

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230011608

APPLICANT REQUESTS: upgrade of his uncharacterized discharge to honorable

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 would like his separation upgraded to an honorable discharge. He was told his separation would be upgraded to an honorable discharge after six months of separation. He has read that an upgrade does not happen automatically, which he was told at the time of separation. His DD Form 214 (Certificate of Release or Discharge from Active Duty) has a remark next to the discharge that shows a capital H. The applicant thinks that shows it should reflect an honorable discharge.
3. The applicant's service record contains the following documents:
  - a. The applicant enlisted in the Regular Army and entered active duty on 16 July 2001.
  - b. DA Form 4856 (Developmental Counseling Form), dated 19 August 2001 shows the applicant was counseled for insubordinate conduct toward a noncommissioned officer. The second page of the counseling statement is not available for review.
  - c. DA Form 4856, dated 24 August 2001, shows the applicant was counseled for being unable to adapt to the solidarization process, he refused all attempts of encouragement and assistance by drill sergeants, he had a lack of discipline, and a lack of motivation. The second page of the counseling form was not available for the Board's review.

d. Memorandum proposed separation, entry level status performance and conduct, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) chapter 11, dated 24 August 2001 shows the applicant's commander was initiating separation of the applicant for lack of self discipline. If approved, the applicant would receive an uncharacterized discharge for being in an entry-level status. On the same day, the applicant acknowledged receipt of the initiation of separation.

e. On 24 August 2001, the applicant stated he had been advised for the contemplated action to separate him for entry level status performance and conduct and its effects, the rights available to him, and the effect of any action taken by him in waiving his rights. The applicant did not desire to consult with military counsel and statements in his own behalf were submitted. He understood if the separation was approved he would receive an entry level separation with an uncharacterized discharge.

f. On 25 August 2001, the applicant submitted a statement regarding his separation, which states: He never wanted to leave the Army, but he had seen something in himself since he had been there that he needed to work on, and the problem was his anger. He wanted to remain in the Army, but he needed to have some anger management classes. If the Army had a program that helped Soldiers deal with stress and anger, he wanted to enroll because he knew he was a great Soldier. He knew it was in him and that he had a flaw that needed to be corrected. He asked the Army for help if he could be given it, which would be a great help. If the Army did not have a program to help him, he could get out and go back into the Army after six months for a second chance, after he took some classes to handle his anger in a more efficient manner. He wanted to stay in the Army but if the Army could not help him with his problem, he just had to go to the civilian side for the help he needed then hopefully get back in the Army. He asked for help on paper in his own words freely. He rested on the decision.

g. On 29 August 2001, the appropriate approval authority approved the applicant's separation with the issuance of an uncharacterized discharge.

h. On 7 September 2001, the applicant was discharged accordingly. His DD Form 214 shows he was discharged from active duty in accordance chapter 11 of AR 635-200 for Entry Level Performance and Conduct and his service was uncharacterized. He completed 1 month and 22 days of active service, and he was assigned Separation Code JGA and Reentry Code 3. He did not obtain a military occupational specialty and he did not complete his first term of service.

4. There is no indication the applicant petitioned the Army Discharge Review Board within that board's 15-year statute of limitations.

BOARD DISCUSSION:

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 (unable to adapt to the solidarization process, lack of discipline, and lack of motivation). He completed 1 months and 22 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.

■

■    ■■■■■■■■■■

---

■■■■■

■■■■■

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when the Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

3. AR 635-5-1 (Personnel Separations - Separation Program Designators), in effect at the time, states that the SPD Code "JGA" applies to separations under the provisions of AR 635-200, Chapter 11, Entry Level Performance and Conduct with an reenlistment code of 3.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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 on the basis of 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//