

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230008123

APPLICANT REQUESTS: Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his:

- date of birth (DOB) as the [REDACTED]
- characterization of service as "Under Honorable Conditions (general)" rather than "Uncharacterized"
- Separation Program Designator (SPD) code and narrative reason for separation to indicate he was separated due to "Medical Disability" rather than "Entry Level Performance and Conduct"
- to appear in person before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Live Birth
- Driver License

FACTS:

1. The applicant did not file within the three-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 the birth certificate used during his enlistment had the wrong DOB and it was corrected after he was discharged. He further states he received a penicillin vaccine during his in-processing and had an allergic reaction that resulted in him being treated at a local hospital. While there, he developed an upper respiratory infection, which progressed into bronchitis. This condition kept him from being able to perform any physical training or drills once he returned to base from the hospital. Someone advised him that due to him being unable to recover from his upper respiratory condition stemming from the penicillin vaccine, and a family medical history of his father and grandfather having asthma, he would be granted a medical discharge. Prior to discharge, he was never notified the conditions of his discharge had changed

from medical, nor was he presented anything to sign confirming he understood the terms had changed, which is confirmed by the fact that he did not sign block 21 (Signature of Member Being Separated) of his DD Form 214. The reason he is requesting these corrections is to enable him to file for disability and be eligible for Veterans benefits such as a home loan, college tuition, and health insurance. These tools can benefit him and help him provide for his loved ones. The applicant indicated he attached the following documents with his application, but they were not included: DD Form 214; military records; military medical records; and local hospital intake/discharge medical records.

3. A DD Form 4/1 (Enlistment/Reenlistment Document – Armed Forces of the United States (U.S.)) shows the applicant enlisted in the U.S. Army Reserve Delayed Entry Program (DEP) on 9 February 2004. This document shows his DOB as the 15th of the month. The applicant requested to be discharged from the DEP and enlisted in the Regular Army for a period of 4 years. He validated this document with his signature.

4. DA Forms 4856 (General Counseling Form) show the applicant was individually counseled on 27 April 2004 by his Drill Sergeant, First Sergeant, and Company Commander for refusing to train. He was repeatedly advised that failure to meet the standards set by the Army could and would result in administrative action being taken against him that could result in him being discharged from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11, for entry level performance and conduct with a service characterization of "Uncharacterized." He indicated his agreement with each of these counseling sessions and validated them with his signature.

5. On 27 April 2004, the applicant rendered a Memorandum for Record wherein he stated he refused to train and did not wish to remain on active duty. He validated this document with his signature.

6. A Basic Combat Training Brigade Form 6 (Trainee Entry Level Separation General Data Sheet), dated 27 April 2004, shows the applicant had served on active duty for 10 days at the time.

7. On 29 April 2004, the applicant's immediate commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 11, for entry level performance and conduct. As the specific reason, the commander cited the applicant's inability to adapt to military life and lack of motivation. He further advised the applicant that if his separation was approved, he would recommend that he receive an entry level separation with uncharacterized service.

8. The applicant acknowledged receipt of the separation notification on the same date. He declined to consult with counsel, to submit statements in his own behalf, and to have a medical examination before his discharge. He indicated he had been advised by counsel of the basis for the contemplated action to separate him for entry-level performance and conduct under the provisions of Army Regulation 635-200, Chapter 11, and its effect; of the rights available to him; and of the effect of any action taken by him in waiving his rights.

9. On 29 April 2004, the applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11. This document shows the applicant's DOB as the 15th.

10. On 29 April 2004, the separation authority approved the recommended separation and directed the applicant's entry-level separation (uncharacterized).

