

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230006868

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 5 March 2003 to show:

- an upgrade of his uncharacterized discharge to honorable
- Expert Rifleman Badge
- National Defense Service Medal
- "Global War on Terrorism Medal"
- Army Commendation Medal
- a video/telephonic appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)

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

2. The applicant states, in effect:

a. The reason he received an uncharacterized discharge is because his wife submitted old medical records that indicated an old back injury. At the time of his separation, he was meeting all physical fitness standards and did not have any medical problems. Due to the old medical evidence, he was separated at the entry level. He continued to attend drills in the National Guard. He never had any issues performing his duties.

b. The requested awards were left off his original DD Form 214 and he is requesting that they be added. Copies of the award letters should be on file in his military personnel records. He previously attempted to get his record corrected, but he was unable to find resources to assist him.

3. A review of the applicant's service records show:

a. He enlisted in the Army National Guard (ARNG) of the United States on 11 May 2002 for a period of 8 years.

b. Orders Number 155-023, issued by the Military Entrance Processing Station (MEPS), dated 26 August 2002, ordered him to initial active duty for training at the 30th Adjutant General Battalion, Fort Benning, GA, with a reporting date of 5 November 2002.

c. Orders Number 064-2254, issued by Headquarters, U.S. Infantry Center, Fort Benning, GA, dated 5 March 2003, released the applicant from active-duty training, discharged from the Reserve of the Army, and returned him to the ARNG. The action did not terminate his individual status as a member of the ARNG of California.

d. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 5 March 2003, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards. His service was uncharacterized. His DD Form 214 shows in:

- Item 11 (Primary Specialty): None
- Item 12c (Net Active Service This Period): 4 months and 2 days
- Item 12d (Total Prior Active Service): 5 months and 23 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): None
- Item 18 (Remarks): Member has not completed first full term of service
- Item 23 (Type of Separation): Release from active-duty training and discharge from the Reserve of the Army and return to ARNG

e. A memorandum dated 20 September 2004 states the applicant was sent home from training on a medical issue. It stated that he had medical documentation that cleared him from the medical issue. His pay entry base date was 1 May 2002, which the original physical was expired but the applicant shipped to training on 4 November 2002 before his entrance for entering training requirement was expired.

f. A memorandum dated 21 September 2004 shows Company Bravo, 3rd Battalion, 160th Infantry (Mechanized), wished to retain the applicant and send him through MEPS for determination of medical condition for attendance to Basic Training and Advanced Individual Training. It states the applicant presented the command with documentation from a civilian doctor stating his current physical condition was normal.

g. DD Form 2807-2 (Medical Prescreen of Medical History), dated 6 October 2004, shows the applicant stated he had back pain before his enlistment, and he was discharged from basic training for an injury existing prior to service. It also shows he had a bulging disk in 1997, with no further problems. He answered yes to the following questions:

- Recurrent neck or back pain
- Discharged from military service for medical reasons
- Ruptured or bulging disk in your back or surgery for a ruptured or bulging disk

h. The medical officer's prescreening comments show that based on the information that was provided, further processing was not justified due to permanent disqualification.

i. On 14 February 2005, the applicant was discharged from the ARNG for failure to meet medical procurement standards, and his service was uncharacterized.

4. His service record does not contain a copy of his DA Form 2-1 (Personnel Qualification Record) or Enlisted Record Brief (ERB), or documentation that he is entitled to additional awards that are not shown on his DD Form 214.

5. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that a portion of relief was warranted. The Board carefully considered applicant's contentions, the military record, and regulatory guidance. The Board agreed that the applicant completed a period of active duty of more than 30 days and as he was otherwise qualified, should be awarded the Global War on Terrorism Medal

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 him a DD Form 214 for the period ending 18 March 2004 showing:

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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. 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 was 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 separation service uncharacterized 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.

3. Army Regulation 600-8-22 (Military Awards) states:

a. The National Defense Service Medal is awarded for honorable active service for any period between 27 July 1950 and 27 July 1954, 1 January 1961 and 14 August 1974, 2 August 1990 and 30 November 1995, and 11 September 2001 and a date to be determined. Army National Guard and U.S. Army Reserve forces personnel on short tours of duty to fulfill training obligations under an inactive duty training program will not be considered as performing active service which qualifies for award of the National Defense Service Medal.

b. The Global War on Terrorism Service Medal is authorized for award to members of the Armed Forces of the United States who have participated in the Global War on Terrorism operations outside of the designated areas of eligibility (AOE) on or after 11 September 2001 to a future date to be determined. All Soldiers on active duty, including Reserve Component Soldiers mobilized or National Guard Soldiers activated, on or after 11 September 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days are authorized the GWOTSM. The GWOTSM may be awarded posthumously. Only one award of the GWOTSM may be authorized to any individual; therefore, second and subsequent awards will not be awarded.

c. The Global War on Terrorism Expeditionary Medal is authorized for award to members of the Armed Forces of the United States who deployed abroad for service in Global War on Terrorism operations on or after 11 September 2001 to a date to be determined. The general area of eligibility (AOE) encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States in operations approved by the Secretary of Defense. Under no conditions will units or personnel within the United States or the general region excluded above be deemed eligible for the Global War on Terrorism Expeditionary Medal. Service members must be assigned, attached, or mobilized to a unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the AOE, or meet other, specified criteria. Initial award of the Global War on Terrorism Expeditionary Medal was limited to service members deployed

abroad in Operations Enduring Freedom and Iraqi Freedom in a designated specific geographic AOE, including Iraq.

d. The Army Commendation Medal is awarded to any Servicemember of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941 and distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. The regulatory guidance states award of certain decorations as authorized in this regulation or later will be made on the basis of existing letters, citations, and/or orders.

e. A Basic Marksmanship Qualification Badge is awarded to indicate the degree in which an individual, military, or civilian has qualified in a prescribed record course, and an appropriate bar is furnished to denote each weapon with which he or she qualified. Each bar will be attached to the basic badge that indicates the qualification last attained with the respective weapon. Basic qualification badges are of three classes: Expert, Sharpshooter, and Marksman.

4. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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 or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//