

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230014756

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his reason for separation as a "medical discharge."

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:

a. In basic training, he slipped getting down from his third tier bunk and landed on his back on the floor. After several weeks, his neck pain worsened, and he was sent to medical. He fractured his C7 vertebrae. He was returned to the barracks on two weeks bed rest. After his follow-up, he was sent home on 30 days convalescent leave.

b. The night before his return to base, he went drinking and returned to base under the influence of medication and alcohol. He was angry with himself, burned himself with cigarettes, cut his arms, and passed out on the helicopter landing area. He was admitted to a psychiatric unit for about a month. He was diagnosed with alcohol dependency and passive aggressive personality disorder, released from the hospital, and discharged from the Army.

c. After he was discharged, he continued to experience pain and struggled with alcohol use. He was divorced and spent several years homeless. He was ultimately discharged from the Army National Guard when he lost his license due to driving under the influence. He is currently sober and living in Veterans housing.

3. Prior to his enlistment, the applicant received an approved waiver of misdemeanor disqualification for charges on 19 June 1990, for operating under the influence of alcohol and a minor transporting alcohol. His supervised probation was terminated on 29 January 1991, pending his satisfactory entrance into military service.

4. The applicant enlisted in the Army National Guard of the United States on 21 February 1991. He was ordered to active duty for completion of his initial entry training on 25 March 1991.

5. Four DA Forms 4856 (General Counseling Form), dated 16 April to 7 June 1991, show the applicant went to sick call for neck pain on 15 April 1991. He was given a one week profile. Upon follow-up on 23 April 1991, he was admitted to the hospital for a fractured cervical spine. He was discharged on 9 May 1991 and sent home for 30 days of convalescent leave. He reported back from leave on 6 June 1991 under the influence of "drugs and alcohol." The applicant stated he was prescribed medication at Fort Devens to relieve stress and anxiety.

6. The applicant underwent a mental status evaluation on 13 June 1991.

a. The examining provider noted the applicant was admitted to Martin Army Community Hospital due to intoxication and "self-mutilatory" behavior; he had a long history consistent with alcoholism; he wanted out of the Army and cut himself as a means of convincing his command that he was serious about doing anything to get out.

b. The provider noted as the diagnoses "alcohol abuse and dependence; chronic" and "mixed personality disorder." However, the applicant met retention standards and did not have a psychiatric disorder that warranted disposition through medical channels.

c. The provider determined the applicant was mentally responsible, able to distinguish right from wrong, and adhere to the right. The applicant was psychiatrically cleared for any administrative action deemed appropriate by his command.

7. The applicant's immediate commander notified the applicant on 28 June 1991 that he was initiating actions to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2, for entry level performance and conduct. As the specific reason, the commander stated the applicant did not want to be part of the organization.

8. On that same date, the applicant acknowledged receipt of the proposed separation notification, and acknowledged understanding, if approved, he would be receiving an entry level separation with uncharacterized service. He was advised of the reasons for separation and of the rights available to him. He consulted with counsel, elected not to submit a statement in his own behalf, and did not request a separation physical.

9. Subsequently, the applicant's immediate commander formally recommended his separation under the Entry Level Separation Program, further requesting the "restart" requirement be waived.

10. The separation authority approved the recommended discharge on 1 July 1991, and directed the applicant be returned to the appropriate State Adjutant General for further discharge.

11. The applicant was released from active duty and transferred back to the control of the Army National Guard on 3 July 1991, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized. He was credited with 3 months and 9 days of net active service. He was not awarded a military occupational specialty.

12. The applicant was discharged from the Massachusetts Army National Guard on 25 July 1991, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level performance and conduct. His service was uncharacterized. He was credited with 5 months and 5 days of net service.

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.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade and, in essence, a referral to the Disability Evaluation System (DES). He states:

“While at the reception center at Fort Benning GA for my basic training, I was assigned a 3rd tier bunk. One night getting down from the bunk, I slipped, hit my chin on the second-tier metal bunk frame which snapped my head back and landed on my back on the floor. My neck was very sore but we were encouraged to work through discomfort and I did not say anything for several weeks.

