

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012567

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his uncharacterized discharge as honorable, and correction of his narrative reason for discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 116-0174
- DD Form 214, for the period ending 29 April 1996
- National Personnel Records Center (NPRC) Letter

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 the narrative to accurately reflect that his disability didn't occur before service. Also, his discharge date is wrong. He did not leave Fort Lee, VA, until October 1996. He was still being paid until October 1996.

a. He was on active duty for more than 180 days therefore an entry level discharge doesn't apply to him. He never had any medical issues until after the gas chamber. At the time of his initial discharge talks, he was told it was due to physical training induced asthma. He completed basic training with no problems.

b. He was recently informed by another veteran that here may be help for him with the Veterans Administration (VA). He requested his DD Form 214 and released that the information on the DD Form 214 was inaccurate. He was only 18 years old at the time of discharge and didn't think to check.

3. The applicant enlisted in the Regular Army on 22 November 1995. He completed basic training and did not complete advanced individual training and was not awarded a military occupational specialty.

4. DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), dated 12 April 1996 shows a medical condition of reactive airway disease, Existed Prior To Service (EPTS).

a. The Narrative Summary shows a chief complaint of wheezing and shortness of breath with exercise. The applicant had difficulty with running and had nocturnal wheezing that improved with use of albuterol meter dose inhaler. He gave a history of being unable to keep up with high school football classmates because of shortness of breath. He did not have this shortness of breath evaluated during high school. Pulmonary function tests revealed mild airway obstruction which improved post bronchodilator therapy.

b. The board recommended the applicant be discharged under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), Chapter 5, (EPTS Medical Condition). The findings and recommendation of the board were approved on 12 April 1996.

5. The applicant agreed with the board's findings and recommendation on 16 April 1996.

6. The applicant requested Separation and Waiver of a Physical Evaluation Board and requested discharge from military service for physical disability based upon the findings and recommendation of the MEB, which considered him unqualified for retention in the military service due to physical disability that was found to have EPTS. The MEB further found the disability neither incident to nor aggravated by his military service.

7. Expeditious Discharge memorandum, dated 16 April 1996 shows the applicant had a physical disability that was found to have EPTS, neither incident, no aggravated by military service. The disability had been determined by competent medial authority to be an unfitting condition for continue active service. The applicant had been fully counseled and offered an expeditious discharge and had requested separation from military service by reason of an EPTS physical disability.

8. The separation authority directed the applicant's release from active duty under the provisions of AR 635-40, Chapter 5, with separation code KFN. His service would be uncharacterized.

9. Orders 116-0174, dated 25 April 1996, issued by U.S. Army Combined Arms Support Command, Fort Le, VA reassigned the applicant for separation processing for discharge from the Regular Army, effective 29 April 1996.

10. The applicant was discharged on 29 April 1996. His DD Form 214 shows he was discharged under the provisions of AR 635-40, Chapter 5, by reason of disability, EPTS-Medical Board, with Separation Code KFN and Reentry Code 3. His service was uncharacterized. He completed 5 months and 8 days of net active service.

11. 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.

12. The applicant provides:

- a. A copy of his DD Form 214 and Orders 114-0174 as discussed above.
- b. A NPRC letter, dated 18 July 2023 that shows the applicant's type of discharge/separation as uncharacterized.

13. Regarding his separation date, AR 635-5 (Separation Documents), states, 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

14. In reference to VA health benefits, decisions of the VA are solely within the jurisdiction of that agency. While the ABCMR can correct errors in an individual's military records it has no authority to direct or influence decisions by other agencies.

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

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 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. Soldiers are

authorized an honorable discharge while in entry-level status only if they complete their active duty schooling and earn their designated military occupational specialty. The applicant did not complete training and was discharged from active duty due to disability, existed prior to service medical board. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized and appropriate narrative reason for separation.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army 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.

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.

[REDACTED]

[REDACTED]

[REDACTED]

[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, 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. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It implements the requirements of Title 10, USC, Chapter 61.

a. Chapter 5, of the regulation in effect at the time of the applicant's period of service, provided for the separation of enlisted personnel for non-service aggravated conditions that existed prior to service when a Soldier requested a waiver of a physical evaluation board evaluation. An enlisted person must meet the following conditions:

- Soldier was eligible for referral into the disability evaluation system.
- Soldier does not meet the medical retention standards as determined by a medical evaluation board
- the disqualifying defect or condition existed prior to entry on active duty.
- hospitalization or institutional care is not required
- after being advised of the right to a full and fair hearing, the Soldier waives physical evaluation board action.
- Soldier was advised a physical evaluation board is required for receipt of Army disability benefits, but waiver of the physical evaluation board will not prevent applying for VA benefits

b. A physical evaluation board liaison officer was required to inform the Soldier of the rights and conditions noted above. If the Soldier declined the opportunity to apply for a discharge, the liaison officer was required to notify the Soldier's commander. If the Soldier requested a discharge, the liaison officer assisted the Soldier in preparing their request for discharge.

c. Commanders with special court-martial convening authority could approve or disapprove a Soldier's discharge under this chapter. Discharges under this provision would be expeditious discharges and each Soldier would receive a DD Form 214 documenting their service. When a Soldier was in an entry level status, meaning they were still in training and had not completed military occupational specialty training, their service would be described as uncharacterized in accordance with AR 635-200, Chapter 3.

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

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. 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.

c. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

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.

4. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 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//