

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006895

APPLICANT REQUESTS: correction of item 28 (Narrative Reason for Separation) on his DD Form 214 (Certificate of Release or Discharge from Active Duty) by deleting the word "CONDUCT."

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, unfortunately, a medical condition prevented him from completing his Army Physical Fitness Test (APFT) while he was in basic combat training (BCT); he suffered from a fractured calcaneus bone. The applicant maintains his conduct was never an issue, but that word "conduct" on his DD Form 214 has caused him difficulty; as soon as prospective employers see the word, "conduct," they begin asking him about any bad behavior they assume he may have committed while on active duty. He believes making his requested change will result in a more accurate reflection of his service.

3. A review of the applicant's service record reveals the following:

a. On 23 February 1989, the applicant enlisted into the Regular Army for 6 years. On or about 2 March 1989, orders assigned him to a basic combat training (BCT) unit at Fort Dix, NJ.

b. On 5 April 1989, the applicant sought medical treatment from his supporting Troop Medical Clinic (TMC); he indicated he had been experiencing heel pain and

swelling for the past 2 weeks; the attending physician's assistant referred the applicant for a consultation with the Podiatry Clinic, and based on an evaluation, the attending physician issued the applicant a 30-day profile. The applicant returned for follow-up evaluations, respectively on 5 and 22 May 1989. On 5 May 1989, the applicant indicated he was experiencing pain in both heels, and the doctor continued the applicant's course of treatment and requested x-rays for the applicant's feet. On 22 May 1989, the doctor returned the applicant to duty.

c. On 25 May 1989, the applicant's BCT first sergeant (1SG) (Sergeant First Class (SFC) M__ L. U__) counseled the applicant, using a DA Form 4856 (Developmental Counseling Form).

(1) SFC U__ noted, because the applicant had not completed the run event within the required time, the applicant had failed his first APFT; however, the applicant would have "a couple more chances" to pass. SFC U__ explained the standards expected of the applicant and that the applicant would need to pass the APFT to graduate. SFC U__ additionally disclosed the applicant had said his feet hurt, and the pain had slowed him down.

(2) Also, on 25 May 1989, First Lieutenant (1LT) H__ J. S__ (applicant's BCT commander) issued the applicant a DA Form 4856; 1LT S__ informed the applicant that he (the applicant) needed to work harder to improve his APFT score.

d. On 1 June 1989, the applicant's 1SG counseled him again after the applicant failed his second APFT due to poor performance on the run event; the applicant told the 1SG his foot had "started to hurt really bad." The applicant additionally affirmed he wanted to remain in the Army, and he declared he would pass his APFT the next time.

e. On 1 June 1989, 1LT H__ J. S__ counseled the applicant for failing the APFT; 1LT S__ told the applicant that there would be one more opportunity to pass the APFT, and if the applicant failed, he would be discharged under the TDP (Trainee Discharge Program; referring to chapter 11 (Entry-Level Status Performance and Conduct), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)).

f. On 6 June 1989, the applicant's 1SG counseled him following the applicant's third APFT failure. SFC M__ L. U__ stated, despite the command's efforts to help the applicant, he continued to perform below standard on the run event. While acknowledging the applicant's feet were hurting, SFC U__ pointed out that the applicant's doctor had said the applicant's feet were "fine." SFC U__ stated he would be recommending the applicant for separation.

g. On 6 June 1989, 1LT H__ J. S__ prepared a DA Form 4856 in which he addressed the applicant third APFT failure; 1LT S__ noted that, while the applicant was

"well motivated," his inability to meet APFT standards showed the applicant would not be a productive Soldier. 1LT S__ recommended the applicant's separation.

h. On 7 June 1989, the applicant returned to his doctor for a follow-up visit; the doctor reported the x-rays had shown the applicant's foot injuries had healed, and he directed the applicant's return to duty.

i. On 13 June 1989, SFC M__ L. U__ advised the applicant, via memorandum, of a proposed separation action initiated against the applicant, per chapter 11, AR 635-200; the specific reason was the applicant's APFT failure.

