

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240001038

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) for service in the U.S. Army Reserve (USAR)

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

DD Form 293 (Application for the Review of Discharge)

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 served honorably in the USAR for 8 years, prior to his reenlistment.
3. The applicant enlisted in USAR on 14 March 2001, and entered initial active duty for training on 31 July 2001. He was issued a DD Form 214 for this period of service.
4. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his USAR discharge processing.
5. Orders 12-076-00018, issued by Headquarters, 99th Regional Readiness Command, Coraopolis, PA, discharged the applicant from the USAR effective 23 March 2012, under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve –Enlisted Administrative Separations). He was reduced in grade from sergeant/E-5 to private/E-1, effective 16 March 2012. His service was characterized as under other than honorable conditions.

6. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under other than honorable conditions discharge. On 14 August 2023, the Board voted to deny relief and determined his discharge was both proper and equitable.

9. The USAR does not issue a Report of Separation or Record of Service when a Soldier separates from the USAR, similar to the DD Form 214 or National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), issued by the Regular Army and the Army National Guard (ARNG), respectively.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. 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 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 complete facts and circumstances surrounding the applicant's separation are not available; however, the applicant was separated from the U.S. Army Reserve (USAR) with an under other than honorable conditions discharge and reduced from sergeant to private at separation. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Board considered the applicant's request for issuance of a DD Form 214 for his service in the USAR. The Board noted the applicant's contention that he served 8 years honorably and concurs that he had prior honorable service on active duty in which he received a DD Form 214 and then time in the USAR subsequent to that. The Board concluded the DD Form 214 captures a summary of the most recent period of continuous honorable active service and a review of the applicant's record does not show and the applicant does not provide any period of active service after his honorable training period; therefore denied relief for issuance of a DD Form 214.

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 635-5 (Separation Documents), paragraph 2-1, provides the instructions for preparing the DD Form 214. This regulation provides that:

a. 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. The DD Form 214 will be prepared for Reserve Component members completing initial active duty for training that results in the award of a military occupational specialty, even when the active duty period was less than 90 days.

c. The characterization or description of service is determined by directives authorizing separation.

3. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. An honorable characterization of service is appropriate when the quality of the Soldier'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 (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

4. 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/NR) 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.

//NOTHING FOLLOWS//