11. Orders and the applicant's DD Form 214 show he was discharged on 7 May 2004. His DD Form 214 shows he was credited with completion of 1 month and 2 days of net active service this period and contains the following entries in:

- Block 5 (DOB) – the [REDACTED]
- Block 21 – Soldier not available to sign
- Block 24 (Character of Service) – Uncharacterized
- Block 25 (Separation Authority) – Army Regulation 635-200, Chapter 11
- Block 26 (Separation Code) – JGA
- Block 27 (Reentry Code) – 3
- Block 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct

12. In addition to the previously discussed evidence, the applicant provides:

- an amended Certificate of Live Birth, issued [REDACTED], that shows his DOB as the [REDACTED]
- Driver License that shows his DOB as the [REDACTED]

13. 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. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for her or her character of service to be rated.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. Applicants do not have a right to a hearing before the ABCMR.

15. 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 applicant's previous ABCMR denial, 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 May 2004 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

“In regard to Performance/Evaluations/Derogatory Information, I received a separation code of JGA when in fact I was discharged for medical reasons.

During my intake processing I was given a penicillin shot which unbeknownst to everyone including myself, was allergic to. The shot caused an allergic reaction where I developed a high fever and was rushed off base to be treated at a local hospital from which I developed an upper respiratory infection which then progressed into bronchitis keeping me in the infirmary unable to perform any PT or attend Company drills once I returned to base from the hospital.

At some time, someone came to see me and advised me of my extended medical event, and a family medical history (i.e., grandfather (deceased at the time), and father) of asthma, they opted to grant me a medical discharge since I was unable to fully recover from my upper respiratory condition (the penicillin shot). Prior to discharge I was never notified the conditions of my discharge had changed from Medical to General.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 6 April 2004 and was discharged on 7 May 2004 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000), for falling below entry level performance and conduct standards. His separation code of JGA denotes “Entry level status performance and conduct.”

d. No medical documentation was submitted with the application. There only two documents in the EMR, and they strongly suggest he was undergoing an evaluation for asthma shortly after entering an active duty: A chest radiograph obtained to evaluate for congested cough and wheezing was read as “Normal Study;” and the applicant was referred for and completed pulmonary function testing (PFT) on 23 April for complaints of shortness of breath and chest tightness after running $\frac{1}{4}$ to $\frac{1}{2}$ of a mile. The PFT results are not available for review.

e. On 27 April 2004, the applicant received performance counseling from his drill sergeant, first sergeant, and company commander for refusing to train in violation of Article 91 and 92 of the UCMJ (Article 91—Insubordinate conduct toward warrant officer, non-commissioned officer, or petty officer; Article 92—Failure to obey order or regulation). The applicant agreed with the counseling, and on a separate signed memorandum for record completed that day he simply stated “I, [Applicant], [SSN], refuse to train and do not wish to remain on active duty.”

f. On 29 April 2004, his company commander informed him of the initiation of separation action under chapter 11 of AR 635-200:

“The reasons for my proposed action are your inability to adapt to military life and lack of motivation.”

g. The battalion commander directed this administrative separation with an uncharacterized discharge on 29 April 2004.

h. There is no probative evidence the applicant had a service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

i. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad.

j. It is the opinion of the Agency Medical Advisor that neither a discharge upgrade nor a referral of his case to the Disability Evaluation System is warranted.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not indicate there was any basis for referring the applicant to the Disability Evaluation System to be considered for discharge due to disability incurred in the line of duty or aggravated by military service. Further, the Board found the administrative record confirms the applicant's chain of command had a well-documented basis for discharging him for entry level performance and conduct. The evidence confirms the applicant was in an entry-level status when he was discharged, and uncharacterized service was required by regulation. Based on a preponderance of the evidence, the Board unanimously determined the applicant's uncharacterized service and the reason for his discharge were not in error or unjust.

4. A majority of the Board determined there is insufficient evidence to support a recommendation to change the DOB recorded on his DD Form 214, noting that an amendment to a birth certificate that occurred several years after his discharge did not retroactively create an error in an Army record that accurately displays the information that was available when the form was completed.

5. The member in the minority found the applicant's amended birth certificate sufficient as a basis for changing the DOB recorded on the applicant's DD Form 214.

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.

5/6/2024

X 

CHAIRPERSON


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 three 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 three-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. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that 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. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. 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.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on entry level performance and conduct.

6. 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.

7. 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, 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//