As training progressed, my neck pain worsened and I finally reported it to medical. They did an examination and x-rays that showed my C7 vertebrae was fractured. I was given a neck brace, 800mg Motrin to take daily and put on 2 weeks bed rest in the barracks. When I went back to the hospital for a 2-week follow-up, there was a different doctor and he admitted me to the hospital. Then it was decided they would send me home on 30 days convalescent leave then I would return to resume or redo my training.

The night prior to my return to base, I went drinking and returned to the base still under the influent of the medication and the alcohol I consumed. I was angry with myself and had burned myself with cigarettes and cut my arms then passed out on the helicopter landing area. I was admitted to the psych unit for alcohol use and the self-harm.

I was there about a month before I was discharged with a diagnosis of Alcohol dependency and Passive Aggressive Personality Disorder.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s signed DD 214 shows he entered the regular Army on 25 March 1991 and was discharged on 3 July 1991 under provisions provided in paragraph 11-3a of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990), for falling below entry level performance and conduct standards.

d. Submitted documentation shows the applicant was evaluated for a sore neck during his second week of training and that he was admitted to the hospital from 16-23 April 1991 for a cervical spine fracture, a minimally displaced fracture of the spinous process of C-7. He was evaluated by orthopedics, placed in a Philadelphia (hard) collar, provided with Motrin and directed to follow-up in four weeks. The discharge summary states he was asymptomatic and had a normal range of motion at the time he was discharged on 4 weeks of unit convalescent leave. There is no indication this was nothing more than a small stable fracture without other injury to the cervical spine or neurologic injuries.

e. A 10 May 1991 Physical Profile done by orthopedics returned the applicant to full duty.

f. A General Counseling Statement shows that while on leave, he went to Fort Devin and "was on drugs and alcohol. He cannot handle the military live. He has stated on it. On the 6 JUN 1991, PVT Applicant again was on drugs or alcohol before returning to the hospital."

g. The applicant underwent a mental status evaluation on 13 June 1991. The psychiatrist documented a normal examination except for the applicant's passivity. She opined:

"This soldier was admitted to Martin Army Community Hospital due to intoxication and self-mutilatory behavior. He has a long history consistent with alcoholism. He states that he wants out of the Army and cut himself while drunk as a means of convincing command that he is serious when he says he will do anything to keep from remaining in the military.

DIAGNOSIS: Alcohol abuse and dependence, chronic

Mixed personality disorder

FINDINGS: This individual meets the retentions standards prescribed in Chapter 3, AR 40-501 [Standards of Medical Fitness] and there is no psychiatric disease or defect which warrants disposition through medical channels. This individual was and is mentally responsible, able to distinguish right from wrong and adhere to the right, and has the mental capacity to participate in board proceedings

This individual was mentally sound at the time of his self-destructive act.

This individual is psychiatrically cleared for any administrative action deemed appropriated by command."

h. On 28 June 1991, his company commander notified the applicant he was initiating action to separate him under paragraph 11-2 of AR 635-200:

"The specific reason(s) for my proposed action is/are: Soldier refused to train. Stated that he does not want to be part of this organization. Request that PVT [Applicant] be separated from the military for the good of this unit and the United Staes Army under the entry level separation program."

i. There is no evidence the applicant's resolved minor cervical spine injury or any medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented him from performing his duties in a satisfactory manner. Thus, there was and remains no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

j. JLV shows he receives humanitarian emergency care as a non-service-connected Veteran and there are no diagnoses listed on his medical problem list.

k. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of his case to the Disability Evaluation System is warranted.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Medical Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being no basis for referring him to the Disability Evaluation System. The evidence confirms the applicant was an entry-level Soldier when he was discharged, and his service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service and the reason for his discharge were 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.

2/26/2025

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CHAIRPERSON

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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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the Soldier, based on his or her office, grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to ensure 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. Paragraph 3-7b states 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.

d. Paragraph 3-9 provides 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.

e. 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.

5. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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.

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//