

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240004246

APPLICANT REQUESTS: an upgrade of his characterization of service from uncharacterized to honorable.

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), 9 November 2017

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, in effect, he is requesting that his character of service be changed to honorable, due to his medical conditions. He has schizophrenia, injuries to his back from his time in service, as well as sciatic nerve neuritis, lumbosacral cervical strain, abdominal muscle damage, and paralysis of sciatic nerve. He is service connected at 100 percent.

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

- a. He enlisted in the Regular Army on 19 September 2017.
- b. On 25 September 2017, he was assigned to Alpha Company, 3rd Battalion, 34th Infantry Regiment, Fort Jackson, SC for Basic Combat Training (BCT).
- c. On "1 November 2017," his immediate commander notified him of his intent to initiate separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 11, for Entry Level Performance and Conduct. His commander noted the specific reasons

for his proposed action: Failure to adapt to the military environment due to behavioral characteristics that are not in compliance with satisfactory service with refusing to train and failure to complete mandatory training, which prevents the successful completion of BCT. The commander informed him he was recommending that he receive an uncharacterized discharge and explained his rights.

d. On 31 October 2017, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for Entry Level Performance and Conduct, under the provisions of AR 635-200, chapter 11, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(2) He understood that as the result of issuance of a discharge that was less than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(3) He waived his right to consultation with counsel.

(4) He did not submit statements in his own behalf.

(5) He further understood that, if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge will be upgraded.

(6) He understood that he may, up until the date the separation authority approves the separation, withdraw the waiver and request that an administrative separation Board hear his case.

(7) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

e. On 1 November 2017, his immediate commander initiated and recommended discharge under the provisions of AR 635-200, chapter 11. He noted that he was recommending separation due to the applicant's failure to adapt to the military environment due to behavioral characteristics that were not in compliance with satisfactory service with refusing to train and failure to complete mandatory training, which prevents the successful completion of BCT.

f. On 1 November 2017, the separation authority approved the recommended discharge under the provisions of AR 635-200, chapter 11, Entry Level Performance and Conduct, and directed the applicant's service be characterized as uncharacterized. He waived the rehabilitative transfer requirement and stated the applicant would not be transferred to the Individual Ready Reserve.

g. The applicant was discharged on 9 November 2017. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 11, by reason of entry level performance and conduct, in the rank/grade of PV1/E-1. He was not awarded a military occupational specialty. This form also shows in:

- Block 12c (Net Active Service This Period): 1 month and 21 days
- Block 18 (Remarks): Period of delayed entry program, 11 August 2017 – 18 September 2017
- Block 24 (Character of Service): Uncharacterized
- Block 26 (Separation Code): JGA
- Block 27 (Reenlistment Code): RE-3

4. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

5. 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 and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 an upgrade of his 9 November 2017 uncharacterized discharge. He states:

"VBA [Veterans Benefits Administration] changed decision to Honorable due to my medical conditions. I have schizophrenia and injuries to my back from my time in service, as well as sciatic nerve neuritis, lumbosacral, cervical strain, abdominal muscle damage, paralysis of sciatic nerve, veteran in service connected at 100%."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 19 September 2017 and received an uncharacterized discharge 9 November 2017 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (19 December 2016): Entry Level Performance and Conduct.

d. On 1 November 2017, the applicant's company commander notified him of his action to separate him under provisions in chapter 11 of AR 635-200:

The reasons for my proposed action are: Failure to adapt to the military environment due to behavioral characteristics that are not in compliance with satisfactory service with refusing to train and failure to complete mandatory training, which prevents the successful completion of BCT [Basic Combat Training]."

e. The EMR shows he was first seen for behavioral health concerns on 10 October 2017:

"Service Member reported complaints of: "I am seeing and hearing things that aren't really happening. I can't completely separate what is happening and what isn't."

f. He was diagnosed with "Other symptoms and signs involving emotional state." His diagnosis remained the same after his 12 October 2017 follow-up:

"Soldier seen for walk in safety screening. Soldier is in A 3/34. Soldier reports ongoing visual and auditory hallucinations. He states his unit is initiating a Chapter 11 on him. Soldier reports that he thinks he sees movement or violence between soldiers in formation and will try to intervene, however there is nothing there to see. He denies SI/HI [suicidal ideations / homicidal ideations] consistently. Soldier encouraged to continue taking notes on his hallucinations to bring to appointment on Monday 16OCT for FFD [Fit For Duty evaluation]."

g. At his FFD on 17 October 2017, he was diagnosed with "Adjustment Disorder, Unspecified" and found not fit for duty.

h. JLV shows he applicant was awarded several VA service-connected disabilities originally effective 4 April 2022., including schizoaffective disorder.

i. The Veterans Benefits Administration operates under authority granted by Congress to the Department of Veterans Affairs (Title 38), and its activities are executed under a different set of laws than those of the Department of Defense and the Military

Services (Title 10). For the Army, 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 type of discharge does not attempt to characterize service as good or bad.

j. It is the opinion of the Agency Medical Advisor that a discharge upgrade is not warranted.

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 the medical review, the Board concurred with the advising official finding that a discharge upgrade is not warranted. The Board noted, the applicant completed 1 month and 21 days of net active-duty service and did not complete training and was discharged by reason of entry level performance and conduct. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

2. 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 for upgrade of his uncharacterized character of service. Therefore, the Board denied relief.

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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), in effect at the time, set 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 11 provides guidance for the separation of personnel because of unsatisfactory performance or conduct while in an entry level status. 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, or minor disciplinary infractions.
 - b. Paragraph 11-3 applies to Soldiers who were voluntarily enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve in an entry level status, undergoing initial entry training, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty or initial active-duty training; and have demonstrated they are not qualified for retention. The following

conditions are illustrations of conduct and/or performance that disqualify Soldiers for retention:

- Cannot or will not adapt socially or emotionally to military life.
- Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline.
- Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

c. Paragraph 11-4 states counseling and rehabilitation requirements are essential when entry-level performance and conduct are the reason for separation. Before initiating separation action, commander will ensure that the Soldier receives adequate counseling and rehabilitation.

d. Paragraph 11-8 states service will be described as uncharacterized under the provisions of chapter 11.

e. Paragraph 3-9 states that a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

f. Entry-level status is defined as: Regular Army 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.

g. 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.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator JGA corresponded to the narrative reason entry level performance and conduct and the authority Army Regulation 635-200, chapter 11, and corresponded to an entry level type separation.

4. 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 Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

6. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

//NOTHING FOLLOWS//