

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230005360

APPLICANT REQUESTS: correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect an honorable discharge vice an uncharacterized discharge.

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)
- Military Entrance Processing Station Orders
- DD Form 4/3 (Discharge from Delayed Entry/Enlistment Program)
- Basic Combat Training (BCT) book and photos
- Leave and Earnings Statement

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, in effect, he completed and graduated BCT; however, his DD Form 214 does not reflect as such. He also completed advanced individual training (AIT) but did not graduate due to failing his 2-mile run of the Army Physical Fitness Test (APFT). Correcting his DD Form 214 would acknowledge his completion of BCT and would also provide the confirmation requested by the Air Force National Guard for him to begin tech school.

3. The applicant provides:

a. His DD Form 214.

b. Military Entrance Processing Station Orders, number and date is illegible, assigned the applicant to the 95th Adjutant General Battalion, with a reporting date of 14 January 2004.

c. DD Form 4/3 shows the applicant requested to be discharged from the Delayed Entry/Enlistment Program (DEP) and enlisted in the Regular Component of the United States Army on 13 January 2004.

d. BCT book and photos which contain images of the applicant.

e. Leave and Earnings Statement

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

a. He enlisted in the Regular Army on 13 January 2004. He was assigned to Fort Sill, OK, for training.

b. On 13 August 2004, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of paragraph 13-2e, AR 635-200 for unsatisfactory performance, specifically for failing his final APFT. He had shown unsatisfactory conduct and performance to remain in the military service by failing his final APFT. He was transferred to Alpha Battery as an attempt to rehabilitate. He displayed a lack of motivation and failed to meet the APFT standards while in Alpha Battery. He had become a training distracter and continue to be a drain on the unit. His separation in the commander's opinion was in the best interest of the applicant in the Army. His commander recommended that he receive an honorable discharge.

c. The applicant acknowledged receipt of the commander's intent to separate him on 13 August 2004. He declined the opportunity to consult with legal counsel. He was advised by his commander of the basis for the contemplated separation action for unsatisfactory performance, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

d. The applicant's commander formally initiated separation action against the applicant under the provisions of chapter 13 of AR 635-200, due to unsatisfactory performance. In his formal recommendation, the commander recommended a general discharge.

e. On 19 August 2004, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 13-2e for unsatisfactory performance, and ordered his service characterized as general under honorable conditions.

f. The applicant was discharged from active duty on 24 August 2004. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 13-2e, physical standards, with his service characterized as uncharacterized. He completed 7 months and 12 days of active service (Separation Code JFT and Reentry Code 3). He was not awarded a military occupational specialty.

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

6. By regulation (AR 635-200), chapter 13 action will be taken to separate a member due to unsatisfactory performance when in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future.

7. 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:

After reviewing the application, supporting documents, evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct, court-martial charges and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the character of service the applicant received upon separation 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 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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 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 13 of this regulation provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions. Sub-paragraph 13-2€ provides that initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army physical fitness-test per AR 350-41 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment.

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. 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. 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//