

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230005305

APPLICANT REQUESTS: to change his character of service from "uncharacterized" to "honorable."

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Brief in Support of Application for Correction of Records, undated
- Letter, To Whom it May Concern, Spouse, 3 January 2000
- 4 Doctor's Notes, Undated, 20-21 January 2000, 11 February 2000
- Letter, To Whom it May Concern, Parents, 14 February 2000
- Letter to a Member of Congress, Spouse, undated
- Prior Servicemember's Character Statement on Behalf of the Applicant, 27 January 2023
- Prior Servicemember's Character Statement on Behalf of the Applicant, 28 January 2023
- Brother's Character Statement on Behalf of the Applicant, 2 February 2023

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, through counsel, requests in a brief in support of his application to the Board, that his record be corrected by upgrading the character of his service from "uncharacterized" to "honorable." He further states, in effect:
 - a. He enlisted in the Regular Army (RA) on 26 August 1999 to escape poverty and the traditional stereotypes related to being a person of color. He planned to retire from the Army, but events outside his control interfered with his plans. He excelled while in basic training and advanced individual training (AIT) and felt everything was going great at Fort Lee, VA.

b. His wife at the time was very young and the mother of two children under the age of four. Unfortunately, she suffered from a debilitating mental health condition. During AIT her condition worsened, and her mental health providers and medical experts determined her condition was so severe that the applicant needed to be home on a permanent basis to care for his children and his ailing wife.

c. The applicant was discharged one day short of 180 days of service on 25 February 2000. The narrative reason for his separation was "hardship" and the characterization of his service is listed as "uncharacterized" with a separation code of "KDB" with reentry code "3."

d. The Secretary of the Army may correct any military record when it is "necessary to correct an error or remove an injustice." He contends he suffered a back injury during his time in service which resulted in him having surgery in 2017. Therefore, he contends it is in the best interest of the Board to consider the merits of his request based upon a correction of a material injustice.

e. The Hagel, Kurta, and Wilkie memos, are primarily focused on how mental health conditions, such as post-traumatic stress disorder and related conditions can influence servicemembers' behavior and play a role in misconduct and can therefore be a mitigating factor in requests for relief from the military's various review boards, the broader implication for this case is that the military's policy and recognition of the importance of mental health conditions has changed significantly since the applicant's discharge. Presumably, had the applicant's situation arisen in the shadow of the Hagel, Kurta, and Wilkie memos, his request for hardship would have been addressed differently, and the applicant would not have been intentionally discharged one day short of 180 days of service.

f. While the injustice of an uncharacterized separation is not always readily apparent, in this case the applicant's unit used the 179 mark to punish him because of his wife's mental illness. The applicant earned an honorable discharge based on his dedication and effort. What he did in his time in the Army should not be erased by the intentional injustice of his unit by ensuring his discharge was rushed through and he was prevented from receiving an honorable discharge.

g. His post-service conduct indicates that the requested relief is warranted. Since his discharge the applicant has been a model citizen and served his community in various ways. Character letters support the contention that were it not for the hardship he endured, he had the character and ability to succeed in the military. The applicant's provided character letters indicate that his character is exemplary, the requested relief is warranted, and that his discharge should be upgraded.

3. The applicant enlisted in the RA on 26 August 1999. Evidence shows he successfully completed the 9-week Petroleum Supply Specialist Course in January 2000, and he was awarded military occupational specialty 77F (Petroleum Supply Specialist).
4. His discharge packet is not available for review; however, his record contains a duly constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows he was discharged on 25 February 2000 after completing 6 months of net active military service with no days of lost time. This form shows he was issued a separation code of "KDB," which means he was discharged under the provisions of paragraph 6-3a, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), due to hardship and a Reentry code of "3" meaning he would require a waiver for reenlistment. It also shows his service was characterized as "uncharacterized."
5. The DD Form 214 he received shows he entered active duty on 26 August 1999 and was separated on 25 February 2000 (a period of 184 days). The form further shows he was awarded or authorized the Army Service Ribbon.
6. However, his Official Military Personnel File contains DD Form 2648 (Preseparation Counseling Checklist), dated 14 February 2000, which clearly shows separation was initiated prior to the applicant obtaining 180 days of active service; therefore, his separation is considered an entry level separation with service uncharacterized since his processing was initiated while he was in an entry level status.
7. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.
8. The applicant provides:
 - a. Notes from a psychiatrist who was treating the applicant's spouse and recommended he be sent home as soon as possible, on a permanent basis because his spouse was suffering from severe major depression. Due to hardships in the home, the doctor believed it was a medical necessity for the applicant to return home.
 - b. Undated spousal correspondence to a Member of Congress requesting the applicant be released from his tour of duty due to her medical hardship. She states the applicant was advised he would not receive an honorable discharge despite successfully completing basic training and AIT.
 - c. Spousal correspondence dated 3 January 2000, requesting the applicant's release due to a lack of income and overbearing stress related to the care of their children ages 3 and 4 weeks old.

