

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 October 2024

DOCKET NUMBER: AR20240004101

APPLICANT REQUESTS: in effect,

- An upgrade of his uncharacterized discharge to an honorable
- an upgrade to his "JGA" separation code to something better
- an upgrade to his "RE-3" code to something better
- an upgrade to his narrative reason for separation from "Entry Level Performance and Conduct" to something better

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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's service record shows:

- a. He enlisted in the Regular Army on 19 May 2015.
- b. DA Form 4856 (Developmental Counseling Form), 26 August 2015, shows the applicant was counseled for violation of Policy Letter C21 (Soldier Honor Code).
- c. DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 31 August 2015, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for having knowledge of a lawful order, an order to which it was his duty to obey, did fail to obey the same (cheating on a test) on 25 August 2015. He was found guilty. His punishment consisted of fourteen-days restriction, and extra duty. He did not appeal.

d. DA Form 4856, 29 September 2015, shows the applicant was counseled for fighting with another Soldier.

e. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 15 October 2015, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for assault (touching another Soldier on the back of his head) on 29 September 2015. He was found guilty. His punishment consisted of forfeiture of pay of \$360.00, fourteen-days restriction, and extra duty. He did not demand a trial by court-martial, and he requested to have a person speak on his behalf. He did not appeal.

f. DA Form 4856, 19 October 2015, shows the applicant was being recommended for separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11, Entry Level Performance and Conduct.

g. DA Form 3822-R (Report of Mental Status Evaluation), dated 23 October 2015, shows his command directed a mental status evaluation for behavioral health clearance, for an Army Regulation 635-200, Chapter 11, administrative separation. He was deemed psychiatrically cleared for any administrative action deemed appropriate by the chain of command. He shows poor adjustment to the military environment, and it was unlikely that his adjustment will improve with time and treatment, or that he would respond to command efforts at rehabilitation (such as transfer, disciplinary action, or reclassification), or to any behavioral health treatment methods currently available in the military. He was recommended for separation from military service due to failure to adapt. This document further:

- Unfit for duty due to a personality disorder or other mental condition that does not amount to a medical disability
- Cognitively Mildly impaired
- Cooperative behavior
- Normal Perceptions
- Occasionally impulsive
- Not dangerous
- Can understand and participate in administrative proceedings
- Can appreciate the difference between right and wrong
- No indication of substance abuse disorders noted
- Post Traumatic Stress Disorder Screening: Negative
- Mild Traumatic Brain Injury Screening: Negative

h. His immediate commander initiated action to separate the applicant under the provisions of Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct, for having problems following the rules and regulations of the Army has set forth to establish good order and discipline. In addition, for not grasping the military

lifestyle and for his proven failure to adapt to the military environment through disciplinary infractions.

i. On 9 November 2015, the applicant acknowledged the separation notice and after consulting with legal counsel, he further acknowledged:

- He was advised he could submit any statements he desired in his own behalf
- He not entitled to consideration of my case by an administrative separation board
- He requested consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government
- He has not filed an unrestricted report of sexual assault within 24 months of initiation of the separation action
- he will be ineligible to apply for enlistment in the United States Army for a period of two years after discharge

j. On 14 November 2015, he submitted a statement on his behalf, that is available in it's entirety for the Boards review. He further explains, in effect, he accepts responsibility his actions. He is embarrassed and wants to prove that these were isolated incidents and serving in the Army is the most important thing to him. He humbly requests to be allowed to continue his service to his country.

k. Ten character references that are available in their entirety for the Boards review, provide the following:

(1) Ms. [REDACTED] (the applicant's mother) states, in effect, her son was always a hard worker, and was always looking for someone or something to learn from. He would go to shops and work multiple jobs there was never a time he was not out looking for a way to learn anything and work for it. This meant holding the positions and keeping good work ethic. Although, she is biased and the one who stands to gain from him coming home but in the end that would be an injustice to him, because he worked hard to get into the Army. She knows he would be a good Soldier, no matter what the outcome.

(2) Mr. [REDACTED] states, in effect, the applicant is not just his employee, but also a hard worker and is willing to learn anything you put in front of him. He works very well in their garage and has also requested a position of higher responsibility. He is hungry for work and wants to better his life. He continues to show great work ethic and character.

