recognition of his exemplary conduct.

2. The Board also noted that the applicant has made repeated efforts since 2006 to obtain a copy of his DD Form 214, without success. In light of the applicant's prior honorable service and the disproportionate nature of the separation action, the Board found sufficient grounds for clemency. As such, the Board agreed that relief be granted by upgrading the applicant's character of service to Under Honorable Conditions (General). Furthermore, the Board determined that the applicant's DD Form 214 be amended to accurately reflect his prior periods of honorable service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

- item 18 (Remarks) adding the following entries in item
  - SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
  - CONTINUOUS HONORABLE SERVICE FROM 19920218 until 19990622
- item 24 (Characterization of Service)- reissuing the applicant a DD Form 214 showing his characterization of service as under honorable (general) conditions

X [REDACTED]

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.

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 635-8, 17 September 2019, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for preparing and distributing the DD Form 214. Paragraph 8-2 (Rules for Reissuing DD Form 214) states do not reissue DD Form 214 to replace copies or DD Forms 214 lost by the Soldier. If no DD Form 214 is available, issue a DA Form 1569 (Transcript of Military Record).
3. DA Form 1569 (Transcript of Military Record).
  - a. Principal Purpose. The DA Form 1569 is required when a DD Form 214 is not available. The DA Form 1569 may be used in lieu of a DD Form 214 or statement of service.
  - b. Routine Uses. To the Department of Veterans Affairs: To provide information relating to service, benefits, pension, in-service loans, insurance, and appropriate hospital support, and law enforcement.
4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the Army Military Human Resource Record. Paragraph 5-7 (Statement of Service) states a statement of service for retired or separated veterans can be obtained by submitting a Standard Form 180 (Request Pertaining to Military Records) to the Commander, U.S. Army Human Resources Command, Department 420, 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5402, or emailing [askhrc.army@us.army.mil](mailto:askhrc.army@us.army.mil).
5. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the

presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//