

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230013497

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 5 October 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 April 1990

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 his actions did not warrant a serious offense rating. He believes he served honorably.
3. The applicant provided a copy of his DD Form 214.
4. A review of the applicant's service records shows:
 - a. On 23 October 1989, he enlisted in the U.S. Army Reserve (USAR).
 - b. On the same date, Military Entrance and Processing Station ordered him to Initial Active Duty for Training (IADT) for One Station Unit Training (OSUT) with a reporting date of 29 December 1989 to U.S. Army Reception Battalion, Fort McClellan for Basic Combat Training; and a reporting date of 5 January 1990 to the same station for Advanced Individual Training.
 - c. On 3 January 1990, he was assigned to Company B, 787th Military Police Battalion, for OSUT.

d. On 5 February 1990, he underwent a mental health status evaluation at Community Mental Health Services (CMHS) as requested by his unit. The examining psychologist noted his behavior was normal, he was fully alert, fully oriented, with unremarkable mood of effect and normal thought content. He had the mental capacity to understand and participate in the proceedings. The supervising psychologist noted he had been followed by CMHS since 9 January 1990 at the request of his unit due to multiple adjustment difficulties and physical complaints. He diagnosed adjustment disorder with physical complaints and passive aggressive and dependent personality traits. He further noted as the Soldier continued to train a decrease in symptom acuity is considered likely but if improvement in adaptation was not evidenced in 3 weeks, administrative separation should be considered.

e. On 4 April 1990, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for disobedience of a lawful order from a noncommissioned officer on 4 April 1990 by not performing any push-ups; and disrespectful deportment toward a noncommissioned officer by saying to him "I am not doing anymore." His punishment consisted of forfeiture of \$156.00 for 1 month, 14 days of restriction, and 14 days of extra duty.

f. On 4 April 1990, he was counseled and given a listing of all his previous counseling sessions consisting of:

- initial counseling, 7 January 1990
- disrespect, 8 January 1990
- appearance, 10 January 1990
- unsecure gear, 11 January 1990
- overweight counseling, 14 January 1990
- physical training failure, 19 January 1990
- personal area, 23 January 1990
- failure to follow instructions, 26 January 1990
- attitude/insubordination counseling, 27 January 1990
- new start counseling and physical training failure, 5 February 1990
- initial counseling, 7 February 1990
- overweight counseling, 25 February 1990
- negative body language, 7 March 1990
- overweight counseling, 4 March 1990, 11 March 1990, 17 March 1990, 25 March 1990, and 2 April 1990
- disrespect and NJP, 4 April 1990
- platoon sergeant referral and first sergeant referral for separation notice, 4 April 1990

f. On 6 April 1990, he was counseled by the Training Company Career Counselor that he was being considered for separation and discharge and he was given the opportunity to provide a statement. His written response statement is illegible.

g. On 10 April 1990, the Company Commander, D Company, 787th Military Police Battalion, recommended he be discharged from the Army for a pattern of misconduct. The reason for his recommendation was while assigned to Company B, 787th Military Police Battalion he was a marginal performer with diverse counseling for disrespect, failure to follow orders, disobeying orders and a poor attitude. He was new started to Company D, 787th Military Police Battalion, due to being hospitalized. He had been a marginal performer while with disrespect towards his drill sergeant. On 4 April 1990 he received NJP for refusing to continue to do exercises during morning physical training. He became insubordinate with the drill instructor by walking away from him. He did this in the presence of the Brigade Commander and Battalion Commander who were observing how their cadre were conducting physical training. He has a problem controlling his emotions and has been seen by community mental health services.

h. On 11 April 1990, his company commander notified him he was initiating action to separate him for misconduct and notified him of his rights. The reason for his proposed action was his pattern of misconduct and contempt towards authority. His company commander recommended that he receive an entry level separation. He understood the separation authority was not bound by his recommendation as to the characterization of service and that the separation authority may direct he receive a characterization of honorable, under honorable conditions, or an entry level separation (uncharacterized). He understood he had a right to consult with consulting counsel, submit statements in his own behalf, or to waive his rights in writing.

