

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012324

APPLICANT REQUESTS, in effect, correction to his DD Form 214, Certificate of Release or Discharge from Active Duty, to show:

- his narrative reason for separation was due to a disability vice entry level performance and conduct
- the characterization of his service was honorable vice uncharacterized

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

- DD Form 149, Application for Correction of Military Record
- DD 214

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, that he never received any type of nonjudicial punishment or counseling during his time in the military. He would like to be able to use his veteran's benefits.
3. On 23 August 2016, the applicant enlisted in the Regular Army, and he was assigned to Fort Sill, OK for Basic Combat Training.
4. On 28 October 2016, the applicant's commander drafted a Memorandum for Record, wherein he identified the applicant for elimination under the provision of Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administration Separation, chapter 11 for refusing to train on 25 October 2016.
5. On 3 November 2016, the applicant declined a military medical examination in conjunction with his administrative separation. In doing so, the applicant acknowledged

that the medical examination was to determine if he was medically fit for separation and to identify any medical conditions that may impact the determination of his service characterization. Further, he acknowledged his understanding that:

- electing not to receive an examination, any undiagnosed or undocumented medical conditions he might currently have would remain undiagnosed and undocumented
- exiting the military with undiagnosed or undocumented medical conditions may limit his eligibility to receive government sponsored medical care, treatment, or compensation in the future for these conditions
- undiagnosed or undocumented medical conditions would not be considered by the separation authority when determining his characterization of service

6. On 8 November 2016 –

a. His immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of AR 635-200, chapter 11, by reason of entry level performance conduct with a recommendation that his service be uncharacterized. On the same day, the applicant acknowledged receipt of his notification of pending separation action.

b. He was advised of the basis for the contemplated action to separate him for entry level performance and conduct under the provisions of AR 635-200, chapter 11. He waived the opportunity to consult with counsel and elected not to submit a statement.

c. His commander formally recommended the applicant be separated from the Army prior to the expiration of current term of service under the provisions of AR 635-200, chapter 11.

7. The separation authority approved the applicant's separation under the provisions of AR 635-200, chapter 11 due entry level performance and conduct, and directed that his service be uncharacterized.

8. On 2 December 2016, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 11 of AR 635-200. He completed 3 months and 10 days of net active service. His service was uncharacterized and his narrative reason for separation is "Entry Level Performance and Conduct" (Separation Code JGA and Reentry Code 3. .

9. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

10. By regulation, 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

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized/entry level separation (ELS) discharge to honorable as well as a medical retirement/disability. He does not assert any condition as related to his request and provides no indication of what he is claiming as a disability.

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 Regular Army on 23 August 2016.
- On 28 October 2016, the applicant's commander drafted a Memorandum for Record, wherein he identified the applicant for elimination under the provision of Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administration Separation, chapter 11 for refusing to train on 25 October 2016.
- On 3 November 2016, the applicant declined a military medical examination in conjunction with his administrative separation.
- On 8 November 2016, his immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of AR 635-200, chapter 11, by reason of entry level performance conduct with a recommendation that his service be uncharacterized. On the same day, the applicant acknowledged receipt of his notification of pending separation action.
- On 2 December 2016, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 11 of AR 635-200. He completed 3 months and 10 days of net active service. His service was uncharacterized and his narrative reason for separation is "Entry Level Performance and Conduct" (Separation Code JGA and Reentry Code 3).

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 never received any type of nonjudicial punishment or counseling during his time in the military. He would like to be able to use his veteran's benefits. Active-duty electronic medical records available for review indicate the applicant had over twenty medical encounters between 25 August 2016 and 28 October 2016, for

various minor medical issues including stomachache, shoulder pain, cough, and upper respiratory infection. None of the applicant's encounters were for behavioral health concerns. The applicant provides an Enlisted Record Brief, dated 2 December 2016, that shows his PULHES as "111111" indicating he had no profile while in service.

d. 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 not participated in any behavioral health services and is not diagnosed with any BH condition.

e. 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 that mitigates his discharge. In addition, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. The applicant did not provide any medical documentation evidencing a medical or behavioral health condition that failed Army retention standards, at the time of service, and would have resulted in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. The applicant does not assert any mitigating condition.

(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? No. There is no evidence of any mitigating BH condition. 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.

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 her 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, available military records and medical review, the Board concurred with the advising official finding no indication that an omission or error occurred that would warrant a referral to the IDES process. ,

2. The Board determined the applicant completed 3 months and 10 days of net active service and did not complete training and was released from active duty for entry level performance and conduct’. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized. Furthermore, evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the applicant’s DD Form 214. As such, the Board determined under liberal consideration changes to the applicant’s narrative reason are not warranted. 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 and relief was denied.

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.

[REDACTED]

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, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel.
 - a. 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 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.
 - c. The service of Soldiers in entry-level status is normally described as uncharacterized. For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

d. Chapter 11 prescribed policy for the separation of Soldiers because of unsatisfactory performance and/or conduct while in entry-level status. 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

The policy applies to Soldiers who are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty or inactive duty training or no more than 90 days of Phase II under a split or alternative training option. Service will be described as uncharacterized under the provisions of this chapter.

3. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a

court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, 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.

6. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

7. 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 ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//