(3) Staff Sergeant (SSG) [REDACTED] (the applicant's uncle) states, in effect, when he requires anything accomplished correctly, he asks the applicant for assistance. He is able to research and find ways to accomplish any task. He is proud of him.

(4) Mr. [REDACTED] states, in effect, he has known the applicant since he was 8 years old. He has always been respectful, courteous, kind, caring, and wonderful young man with a bright future. It was not always easy for him growing up. He had to take on a role as the man of the house at an early age due to the passing of his father. He is proud to call him a friend.

(5) Mr. [REDACTED] (the applicant's great uncle) states, in effect, the applicant comes from a long line of military commitment in his family. He is aware that it can come with hazards by choosing this lifestyle but believes the rewards are worth it. He had a few setbacks in his time in the Army to this point, but by showing him some compassion and let him continue his enlistment, he can become a better Soldier. We as a nation need to have citizens like him who will actively volunteer to serve. He is a good young man who has made a couple of mistakes, but he can learn from them. He wants to be in the Army and to become a better person, please give him a chance to prove his worth.

(6) Mr. [REDACTED] (the applicant's uncle) states, in effect, the applicant worked hard for a chance to be where he wanted to be. Why would a young man go through that unless his goal was to be a Soldier? He has the dedication and the will power to be a Soldier you will be proud of if you put in the effort and show him the way.

(7) Mr. [REDACTED] states, in effect, the applicant had the unfortunate experience of losing his father when he was only eleven years old. He has been raised by his hard working single mother who, by advice and example, instilled in him fine qualities. He has the courage and tenacity to overcome some learning deficits that would have discouraged a person with less motivation and character. For that reason, we urge you to have confidence that this young man would expend every effort to accomplish the goals and demands that you place upon him.

(8) Mr. [REDACTED] states, in effect, he has known the applicant for approximately 15 years. He has always showed great respect and has been a good friend to many. Always willing to help, and if given the chance he would make everyone proud.

(9) Ms. [REDACTED] (the applicant's teacher), states, in effect, he has remained in contact with her, and other teachers at his High School, and has visited occasionally since he graduated in 2013. During these visits he is positive and very motivated about his future and in particular about his future in the military. This motivation helped him prepare and pass the ASVAB. His desire to continue with the military remains strong.

(10) Specialist (SPC) [REDACTED] states, in effect, he has known the applicant since their initial entry into the military. He has always been well mannered, and very friendly. He is trustworthy and a person that would lend you a hand in your time of need.

l. His commander recommended that the applicant be separated from the Army prior to his expiration term of service (ETS), under the provisions of Army Regulation 635-200, Chapter 11.

m. The separation authority directed the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 11. He further directed that the applicant be issued an "uncharacterized" characterization of service.

n. His DD Form 214 shows he was discharged on 4 December 2015 in accordance with Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct with an uncharacterized discharge. He was assigned separation code JGA and reentry code 3. He completed 6 months and 16 days of active service. He was not awarded a military occupational specialty and he did not complete first term of service. His grade at the time of discharge was private (E-1). He was awarded the National Defense Service Medal.

3. The applicant has previously applied to the Army Discharge Review Board (ADRB), for an upgrade of the characterization of his service.

a. ADRB Docket number AR20160017849, 7 October 2016, shows the applicant requested an upgrade of the characterization of service from general (under honorable conditions) to honorable and a change to the narrative reason for separation. However, the record of evidence shows at the time of discharge the applicant was issued an uncharacterized discharge. The applicant seeks relief contending, in effect, his separation code (JGA) on the DD Form 214 is annotated as being pregnant. Per the Board's Medical Officer, based on the information available for review at the time, the applicant did not have a medical or behavioral health condition that was mitigating for the offenses leading to his separation. In a records review conducted on 3 January 2018, and by a 5-0 vote, the ADRB denied the request upon finding the separation was both proper and equitable. Accordingly, his request for a change in the character and/or reason for his discharge is denied.

