

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230007416

APPLICANT REQUESTS: His characterization of his separation to be changed to honorable or under honorable conditions (general) discharge.

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

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

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 he originally planned to join the Air Force, but after a conversation with his drill instructor it was recommended, he re-up after completing college, and completion of civilian ground school. The correction will allow him to continue a career in the Air Force or Air National Guard.
3. The applicant indicates some sort of incident occurred in his 19th week of training; however, there is no evidence of any incident in the record and the available record does not include any of the applicant's separation processing documentation.
4. The applicant enlisted in the Army National Guard (ARNG) on 7 November 2008 in the grade of E-3. He entered initial active duty for training (IADT) on 24 March 2009.
5. The applicant was released from active duty and discharged from the U.S. Army Reserve on 4 June 2009 with transferred back to his ARNG unit. The DD Form 214 (Certificate of Release or Discharge from Active Duty) issued at that time shows:
 - separation in the grade of E-3
 - 2 months and 11 days of active duty service
 - 4 months and 17 days of prior inactive service

- no awards or decorations listed
- he did not complete training and was not awarded a military occupational specialty
- he received an uncharacterized separation
- separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17
- a narrative reason for separation as "Condition, not a disability"
- a separation code is "JFV" and his Reentry Code is "NA"

6. The applicant was discharged from the ARNG on 4 June 2009. His NGB Form 22 (Report of Separation and Record of Service) shows:

- enlistment on 7 November 2008
- separation on 4 June 2009
- no awards or decorations
- no military education completed
- separation under NGR 600-200, 8-35c(6) (Other designated physical or mental conditions)
- his service as uncharacterized

7. The Army Discharge Review Board denied the applicant's request for relief on 11 September 2012 stating:

"After carefully examining the applicant's record of service during the period of enlistment under review, hearing his testimony, and considering the analyst's recommendation and rationale, the Board determined that the discharge was both proper and equitable and voted to deny relief."

8. The applicant provided a copy of his resume that indicates he has completed a degree in Business Administration and is certified in Commercial and General Aviation Services.

9. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. The Board reviewed the application, all supporting documents, all statements, the evidence in the applicant's service records, and the published Department of Defense guidance pertaining to the application of clemency.
2. The Board determined the reason and character of service the applicant received upon separation was 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.

█

█ █

█

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 15-185 (ABCMR), paragraph 2-9 states 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.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. It provides:

a. 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.

b. A 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. A separation will be described as an entry level separation with service uncharacterized if processing is initiated while a Soldier is in entry level status, except under specific circumstances. For Army National Guard (ARNG) and USAR Soldiers, entry level status begins upon enlistment in the Army National Guard or U.S. Army Reserve and terminates for Soldiers ordered to IADT for one continuous period-180 days after beginning training or the Soldier is ordered to IADT for the split or alternate training option-90 days after beginning Phase II (advanced individual training). (Soldiers completing Phase I (basic training or basic combat training) remain in entry level status until 90 days after beginning Phase II.

d. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

e. Chapter 5 (Separation for Convenience of the Government) states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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//