

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2025

DOCKET NUMBER: AR20240007133

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- correction of his date of birth (DOB) to read [REDACTED]
- correction of his date of discharge to reflect 1995 vice 21 December 1992
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Live Birth, State of Mississippi
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 2-1 (Section VII – Current and Previous Assignments)
- National Personnel Records Center (NPRC) Letter, 29 August 2023
- Department of Veterans Affairs (VA) Letter, 11 September 2023
- U.S Army Human Resources Command (HRC) Letter, 4 March 2024

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 date of birth is incorrect, currently listed as [REDACTED] and should reflect [REDACTED]. Additionally, his discharge date is listed as 21 December 1992, and he was not discharged until 1995. He was authorized leave in 1992 due to his grandmother's illness and subsequent passing. Finally, the DD Form 214 lists his discharge as under other than honorable conditions and should be amended to show an honorable characterization of service. The current DD Form 214 sheds a negative light on his service to the Army and his country and he believes could be missing vital information. Furthermore, it prevents him from applying for much needed benefits from the Department of Veterans Affairs (VA).

3. The applicant provides:

a. The below listed documents as proof of identify and proof service:

- Certificate of Live Birth – shows [REDACTED] as DOB
- Extract of DA Form 2-1 (Personnel Qualification Record)
- DD Form 214

b. A letter from NPRC dated 29 August 2023, shows the applicant requested and was provided with his separation documents.

c. A letter from VA dated 11 September 2023, shows the applicant submitted a claim; however, a determination would be required to decide if he served honorably.

d. A letter from HRC, Army Service Center dated 4 March 2024, informed the applicant they could not provide him with a DD Form 215 (Correction to DD Form 214) with the requested upgrade and he was required to submit his request to the Army Review Boards Agency.

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

a. He enlisted in the Regular Army on 7 May 1991. Block 6 (Date of Birth) of his DD Form 4 (Enlistment/Reenlistment Document) is listed as [REDACTED]

b. His DA Form 2-1 shows a period of lost time from 30 May 1992 through 11 November 1992 (165 days).

c. On 23 September 1992, a DA Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant for one specification of absenting himself from his unit without authority from on or about 30 May 1992 to on or about 12 November 1992.

d. The commander conducted an interview with the applicant on 12 November 1992 following his return from AWOL. The applicant stated he began dating a Hawaiian girl upon his arrival to Hawaii and was assaulted several times. He attempted to engage the Inspector General (IG) office for help, but he never received the support he desired. He lost trust in the chain of command and did not believe they cared about him nor his welfare. Additionally, he became disillusioned with his chain of command because he received training and was qualified as a heavy construction equipment repairer; however, he was utilized for "details" since his arrival. The applicant admitted to living with his girlfriend and her father, working under the table in construction.

e. On 24 November 1992, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under conditions other than honorable
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

f. On 10 December 1992, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate.

g. On 21 December 1992, he was discharged with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 8 months and 17 days of active service with 165 days of lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar

5. A review of the applicant's record confirms administrative entries were erroneously recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-5), 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.

9. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

10. In reaching its determination, the Board can consider the applicant's petition and his 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 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 frequency and nature of the applicant's misconduct and the reason for separation.

- Upgrade of his UOTHC Discharge to Honorable. Deny: The Board found the applicant was pending court-martial charges for absenting himself from his unit without authority from 30 May 1992 to 12 November 1992, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board also noted the applicant's length of absence. Therefore, based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

- Correct his date of discharge to reflect 1995 vice 21 December 1992. Deny: The Board determined there was insufficient evidence to show he was discharged in 1995 vice 1992 and the applicant failed to provide any supporting documentation to support his claim. As a result, the Board found no merit in his request and denied relief.

2. Administrative Note: A review of the applicant's record is sufficient to substantiate correction of the DD Form 214 without action by the Board. As a result, correct his DD Form 214 to show in item 5 (Date of Birth) to reflect [REDACTED]

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
:XXX	:XXX	:XXX	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.

//SIGNED//
X

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record is sufficient to substantiate correction of the DD Form 214 without action by the Board. As a result, correct his DD Form 214 to show in item 5 (Date of Birth) to reflect [REDACTED]

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

3. Army Regulation 635-5 (Separation Documents, in effect at the time, 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.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions,

official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//