i. On the same date, he acknowledged receipt of his commander's notification memorandum and he elected his rights, he requested consulting counsel, and he declined to submit statements in his own behalf. He understood he could withdraw the waiver of any of his rights up to the date the separation authority approved his separation. He further understood he could apply to the Army Discharge Review Board for an upgrade of his discharge and that he would be ineligible to apply for enlistment in the Army for a period of 2 years after his discharge.

j. On 11 April 1990, his company commander recommended his separation under the provisions of Army Regulation 635-200, Chapter 14-12 for a pattern of misconduct and for disrespect towards authority. His company commander noted he had received counseling from his drill instructors, community mental health services, and he received one instance of NJP.

k. On 13 April 1990, he underwent a mental health status evaluation. The examining psychologist noted his behavior was normal, he was fully alert and he was fully oriented,

with unremarkable mood of effect and normal thought content. He had the mental capacity to understand and participate in the proceedings. The supervising psychologist noted he had been followed by CMHS between 9 January 1990 and 5 February 1990 at the request of his unit due to multiple adjustment difficulties and an excessive desire for separation subsequent to new start. Initial report of mental status was provided on 5 February 1990 with routine follow-up discontinued as a result of the Soldier's improvement. He was again seen by CMHS on 12 and 13 April 1990 subsequent to NJP and initiation of separation action due to insubordinate conduct. He reports situational anxiety and frustration at pending elimination due to his desire for retention in the USAR. It was the impression of the examining psychologist that the Soldier was an immature individual but was not suffering from any mental disease or defect that would impact on his being held accountable for his behavior. He possessed the awareness of his misbehavior, contrition for same, and expressed a desire for rehabilitation. He was psychiatrically cleared for administrative action deemed appropriate by command.

l. On an unspecified date his intermediate commander recommended approval the separation recommendation.

m. On 20 April 1990, the separation approval authority approved his separation with an entry level separation under the provisions of Army Regulation 635-200, Chapter 14, Section III, Paragraph 14-12c.

n. On 25 April 1990, he was discharged. His DD Form 214 shows:

- block 12c (Net Active Service This Period) – 3 months and 28 days
- block 13 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Hand Grenade Bar and Pistol Bar (.45 caliber)
- block 24 (Character of Service) – uncharacterized
- block 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c
- block 28 (Narrative Reason for Separation) – Misconduct-Commission of a Serious Offense

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

BOARD DISCUSSION:

After review of the application and all evidence, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined there is insufficient evidence to grant relief. The governing regulation provides that a separation will be described as uncharacterized, if the separation action is initiated within the first 180 days of active duty service. As such, his DD Form 214 properly shows his service as uncharacterized.

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.

2/5/2025

X [REDACTED]

CHAIRPERSON

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

a. Paragraph 3-7a. 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. Paragraph 3-7b. 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. Paragraph 3-9a Entry Level Status Separation. Uncharacterized separations. A separation will be described as an entry level separation with service uncharacterized if processing is initiated while a soldier is in entry level status.

d. Section III, Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter.

e. Chapter 14-12a. Minor disciplinary infractions. A pattern of misconduct, consisting solely of minor military disciplinary infractions. If separation of a soldier in entry level status; is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Status Performance and Conduct (chapter 11).

f. Chapter 14-12b. A pattern of misconduct. A pattern of misconduct consisting of:

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order, and discipline includes conduct violative of the accepted standards, of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

g. Paragraph 14-12c Commission of a Serious Offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge, would be authorized for the same or a closely related offense under the Manual for Courts Martial.

(1) Paragraph 14-12c(2): Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

(2) Paragraph 14-12c(2)a: First-time drug offenders. Soldiers in the grade of sergeant and above, and all Soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.

(3) Paragraph 14-12c(2)b: Second-time drug offenders. All Soldiers must be processed for separation after a second offense.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKQ" corresponded to "Misconduct (Serious Offense), and the authority, Army Regulation 635-200, paragraph 14-12c.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes. Table 3-1 (U.S. Army reentry eligibility codes) reads:

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

5. An uncharacterized discharge is neither positive nor negative and it is not meant to be a negative reflection of a Soldier's military service. It merely means that the Soldier

has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise.

//NOTHING FOLLOWS//