

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230007768

APPLICANT REQUESTS: reconsideration of his previous request to have his uncharacterized discharge upgraded to an honorable discharge.

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), 28 May 1993
- Installation Clearance Record
- County Record of Discharge Document

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180014993 on 6 May 2018.

2. The applicant states a JAG (Judge Advocate General) individual told him his general (i.e., uncharacterized) discharge would be upgraded after 6 months, to an honorable discharge. This has not been done yet. He has previously attempted to resolve the problem, but no one seems to want to help.

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

a. The applicant enlisted in the Regular Army on 5 March 1993 for 4 years. He was assigned to Fort Sill, OK for completion of basic combat training.

b. On 26 April 1993, the applicant's immediate commander notified the applicant that he was initiating action to discharge him from the Army prior to the expiration of his current term of service under the provisions of Army Regulation 635-200 (Personnel Separations), chapter 11 for unsatisfactory performance. The specific reason for his proposed action was the applicant's inability to qualify with his assigned M16 rifle. His best score was 20/40 after 9 attempts. The Army standard is 23/40 to pass. His service would be uncharacterized.

c. On 26 April 1993, the applicant acknowledged the commander's intent to discharge him, his available rights and consulted with counsel. He understood that if approved, he would receive an entry level separation with uncharacterized service. He further understood that he would not be permitted to apply for reenlistment in the Army within two years of his separation. He elected not to submit a statement on his behalf.

d. On 17 May 1993, the applicant's immediate commander initiated separation action against the applicant for failure to meet minimum standards of Basic Rifle Marksmanship. The applicant's intermediate commander recommended approval.

e. On 25 May 1993, the separation authority approved the applicant's proposed separation under the provisions of chapter 11 of AR 635-200, and ordered the applicant receive an Entry Level Status Separation-Uncharacterized and waived the requirement for rehabilitation transfer.

f. The applicant was discharged from active duty on 28 May 1993. His DD Form 214 shows he was discharged in accordance with chapter 11 of AR 625-200 and his service was uncharacterized for entry level separation (Separation Code JGA, Reentry Code 3). His DD 214 shows he completed 2 months and 24 days of net active service.

g. There is no indication he petitioned the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

4. By regulation (AR 635-200), enlisted Soldiers are in an entry-level status when they are within their first 180 days of active duty service.

5. On 6 May 2019, the ABCMR considered the applicant's request to change his character of service from uncharacterized to honorable. After review of the application and all evidence, the Board determined there is insufficient evidence to grant relief. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. As such, his DD Form 214 properly shows his service as uncharacterized. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

BOARD DISCUSSION:

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

applicant was discharged under the provisions of AR 635-200, paragraph 11-3a, for entry level status performance and conduct. His service was uncharacterized (entry level status (ELS)). He completed 2 months and 24 days of net active service. He was not awarded a military occupational specialty and he did not complete his term of service. Soldiers are considered to be in an ELS when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an ELS at the time of his separation processing. As such, his DD Form 214 properly shows his service as uncharacterized. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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 to amend the decision of the ABCMR set forth in Docket Number AR20180014993 on 6 May 2018.

[REDACTED]

[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. Army Regulation 635-200, Personnel Separations, sets the policies and standards for the administrative separation of enlisted personnel from active duty. chapter 11, in effect at the time, provided for separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry level status.

a. Paragraph 11-3a stated separation was warranted when unsatisfactory performance or minor disciplinary infractions was evidenced by inability, lack of reasonable effort or failure to adapt to the military environment. The policy applied to members who were in an entry level status and, before the date of the initiation of separation action, had completed no more than 180 days of continuous active duty, could not or would not adapt socially or emotionally to military life, had demonstrated character and behavior characteristics not compatible with satisfactory continued service and had failed to respond to counseling. Entry level status is defined as the first 180 days of continuous active service or the first 180 days of continuous active service after a service break of more than 92 days of active service. The regulation required an uncharacterized description of service for separation under this chapter.

b. An uncharacterized separation is an entry-level separation. separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable conditions is authorized by the reason for separation and is warranted by the circumstances of the case or when the Secretary of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

c. 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.

2. 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, 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 grounds. 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

based on 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. 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//