

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230012254

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 March 1986, as follows:

- to show his uncharacterized service as honorable
- correction of items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) to private (PV2)/E-2
- and an appearance before the Board via video or telephone

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 (USC), 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 was discharged two weeks before graduation due to following orders and being placed in a mental health hospital. He was sexually assaulted on base which affected his mental health. He spoke to a psychiatrist on base after the incident. The applicant notes post-traumatic stress disorder (PTSD), other mental health, and sexual assault/harassment as conditions related to his request.
3. The applicant enlisted in the U.S. Army Reserve on 25 June 1985. He was ordered to active duty, effective 9 October 1985, for the completion of initial entry training. The highest rank he attained was private/E-1.
4. He was formally counseled on four occasions between 4 December and 8 December 1985. Areas of emphasis covered in the counseling include:
 - smoking while on "total control"
 - breaking company rules

- disobeying a lawful order
- self-discipline

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 13 December 1985 for failing to obey a lawful order, on or about 7 December 1985, and for absenting himself from his place of duty, on or about 8 December 1985. His punishment consisted of forfeiture of \$130.00 pay (suspended) and 5 days confinement in the correctional custody facility (CCF) (suspended). The suspension was vacated on 6 January 1986.

6. He was formally counseled on three occasions between 16 December 1985 and 28 February 1986. Areas of emphasis covered in the counseling include:

- disobeying orders (smoking)
- failing a written exam
- placement in the Basic Skills Education Program (BSEP)

7. The applicant was transferred to a different company and “new started,” on or about 27 January 1986, for the purpose of completing his military occupational specialty (MOS) training following his confinement in the CCF (5 days) and participation in BSEP.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 3 March 1986, for failing to obey a lawful order and for stealing a pack of cigarettes from the post exchange, on or about 26 February 1986. His punishment consisted of forfeiture of \$137.00 pay and 14 days restriction.

9. The applicant's immediate commander notified him on 10 March 1986 of her intent to initiate action to release him from active duty, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct. As the specific reasons, the commander stated the applicant was apprehended for stealing a pack of cigarettes, was “recycled,” received two Articles 15, and was sent to the CCF for disciplinary action.

10. On that same date, the commander formally recommended the applicant's separation under the provisions of AR 635-200, Chapter 11, by reason of failure to adapt to the military and failure to follow regulations.

11. A Statement of Option, dated 11 March 1986, shows the applicant elected not to undergo a separation medical examination.

12. On 12 March 1986, the applicant acknowledged receipt of the proposed separation notification, and acknowledged understanding, if approved, he would be receiving an entry level separation with uncharacterized service. He was advised of the reasons for

separation and of the rights available to him. He elected not to submit a statement in his own behalf.

13. The separation authority approved the recommended separation action on 14 March 1986, waived further rehabilitation efforts, and directed an entry level separation (uncharacterized) from service.

14. The applicant was discharged on 19 March 1986, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status performance and conduct, in the rank/grade of private/E-1. His DD Form 214 confirms his character of service was entry level status (uncharacterized), with separation code JGA and reenlistment code RE-3. He was credited with 5 months and 12 days of net active service. The applicant was not awarded a MOS.

15. There is no documentation in the applicant's service record to indicate he was advanced to the rank/grade of private (PV2)/E-2.

16. 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.

17. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.

18. On 8 April 2024, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Sexual Trauma (MST) Reports pertaining to the applicant.

19. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized/entry level separation (ELS) discharge to honorable as well as correction of his rank. The applicant selected PTSD, OMH, and MST on his application as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted into the U.S. Army Reserve on 25 June 1985. He was ordered to active duty, effective 9 October 1985, for the completion of initial entry training.
- He was formally counseled on four occasions between 4 December and 8 December 1985. Areas of emphasis covered in the counseling include: smoking while on “total control”, breaking company rules, disobeying a lawful order, and self-discipline.
- The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 13 December 1985 for failing to obey a lawful order, on or about 7 December 1985, and for absenting himself from his place of duty, on or about 8 December 1985. His punishment consisted of forfeiture of \$130.00 pay (suspended) and 5 days confinement in the correctional custody facility (CCF) (suspended). The suspension was vacated on 6 January 1986.
- He was formally counseled on three occasions between 16 December 1985 and 28 February 1986. Areas of emphasis covered in the counseling include: disobeying orders (smoking), failing a written exam, and placement in the Basic Skills Education Program (BSEP).
- The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 3 March 1986, for failing to obey a lawful order and for stealing a pack of cigarettes from the post exchange, on or about 26 February 1986. His punishment consisted of forfeiture of \$137.00 pay and 14 days restriction.
- The applicant's immediate commander notified him on 10 March 1986 of intent to initiate action to release him from active duty, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct. As the specific reasons, the commander stated the applicant was apprehended for stealing a pack of cigarettes, was “recycled,” received two Articles 15, and was sent to the CCF for disciplinary action.
- The applicant was discharged on 19 March 1986, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status performance and conduct, in the rank/grade of private/E-1. His DD Form 214 confirms his character of service was entry level status (uncharacterized), with separation code JGA and reenlistment code RE-3. He was credited with 5 months and 12 days of net active service. The applicant was not awarded a MOS.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states, “he was discharged two weeks before graduation due to following orders and being placed in a mental health hospital. He was sexually assaulted on base which affected his mental health. He spoke to a psychiatrist on base after the incident”.

However, the applicant does not provide any indication/details regarding the nature of the assault, what occurred, possible date or timeframe, nor who assaulted him.

d. Due to the period of service no active-duty electronic medical records were available for review. A Statement of Option, dated 11 March 1986, shows the applicant elected not to undergo a separation medical examination.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. VA electronic medical records available for review, indicate the applicant has receive support via the VA related to issues with homelessness. A social work assessment dated 22 October 2018 indicates the applicant denied any concerns related to trauma, abuse, neglect, or exploitation. In addition, depression and suicide screenings were both negative for any mental health concerns and he denied prior mental health services but endorsed daily substance use. On 8 April 2024, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Sexual Trauma (MST) Reports pertaining to the applicant.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service but he assets an MST.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the following mitigating conditions; PTSD, OMH, and MST.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. In addition, the medical record shows that upon screening, the applicant denied any issues related to trauma, abuse, neglect, or exploitation. However, the applicant stated he was assaulted on base during Basic Training. As such, his offenses of disobeying orders and absenting himself would be mitigated. It is more likely than not that, if the applicant had not suffered an MST during basic training, he would not have engaged in misconduct and would have been able to successfully complete his term of military service.

h. Per Liberal Consideration guidelines, the applicant's assertion of PTSD, OMH, and MST is sufficient to warrant consideration by the Board.

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. 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 insufficient evidence to support the applicant had a behavioral health condition during military service. The opine noted the applicant's record is absent evidence of any in-service BH diagnoses.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of shoplifting and various counseling's. The applicant's documented characterization of service does not require a different separation; the applicant's discharge was proper and equitable. The applicant served 5 months and 12 days of net active service, did not complete training and was released from active duty by reason of entry level status performance and conduct. Furthermore, the Board found no evidence the applicant was recommended for advancement to the grade of PV2. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized and his rank of E-1, there is no basis for granting the applicant's request. Relief is denied.
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. 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:

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, USC, 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

6. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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//