j. On 13 June 1989, the applicant acknowledged the notification of his proposed separation and understood, if approved, he would receive an entry-level separation with an uncharacterized character of service. The applicant affirmed he did not desire to consult with counsel; he did, however, wish to make statements in his own behalf (not available for review); and he opted not to undergo a separation physical. SFC M__ L. U__ (applicant's 1SG) signed the part of the applicant's election document normally reserved for counsel.

k. On 13 June 1989, 1LT H__ J. S__ forwarded his separation recommendation to the separation authority; he cited the applicant's failure to meet minimum physical fitness standards as the basis for his action. On 14 June 1989, the separation authority approved the commander's recommendation and directed the applicant uncharacterized discharge from active duty; on 19 June 1989, orders separated the applicant accordingly.

l. The applicant's DD Form 214 shows he completed 3 months and 27 days of his 6-year enlistment contract. The report additionally reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – two marksmanship qualification badges
- Item 25 (Separation Authority) – AR 635-200, paragraph 11-3 (Entry-Level Status Performance and Conduct – Separation Policy)
- Item 26 (Separation Code (SPD)) – "JGA"
- Item 28 (Narrative Reason for Separation) – "ENTRY LEVEL STATUS PERFORMANCE AND CONDUCT"

4. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

5. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, the FSM's available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board found that the word “conduct” in the narrative reason for the applicant’s separation is clearly misleading. The record shows he was a motivated trainee who simply had an issue that prevented him from successfully completing the run portion of the APFT. Although the narrative reason for separation on the applicant’s DD Form 214 is administratively correct, the Board found the word “conduct” to be unfairly prejudicial to the applicant. The Board determined the applicant’s DD Form 214 should be corrected by removing the word “conduct” from the narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). 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. Paragraph 3-9 (Uncharacterized Separations). Effective 1 October 1982, a revision of AR 635-200 mandated the issuance of uncharacterized characters of service to Soldiers separated while in an entry-level status; for Regular Army Soldiers, entry-level status began upon their entrance on active duty and ended after 180 days of continuous active duty. The regulation stated the Secretary of the Army could issue an honorable character of service, on a case-by-case basis, when clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

d. Section II (Secretarial Authority) stated the separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be executed only by his/her authority. The discharge or release of any enlisted member of the Army for the convenience of the Government will be at the Secretary's discretion and with the type of discharge as determined by him/her.

e. Chapter 11 (Entry Level Status Performance and Conduct). This provision permitted commanders initiate separation action against entry level Soldiers who demonstrated they were not qualified for retention based on not adapting socially or emotionally to military life, not meeting minimum standards prescribed for successful completion of training, and/or not responding to counseling (as recorded on DA Forms 4856 (General Counseling Form).

(1) Paragraph 11-4 (Counseling and Rehabilitation Requirements) stated it was essential to fulfill the regulation's counseling and rehabilitation requirements because military service was a calling different from any civilian occupation; commanders should not separate a Soldier, using entry level performance and conduct as the sole basis, unless efforts at rehabilitation had been made.

(2) The regulation also stipulated commander's use of the notification procedure when advising the Soldier of the contemplated separation action. The notification procedure involved the following:

- Giving the Soldier a written notice of the proposed separation that specified the type of separation and the reason for the commander's action
- Advising the Soldier of his or her rights, under the regulation's separation process, which included: consulting with military counsel, submitting statements in his/her own behalf, receiving copies of documents sent to the separation authority, and waiving, in writing, the aforementioned rights
- The Soldier was to indicate on an "Election of Rights" document whether that Soldier had consulted with counsel and was or was not submitting matters on his/her own behalf

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. The regulation linked the narrative reason for separation to the regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 for this entry and the separation code (SPD).

4. AR 635-5-1 (SPD), in effect at the time, showed the narrative reason for separation assigned to Soldiers separated per chapter 11, AR 635-200 was, "Entry-Level Status Performance and Conduct." and the SPD was "JGA."

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

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, 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.

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.

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states the ABCMR

begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

//NOTHING FOLLOWS//