

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230005412

APPLICANT REQUESTS: his uncharacterized service be changed to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Civilian employment documents
- Veterans Affairs (VA) documents

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 since 2007, he has been serving as a Supervisory Special Agent for the Department of Homeland Security. This is a federal law enforcement position under the provisions of the Office of Personnel Management (OPM). In 2023, he was advised by his Retirement and Benefits Unit that he had the option to buy back his military service time under OPM guidelines. The request was rejected by the National Finance Center because they said his DD Form 214 (Certificate of Release or Discharge from Active Duty) cannot be uncharacterized for the discharge type. Without this upgrade he will be unable to buy back his military time which will affect his overall benefit at the time of retirement. It should be noted that since 2004, he has been working in federal law enforcement and is eligible to retire in December 2027 after more than 20 years of service.
3. The applicant enlisted in the Regular Army on 7 January 1997, for 5 years. He was assigned to Fort McClellan, AL, for basic training. However, his service record shows he neither completed training nor was awarded a military occupational specialty.
4. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) dated 3 April 1997, notes the applicant was a 23-year-old male who complained of both eyes

tearing, red, rhinorrhea, and sneezing. He had no improvement with oral medication and symptoms were worse when outdoors. He had several visits to sick call in the previous three weeks. He was diagnosed with seasonal allergies (severe). He was placed on a permanent profile of no crawling, stooping, running, jumping, marching, or mandatory physical activity; no pullups, no pushups, overhead work or lifting with both arms; and no assignment to isolated areas where definitive medical care was not available.

5. The EPSBD recommended the applicant be separated from service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, for a condition that existed prior to service.
6. The applicant acknowledged the EPSBD findings and further acknowledged that he had been advised that legal counsel from an Army attorney was available to him or he could consult civilian counsel at his own expense. He could request discharge from the Army without delay or request retention on active duty. He concurred with the proceedings and requested discharge from the Army without delay.
7. By sworn statement, on 4 April 1997, the applicant stated his medical condition existed prior to his enlistment into the military. He stated he had informed his recruiter of his medical condition, but he was told not to worry about it.
8. A memorandum dated 4 April 1997, shows an official inquiry was conducted in reference to a Chapter 5-11 separation action on the applicant for possible fraudulent enlistment. The inquiry determined he did not wrongfully attempt to commit fraud against the Army.
9. The applicant's commander recommended his separation from the Army on 5 April 1997. The separation authority approved the recommendation on 7 April 1997 under the provisions of Army Regulation 635-200, paragraph 5-11, with an uncharacterized entry level status discharge.
10. The applicant was discharged on 10 April 1997. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. His service was uncharacterized. He was assigned Separation Code JFW and Reentry Code 3. He was credited with 3 months and 4 days of net active service this period.
11. The applicant provides the following (provided in entirety for the Board):
  - a. Documents and an email that show he is employed with the Department of Homeland Security and his request to buy back his military time was denied because of his service was uncharacterized.

b. VA certification letter that shows he was discharged from the Army and his service was characterized as under honorable conditions (general).

12. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

13. The Board should consider the applicant's statement in accordance with the published guidance.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his uncharacterized discharge. He states:

"I'm requesting an amendment to the Character of Service to Honorable or General Under Honorable Conditions. This is for Civil Service benefits purposes per the Office of Personnel Management (OPM) and the National Finance Center (NFC)."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the regular Army on 7 January 1997 and received an uncharacterized discharge on 10 April 1997 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was

identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501 [Standards of Medical Fitness], chapter 3.

e. On his pre-entrance Report of Medical History, the applicant indicated that he had a history of or currently had “Ear, nose, or throat trouble.” On the accompanying Report of Medical Examination, the provider documented a normal examination, and the applicant was found qualified to enlist in the Army.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) IAW paragraph 5-11 of AR 635-200 for severe seasonal allergies that had failed to respond to conservative treatment.

g. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition or develop a condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently aggravated by their military service.

h. From the Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) dated 3 April 1997:

**HISTORY OF PRESENT ILLNESS:** 23-year-old male complaining of both eyes tearing, red, rhinorrhea [runny nose], and sneezing. No improvement with oral medication. Symptoms worse when outdoors and several visits to sick-call in the past 3 weeks.

**PAST HISTORY:** History of seasonal allergies, had been on Seldane (see civilian records attached)

**PHYSICAL EXAMINATION:**

Conjunctiva [thin protective membrane over the front of the eye] – both infected

Nares: swollen, irritated turbinates with clear rhinorrhea

DIAGNOSIS: Seasonal Allergies (severe)

Unfit UP AR 40-501, Chapter 2, para 2-39c

RECOMMENDATION: "...Therefore, recommend separation from the military UP AR 635-200, Para 5-11, for a condition noted within the first 180 days of active duty or IADT that existed prior to service and is not [permanently] service aggravated

i. Paragraph 2-39c of AR 40-501 (30 August 1995) states is essentially a catchall paragraph. It states that " Any deformity, abnormality, defect, or disease that impairs general functional ability to such an extent as to prevent satisfactory performance military duty" is cause for rejection for enlistment.

j. The EPSBD determined this condition failed the enlistment standards in chapter 2 AR 40-501, had existed prior to service, had not been permanently aggravated by his military service, and was not compatible with continued service. The applicant agreed with these findings on 3 April 1997, marking and initialing the option "I concur with these proceedings and request to be discharged from the U.S. Army without delay."

k. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had medical conditions which were, unfortunately, not within enlistment standards.

l. It is the opinion of the Agency Medical Advisor that an upgrade of his discharge is unwarranted.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding an upgrade of his discharge is unwarranted.

2. The Board determined, based on regulatory guidance, Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. That is not the case here. The applicant did not complete training and was released from active duty by reason of failure to meet procurement medical fitness standards. As such, his DD Form 214 properly shows the character of service as uncharacterized. Therefore, the Board denied relief.

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:

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.

4/8/2024

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-9 provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

//NOTHING FOLLOWS//