b. ADRB Docket number AR20210002218, 3 May 2023, shows the applicant requested an upgrade to honorable. The applicant seeks relief contending, in effect, the DD Form 214 reflecting a discharge code, JGA, for being pregnant needs to be corrected. The applicant is looking forward to reenlisting in the military. In a records review conducted on 15 February 2023, and by a 5 - 0 vote, the Board denied the request upon finding the separation was both proper and equitable. Accordingly, his request for a change in the character and/or reason for his discharge is denied.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Character of Service: Deny. The evidence shows the applicant had problems following the rules and regulations of the Army has set forth to establish good order and discipline. In addition, he did not grasp the military lifestyle and failed to adapt to the military environment through disciplinary infractions, during initial entry training. As a result, his chain of command initiated separation action against him for entry level performance and conduct. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board found no error or injustice in his separation processing. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation and associated codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of Chapter 11, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Entry Level Performance and Conduct," the separation code is "JGA", and the reentry code is "RE 3." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or corresponding codes. In view of the foregoing, the Board determined that the reason for discharge and corresponding codes were proper and equitable and there is no reason to change them.

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.

	10/31/2024
X	■
<hr/>	
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 (Armed Forces), 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 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, 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. The separation policies in this regulation promote the readiness of the U.S. Army, readiness is promoted by maintaining high standards of conduct and performance.

a. Honorable discharge. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry-level status separation (uncharacterized) is warranted.

b. General discharge. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Entry-level status. For Regular Army (RA) Soldiers, entry-level status is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) Soldiers, entry-level status begins upon enlistment in the Army National Guard (ARNG) or USAR. For

Soldiers ordered to initial active duty for training (IADT) for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (AIT) (Soldiers completing Phase I basic training (BT) or basic combat training remain in entry-level status until 90 days after beginning Phase II.).

c. Chapter 11 (Entry Level Performance and Conduct), sets policy and provides guidance for the separations of Soldiers because of unsatisfactory performance and/or conduct while in entry-level status. This policy applies to Soldiers who enlisted in the RA, ARNG, or USAR.

(1) Soldiers in entry-level status, undergoing initial entry training (IET) and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous AD or IADT or no more than 90 days of Phase II under a split or alternate training option.

(2) Have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct and/or performance that disqualify Soldiers for retention.

(3) Enlisted women who become pregnant while still in entry-level status.

(4) Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- Inability
- Lack of reasonable effort
- Failure to adapt to the military environment
- Minor disciplinary infractions
- Have failed to respond to counseling

d. Counseling and rehabilitation requirements. Counseling and rehabilitation requirements are essential when entry-level performance and conduct are the reason for separation. Military service is a calling different from any civilian occupation, and a Soldier should not be separated when this is the sole reason for separation unless efforts at rehabilitation have failed. Before initiating separation action, commanders will ensure that the Soldier receives adequate counseling and rehabilitation.

4. Army Regulation 635-8 (Separation Processing and Documents). in effect at the time, This regulation prescribes the transition processing function of the military personnel system. It supersedes and consolidates AR 635–5, AR 635–10, and DA Pam 600–8–11. This new regulation provides principles of support, standards of service,

policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents.

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service. Except as provided in paragraph 5-2, a DD Form 214 will be prepared for Soldiers in the following categories:

- RA Soldiers on termination of active duty because of administrative separation (including separation because of retirement or ETS), physical disability separation, or punitive discharge resulting from a court-martial
- RC Soldiers completing 90 days or more days of continuous active duty
- RC Soldiers separated for cause or physical disability regardless of the length of time served on active duty
- Recalled retirees on active duty reverting to retired status regardless of the period of active duty service
- ARNGUS and USAR Soldiers mobilized under 10 USC 12301(a), 12302, or 12304 and ARNG Soldiers called into service under 10 USC 15 or 10 USC 12406, regardless of length of mobilization, when transitioned from AD
- RC Soldiers completing active duty that results in the award of an MOS, even when the active duty period was less than 90 days
- Soldiers changing their status or component while serving on active duty

b. A Soldier's DD Form 214 or DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) contains vital, sensitive, and authoritative data. The transition center human resources supervisor, or acting transition center human resources supervisor, is the preferred authenticating official for DD Forms 214 or 215. However, the commanding officers of activities authorized to issue DD Forms 214 and DD Forms 215, or civilian equivalent officials, will appoint, in writing, individuals with authority to control, authenticate, or issue DD Forms 214 and DD Forms 215.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment

- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

6. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JGA" and RE code “3” are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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//