d. Letter from the applicant's parents dated 14 February 2000, supporting the applicant's release to help his spouse and family as recommended by her psychiatrist.

e. Character reference letter from [REDACTED], a former airman, 27 January 2023, who appears to have worked with the applicant for six years as network engineers. He states the applicant is a responsible God-fearing dad and husband who is informed with national matters and community and possesses strong morals and a good work ethic.

f. Character reference letter from [REDACTED] a retired Technical Sergeant, U.S. Air Force, who has been a friend and co-worker on the same network team the past seven years. He states the applicant is knowledgeable, dependable and he can be relied on him for answers. He works multiple projects at the same time but is always available to help whenever he is need or asked by others. He is a devoted father managing time between work and his children's many events with school, functions, sports, and appointments.

g. Character reference letter from his brother, 2 February 2023, who states the applicant is a dedicated and devoted individual with a passion for serving his community and others. He served in the ministry until he was unable to do so, but his commitment to helping others remains unwavering. The applicant is also a devoted father to five boys, who he loves and supports unconditionally. He is a loving and supportive son, who not only helps his parents with their house maintenance but is also a positive presence in their lives, especially his father, who is a veteran. His kind and selfless nature is evident in the way he puts the needs of others before his own.

10. The Board should consider the evidence and the applicant's and counsel's statements in accordance with the 25 July 2018, Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and BCM/NRs regarding equity, injustice, or clemency determinations.

11. Army Regulation 635-200, paragraph 6-3a, states hardship exists when in circumstances not involving death or disability of a member of the Soldier's (or spouse's) immediate family causes that member to rely upon the Soldier for principal care or support. Characterization or Description of Service, states if the Soldier is still in Entry Level Status, service will be described as uncharacterized. If the Soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests.

2. A majority of the Board found the applicant's uncharacterized service to be inequitable. The majority noted that the applicant's administrative discharge proceedings commenced prior to him completing 6 months of service and uncharacterized service did comply with the governing regulation. However, the majority also noted that Reserve Component Soldiers who complete initial entry training receive an honorable character of service when they are released from active duty to return to their Reserve Component units. Because the applicant was situated similarly to these Reserve Component Soldiers—he had completed initial entry training—a majority of the Board determined his character of service should be changed to honorable.

3. The member in the minority noted that uncharacterized service is not negative—it merely indicates the Soldier had not served long enough for the character of service to be fairly assessed. The member in the minority found the evidence confirms the applicant was in an entry-level status when his separation processing began and determined uncharacterized service was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	:	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	■	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

5/6/2024

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.

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 (Active Duty Enlisted Administrative Separations) 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. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3-9a.
 - b. Paragraph 3-7 states 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. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

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

(2) HQDA on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

d. Paragraph 6-3a, states hardship exists when in circumstances not involving death or disability of a member of the Soldier's (or spouse's) immediate family causes that member to rely upon the Soldier for principal care or support. Paragraph 6-11, Characterization or Description of Service, states if the Soldier is still in Entry Level Status, service will be described as uncharacterized. If the Soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions as set forth in Chapter 3, Section III. Entry Level Status is defined for RA Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

e. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. On 24 February 2016, the Acting Principal Deputy Under Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to waive the imposition of the statute of limitation for service members requesting discharge upgrades related to PTSD or TBI. Additionally, cases previously considered by either the DRBs, BCMRS, or BCNR without the benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. 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 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//