

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230005843

APPLICANT REQUESTS: in effect, upgrade of his uncharacterized discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record), 8 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 states, in effect:
 - a. His discharge was supposed to be (honorable).
 - b. He was treated unfairly and wrongfully discharged.
 - c. He indicated on his DD Form 149 by checkbox he was suffering from post-traumatic stress disorder (PTSD) and sexual harassment.
3. The applicant provided his DD Form 149 and self-authored statement for Board consideration.
4. A review of the applicant's service records shows:
 - a. On 10 March 1999, he enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) for 8 years.
 - b. On 14 April 1999, he was discharged from the USAR, DEP and he enlisted in the Regular Army for 2 years under the U.S. Army Enlistment Program 9A, with an agreement to undergo Advanced Individual Training for military occupational specialty 91L (Wire Systems Installer), at grade/pay grade private 1/E-1.

c. He was assigned to Company A, 1st Battalion, 61st Infantry Regiment, 4th Combat Training Brigade, Fort Jackson, for Basic Combat Training (BCT).

d. On 23 April he received his initial counseling summary for BCT, outlining the training standards he was required to successfully complete in order to graduate. These included, but were not limited to completion of a passing score for the Basic Physical Fitness Test (BPFT), successful qualification with the M-16A1/A2 rifle, and achieving a passing score on the Individual Proficiency Test (IPT).

e. On 1 May 1999, his drill instructor counseled him for failing to meet the Solidarization process and recommended he be separated from the Army.

f. On 5 May 1999, the Company Commander, A Company, 1st Battalion, 61st Infantry Regiment, notified him of his intent to initiate separation actions under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 11, for entry level performance and conduct, and notified him of his rights. The reason for his commander's proposed action was his disruptive behavior. He understood he had the right to consult with consulting counsel or civilian counsel at his own expense, he could submit statements in his own behalf, he could request a separation physical, and, he had a right to obtain copies of the documents supporting the proposed separation that would be sent to the separation authority.

g. On the same date, having been advised by his consulting counsel of the contemplated action to separate him, he acknowledged his rights and he elected not consult with consulting counsel, he elected to submit statements on his own behalf, and he did not request copies of the documents that would be sent to the separation authority supporting the proposed separation. He understood that up to the date the separation authority ordered, directed, or approved his separation, he could withdraw his waiver of any of the above rights. He further understood that if the recommendation for separation was approved, he would receive an entry level separation with an uncharacterized discharge.

h. A written statement from the applicant is not contained in the available records.

i. On 5 May 1999 (the same date), his company commander recommended his discharge under the provisions of Army Regulation 635-200, chapter 11. His company commander noted he had created disruptive behavior and he had undergone repeated counseling and retraining. There was no record of disciplinary action, including nonjudicial punishment, offenses, findings, and sentence. His commander noted he had enclosed a DA Form 4856-R with applicable statements by support agencies for review by the separation authority, and he did not consider it feasible or appropriate to accomplish disposition other than separation from the U.S. Army.

j. On 6 May 1999, the separation authority approved his discharge under provisions of Army Regulation 635-200, chapter 11 with an uncharacterized discharge.

k. On 12 May 1999, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was separated under provisions of Army Regulation 635-200, chapter 11, by reason of entry level performance and conduct with service as uncharacterized. He completed 29 days of net active service. His grade/pay grade was shown as private 1/E-1 and he was not awarded a military occupational specialty.

5. The Army Review Boards Agency requested and the U.S. Army Crime Records Center provided a memorandum, 2 June 2023, (Request for Sanitized Record of Investigation and Military Police Reports for Official use Purposes (Military Sexual Assault/Trauma) – (Applicant)). Its search of the Army criminal files indexes revealed no records pertaining to the applicant.

6. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. Governing regulation provides that a separation will be described as uncharacterized if the separation action is initiated within the first 180 days of active duty service. As such, his DD Form 214 properly shows his service as uncharacterized.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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 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, United States 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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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. 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.

b. Chapter 11 provides guidance for the separation of personnel because of unsatisfactory performance, or conduct (or both) while in an entry level status. Chapter 11-3 applies to Soldiers who were voluntarily enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve are in an entry level status and, before the date of the initiation of separation actions, have completed no more than 180 days of creditable continuous active duty or initial active duty training; and have demonstrated they cannot or will not adapt socially or emotionally to military life.

c. Entry-Level status. Service will be uncharacterized for separation under the provisions of chapter 11.

4. 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.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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. 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//