

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012506

APPLICANT REQUESTS:

- an upgrade of his discharge from uncharacterized to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period ending on 22 January 1991
- Court Order amending the applicant's name, dated 24 August 2012

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 at the beginning of the Gulf War was he felt the strong desire to serve his country, so he enlisted in the Army. During basic combat training (BCT) he was notified of the passing of his father, at which point his commander advised him to temporarily leave the service so he can care for his family. This resulted in him receiving an uncharacterized discharge. Looking back, he regrets not continuing his military service and followed the same path as his brother who joined the Army after him and served for 20 years. This missed opportunity weighs on him especially since he was the one that took care of their mother, while his brother pursued his military career. He is now interested in using benefits offered by the Department of Veterans Affairs (VA) that he would have been eligible for had he continued his service.

3. On 24 August 2012 the Superior Court [REDACTED] County [REDACTED], issued an order officially changing the applicant's name from [REDACTED]

4. The applicant's service record reflects the following:

a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows he enlisted in the Regular Army on 11 October 1990.

b. DA Forms 4856 (General Counseling Form) show he was counseled on:

- 8 November 1990, for failing to meet the minimum standards on the Army Physical Readiness
- 26 November 1990, for attempting to injure himself
- 4 December 1990, for motivation and attitude problem
- 10 December 1990, for poor performance on the end of course test
- 14 December 1990, for motivation and attitude problem
- 19 December 1990, for standing around and crying instead of training
- 21 December 1990, for notification of transfer to a different platoon
- 30 December 1990, for disobeying a direct order from a drill sergeant

c. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ (Uniform Code of Military Justice)) dated 31 December 1990, shows he received non-judicial punishment under the provisions of Article 15, UCMJ for having knowledge of a lawful order issued by Staff Sergeant (SSG) ■■■ to get into the proper uniform and report to the battery dayroom, an order which was his duty to obey on or about 30 December 1990, did fail to do so. He was found guilty and received a punishment of reduction in grade to private-E1, forfeitures of pay of \$156.00, 15 days restriction and extra duty. He did not appeal.

d. DA Form 4856, dated 10 January 1991, shows he was counseled on the commander's initiation of separation against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 11 (Performance and Conduct).

e. In a memorandum dated 11 January 1991, the battalion Chaplain provided his assessment based on multiple interviews with the applicant, as follows: "I found him to be very withdrawn, very nervous, and very difficult to communicate with. His span of attention was extremely short. PVT ■■■ who is Korean, has struggled with his losing "face" due to an estranged relationship with his father who had been quite ill. Since being notified of his father's death, PVT ■■■ emotional state has deteriorated." The Chaplain further recommended that it is in the best interest of the applicant and the Army if he was to be eliminated from the service.

f. On 11 January 1991, his commanding officer initiated separation under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct. After consulting with legal counsel for his separation action and its effects of the rights available to him, and the effect of any action taken by him in waiving in part his rights. He further acknowledged:

- he desired to consult with consulting counsel
- he did not desire to obtain copies of documents of this separation
- he did not desire to submit any statements in his own behalf
- he did not request a separation physical

g. On 16 January 1991, the separation authority approved the request for the applicant's discharge with an entry level status separation uncharacterized. He also directed the applicant to not be transferred into the Individual Ready Reserve (IRR).

h. DD Form 214 for the period ending 22 January 1991, shows he was discharged accordingly with an uncharacterized discharge, pursuant to Army Regulation 635-200, Chapter 11. The narrative reason for separation was "Entry Level Status Performance and Conduct". He completed 3 months, and 12 days of net active service this period. He did not receive a military occupational specialty.

#### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors, noting that, because he was in an entry-level status when he was discharge, his service was uncharacterized in accordance with the governing regulation. The Board found no evidence of unusual circumstances that would support anything other than uncharacterized service. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is 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.

12/19/2024

X

CHAIRPERSON

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. 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 is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

c. Chapter 11 (Entry Level Status 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. Soldiers 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 IADT. Have demonstrated that they are not qualified for retention due to the following conditions: cannot or will not adapt socially or emotionally to military life; cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; have demonstrated character and behavior characteristics not compatible with satisfactory continued service; have failed to respond to counseling.

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, Entry Level Status Performance and Conduct.

4. Army Regulation 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. 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. 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.

//NOTHING FOLLOWS//