

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240001479

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record) (online application)
- Purple Heart Certificate
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (U.S. Marine Corps (USMC))

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 his discharge was already approved to be upgraded to honorable by the Army Discharge Review Board (ADRB), but he has not received an updated DD Form 214. The narrative on the DD Form 214 states misconduct, but if you look at the separation papers it was for not turning his wife in after she had gone absent without leave (AWOL). Courts and Federal and State governments recognize the spousal privilege in order to protect marital relationships from the harm that would befall them if spouses could be forced to testify against each other. Also, he served 8 years in the USMC. He received a purple heart, two good conduct medals, four campaign medals, and a combat action ribbon. He is currently working for the Army Corps of Engineers and provides skills that protect Army Soldiers and civilians from hazards.

3. The applicant provides:

a. His Purple Heart certificate shows he was awarded for wounds received in action on 27 September 2010 in Afghanistan given on 9 February 2016.

b. His DD Form 214 USMC shows he entered active duty on 19 September 2005. He was honorably discharged on 16 October 2013. He completed 8 years, and 28 days net active service, with 2 years, 3 months, and 8 days of foreign service He was awarded the following awards:

- Combat action Ribbon (Afghanistan)
- Navy Unit Commendation (2)
- Marine Corps Good Conduct Medal (2)
- National Defense Service Medal
- Afghanistan Campaign Medal (with 2 stars)
- Iraq Campaign Medal (with 2 stars)
- Global War on Terrorism Service Medal, Sea Service Deployment Ribbon (4)
- NATO Medal-ISAF-Afghanistan
- Certificate of Commendation (Individual Award)
- Letter of Appreciation
- Meritorious Mast
- Marksmanship Expert Rifle Qualification Badge
- Marksmanship Marksman Pistol Qualification Badge

4. The applicant's service record shows the following information:

a. DD Form 4 (Enlistment/Reenlistment Document Armed forces of the United States) reflects he enlisted in the Regular Army on 10 October 2002.

b. DA Form 4856 (Developmental Counseling Form), 10 June 2003, the applicant received discipline counseling because his was in violation for being an accessory after the fact and assisting a deserter. His fiancé Private/PVT [REDACTED] was considered a deserter. The applicant knowing this still got married on 15 May 2002 and willfully withheld information regarding his wife's status. The applicant stated his finance was medically discharged from the U.S. Army. He lied to the chain of command and failed to notify anyone about his wife.

c. The Mental Health Evaluation, 26 June 2003, shows the applicant was seen by Dr. [REDACTED] in the Behavioral Health Department for mental health evaluation for Chapter 14-12c separation. The psychological evaluation revealed that the applicant suffers from an adjustment disorder with depressed mood. However, his current depression is not a sufficient severity to warrant a medical board. He is psychologically cleared for any administration action deemed necessary.

d. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflects the applicant accepted nonjudicial punishment under Article 15 on 1 July 2003 for having knowledge that PVT [REDACTED] had actually committed a serious offense desertion on or about 21 April 2003 wrongfully conceal such serious offense by

telling First Lieutenant [REDACTED] Sergeant First Class [REDACTED] and Staff Sergeant [REDACTED] that PVT [REDACTED] had been medically discharged and fail to make the same known to the civil or military authorities as soon as possible. His punishment consisted of reduction to private/E-1; for feature of \$268.00 (suspended), extra duty for 14 days and restriction for 14 days.

e. The applicant's commander notified him he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 14-12c for knowingly assisting his wife, whom he knew to be a deserter from the Army, by informing his chain of command that she had been medically discharge. He recommended a under honorable conditions (general) characterization of service. The applicant acknowledged receipt on 21 July 2003.

f. The applicant consulted with legal counsel on 23 July 2003 and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He understood that if he had more than 6 years of total active and reserve service at the time of separation under AR 635-200, Chapter 14-12c, or if he had been notified that he was being considered for a discharge under honorable conditions (general). He was entitled to have his case heard by an administrative separation board. He requested military counsel. He elected not to submit statements in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharged was issued to him.

g. The applicant's commander formally recommended him for separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of knowingly assisting his wife, whom he knew to be a deserter from the Army, by informing his chain of command that she had been medically discharged. The commander and the chain of command recommended approval with a under honorable conditions (general) characterization of service.

h. The separation authority approved the separation under the provisions of AR 635-200, Chapter 14-12c, commission of a serious offense and directed the issuance of a under honorable conditions (general) discharge.

i. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 14-12C, for misconduct on 25 August 2003. He had separation code JKQ and reentry code 3. His service was characterized as under honorable conditions (general). He completed 10 months, and 16 days of net active service. He was awarded or authorized the following awards: National Defense Service Medal and the Army Service Ribbon.

5. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate;

however, the separation authority may direct a general discharge if such is merited by the overall record.

6. On 8 March 2013, the Army Review Boards Agency acknowledged receipt of his application to the Army Discharge Review Board (ADRB). His application was not signed and was returned without action and without prejudice. He could reapply with a signed application.

7. On 24 October 2013, the ADRB determined the applicant was properly and equitably discharged and denied the applicant's request for a change in the character and/or reason of his discharge.

8. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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 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 there was insufficient evidence of in-service mitigating factors to outweigh the applicant's misconduct. Specifically, the applicant knowingly assisted his wife, whom he was aware had deserted the Army—by falsely informing his chain of command that she had been medically discharged.

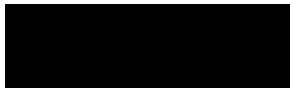
2. The Board acknowledged the applicant's prior honorable service and deployments while serving in the U.S. Marine Corps. However, after thorough consideration, the Board concluded that the applicant's achievements in the USMC did not outweigh his misconduct of aiding and abetting his then-fiancé, now wife. As a result, the applicant was discharged for misconduct with an under honorable conditions (General) characterization of service. The Board further determined that the applicant's discharge characterization remains appropriate, as his actions did not meet the standards of acceptable conduct and performance required of Army personnel to receive an Honorable discharge. Based on these findings, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JKQ (is to be used for RA Soldiers discharged for misconduct).

4. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JKQ has a corresponding RE Code of "3."

5. 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation

- RE-4 Applies to persons who are definitely not eligible for reenlistment

//NOTHING FOLLOWS//