

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2024

DOCKET NUMBER: AR20240004064

APPLICANT REQUESTS: his uncharacterized service be changed to under honorable conditions (general) or honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he was discharged because he received a traffic ticket before entering the military. His recruiter told him that he would take care of the paperwork regarding the traffic ticket. However his recruiter failed to complete the necessary paperwork, and it impacted his attendance at military police school. Discharge upgrade is warranted because his recruiter lied to him. The applicant would like to have access to Department of Veterans Affairs benefits.

3. Prior to the applicant's enlistment, he completed a DD Form 398-2 (National Agency Questionnaire) dated 24 June 1994, to provide detailed background information for his security clearance consideration. The applicant initialed "NO" in item 20a (Have you ever tried or used or possessed any narcotic, depressant, stimulant, hallucinogen, or cannabis, or any mind-altering substance, even one-time or on an experimental basis, except as prescribed by a licensed physician?)

4. On 17 January 1995, the applicant enlisted in the Regular Army for 5 years. His record shows he was not awarded a military occupational specialty (MOS).

5. By memorandum, dated 18 January 1995, the applicant requested a waiver to continue training as a military policeman, reclassification to another MOS, or separation from the Army. In his questionnaire, the applicant disclosed he had previous law violations for motor vehicle offenses with an open unpaid traffic ticket.
6. On 23 January 1995, the applicant paid the \$85.00 traffic ticket.
7. A Retention Decision Support Matrix, dated 23 January 1995, shows the applicant's commander recommended disapproval of the applicant's request for retention. The commander noted the applicant had failed to mention on his DD Form 398-2 previous cocaine and marijuana use and rehab for four to five weeks.
8. The applicant's commander notified him on 1 February 1995 that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 7-17, for fraudulent enlistment.
9. The applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he would be ineligible to apply for enlistment in the Army for a period of two years after discharge. He waived his right to consult with counsel and elected not to make any statements in his own behalf.
10. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 7-17, by reason of fraudulent entry. As the specific reason, the commander noted the applicant had withheld information about an unpaid traffic violation on his enlistment contract at the time of enlistment, which might have resulted in his rejection.
11. On 8 February 1995, the separation authority approved the recommended discharge and directed an entry level separation with uncharacterized service.
12. The applicant was discharged on 13 February 1995. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 7, for fraudulent entry. His service was uncharacterized. He completed 27 days of net active service this period.
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. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, and the reason for his separation. The Board found insufficient evidence of in-service mitigating factors, noting that the evidence confirms the applicant was an entry-level Soldier at the time of separation and therefore his service was uncharacterized in accordance with the governing regulation. 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. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

12/8/2024

X

CHAIRPERSON

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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 policies, standards, and procedures to insure 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 7-17 provides that fraudulent entry is the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. When separation of a Soldier in an entry level status is warranted by the provisions of this chapter; his or her service will be described as uncharacterized.

d. 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.

//NOTHING FOLLOWS//