

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230008566

APPLICANT REQUESTS: his uncharacterized service be characterized as under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 3 May 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 3 May 2023
- self-authored email, 7 November 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 20 July 1984
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 1 October 1984

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, in effect, while on active-duty orders in basic training he broke his left ankle. He passed basic training and while in processing for advanced individual training, he became medically disqualified for a bone spur, which was located in his left ankle. He is requesting his entry level status be changed to gain access to the benefits he should be entitled to while serving on active duty. He additionally adds, his DD Form 214, is incorrect for his swearing in date, time on orders, and character of discharge.
3. The applicant's National Archives and Records Administration (NARA) record is not available for review. Despite the lack of his Official Military Personnel File, the applicant provided a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of the applicant's petition.

4. The applicant's DD Form 214 shows the following:

a. The applicant enlisted in the Army National Guard (ARNG) and was ordered to active duty for training on 18 June 1984.

b. He was released from active duty on 20 July 1984, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, by reason of - did not meet procurement medical fitness standards – no disability.

c. He was credited with 1 month and 3 days of net active service and 2 months of total prior active service.

d. He received an entry level status (uncharacterized) character of service with separation code of LFT and reenlistment code of RE-3. He was transferred back to the control of the New Hampshire ARNG.

5. The applicant provides his NGB Form 22, showing:

a. He enlisted on 30 December 1982.

b. He served 1 year, 9 months, and 2 days of net service this period.

c. He was separated from the ARNG of New Hampshire on 1 October 1984. His character of service is not shown on the provided NGB Form 22.

6. 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 simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

7. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

8. 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/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 20 July 1984 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

“My character of discharge is "Entry Level Status" and I broke my Left ankle while at Basic Training and was on Active-Duty Orders for about a year while healing. I passed Basic Training and was in processing for AIT when I was medically disqualified for a bone spur that was located in my left ankle. I am requesting this to be upgraded and to have access to the benefits I earned and should be entitled to. I am trying to have access to the VA medical.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of service under consideration shows the former Guard Soldier entered active duty for training on 18 June 1984 and was discharged on 20 July 1984 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 October 1982): Separation of personnel who did not meet procurement medical fitness standards.

d. His Report of Separation and Record of Service (NG Form 22) shows he had entered the [REDACTED] Army National Guard ([REDACTED] ARNG) on 30 December 1982 and was discharged for same on 1 October 1984.

e. No medical documentation was submitted with the application and his period of service predates the EMR. JLV shows the applicant is not registered with the VA and there are no encounters.

f. Neither his separation packet nor documentation addressing his involuntary administrative separation was submitted with applicant nor uploaded into iPERMS.

g. It is assumed the applicant was referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200 for tuberculosis which had existed prior to his entrance onto active duty.

“5-11. Separation of personnel who did not meet procurement medical fitness standards. a.

Members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 4 months

of the member's initial entrance on AD or ADT under the Reserve Enlistment Program of 1963 which –

- (1) Would have permanently disqualified him or her for entry into the military service had it been detected at that time; and
- (2) Does not disqualify him or her for retention in the military service under the provisions of AR 40-501, chapter 3.”

h. EPSBD's are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 4 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently service aggravated.

i. Given his separation authority, it is implicit the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

j. 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. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

k. It is the opinion of the ARBA Medical Advisor that a discharge upgrade is not warranted.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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. Upon review of the applicant’s petition, available military records and medical review, the Board concurred with the advising official finding that a discharge upgrade is not warranted.

2. The Board noted the applicant completed 1 months and 3 days and did not complete training and was released from active duty for failure to meet medical procurement standards. 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 for upgrade of his uncharacterized character of service or referral of his case to the DES. Therefore, the Board denied relief.

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.

4/8/2024

X

[REDACTED]

CHAIRPERSON

[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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. AR 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. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. 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.

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