

IN THE CASE OF: ██████████

BOARD DATE: 15 January 2024

DOCKET NUMBER: AR20230006303

APPLICANT REQUESTS:

- his uncharacterized discharge be upgraded to either an under honorable conditions (general) discharge or an honorable discharge
- narrative reason for separation be changed from "Fraudulent Entry" to an unspecified, presumably more favorable reason
- to appear in person before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 recruiters misguided and misled them during the enlistment process. The applicant was honest about his concerns, but the recruiters said "not to worry about it." This caused the applicant to lose status prior to completion of the 4-year contract.
3. The applicant enlisted in the Regular Army on 26 March 1993 for a period of 3 years. He was assigned to Fort Jackson, SC, for completion of initial entry training.
4. A Defense Investigative Service Report of Investigation, dated 14 June 1993, shows the applicant had an outstanding bench warrant to appear in court and to fulfill his sentence following his arrest on 23 May 1990. He was cited for providing false information to a police officer and unlawfully challenging another person to incite a fight.

It was also noted that he was arrested on 20 June 1990 for being a minor in possession of alcohol and fined \$120.00.

5. On 24 June 1993, the applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for on or about 19 June 1993, as a result of wrongful previous overindulgence in intoxicating liquor, being incapacitated for the proper performance of his duties. His punishment consisted of forfeiture of \$189.00 pay, 14 days of extra duty, and 14 days of restriction.

6. On 21 July 1993, the applicant was informed of his legal rights and advised that his company commander wanted to question him about his failure to disclose his criminal conviction on enlistment documents. The applicant indicated that he did not want to be questioned or say anything.

7. On 22 July 1993, the applicant's company commander counseled him for concealing his conviction by a civil court on 19 June 1990, and advised the applicant that he was initiating action to have him separated under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 7, for fraudulent entry.

8. On 27 July 1993, the applicant rendered a written statement wherein he stated there was a misunderstanding between him and his recruiter because he was advised that his police and court record checks were clean, and he should deny everything. It was also his understanding that he was granted a waiver for enlistment.

9. On 10 August 1993, the applicant's commander formally notified the applicant that he was initiating action to separate him under the provisions of Army Regulation 635-200, Chapter 7, Section V (Fraudulent Entry). He informed the applicant that he was recommending he receive an uncharacterized characterization of service, but the final decision would be determined by the separation authority.

10. The applicant acknowledged receipt on the same day and indicated he did not desire a separation physical.

11. The battalion commander recommended approval of the separation action.

12. On 12 August 1993, the separation authority approved the recommended entry-level separation, with uncharacterized service, for fraudulent entry.

13. The applicant's DD Form 214 shows he was discharged on 17 August 1993 under the provisions of Army Regulation 635-200, paragraph 7-17b(1) by reason of "Fraudulent Entry." His Separation Program Designator code was "JDA" and his Reentry Eligibility code was "3." His service was uncharacterized, and he was credited

with completion of 4 months and 22 days of net active service. He was not awarded a Military Occupational Specialty (MOS).

14. Army Regulation 635-200, in effect at the time, stated commanders were to separate Soldiers who procured an enlistment, re-enlistment, or period of service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver.

15. The applicant was in an entry-level status at the time of separation processing. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for his or her character of service to be rated.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance. Applicants are not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and noted the evidence confirms the applicant was in an entry-level status when he was discharged. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge and his uncharacterized service are not in error or unjust.


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.

4/24/2024

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, 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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided 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.

e. Chapter 7 established policy and prescribed procedures for separating enlisted members for minority, erroneous enlistment, reenlistment or extension of enlistment, defective enlistment agreement, or fraudulent entry. Paragraph 7-17 provided that fraudulent entry is the procurement of an enlistment, re-enlistment, or period of service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. Upon determination that a fraudulent entry existed, the discharge authority would direct discharge. The character of service for Soldiers separated under

this provision would normally be general or 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. 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 on the basis of equity, injustice, or clemency grounds, Boards 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//