

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240004328

APPLICANT REQUESTS: his DD Form 214 (Certificate of Release or Discharge from Active Duty) be corrected to show his uncharacterized service as honorable.

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

- DD Form 149 (Application for Correction of Military Record), 2 February 2024
- Department of Veterans Affairs (VA) documents

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 is requesting an adjustment to his character of service or a DD Form 215 (Correction to DD Form 214) for the period of 25 October 1996 to 18 November 1999. He believes these corrections should be made based on the evidence he provides from the VA, his outstanding character within the military, and in his community along with his family.
3. The applicant enlisted in the Regular Army on 25 August 1993, for a 4-year period. The highest rank he attained was private/E-1.
4. On 9 October 1993, the applicant's immediate commander notified him of his intent to initiate action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-2 (Entry Level Status Performance and Conduct – Basis for separation). The commander cited the applicant could not or would not adapt socially or emotionally to military life. He showed no positive response to counseling. He further noted the applicant's spouse has lupus and the applicant felt he needed to be home with her.
5. The applicant acknowledged receipt of the proposed separation notification. He consulted with military counsel and was advised of the basis for the contemplated action

and its effects; of the rights available to him; and the effect of any action to waive his rights. He understood VA and other benefits normally associated with completion of active service would be affected, additionally he did not desire to make a statement in his own behalf, a separation medical examination, or to consult with military legal counsel nor civilian counsel.

6. The applicant's immediate commander formally recommended the applicant's separation prior to his expiration term of service, under the provisions of AR 635-200, paragraph 11-2. Further adding, the applicant could not or would not adapt socially or emotionally to military life.

7. The separation authority approved the recommended separation action on 26 October 1993.

9. The applicant was discharged on 1 November 1993, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status. His DD Form 214 shows his service was uncharacterized, with separation code JGA and reentry code 3. He completed 2 months and 7 days of net active service this period. He was not awarded a military occupational specialty.

10. The applicant did not provide, and his official military personnel file is void of a DD Form 214, for the period of 25 October 1996 through 18 November 1999.

11. The applicant provides a VA administrative decision letter showing due to his service periods from 25 August 1993 through 1 November 1993 he and his dependents are eligible for VA benefits for this period of service. Additionally, the VA decided for his military service for the timeframe of 25 October 1996 through 18 November 1999, was not a bar to VA benefits.

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. 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 and available military records, the Board determined the applicant did not receive a military occupational specialty (MOS).
2. The Board determined the applicant completed 2 month and 7 days of net active-duty service and did not complete training and was released from active duty for reason of entry level status. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty 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 and relief was denied.

**BOARD VOTE:**

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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:	:	:	GRANT FORMAL HEARING
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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.

[REDACTED]

[REDACTED]

[REDACTED]

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 Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an

honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

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.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

3. 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//