

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240003778

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 13 April 2003, to reflect:

- period of deployments
- awards for his deployment(s)
- restore his highest grade held of specialist (SPC)/E-4

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

- DD Form 149 (Application for Correction of Military Record) dated 7 February 2024
- DD Form 149 dated 12 February 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC, 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 character of service was upgraded to an honorable. He requests his DD Form 214 be corrected to reflect his periods of deployments, the awards and medals from those deployments and restore his highest grade held of SPC/E-4.

3. A review of the applicant's service record shows:

- a. On 14 April 2000, the applicant enlisted in the Regular Army (RA).
- b. DA Form 2-1 (Personnel Qualification Record) shows in:
 - Item 5 (Overseas Service): served in the Republic of Korea during the period of 16 October 2000 through 15 October 2001

- Item 9 (Awards, Decorations and Campaigns): Army Service Ribbon and Overseas Service Ribbon
- Item 18 (Appointments and Reductions):
 - private (PVT)/E-1 effective 14 April 2000
 - private (PV2)/E-2 effective 14 October 2000
 - private first class/E-3 effective 13 October 2001

c. On 11 December 2002, the applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice for wrongful use of marijuana. His punishment included:

- reduction to the rank of PVT/E-1, any amount in excess of reduction to PV2/E-2 was suspended to be automatically remitted if not vacated before 17 June 2003
- forfeiture of pay for 2-months, suspended to be automatically remitted if not vacated before 17 June 2003
- 45-days extra duty and restriction

d. On or about 5 March 2003, the applicant was notified of his commander's intention to separate him from the RA under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c (commission of a serious offense) due to his non-judicial punishment. His commander was recommending his separation with a character of service of general under honorable conditions discharge and he was notified of his rights. The applicant acknowledged the notification of his separation.

e. On 5 March 2003, after consultation with counsel, the applicant waived his right to an administrative separation board in exchange for the issuance of a general under honorable conditions discharge. He also understood he:

- may expect to encounter substantial prejudice in civilian life
- may apply to the Army Discharge Review Board or the ABCMR to request an upgrade of his character of service
- consideration by either board does not imply the upgrade would be granted

f. On 10 March 2003, the applicant's commander recommended he be separated from the U.S. Army under the provisions of AR 635-200, paragraph 14-12c prior to his Expiration Term of Service (ETS). He recommended the conditional waiver be disapproved and the applicant be separated with an under other than honorable conditions discharge.

g. On 14 March 2003, the applicant's battalion commander recommended he be separated from the U.S. Army under the provisions of AR 635-200, paragraph 14-12c prior to his ETS. He recommended the conditional waiver be disapproved and the applicant be separated with an other than honorable conditions discharge.

h. On 18 March 2003, the applicant's brigade commander recommended separation from the U.S. Army under the provisions of AR 635-200, paragraph 14-12c prior to his ETS. He recommended the conditional waiver be approved and the applicant be separated with an general under honorable conditions discharge.

i. On 26 March 2003, the separation authority directed the applicant be discharged under the provisions of AR 635-200, paragraph 14-12c and issued a general under honorable conditions discharge.

j. On 13 April 2003, the applicant was discharged from active duty under the provisions of AR 635-200, paragraph 14-12c and issued a general under honorable conditions character of service. DD Form 214 shows the applicant completed 3-years of active service. It also shows in:

- item 4a (Grade, Rate or Rank) and item 4b (Pay Grade): PV2/E2
- item 12f (Foreign Service): 1-year, 1-month, and 7-days
- item 12h (Effective Date of Pay Grade): 19 December 2002
- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, and Expert Marksmanship Qualification Badge with Rifle Bar
- Item 18 (Remarks): does not list any deployments outside the continental United States

k. On 27 July 2004, the Army Discharge Review Board (ADRB) granted him relief in the form of an upgraded character of service from general under honorable conditions to honorable and was issued a new DD Form 214. The ADRB reviewed his service record, there was consideration of his faithful honorable service and the infraction of discipline and the seriousness of the offense. The applicant was discharged on his ETS, therefore, the ADRB determined the character of service was improper. AR 635-200, paragraph 4-5 states a Soldier who is separated upon his ETS will be awarded a character of service of honorable. The ADRB determined the reason for the discharge was proper and equitable.

l. On 27 July 2006, the ABCMR denied the applicant's request to change his Separation Program Designator as shown on his DD Form 214. His record shows his highest rank attained on active duty was SPC/E-4. He was reduced in rank to PV2/E-2 due to non-judicial punishment during his service. He was discharged from the U.S.

