

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230014531

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 20 November 2000, to show his service was characterized as honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge), 23 August 2023

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, in effect, he was 17 years old when he joined, and he was injured while in training. He was forced to accept the terms in order to leave, and he was too young to understand he was forfeiting his rights to benefits. He was not unfit; he could just no longer perform after training related injuries. He notes other mental health is related to his request.
3. The applicant's complete military records, including his DA Form 4707 (Entrance Physical Standards Board (EPSBD)) separation proceedings, are not available for review. Therefore, this case is being considered based on limited documents.
4. The applicant's Standard Form 88 (Report of Medical Examination) shows he was not found medically qualified for enlistment by the Examiner on 6 July 2000 and on 22 August 2000 he was found medically qualified by the Examiner.
5. The applicant enlisted in the Regular Army on 31 August 2000, for a period of 3 years.
6. The applicant was discharged on 20 November 2000, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards. His DD Form 214

confirms his service was uncharacterized, with separation code JFW and reentry code 3. He was credited with 2 months and 20 days of net active service. He did not complete initial entry training and was not awarded a military occupational specialty.

7. Army Regulation 635-200, in effect at the time, stated commanders were to separate Soldiers who were not medically qualified under procurement medical fitness standards when they enlisted. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following:

- medical authority had identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entry on active duty
- the condition(s) would have permanently disqualified the Soldier from entry into military service, had they been detected earlier
- the medical condition did not disqualify him/her for retention in military service
- Soldiers disqualified under this provision could request retention on active duty; the separation authority made the final determination

8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

9. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a change in the following: Characterization of service from Uncharacterized to Honorable, separation code, and narrative reason for separation. He indicated that Other Mental Health was related to his request. He also stated that he was injured during training.

2. The ABCMR ROP summarized the applicant's record. The complete facts and circumstances surrounding the applicant's discharge were not in the available record. The applicant entered the Regular Army 31Aug2000. He was discharged a little under three months later on 20Nov2000 under AR 635-200, para 5-11 due to failure to meet procurement medical fitness standards. His service was designated as Uncharacterized.

3. Summary of medical records in JLV. (There were scant encounters available.)

a. 06Jul2000 The Report of Medical Exam was initially marked as unqualified and a temporary T3 profile was noted. Reason marked was code "4M". He had tested

positive on the first drug test. The second round of drug testing was negative. It was noted that in his security clearance paperwork, he disclosed use of marijuana once (2000/5/27) due to "peer pressure". He was ultimately deemed qualified for service.

b. 15Nov2000 Fort Benning. The applicant was a 17-year-old basic trainee. He was admitted overnight for a 3-day illness ultimately diagnosed as pneumonia by chest x-ray. At discharge, his condition was improved. This note indicated the applicant was in the process of being discharged for Right Knee Pain that existed prior to service (ETPS). No further information was documented concerning the knee condition. A knee film was not found.

c. 02Jun2022 Beaumont Health note (VA community partner note). Two decades after discharge from service, the applicant was seen for recurrent right shoulder dislocations. He reported this first occurred age 18 while playing football. Over the years he had experienced multiple episodes of recurrent dislocations. He did not do physical work or exercise. He was a college graduate working in auto sales.

4. The applicant requested a change in the characterization of service, separation code, and narrative reason for separation. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered; however, the applicant did not report a specific behavioral health diagnosis and one was not found in the available record. There was no indication in the applicant's statements or in the available records, that would lead one to reasonably conclude that he had experienced psychosis or MST; or performed an extreme act of heroism while in the military that might warrant a change in characterization of service from 'Uncharacterized' to Honorable. There were no available service treatment records documenting an injury. The applicant was seen for an illness that generally resolves with appropriate treatment. There was insufficient information/evidence concerning Other Mental Health or the Right Knee Pain conditions to warrant a recommendation for change in characterization of service from Uncharacterized, separation code, or narrative reason for separation. The applicant's available record did not document any misconduct.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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.

2. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient information/evidence concerning Other Mental Health or the Right Knee Pain conditions to warrant a recommendation for change in characterization of service from Uncharacterized, separation code, or narrative reason for separation. The opine found no available service treatment records documenting an injury. The applicant was seen for an illness that generally resolves with appropriate treatment. The Board noted the applicant completed 2 months and 20 days of net active service. He did not complete initial entry training and was not awarded a military occupational specialty and was released from active duty by reason of failure to meet procurement medical fitness standards.

3. 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 for upgrade of his uncharacterized character of service. Therefore, the Board denied relief.

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.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 sets forth the basic authority for the 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 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A 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. 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.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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. 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//