

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230013454

APPLICANT REQUESTS:

- an upgrade of his characterization of service from uncharacterized
- a change in the narrative reason for separation with respective separation code
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 12 August 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 2 June 2022
- TRADOC Form 350-6-2-R-E (Initial Military Training (IMT) Soldier Assessment Report), dated 10 June 2022
- Weapons Scorecard
- Senior Defense Counsel Email Correspondence, dated 11 May 2022
- Chief of Staff Letter to U.S. Representative, dated 6 June 2022
- Investigating Officer Findings and Recommendations
- Career Development Certificates
- Letters of Support
- Redacted DA Forms 2823 (Sworn Statement)
- Email Correspondence between Drill Sergeant and Attorney, dated 13 May 2022
- Text Messages
- SHARP Intake Form
- Attorney Correspondence, dated 16 May 2022
- Memorandum, subject: Request to Suspend Pay and Allowances, dated 20 April 2022

FACTS:

1. The applicant states he is requesting an upgrade to his military discharge and that all his records reflect a favorable discharge with the option to be reinstated back on

active duty status. The basis for his request lies in the numerous inaccuracies identified by the applicant, witnesses, and his legal counsel. His goal is to reenlist into the Army.

2. The applicant provides:

- a. A DD Form 214 for his active service from 11 January 2022 through 2 June 2022.
- b. A TRADOC Form 350-6-2-R-E, dated 10 June 2022, shows that the applicant served as a squad leader for 6 weeks during basic combat training.
- c. Weapons scorecard shows the applicant qualified sharpshooter with the M4A1 5.56 carbine rifle on 28 February 2022.
- d. Senior Defense Counsel email correspondence, dated 11 May 2022, indicates that the defense counsel communicated with the applicant's chain of command and inquired whether they would consider disposing of the separation action against the applicant through an Article 15 and permitting him to proceed to advanced individual training. Defense Counsel requested an alternate disposition, citing Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c. This chapter pertains to the commission of a "serious offense" related to "sexual harassment." However, the violation in question – expressing romantic interest in fellow trainees – does not warrant separation under this chapter.
- e. Chief of Staff response to U.S. Representative, dated 6 June 2022, provides a summary of the investigation findings and clarifies the reasoning and procedures related to the applicant's separation. The basis of the administrative separation was the misconduct the applicant committed when he violated SHARP Policy.
- f. Memorandum, subject: an extract from the findings and recommendations for AR 15-6 Investigation in circumstances surrounding an allegation of sexual harassment against trainee. The investigating officer determined that the applicant's behavior indicated romantic advances towards the trainees, although not necessarily of a sexual nature. However, his persistent unsolicited romantic overtures toward one particular trainee through multiple letters created a hostile environment, causing her discomfort.
- g. Career developmental certifications from the Woodstock Job Corps Career Development Center, signifying successful completion of their program. Additionally, the applicant achieved graduating Magna Cum Laude with a Juris Doctor degree from the University of the District of Columbia.
- h. Letters of support for the applicant, each attesting to his professionalism, strong leadership, and excellent interpersonal skills. These letters unanimously describe the

applicant as a loyal, dedicated, and trustworthy individual who would be an asset to any organization.

i. Two DA Forms 2823 (Sworn Statement) signed statements from the trainees the applicant wrote letters to.

- Trainee 1, dated 2 March 2022
- Trainee 2, dated 3 March 2022

j. Email correspondence between the drill sergeant and attorney, dated 13 May 2022, reveals the drill sergeant's opinion of the applicant stating that he has potential to serve in the Army and supports him being retained because of his motivation and experience.

k. Text messages between the drill sergeant and attorney showing that the commander told the drill sergeant not to get involved.

l. The SHARP Intake Forms (Sexual Harassment Intake Form (Formal and Informal)) shows both female trainees reported formal SHARP complaints against the applicant on 22 February 2022. These complaints were documented in the SHARP Intake Forms. Both trainees reported experiencing a hostile environment. The forms capture the incidents and provide essential information for further investigation.

l. The attorney correspondence, dated 16 May 2022, indicates the applicant's attorney corresponded with the applicant's chain of command regarding administrative actions taken against the applicant. Specifically, on 20 April 2022, the applicant's immediate commander submitted a request to suspend the applicant's pay and allowances. The applicant's attorney suspected the immediate commander of bias and violation of Articles 131b (Obstruction of Justice) and 131g (Wrongful Inference with Adverse Administrative Proceedings).

m. Memorandum, subject: Request to Suspend Pay and Allowances, dated 20 April 2022, the immediate commander requested the Defense Military Pay Office Separations Branch to suspend the pay and allowance of the applicant pending final determination by the separation authority.

n. Although the applicant listed a separation packet, rebuttal, medical evaluation, and resume; the application is void of these attachments.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 11 January 2022.

b. His Enlisted Record Brief shows he was in training at Fort Jackson, SC. The applicant was assigned to E Company 3rd Battalion 13th (3/13) Infantry Training Brigade and reassigned to B Company 3/13 on 11 March 2022.

c. The service record is void of the applicant's medical examination and mental evaluation.

d. On 10 May 2022, the applicant's immediate commander notified the applicant of her intent to separate him under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. The reason for her proposed action was for violating AR 600-20 (Army Command Policy), Army SHARP Policies by sexually harassing other trainees. The applicant acknowledged receipt on the same day.

e. On 10 May 2022, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he is not entitled to consideration of his case by an administration separation board
- he is not entitled to personal appearance before an administrative separation board
- statements in his own behalf are submitted herein as an enclosure
- he may encounter substantial prejudice in civilian life if less than honorable discharge was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may be ineligible to apply for enlistment in the U.S. Army for a period of up to 2 years after discharge

f. On 17 May 2022, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. She recommended his service be characterized as uncharacterized. The intermediate commander recommended approval.

g. On 26 May 2022, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. His service would be characterized as uncharacterized.

h. On 2 June 2022, he was discharged from active duty in accordance with chapter 14-12c of AR 635-200 with an uncharacterized discharge. His DD Form 214 shows he completed 4 months and 22 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3.

4. On 23 January 2024, the U.S. Army Criminal Investigation Division (CID) conducted a search of the Army criminal file indexes and found there were no MST records revealed utilizing the provided information on the applicant.
5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.
7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
8. By regulation (AR 635-5-1), the SPD code "JKQ" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, chapter 14-12c by reason of "misconduct-serious offense".
9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined 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.
2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.
 - a. Discharge Upgrade: Deny. The evidence shows the applicant was discharged while still in initial entry training. He completed 4 months and 22 days of active service. He did not complete training and was not awarded an MOS. He received an uncharacterized discharge. The Board found no error or injustice. 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 noted the applicant did not provide evidence he had a medical condition or injury which would have failed the medical retention standards of chapter 3, AR 40-501 prior

to his discharge. The Board determined that a discharge change/upgrade is unwarranted.

b. Narrative Reason and Separation Code: Deny. The evidence shows the applicant committed a serious offense by sexually harassing other trainees. As a result, his chain of command initiated separation action against him. Absent his misconduct, there was no reason to process him for separation. The underlying reason for his separation was his misconduct – commission of serious offense. The appropriate Separation Code assigned to enlisted Soldiers discharged under chapter 14 of AR 635-200 for misconduct (other than drugs) is JKQ. Therefore, the Board determined the narrative reason for separation and separation code he received are 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.

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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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. Uncharacterized separation is an entry-level-status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

d. Chapter 14 establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM.

2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code "JKQ" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, chapter 14-12c by reason of "misconduct-serious offense".

3. Army Regulation 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

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