Army under the provisions of AR 635-200, paragraph 14-12c as a result of his positive urinalysis for marijuana. In order to justify the correction of his record, the applicant must show this was in error or unjust. He failed to submit any evidence of this. The Board determined the overall merits of the case were insufficient for the correction of his records, therefore, his request was denied.

m. Army Master Military Pay Account for page 5 shows the applicant received hostile fire/imminent danger pay for the period of 30 January 2002 through 9 July 2002 at the monthly rate of \$150.00 for deployment in Afghanistan.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Deployment: The applicant's pay records show he received hostile fire/imminent danger pay for the period of 30 January 2002 through 9 July 2002 (5 months and 10 days) for deployment in Afghanistan. This deployment should be listed on his DD Form 214.

b. Afghanistan Campaign Medal: Grant. Based on his service in Afghanistan, the applicant qualifies for award of the Afghanistan Campaign Medal with one bronze service star and correction of his DD Form 214 to show it.

c. Foreign Service: Grant. The applicant served in Korea from 16 October 2000 to 15 October 2001 (1 year) and in Afghanistan from 30 January 2002 to 9 July 2002 (5 months and 10 days), for a total of 1 year, 5 months, and 10 days of foreign service.

d. Global War on Terrorism Service Medal: Grant. The applicant served a qualifying period of service for this award and should have his DD Form 214 corrected to show it.

e. Korea Defense Service Medal: Grant. The applicant served in Korea from 16 October 2000 to 15 October 2001. Therefore, he served a qualifying period of service for award of the Korea Defense Service Medal and should have his DD Form 214 corrected to show it.

f. Grade: Deny. The applicant was promoted to PFC/E-3 on 13 October 2001. He received NJP on 11 December 2002 that resulted in his reduction to PV2/E2. He held the rank/grade of PV2/E-2 at the time of separation. There is no evidence he was promoted to SPC/E-4 after his reduction to PV2/E-2. The discharge upgrade he received has no impact on his receipt of NJP that resulted in his reduction.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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 a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 as follows:

- Block 12f, delete 0001-01-07 and add 0001-05-10
- Block 13, add Global War on Terrorism Service Medal, Afghanistan Campaign Medal with campaign star, and Korea Defense Service Medal
- Block 18, add "service in Afghanistan from 30 January 2002 to 9 July 2002"

2. The Board further determined 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 the grade of SPC/E-4.

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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, USC, 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. AR 600-8-22 (Military Awards), prescribes Department of the Army (DA) policy, criteria, and procedures for individual and unit military awards and foreign decorations and badges. Paragraph 2-8 (Categories of Campaign, Expeditionary and Service (CE and S) Medals), there are four categories of CE and S medals:

- Campaign medals - Campaign medals recognize participation in large-scale or long-duration combat operations
- Expeditionary medals - Expeditionary medals recognize deployed participation in small-scale or short-duration combat operations or military operations where there is an imminent threat of hostilities
- Deployed Service medals - Deployed Service medals recognize deployment or assignment to a designated area of eligibility to participate in or directly support a designated military operation where there is no foreign armed opposition or imminent threat of hostile action
- Individual Service medals - Individual Service medals recognize individual merit and direct participation in a DoD-approved military activity, undertaking, event or operation, or service during a specified period

The military service of the service member on which qualification for award of CE and S medals is based must have been honorable. Approval of CE and S medals is based on administrative determinations rendered by the commander or servicing personnel officer. The burden of proof rests with the Soldier to provide adequate information on which to base a decision.

3. AR 635-8 (Personnel Separations – Separation Processing and Documents), provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents.

a. Paragraph 5-1 (When to prepare the DD Form 214), DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clearcut record of all current active, prior active, and prior inactive duty service at the time of discharge.

b. Paragraph 5-4 (Source documents), when separation is ordered, the separation approval documents must be present for transition processing to occur. Source documents must be present in a Soldier's record in order to complete the DD Form 214. If approval documentation is not present in a Soldier's record, action will be coordinated with the necessary activity (personnel service division, Assistant Chief of Staff for Personnel, adjutant general, or chain of command) for proper source documents. Use the following documents when preparing a DD Form 214:

- Servicemember's record brief
- Separation approval documents, if applicable
- Separation order
- Any other document authorized for filing in the Army Military Human Resources Record

c. Paragraph 5-6 (Rules for completing the DD Form 214),

- block 4: (Grade, Rate or Rank), verify that active duty grade or rank and pay grade are accurate at the time of separation
- block 12f: (Foreign Service), enter the total amount of service performed outside the Continental United States (OCONUS) during the period covered in block 12c to include deployments; additionally, list periods of deployed service in block 18
- block 18 (Remarks): for active duty Soldiers, list any/all OCONUS deployments completed during the period of the DD Form 214 being created in statement 2, below. "SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates)"

4. AR 27-10 (Military Justice), in effect at the time, prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2019 (MCM), and the rules for courts-martial (RCMs) contained in the MCM. Paragraph 3-19b (6) (d) (Void reduction), any portion of a reduction pursuant to Uniform Code of Military Justice (UCMJ), Article 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where a commander reduces a Soldier below a grade to which the commander is authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at least one grade, a one-grade reduction may be executed. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

5. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system. Paragraph 7-14 (Restoration to Former Grade), setting aside, mitigation or suspension

of non-judicial punishment. The procedures and means of restoring grades and announcing these actions are set forth in AR 27-10.

//NOTHING FOLLOWS//