

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230013609

APPLICANT REQUESTS: Upgrade of his uncharacterized discharge to honorable. Additionally, he requests 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 (Certificate of Release or Discharge from Active Duty)

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 commanding officer said he would love to keep him, and that once he was separated he would give him an honorable discharge. That did not happen.
3. On 13 April 1988, the applicant enlisted in the Regular Army, for 4 years. His record shows he was not awarded a military occupational specialty.
4. A State of Ohio, criminal history record shows the applicant, prior to his enlistment in the Army, had arrests for rape, kidnapping, and receiving stolen property.
5. On 26 July 1988, the applicant was reported as confined by civil authorities.
6. The applicant's commander notified him on 1 September 1988, that she was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for fraudulent entry. As the specific reason, the commander noted the applicant had violated his probation on a 1986 conviction for sexual battery, and a charge of receiving stolen property, all of which occurred in the State of Ohio.

7. On 9 September 1922, the applicant acknowledged receipt of the separation notification. He waived his right to consult with counsel and elected not to make any statements in his own behalf.
8. On 19 September 1988, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11.
9. On 30 September 1988, the separation authority approved the separation recommendation and directed the issuance of an entry level separation with uncharacterized service.
10. The applicant was discharged accordingly on 13 October 1988. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 11-3a, for entry level status. His service was uncharacterized. He was assigned Separation Code JGA and Reenlistment Code RE-3. He completed 3 months and 11 days of net active service this period.
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. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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. 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 and available military record, the Board determined the applicant completed 3 months and 11 days of net active service this period and did not receive a military occupational specialty (MOS). The applicant was discharged with an uncharacterized discharge with a narrative reason for separation of fraudulent entry. As such, his DD Form 214 properly shows his service as uncharacterized.

2. 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. Furthermore, the Board noted, the applicant concealed that he had a criminal history record prior to his enlistment in the Army. Evidence shows the applicant had arrests for rape, kidnapping, and receiving stolen property. Based on the preponderance of evidence, the Board denied relief.

3.. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

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:	:	:	GRANT FULL RELIEF
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:	:	:	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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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.

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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry level status. When separation of a Soldier in an entry level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry level separation under the provisions of this chapter.

d. 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.

//NOTHING FOLLOWS//