

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230011413

APPLICANT REQUESTS:

- in effect, an upgrade of his uncharacterized discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Service Officer (VSO) Letter, 14 November 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- NGB Form 22 (Report of Separation and Record of Service)
- Veterans Benefits Administration Query

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 his DD Form 214 indicates he has an uncharacterized discharge; however, he would like it to match his records for the Department of Veterans Affairs (VA) and reflect an honorable discharge. He believes the correction will enable him to receive benefits from the Social Security Administration and military benefits. He further noted the upgrade in discharge should be reflected on both his DD Form 214 and his NGB Form 22.
3. The applicant provides:
 - a. A letter from the VSO, dated 14 November 2023, which states the applicant was responding to the request for supporting documentation by providing a copy of his DD Form 214 and his NGB Form 22.

b. The below listed records to be referenced in the service record for the service period ending 25 February 1999: DD Form 214 and NGB Form 22

c. A Veterans Benefits Administration Query, dated 14 November 2023, shows his service period in the Army from 5 January 1999 through 25 February 1999 as honorable. A prior service period beginning on 1 October 1998 does not have a discharge date nor characterization of service listed.

4. A review of the applicant's service record shows:

a. He enlisted in the Ohio Army National Guard (OHARNG) on 1 October 1998.

b. Orders 193-24, dated 1 October 1998, ordered the applicant to initial active duty for training (IADT) with a report date of 5 January 1999.

c. On 16 February 1999, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11 for entry level status performance and conduct. The reasons for his proposed action were the applicant's failure to meet the minimum standards prescribed for successful completion of training due to his lack of motivation.

d. On 17 February 1999, the applicant signed a statement of option which indicated he understood that he was required to undergo a medical examination for separation from active duty and he elected not to under a separation medical examination.

e. After consultation with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he will not be eligible for enlistment in the U.S. Army for a period of 2 years after discharge
- he elected not to submit statements on his own behalf

f. The immediate commander initiated separation action against the applicant for entry level status performance and conduct. He recommended that the applicant receive an uncharacterized characterization of service. The intermediate commander recommended approval.

g. On 22 February 1999, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 11, for entry level status performance and conduct.

h. On 25 February 1999, he was discharged from active duty in accordance with chapter 11 of Army Regulation 635-200 with an uncharacterized characterization of service. His DD Form 214 shows he completed 1 month and 21 days of active service. He was assigned separation code LGA and the narrative reason for separation listed as "Entry Level Performance and Conduct," with a reentry code of 3.

i. On 25 February 1999, he was discharged from the OHARNG with an uncharacterized discharge. His NGB Form 22 shows he completed 4 months and 25 days of net service for the period. Block 23 (Authority and Reason) shows he was separated under entry level status.

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

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), service will be described as uncharacterized under the provisions of Chapter 11. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

9. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was separated for entry level status (failure to meet the minimum standards prescribed for successful completion of training due to his lack of motivation). He

completed 1 month and 21 days of net active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. 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. The Board found no error or injustice in his separation processing. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

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.

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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.

b. Chapter 11 of the regulation states service will be described as uncharacterized under the provisions of this chapter. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

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/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 based on equity, injustice, or clemency grounds, BCM/NRs 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//