

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003471

APPLICANT REQUESTS: upgrade his uncharacterized discharge to an honorable character of service.

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, 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, while in basic combat training (BCT), he sustained an injury that required hospitalization; his BCT leadership recycled him, but someone accused him of being gay. After this, they marched him up to the battalion commander's office, told him to sign a bunch of paperwork, and transferred him to the out-processing battalion.
3. A review of the applicant's service record shows the following:
 - a. On 17 May 2002, the applicant enlisted into the Regular Army for 3 years; at his entrance on active duty, he held the rank/grade of private first class (PFC)/E-3. Orders subsequently transferred him to Fort Jackson, SC for initial entry training.
 - b. The applicant's separation packet is unavailable for review; however, his service record includes his DD Form 214 (Certificate of Release or Discharge from Active Duty), which shows that, on 24 June 2002, the Army discharged him with uncharacterized service. The DD Form 214 additionally reflects the following:
 - Item 11 (Primary Specialty) – "None"
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – "None"
 - Item 14 (Military Education) – "None"

- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 11 (Entry Level Performance and Conduct)
- Item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, and DoD guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's statement, his record and length of service and the reason for his separation. The Board found no evidence in the record of an injury to the applicant or the separation processing packet. The Board found that the applicant served 1 month and 8 days, was not awarded an MOS and was discharged Uncharacterized while in an entry-level status. Based on a preponderance of evidence, the Board determined that the applicant's character of service and reason for separation was not in error or unjust.
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.

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for administrative enlisted separations.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor.

(1) An honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Only an honorable characterization could be awarded to Soldiers who had completed their term of enlistment. When a Soldier was discharged before his/her expiration term of service, based on reasons that made an honorable discharge discretionary, the following applied:

(a) Where infractions of discipline had occurred, the extent was to be considered, along with the seriousness of the offense(s).

(b) An honorable discharge could still be furnished when disqualifying entries in the Soldier's military record were outweighed by subsequent honest and faithful service over a greater period of time; it was the pattern of behavior and not any isolated incidents that should be considered as the governing factor in a character of service determination.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation from the Army under honorable conditions and was issued to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Effective 1 October 1982, a revision of AR 635-200 mandated the issuance of uncharacterized characters of service to Soldiers separated while in an entry-level status; for Regular Army Soldiers, entry-level status began upon their enlistment and continued until they had either completed 180 days of continuous active-duty service. The regulation further stated the Secretary of the Army could issue an honorable character of service, on a case-by-case basis, when clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

d. Under chapter 11 (Entry Level Performance and Conduct), commanders could initiate separation action against entry-level Soldiers who demonstrated they were unqualified for retention by not adapting socially or emotionally to military life, not meeting minimum standards for the successful completion of training, and/or not responding to counseling (as recorded on DA Form 4856).

(1) Paragraph 11-3 (Policy) stated chapter 11 applied to Regular Army Soldiers who had voluntarily enlisted, were in an entry-level status, and had not completed more than 180 days of continuous active-duty service, or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

(2) Paragraph 11-4 (Counseling and Rehabilitation Requirements) stated it was essential to fulfill the regulation's counseling and rehabilitation requirements because military service was a calling different from any civilian occupation; commanders should not separate a Soldier, using entry level performance and conduct as the sole basis, unless efforts at rehabilitation had been made.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the

appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

4. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 11, AR 635-200 were to receive an SPD of "JGA" and have, "Entry Level Performance and Conduct" entered in item 28 of their DD Form 214.

5. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JGA" had a corresponding RE code of "3."

6. AR 601-210, in effect at the time, provided the following descriptions of RE Codes:

- RE-1 – Person completed their term of active service and were qualified for reentry into the Army
- RE-3 – Person was not qualified for reentry but the disqualification could be waived

7. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b. Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

8. 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. 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//