

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230007658

APPLICANT REQUESTS:

- his uncharacterized discharge be characterized as under honorable conditions (General)
- an appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 that when he initially received his DD Form 214 the characterization of service was listed as general. When he received a copy from the National Archives, he the character of discharge was changed to uncharacterized. He would like it changed back to general.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 11 March 1983. He entered active duty for training on 25 March 1983. He did not complete training and was not awarded a military occupational specialty (MOS).
4. The applicant received general counselings between 13 April and 19 July 1983 for: failing Army weight standards, failing to pass end of cycle test on his second attempt, failure to comply with operating procedures that would result in a safety violation, failed first and second written examinations, failed to meet course requirements of MOS 62F (Lifting and Loading Equipment Operator). On 15 July 1983, he failed the written test and was recommended for reclassification to another MOS.

5. On 19 July 1983, he was counseled for failing his course and he was counseled on being released from active duty (REFRAD) and assigned to the USAR Control Group.
6. The applicant's commander notified him on 22 July 1983 that she was initiating actions to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 11, for entry level performance and conduct, and transfer to the Individual Ready Reserve (IRR). The reasons for the proposed separation action were that the applicant had shown an inability to comprehend and retain the information necessary for the successful completion of the 62F course. He failed to meet course standards even after receiving reinforcement training from the course and attending mandatory study sessions at the company. He was not the productive Soldier needed in today's Army. He was advised of the rights available to him. The applicant acknowledged receipt of the notification and stated his understanding that his service would be described as Entry Level Status with uncharacterized service.
7. The applicant consulted with counsel and was advised of the rights available to him and the effects of waiving his rights. He did not elect to submit statements in his own behalf and he did not request a separation physical.
8. The separation authority approved the recommended separation for entry level status performance and conduct on 25 July 1983. The applicant would be released from active duty and transferred to the IRR.
9. The applicant was discharged accordingly on 3 August 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 11-3a, for entry level status performance and conduct. He was assigned Separation Code JGA with Reenlistment Code 3. His service was uncharacterized. He completed 4 months and 9 days of active service.
10. Soldiers are considered to be in an entry level status when they are within their first 180 days of active duty service.
11. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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. The Board noted the applicant's net active service as 4 months and 9 days and determined he was in an entry-level status when separated. Therefore, the Board determined the uncharacterized service the applicant received upon separation was not in error or unjust.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. 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.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), 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. 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.

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.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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//