

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240007538

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the service period ending 24 October 2002 to show:

- an upgrade of her general, under honorable conditions discharge to honorable
- a change in the narrative reason for separation and respective separation code
- a change of the reentry (RE) code to RE-1

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 effective 24 October 2002
- Separation Packet
- Marriage Certificate
- Spouse Character Letter

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 is requesting all portions of his DD Form 214 and discharge related information be changed to reflect an honorable discharge, a change in the narrative reason for separation to reflect a general reason, the respective separation code, and the RE code to show he would have been able to reenlist. He was given an Article 15 for misconduct over misinformation and retaliation by his chain of command. Prior to that time, he was never disciplined during his service and was always commended for his work ethic, respect, and desire to succeed. He was misinformed at the time of his Article 15 being told he would not be eligible for benefits and not to try. He was young and did not realize that he could have fought the charges through the Judge Advocate General (JAG). He believes the misunderstanding led to the loss of his job, livelihood, and his pride. He would like for his records show eligibility for benefits and life insurance through the Department of Veterans Affairs.

3. The applicant provides the following:

a. His marriage certificate serves as proof of identify and his current relationship status.

b. A statement from his wife wherein she noted they are interracial couple that have been married for 27 years. During his enlisted service, and at the time of is Article 15, they were expecting their fourth child and supported solely by his income which caused them to experience financial difficulty. Upon their move from Fort Shafter, Hawaii to Fort Bragg, North Carolina, they had to reach out for emergency assistance to help cover bills and food and obtain his commander's approval for the assistance. A few weeks after his arrival at Fort Bragg, he was given an Article 15 and his security clearance had been revoked. A neighbor and fellow Soldier in his company shared that he was aware that the first sergeant showed different treatment and feelings towards people of color. The applicant regrets not fighting for the character of his discharge to be changed and being unable to serve a second enlistment in a job he loved and gave him purpose.

4. A review of the applicant's available service record reflects the following:

a. On 30 December 1994, he enlisted in the Regular Army.

b. On 8 August 2002, the applicant accepted non-judicial punishment for one specification of failure to obey a lawful order by failing to pay the balance or make payments on the Government Travel Card. His punishment included reduction to the rank of specialist (SPC)/E-4, suspended for 6 months.

c. On 26 August 2002, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluations) shows the applicant had no duty limitations due to behavioral health reasons, met medical retention standards, and was cleared for administrative action.

d. The service record includes the applicant's medical examinations, dated 4 September 2002, for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service.

- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)
- DD Form 2627 (Report of Medical Assessment)

e. On 17 September 2002, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

f. On 17 September 2002, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for commission of a serious offense. The specific reasons for his proposed recommendation were his failure to make payments on his Government Travel Card and disrespect to a commissioned officer. He acknowledged receipt of the notification of separation.

g. On 18 September 2002, after waiving consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions discharge is issued to him
- he may apply to the ADRB or the ABCMR for upgrading
- he may be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge
- he elected not to submit matters

h. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

i. On 24 October 2002, he was discharged from active duty with general, under honorable conditions characterization of service. His DD Form 214 shows he completed 7 years, 9 months, and 25 days of active service with no lost time. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Noncommissioned Officer's Professional Development Ribbon
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Parachutist Badge
- Air Assault Badge
- Driver and Mechanic Badge with Driver – W Bar

5. 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.

6. By regulation, (AR 635-200), action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
7. By regulation (AR 635-8), 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).
8. By regulation (AR 635-5-1), provides separation program designators (SPD) are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JKQ is listed with narrative reason "Misconduct (serious offense)," under regulatory authority AR 635-200, Chapter 13.
9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation, the current characterization of service received by the applicant, and the lack of any clemency submitted by the applicant (such as post-service character evidence), showing he has learned and grown from the date of the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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//

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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.

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 635-200 (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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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/NRs) 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 based on 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.

4. Army Regulation 635-8 (Separation Processing and Documents), 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

5. Army Regulation 635-5-1 (Separation Program Designator Codes), provides separation program designators (SPD) are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JKQ is listed with narrative reason "Misconduct (serious offense)," under regulatory authority AR 635-200, Chapter 13.

//NOTHING FOLLOWS//