

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20230014689

APPLICANT REQUESTS:

- his uncharacterized service be changed to honorable
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 he was unaware of who he was or what he wanted in life at the time. He feels he was picked on for who he was. Then 9/11 happened; he was young and with so much going on, he was unstable. He has a family to support. He knows who he is, and what he wants now.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 24 March 2001. He entered active duty for the completion of his initial entry training on 25 June 2001.
4. The applicant was formally counseled by his Drill Sergeant, on 9 August 2001, for putting a controlled medication into the canteens of other Soldiers. He was advised that he was being recommended for an Article 15 and separation from the Army.
5. He underwent a mental status evaluation on 10 August 2001. He admitted to knowingly lacing his peers' canteens as a practical joke with no malicious intent. He was found mentally responsible, able to distinguish right from wrong, and adhere to the right. He was cleared for any administrative action deemed appropriate by the command.
6. The applicant accepted nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice on 24 August 2001, for unlawfully choking Private

Pxxxx until he was unconscious and had to be transported to the hospital; and for willfully disobeying a lawful order to not wrestle or horseplay in the barracks on or about 12 August 2001; and for failing to obey a lawful regulation by placing stool softeners in the canteens of several Soldiers, on or about 9 August 2001. His punishment consisted of forfeiture of \$482.00 pay per month for two months, 45 days extra duty, 45 days of restriction, and an oral reprimand.

7. The applicant was referred to the Reserve Component Liaison Officer (RCLNO) on 6 September 2001 for formal counseling of his failure to meet the Army Values. The RCLNO recommended the applicant be separated from service. On the same date, he was formally counseled by his immediate chain of command on their recommendations to initiate separation action against him.

8. The applicant's immediate commander notified him on 14 September 2001 that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for motivational reasons. As the specific reason, the commander noted the applicant received an Article 15 for putting stool softeners in other Soldiers canteens, and he choked another Soldier until he was unconscious. He failed to adapt to military life and follow the Army Core Values. He lacked self-discipline and the necessary motivation to complete basic training. The commander further recommended an entry level separation with an uncharacterized discharge.

9. On that same date, the applicant acknowledged receipt of the proposed separation notification. He was advised of the reasons for his separation and of the rights available to him. He declined the opportunity to consult with counsel and waived his rights in writing.

10. Subsequently, the commander formally recommended the applicant's separation, prior to the expiration of his term of service, under the provisions of AR 635-200, Chapter 11.

11. The separation authority approved the recommended separation action, waived the requirement for rehabilitative transfer, and directed the issuance of an entry level separation (uncharacterized).

12. The applicant was discharged on 19 September 2001, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized with separation code JGA and reentry code RE-3. He was credited with 2 months and 25 days of net active service. He was not awarded a military occupational specialty (MOS).

13. 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.

14. The Board should consider the applicant's argument and/or evidence 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 in the U.S. Army Reserve 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 released from active duty due to entry level performance and conduct. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

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.

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:

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. 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. 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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 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 were 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. 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.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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.

//NOTHING FOLLOWS//