

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230009758

APPLICANT REQUESTS: an upgrade to his characterization of service to reflect under honorable conditions (general) vice uncharacterized.

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

- DD Form 149 (Application for Correction of Military Record)
- A letter from the Department of Veterans Affairs (VA), dated 31 October 2002

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:
 - he did not realize that his character of service was listed as uncharacterized at the time of his separation
 - it is to his understanding that the government considers an uncharacterized discharge the same as an honorable
 - he is proud to have served his country and would like his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect that he served honorably
3. The applicant provides a letter from the VA, dated 31 October 2002, that shows his character of discharge as certified to the VA by a military branch of service or shown on official military documents as "Honorable".
4. The applicant's service record shows the following information:
 - a. On 22 October 1992, the applicant enlisted in the Regular Army for 2 years and 16 weeks.

b. DA Form 4856 (General Counseling Form) dated 15 January 1993 shows he was counseled for, in effect:

- for demonstrating immaturity
- for orally conveying his thoughts about the Army way of life
- for making the statement "I do not want to be in the Army because it was not what I expected"

c. DA Form 4856 dated 16 January 1993 shows he was counseled, in effect:

- for malingering at sick call and expressing to his physician that he no longer wanted to be in the Army and that he would do anything to get out
- for disobeying lawful orders and the consequences for failing to obey orders as he continues to refuse to train

d. DD Form 2329 (Record of Trial by Summary Court Martial- (SCM)) shows at a preliminary proceeding held on 28 January 1993, the SCM gave the accused a copy of the charge sheet. At that preliminary proceeding, the SCM informed him of his rights, which he acknowledged on 2 February 1993 and he did not object to a SCM. He was not represented by counsel.

e. DA Form 4430-R (Department of the Army Report of Result of Trial), undated shows the applicant received a SCM for disobeying a lawful order and for disobeying a noncommissioned officer, for which he pled and was found guilty. He was sentenced to forfeitures of \$376.00 pay for one month and to be confined for 20 days. Only so much of the sentence as provide for forfeiture of \$376.00 and confinement of 10 days was approved and was duly executed.

f. DD Form 497 (Confinement Order), dated 3 February 1993 shows he was confined to the U.S. Army Intelligence Center (USAIC) Regional Confinement Facility, as a result of his SCM.

g. DA Form 4187 (Personnel Action), dated 3 February 1993 reflects his status changed from present for duty to confinement, effective 3 February 1993.

h. DA Form 4856, dated 4 February 1993 shows he was counseled by his command of their recommendation for discharge under Chapter 11 (Entry Level Status (ELS) Performance and Conduct), Army Regulation (AR) 635-200, due to the following reasons:

- SCM for refusal to train, disobeying the orders of an officer and a noncommissioned officer

- lacking the desire, motivation, and dedication to become an American fighter
- for having no potential for further service to the U.S. Army

i. In a memorandum, subject: ELS, undated, the applicant did not desire to make a statement or submit a rebuttal, to have a separation medical examination, or to consult with military or civilian legal counsel.

j. On 8 February 1993, the separation authority approved the proposed ELS separation for the reasons listed below:

- he failed to perform to the minimal standards expected of an initial entry Soldier
- for being a constant disruptive influence in the platoon and company, resulting in his court martial for disobeying a lawful order
- his motivation to attempt to soldier was nonexistent despite repeated attempts of the chain of command to help him
- for not having the potential of useful service

k. DA Form 4187 dated 11 February 1993 reflects the applicant's status change from confinement to present for duty, effective 11 February 1993.

l. DD Form 214 for the period ending 11 February 1993, shows he was discharged accordingly with an uncharacterized discharge, pursuant to Army Regulation 635-200, Chapter 11-3a. He received a separation code of "JGA", a reentry code of "3", and a narrative reason for separation of "ELS". He completed 3 months, and 12 days of net active service this period.

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 and available military records, the Board determined the applicant did not complete training and was released from active duty.

2. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 3 months, and 12 days of net active service this period. The Board agreed the applicant's DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

3. 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.

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.

4/11/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. 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. Characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty. A general (under honorable conditions) discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by prior or subsequent honest and faithful service over a greater period of time during the current term of service.

b. Chapter 11-3a (ELS Performance and Conduct), sets policy and provides guidance for the separations of personnel because of unsatisfactory performance or conduct (or both) while in entry level status. This policy applies to Soldiers who were voluntarily enlisted in the Regular Army, are in ELS and before the date of initiation of separation, have completed no more than 180 days of credible continuous AD or IADT or no more than 90 days of phase II under a split or alternative training option and, have demonstrated that they are not qualified for retention.

3. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JGA" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 11, ELS Performance and Conduct.

//NOTHING FOLLOWS//