

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007554

APPLICANT REQUESTS: his uncharacterized discharge be upgraded. Additionally, he requests a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-Authored Letter
- Veterans Administration (VA) Letter
- Character Letters (three)
- National Personnel Records Center (NPRC) Letter

FACTS:

1. The applicant did not file within the 3-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:

a. He requests this upgrade to correct his discharge and improve help with finding work. Several days before his graduation, he was preparing in and out of tanks. He was learning skills to be an operator, performing the duties of being a loader and learning how to be a driver. He injured his back exiting a tank, having a severe back spasm on the turret. He went to sick bay, and they prescribed Robaxin for the back pain. He was sent to the hospital and diagnosed with severe back pain. He experienced so much pain that he took the pain medication every day, due to also having to do physical training. He took 11 Robaxin, therefore overdosing. The instructions on the bottle were not clear. It read 11 PO (by mouth) 4 times. He misunderstood, and thought he was supposed to take 11. He was rushed to the hospital and released the next day. That day he had to take a test on the tanks. he couldn't remember anything (order of operations), and therefore failed the Gate test.

b. He was told that he was going to be recycled. He spoke with the battalion commander, who gave him the option of staying in the military or choosing to leave the military. He chose to leave the military as he was in so much pain with his back.

c. He continued having back problems in civilian life. Therefore, he thinks he made the right decision leaving the military, as he obviously would not have been a good Soldier. His back problems lead to knee problems, and as a result, he has had two back surgeries, and both knees replaced.

3. The applicant's military records are not available for review; therefore, this case is being considered based on his DD Form 214.

4. The applicant enlisted in the Regular Army on 22 January 1992. He did not complete training and was not awarded a military occupational specialty.

5. The applicant's separation packet containing the specific facts and circumstances surrounding his discharge processing is not available for review.

6. The applicant was discharged on 26 May 1992. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 11-3a, by reason of entry level status performance and conduct. He was assigned Separation code JGA with Reentry Code 3. His service was uncharacterized. He completed 4 months and 5 days of net active service.

7. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation processing.

8. The applicant provides:

a. A copy of his DD Form 214 discussed above.

b. A character letter from the applicant's former wife states that although their marriage did not work out, they are currently friends. He loves his kids more than anything and would very much like to have a place where his kids could go stay with him. Their daughter has learning disabilities, and he is very good with her. Their son is in the Marine Corps, and the applicant is extremely proud of him. She is very hopeful the applicant gets his discharge status changed, so that he may buy a house.

c. A VA transmittal form, dated 17 April 2023, shows an open discharge review application regarding the applicant.

d. The NPRC notification shows the applicant's record is charged out.

9. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR requesting a discharge upgrade, a change in the narrative reason for his discharge, and, in essence, a referral to the Disability Evaluation System (DES). He states: "This request is in order to correct my discharge and help with improvement in finding work." From his self-authored statement:

"I injured my back exiting a tank, having a severe back spasm on the turret. I went to sick bay and they prescribed Robaxin for the back pain. I was also sent to the hospital and diagnosed with severe back pain. I experienced so much pain that I took the pain medication every day, due to also having to do physical training. The whole platoon was granted a day off to tour the base at Fort Knox, Kentucky. We went to the Patton Museum. I took 11 Robaxin, therefore overdosing.

I couldn't remember anything, order of operations, and therefore failed the Gate test. I was told that I was going to be recycled. I spoke with the Battalion Commander; he gave me the option of staying in the Military or choose to leave the Military. I chose to leave the Military as I was in so much pain with my back.

My back problems, lead to knee problems, and as a result, I have had 2 back surgeries, and both knees replaced."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's signed DD 214 shows he entered the regular Army on 22 January 1992 and was discharged on 26 May 1992 under provisions provided in paragraph 11-3a of AR 635-200, Personnel Separations –

Enlisted Personnel (17 September 1990), for falling below entry level performance and conduct standards.

d. Neither his separation packet nor other documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

e. No medical evidence was submitted with the application and there are no contemporaneous encounters in the EMR.

f. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented him from performing his duties in a satisfactory manner. Thus, there was and remains no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

g. Review of his records in JLV to show he has been awarded multiple VA service-connected disability ratings, including awards for related to his back and knee. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

h. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade, change in this narrative reason for separation, nor a referral of his case to the Disability Evaluation System remain is warranted.

#### BOARD DISCUSSION:

1. The Board determined 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 relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the

records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant was discharged from active duty due to entry level performance and conduct. He did not complete training and was not awarded an MOS. His DD Form 214 shows he completed 4 months and 5 days net active service this period. The Board agreed that given the applicant's separation authority, it is implicit that his entry level performance and conduct warranted his separation while he was in initial entry training. As required by the governing regulation, he received an uncharacterized discharge. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board determined that the character of service he received is not in error or unjust.

b. Additionally, the Board reviewed and agreed with the medical reviewer's finding no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented him from performing his duties in a satisfactory manner. Thus, there was and remains no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

c. The Board determined that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

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.

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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, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 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.

4. AR 635-200, in effect at the time, sets 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. Chapter 3 states 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 is 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. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records

(BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

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

//NOTHING FOLLOWS//