

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230003234

APPLICANT REQUESTS:

- an upgrade of his uncharacterized discharge to honorable
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his date of birth (DOB) as [REDACTED] vice [REDACTED].

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

- DD Form 149 (Application for Correction of Military Record)
- Birth Certificate
- Department of Veterans Affairs (VA) Statement of Service
- VA Rating Decision

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 the VA documents show he has a VA disability rating and that he was honorably discharged. His birth certificate shows his DOB as [REDACTED].
3. The applicant provided two documents from the VA as follows:
 - a. A copy of his birth certificate showing his DOB as [REDACTED]
 - b. A statement of service shows the VA considered his limited service to have been honorable for VA purposes.
 - c. A VA rating decision shows he was awarded a 10% disability evaluation for a proximal right radius fracture malunion based on aggravation of a preexisting condition.

4. A review of the applicant's service record shows he enlisted in the Army National Guard on 4 April 1984 and entered initial active duty for training (IADT) on 2 November 1984. He did not complete basic combat training or advanced individual training and did not receive a military occupational specialty.

5. The applicant was afforded an Entrance Physical Standards Board (EPSBD) review on 16 November 1984. The EPSBD found the applicant had a fracture to his right forearm prior to entry onto active duty. The physical examination found limited range of motion with swelling and pain on motion. The EPSBD recommended he be separated under Army Regulation 635-200 (Enlisted Separations), paragraph 5-11.

6. The applicant was relieved from active duty training and discharged from the Reserve of the Army on 27 December 1984. The DD Form 214 issued at this time shows:

- his DOB as [REDACTED]
- he completed 1 month and 26 days of active service
- his service was uncharacterized
- a narrative reason for separation states "Did not meet procurement medical fitness standards-no disability"

7. The ARNG discharged the applicant on 1 February 1985 for failure to meet medical fitness with an uncharacterized separation. His date of birth is shown as [REDACTED] and he had 9 months and 28 days of net service.

8. The applicant previously applied to the ABCMR for correction of his DD Form 214 (AR20120022996 and AR20150012929) with both requests being administratively closed for failure to exhaust all of his other administrative options and he was referred to the ARNG. Neither review addressed his request for correction of his DD Form 214.

9. On 29 August 2013, the ARNG denied the applicant's request for correction of his record stating that "Based on a previous medical condition, Mr. Rodriguez was physically disqualified for induction into military service in accordance with Army Regulation 40-501 (Standards of Medical Fitness), paragraph 2-9c."

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 published Department of Defense guidance for liberal and clemency determination requests for discharge upgrades were carefully considered. The Board noted the applicant's provided VA documents indicating his honorable period of service; however, determined the entry-level separation was the

appropriate characterization at the time of separation. The Board found the applicant's provided passport to be sufficient evidence in substantiating a change to his date of birth and therefore recommended to grant partial relief for the date of birth correction and denied so much of his request pertaining to a change in characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 the DD Form 214 to show his date of birth as [REDACTED]

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 upgrade of the applicant's uncharacterized discharge to honorable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 40-501 governs the medical fitness standards for enlistment, induction, and appointment, including officer procurement programs.

a. Paragraph 2-9c, as then in effect, provided that medical conditions or physical defects of the upper extremities that would require excessive time lost from duty for necessary treatment or hospitalization or would likely result in separation from the Army for medical unfitness.

b. Paragraph 3-3b(1) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating.

c. Enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the standards of Chapter 2 may be separated (or receive a waiver to remain on active duty) following an evaluation by an Entrance Physical Standards Board,

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 3 describes the different characterizations of service.

a. 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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

b. A separation would be described as an entry-level separation with service as uncharacterized if processing is initiated while a Soldier is in an entry-level status, separation, within the first 6 months of active duty except in the following circumstances:

(1) when characterization of under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case or

(2) when the Secretary of the Army, on a case-by-case basis, determines that an honorable characterization of service is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

//NOTHING FOLLOWS//