

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006363

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions characterization of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 several situations led to his discharge from the United States Army Reserve (USAR). He was never contacted about the discharge, and he received no documentation. He believes two factors affected his discharge that were unjust. He joined the USAR Military Intelligence Augmentee Detachment (MIAD), which provided logistical support to keep Soldiers with difficult to retain intelligence military occupational specialties (MOS) in the Reserve. The program assigned him to a unit 400 miles away. When the funding for travel disappeared, he was unable to sustain out of pocket travel expenses and the unit would not compensate him. Secondly, his wife filed for a divorce during deployment, and he could not go. He believes he was retaliated against by being discharged.
3. The applicant completed three periods of active service and he was issued three DD Forms 214 showing:
 - a. He entered active duty for training (ADT) on 29 October 1992, completed the training requirements, and he was awarded MOS 51K (Plumber). On 12 March 1993, he was released from ADT, under the provisions of chapter 4, Army Regulation (AR) 635-200, due to completion of ADT, with uncharacterized service, and he was transferred to his USAR unit in Boise, ID, in pay grade E-1. He completed 4 months and 14 days of net active service this period.

b. He served in the Regular Army (RA) from 18 September 1993 to 11 February 2000. He held military MOS 98C (SIGNIT Analyst). He was honorably released under the provisions of chapter 4, AR 635-200, due to completion of required active service and he was transferred the USAR Control Group (Reinforcement), St. Louis, MO, to complete his remaining service obligation. He completed 1 year, 2 months, and 25 days of net active service this period. He also completed 6 years, 4 months, and 24 days of total prior active service.

c. The applicant was ordered to active duty in support of Operation Iraqi Freedom from 20 October 2004 to 14 January 2006. He served in Iraq/Kuwait from 18 February 2004 to 13 December 2005. He held MOS 98C (Signals Intelligence Analyst). He was honorably released under the provisions of "HQ-CAJMTC Orders #349-213 DTD 20051215," due to completion of required active service and he was reverted to "Company A, 844th Engineer Battalion," in the rank/pay grade of staff sergeant/E-6. He did not have a remaining service obligation. He completed 1 year, 2 months, and 25 days of net active service this period and 6 years, 9 months, and 8 days of total prior active service.

4. Between 17 May 2011 and 3 May 2012, the applicant was absent from scheduled unit training assemblies (UTAs) or multiple unit training assemblies (MUTAs) a total of 20 times. His Interactive Personnel Electronics Records Management System record contains six Memoranda, subject: Letter of Instructions (LOI) – Unexcused Absence showing on 17 May 2011, 12 July 2011, 18 July 2011, 12 March 2012, 16 April 2012, and on 7 May 2012, the applicant was advised of such.

a. In each case, by certified/registered mail, the applicant's immediate commander notified him that he was absent from the scheduled UTAs/MUTAs for the scheduled period.

b. In each memorandum, he was also advised that he had accrued a certain number of unexcused absences and that an accumulation of nine unexcused absences within 1 year would declare him an unsatisfactory participant.

c. In each case, he was also provided an opportunity to explain and/or provide justification for the unexcused periods. The certified mail receipts show he accepted and signed for at least one of these memoranda, but he did not sign/accept delivery of most of them.

5. On 23 May 2012, the applicant's immediate commander notified the applicant action was being initiated to separate him from the USAR under the provisions of chapter 13, AR 135-178 (Army National Guard and Reserve – Enlisted Administrative Separations),

due to unsatisfactory participation, he had accumulated nine unexcused absences within a 1-year period. He was advised of his rights.

6. The applicant's acknowledgment, election, and waiver of rights in separation proceedings under, chapter 13, AR 135-178, unsatisfactory participation, dated 24 May 2012 is unsigned.

7. On 26 June 2012, the applicant's immediate commander recommended the applicant's separation under chapter 13, AR 135-178 (Separation of Enlisted Personnel) prior to his expiration term of service, due to unsatisfactory participation, with an under other than honorable conditions characterization of service. Additionally, the commander stated in part:

a. The applicant originally enlisted in the Reserve Component on 29 October 1992, he was discharged on 11 March 1993 with uncharacterized service after completion of training in MOS 51K (Plumber).

b. He was reclassified into MOS 98C (Signals Intelligence Analyst) from 18 September 1993 - 11 February 2000.

c. He enlisted in the RA on 18 September 1993 and served 6 years, 4 months and 24 days. He was released to the Individual Ready Reserve on 11 February 2000 from Fort Carson, CO.

d. On 29 July 2004, he reenlisted in the USAR for 1 year. On 20 October 2004, he was mobilized with the 844th Engineer Battalion in support of Operation Iraqi, Freedom as a 98C (Signals Intelligence Analyst).

e. On 3 February 2005, he reenlisted in Kuwait for an indefinite term. He was released from active duty on 14 January 2006 and was assigned to Company A, 373d Military Intelligence Battalion.

f. This document is annotated to show a reasonable effort was made to personally deliver certified or registered mail to the applicant concerning his absences and separation processing. However, he avoided contact, refused to accept, or acknowledge contact, or he could not be located. At least three envelopes were returned unclaimed.

8. The applicant's chain of command recommended the applicant's separation from the USAR prior to the expiration of his term of service under the provisions of chapter 13, AR 135-178, with service characterized as under other than honorable conditions.

9. On 28 August 2012, the appropriate authority approved/directed the applicant's discharge under the provisions of chapter 13, AR 135-178, for unsatisfactory participation with service characterized as under other than honorable conditions, and in accordance with AR 600-8-19 (Enlisted Promotions and Demotions), paragraph 10-15 reduction from [staff sergeant/E-6] to private/E-1.

10. Headquarters, 88th Regional Support Command Orders 12-244-00018, dated 31 August 2012 discharged the applicant from the USAR under the provisions of AR 135-178, with an under other than honorable conditions characterization of service, effective 28 August 2012, in the rank of private/E-1.

11. The applicant alleges he was not contacted concerning his discharge processing and he received no documentation. His unit was 400 miles away, funding for travel disappeared, and he was unable to sustain out of pocket travel expenses. He was going through a divorce, and he was unable to deploy. He believes he was retaliated against by being discharged.

BOARD DISCUSSION:

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 review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board majority found no error or injustice existed to warrant an upgrade. The applicant provided no evidence of post-service achievements. The Board minority concluded an upgrade to under honorable conditions (General) was appropriate based on the applicant's potential PTSD. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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.



X //SIGNED//

CHAIRPERSON
Signed by:

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 135-178 sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States and USAR enlisted Soldiers for a variety of reasons. Chapter 13 of the regulation in effect at the time governed separation for unsatisfactory participation in the USAR. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. An honorable characterization of service is not authorized for a member who is no longer in an entry level status unless the member's record is otherwise so meritorious that any other characterization would clearly be inappropriate.

b. An honorable discharge is a separation with honor. The honorable characterization 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.

c. 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.

3. Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures) governs service obligations of members of Reserve Components. This regulation states that a member is an unsatisfactory participant when he or she accrues nine or more unexcused absences from scheduled drills during a 1-year period.

//NOTHING FOLLOWS//