

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20240000089

APPLICANT REQUESTS: reconsideration of his previous request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show an honorable medical discharge vice uncharacterized.

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

- DD Form 293 (Application for the Review of Discharge)
- Two DD Forms 149 (Application for Correction of Military Record)
- Three Greensboro Radiology Imaging's dated 23 April 2014

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100026449 on 14 April 2011.

2. The applicant provides the following new evidence not previously considered by the Board:

- new argument – he was injured during basic training and currently received training for the same injury
- his discharge is under a Chapter 9, drugs, and alcohol. He is a different man who has been a sober, responsible citizen for many years. Serving in the Army was the most positive choice he has made. He wants his family to be proud of him after he is gone

3. A review of the applicant's service records show:

a. The applicant enlisted in the Regular Army on 17 March 1983.

b. While attending basic training the applicant was formally counseled on three separate occasions between 6 April 1983 and 14 April 1983, for reasons including but not limited to:

- displaying a negative attitude toward the military and wants out the Army. recommend applicant for discharge and referral to commander for further counseling
- less than marginal performance since arrival to basic training, not within standards for passing phase I into phase II
- unable to handle the discipline in the Army and not having the attitude and drive needed to help him become a soldier. He feels he made a mistake enlisting in the service

c. The applicant was command referred and underwent a mental status evaluation on or about 14 April 1983. The relevant Disposition Form shows he was psychiatrically cleared for any action deemed appropriate by command. The counselor recommended that an administrative discharge should be seriously pursued. The applicant showed a negative attitude toward continued training in the military.

d. The applicant was counseled on 16 April 1983, for his inability to adapt to the military because he is an individualist. He does not have the motivation to continue in basic training.

e. On 20 April 1983, the applicant's unit commander informed the applicant of his intent to process him for separation under the provisions of Chapter 11, Army Regulation 635-200 (Personnel Separations — Enlisted Personnel), by reason of entry-level status performance and conduct. The unit commander cited the applicant's lack of motivation, self-discipline, and poor attitude as the specific reasons for his proposed action.

f. The applicant acknowledged receipt of the separation notification. The applicant was afforded the opportunity to consult with appointed counsel and he declined the opportunity. He acknowledged that he understood the basis for the contemplated separation action and his understanding that, if approved, he would receive an entry-level status separation with an uncharacterized discharge. The applicant elected not to submit a statement in his own behalf.

g. On 25 April 1983, the separation authority reviewed and approved the applicant's separation. The separation authority directed that the applicant be separated under the provisions of Chapter 11, Army Regulation 635-200, and that his service be uncharacterized.

h. On 2 May 1983, the applicant was discharged accordingly. His DD Form 214 shows he was separated under the provisions of AR 635-200, paragraph 11-3a, based on entry level status performance and conduct. He completed 7 months and 9 days of active service and his service was uncharacterized (Separation Code JGA and Reentry

Code 3). He was not awarded a military occupational specialty and did not complete his first full term of service.

4. The applicant provides three radiology imaging reports, dated 23 April 2014 of his lumbar spine, hip and pelvis from Greensboro Radiology which show that he has severe left hip osteoarthritis, mild right hip osteoarthritis and minimal facet sclerosis in the mild lower lumbar spine.

5. The applicant petitioned the ABCMR for an upgrade to his service characterization. The ABCMR considered his request on 14 April 2011, determined the evidence presented did not demonstrate the existence of a probable error or injustice and denied the request for an upgrade of his discharge.

6. 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. As a result, his service was appropriately described as “uncharacterized” and his narrative reason for separation appropriately reflected “Entry Level Performance and Conduct” for this period of active service, in accordance with governing regulations.

7. 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.

8. In reaching its determination, the Board can consider the applicant’s petition, arguments and assertions, and service record in accordance with published guidance.

9. 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), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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. He states:

“I was disabled while in boot camp and I went to doctor for the same reason that I’m disabled now.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period under consideration shows he entered the regular Army 17 March 1983 and was discharged on 2 May 1983 under the provisions in paragraph 11-3a of AR 635-200, Personnel Separations - Enlisted Personnel (1 October 1982) for failure to meet the entry level standards for performance and conduct.

d. No contemporaneous medical documentation was submitted with the application and his period of service predates the EMR. Submitted radiology reports from 2014 show the applicant has bilateral hip and lumbar spine osteoarthritis.

e. The applicant received multiple negative counseling’s regarding his poor performance. He concurred with these statements. It is noted in his 15 April 1983 counseling “PVT [Applicant] stated he is an individualist and cannot adapt to military lifestyle. He also indicated he cannot handle the discipline required by the U.S. Army.”

f. He underwent a Unit Commander’s directed mental status evaluation on 14 April 1983. The provider checked off items indicating the applicant was “lazy, depressed, can’t follow instructions.” He wrote the applicant was “uninterested / no enthusiasm / negative attitude.” He was psychiatrically cleared for any administrative or judicial action deemed appropriated by command and recommended for discharge.

g. On 20 April 1983, his company commander informed him to the initiation of action to separated him under chapter 11 of AR 635-200:

“The specific reasons for my proposed action are: lack of motivation, self-discipline and poor attitude. You have been given ample time to improve, but have failed to do so.”

h. The applicant subsequently declined a separation physical.

i. JLV shows he receives emergency humanitarian care as a non-service-connected Veteran. The one mental health encounter shows he has been diagnosed with alcohol use disorder.

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

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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, available military records and medical review, the Board concurred with the advising official finding that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

2. The Board noted the applicant completed 7 months and 9 days of active service, did not complete training and was discharged based on entry level status performance and conduct. As such, the applicant's DD Form 214 properly shows the appropriate characterization of service as uncharacterized. 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. The Board agreed there is no basis for granting the applicant's request for reversal of the previous Board determination and denied relief.

3. Referral to the IDES occurs when a Soldier has one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and

authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20100026449 on 14 April 2011.

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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. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army

personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

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 was 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.

2. 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//