

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 October 2024

DOCKET NUMBER: AR20240004217

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to an under honorable conditions (general) discharge. He also requests an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 18 October 2023
- Department of Veterans Affairs (VA) service document, 18 October 2023

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 his discharge has been updated to under honorable conditions (general); however, his DD Form 214 (Certificate of Release or Discharge from Active Duty) needs to be updated to reflect the change.
3. The applicant enlisted in the Regular Army on 18 May 2004, for a period of 3 years and 17 weeks. The highest rank he attained was private/E-1.
4. On 13 September 2004, the applicant received two developmental counseling's from his Drill Sergeant and Company Commander for recommendation of separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 11 (Entry Level Performance and Conduct), due to his failure to meet the Army standards for passing of the Army Physical Fitness Test (APFT).
5. The applicant's immediate commander notified him on 16 September 2004, of the intent to initiate action to discharge him under the provisions of AR 635-200, Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's inability to attain the minimum standards prescribed for

passage of the mid-cycle APFT. Additionally adding, his mid-cycle APFT was a total of 143 points and on 22 July 2004 he received an inter-battalion rehabilitative transfer to provide him an opportunity to pass his mid-cycle and final APFT. On 13 September 2004, he took his mid-cycle APFT, and his total points were 132. He showed no improvement and his point total decreased.

6. 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 did desire to consult with military or civilian counsel and elected to not submit a statement in his own behalf.

7. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 11, on 16 September 2004.

8. On 17 September 2004, the applicant's intermediate commander recommended approval of the request for separation. Further adding, the applicant could not successfully complete training due to his immaturity, lack of motivation, apathetic attitude, and his unwillingness to adjust and adapt to the military regimen or environment.

9. The separation authority approved the recommendation for separation on 1 October 2004, further adding the applicant's immediate separation is in the best interest of the applicant and that of the Army.

10. The applicant was discharged on 6 October 2004, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct, in the grade of E-1. His DD Form 214 shows his character of service was uncharacterized, with separation code JGA and reentry code 3. He was credited with 4 months and 19 days of net active service, and he was not awarded a military occupational specialty.

11. The applicant provides his Department of Veterans Affairs service document showing he was discharged with an under honorable conditions characterization of service on 6 October 2004, for Veterans Affairs purposes.

12. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. 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.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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. The evidence shows the applicant was unable to attain the minimum standards prescribed for passage of the mid-cycle APFT during initial entry training. He received rehabilitative transfer to provide him an opportunity to pass his mid-cycle and final APFT, but he showed no improvement. Accordingly, he was separated for entry level performance and conduct, after completing 4 months and 19 days of active service. 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. This uncharacterized discharge is neither positive nor negative; it is not "derogatory." It simply means the Soldier did not serve long enough to qualify for a specified characterization of service. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was 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.

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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, 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. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – 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.

a. Chapter 3 states 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. 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.

4. 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/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//