

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240007556

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 11 February 2022, to show his rank/grade as staff sergeant (SSG)/E-6.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 11 February 2022
- Army Discharge Review Board (ADRB) Docket Number AR20230006178, Case Report and Directive, dated 22 January 2024; and decision letter, dated 14 February 2024

FACTS:

1. The applicant states he was serving in the rank/grade of SSG/E-6 at the time of his administrative separation. His rank/grade was reduced to private (PV1)/E-1 upon the issuance of his under other than honorable conditions (UOTHC) discharge. The only reason for this reduction was by operation of law due to his characterization of service. He was granted an upgrade of his UOTHC character of service to under honorable conditions (general) by the ADRB. Accordingly, his rank should have been corrected to show SSG/E-6.

2. Following two periods of enlisted service in the Army National Guard, the applicant was reassigned in the U.S. Army Reserve (USAR). On 8 December 2006, he was ordered to active duty in Active Guard/Reserve (AGR) status, in the rank/grade of sergeant (SGT)/E-5, with a report date of 8 January 2007.

3. He reenlisted in the USAR on 30 April 2009 and 5 March 2015.

4. The applicant was promoted from SGT/E-5 to SSG/E-6, effective 1 December 2013; and from SSG/E-6 to sergeant first class (SFC)/E-7, effective 1 October 2017.

5. The applicant was reduced in rank/grade to SSG/E-6, effective 18 June 2018. A Headquarters, Department of the Army, Standby Advisory Board convened on

26 August 2018 and recommended the applicant be removed from the Fiscal Year (FY) 2016 SFC Promotion List. The Director of Military Personnel Management approved the board's recommendation of his removal.

6. A Statement of Trial Results Worksheet shows that before a special court-martial, at Fort Meade, MD, the applicant was found guilty of behaving with disrespect towards his superior commissioned officer, on or about 4 March 2017. The applicant was found not guilty of the remaining charges against him, or the charges were withdrawn and dismissed. The sentence was adjudged on 29 April 2021. He was sentenced to forfeit \$1050.00 pay per month for two months, two months of hard labor without confinement, and a reprimand. The convening authority approved the sentence on 1 June 2021 and issued the reprimand.

7. On or about 16 November 2021, the U.S. Army Court of Criminal Appeals determined the findings of guilty and the sentence to be correct in law and fact. Appellate review was complete, and the conviction final.

8. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, a fully constituted DD Form 214 shows the applicant was discharged from the USAR, in the rank/grade of PV1/E-1, on 11 February 2022, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), by reason of misconduct (serious offense). His character of service was UOTHC, with separation code JKQ. He completed 15 years, 1 month, and 4 days of net active service this period. He was awarded or authorized the following:

- Army Commendation Medal (2nd award)
- Army Achievement Medal
- Army Superior Unit Award
- Army Good Conduct Medal (3rd award)
- Army Reserve Component Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon (3rd award)
- Army Service Ribbon
- Army Reserve Component Overseas Training Ribbon (3rd award)
- Armed Forces Reserve Medal
- Air Assault Badge
- Master Recruiter Badge
- Driver and Mechanic Badge with Driver-Wheeled Vehicle clasp

9. On 22 January 2024, the ADRB determined the applicant's discharge was inequitable based upon the basis of the issues with the court-martial case, inconsistencies in the packet, and the length/quality of the applicant's service record and his post service accomplishments. The Board voted to grant relief in the form of an upgrade of his characterization of service to under honorable conditions (general). The applicant's additional requests for correction of his narrative reason, separation code, and reentry code were denied.

10. On 15 February 2024, the applicant's original DD Form 214 was voided, and a new DD Form 214 was published showing he was discharged from the USAR on 11 February 2022, under the provisions of Army Regulation 635-200, by reason of misconduct (serious offense), with separation code JKQ. His DD Form 214 also shows:

- item 4a (Grade, Rate or Rank) – PV1
- item 4b (Pay Grade) – E01
- Item 12i (Effective Date of Pay Grade) – 9 February 2022
- item 24 (Character of Service) – Under Honorable Conditions (General)

11. Regulatory guidance provides when the separation authority determines an individual will be discharged with a UOTHC character of service, he or she will be reduced to the lowest enlisted grade.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant's own misconduct was a result of him receiving an Under Other Than Honorable Conditions Discharge and the statutory law stating service members receiving an UOTHC discharge being reduced in grade to the lowest enlisted pay grade, the Board concluded there was insufficient evidence of an error or injustice warranting restoration of the applicant's rank to SSG.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records (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. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.
2. Army Regulation 600-8-19 (Enlisted Promotions and Demotions), still in effect, prescribes policies and procedures for promotions and reductions. Paragraph 7-15 provides, when the separation authority determines a Soldier is to be discharged from the service under other than honorable conditions, he or she will be reduced to the lowest enlisted grade. Board action is not required for this demotion. If a discharge is

approved under other than honorable conditions but is suspended, the will not be demoted under this paragraph.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) still in effect, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 1-14d (Reduction in grade), when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19.

b. Paragraph 3-7b states 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 such were merited by the Soldier's overall record.

4. 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/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, Boards 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//