

IN THE CASE OF: ██████████

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008947

APPLICANT REQUESTS: his uncharacterized service be changed to honorable based on his disability, and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 20 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 18 June 1990
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 18 June 1990
- Army National Guard Retirement Points History Statement, 21 October 1991
- Department of Veterans Affairs (VA) record, 30 May 2012
- VA rating decision, 28 January 2022
- VA benefits claim, 20 May 2023

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, he is requesting his character of service be changed to honorable as shown on the VA document he provided. He is additionally requesting a narrative reason to show disability as he has records from the VA showing he is disabled. He is requesting consideration by the Board due to his disability claim being approved on 18 July 2011.
3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri. According to the response received from NARA, his record is currently signed out and is unavailable for review at this time. Despite the lack of his OMPF, 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 enlisted in the [REDACTED] Army National Guard on 29 December 1989. He entered active duty on 1 March 1990 for the purpose of initial entry training. He did not complete initial entry training and was not awarded a military occupational specialty.

5. The applicant was released from active duty on 18 June 1990. His DD Form 214 shows he was separated 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 standard, no disability. His service was uncharacterized, with separation code LFT and reentry code NA. He was credited with 3 months and 18 days of net active service this period.

6. The applicant provides:

a. His NGB Form 22 shows he was discharged from the Army National Guard on 18 June 1990, with an uncharacterized character of service and reenlistment eligibility (RE) code RE-3.

b. A printout of his Army National Guard Retirement Points History Statement, dated 21 October 1991, showing he served from 1 March 1990 to 18 June 1990. He earned 117 total career points.

c. A VA letter showing on 30 May 2012, his service was considered honorable for VA purposes.

d. A VA rating decision, dated 28 January 2022, shows service connection for degenerative disc disease and left lower extremity radiculitis.

e. A VA rating decision document showing on 20 May 2023, he received a service-connected evaluation of 60% and has an under honorable conditions character of service for VA purposes.

7. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

8. 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.

9. 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.

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 (AHLTA), 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 applying to the ABCMR requesting an upgrade of his uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He does not identify a reason for this change nor identify a medical condition for referral to DES.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Report of Separation and Record of Service (NGB 22) under consideration shows he entered the [REDACTED] Army National Guard ([REDACTED] ARNG) on 29 December 1989 and was discharged 18 June 1990 under authority provided by paragraph 8-26f of NGR 600-200, Personnel General – Enlisted Personnel (17 April 1989): Failure to meet medical procurement standards, AR 40-501 [Standards of Medical Fitness], chapter 2, prior to entry on IADT [Initial Active Duty for Training].

d. No contemporaneous medical documentation was submitted with application and his period of service predates AHLTA.

e. Neither the applicant's separation packet nor documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

f. A submitted VA ratings decision shows the applicant was granted two 10% VA service-connected disability ratings on 18 July 2011, one for lumbosacral strain and the other for left lower extremity radiculitis. JLV shows he now has a total of five VA service-connected disability ratings, with the latter three granted in 2022 and 2023.

g. There is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

h. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. 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 even enter 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.

j. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of his case to the DES is 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding neither a discharge upgrade nor a referral of his case to the DES is warranted. The Board agreed due to no fault of the applicant he just did not meet the required standards. Evidence shows the applicant did not complete his initial training nor was he awarded an MOS. The Board noted, an uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty 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.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

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, 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 15-185 (ABCMR), the regulation governing this Board, states 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 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.

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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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. 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//