

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240005538

APPLICANT REQUESTS: his uncharacterized discharge be changed to under honorable conditions (general) or honorable. Additionally, he requests an appearance via video/telephone before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 unjustly discharged because of his right under the "don't ask, don't tell" policy. He was violated and made to disclose his preference. He refused to answer, so he was threatened with dismissal and eventually discharged. Being a Soldier was and always will be his dream. He feels he was denied a career in the Army because of harassment from his superiors. He was afraid to come forward because they told him that he wouldn't be believed, and his peers would see it as a betrayal. The applicant indicates on his application, that sexual assault/harassment is related to his request.
3. On 22 February 1995, the applicant enlisted in the Regular Army for 5 years. His record shows he was not awarded a military occupational specialty.
4. A student interview sheet documented by reason of chapter (separation); the applicant's superior officer provided an assessment that the applicant had an average level of maturity. Due to the stress of his wife's illness, the applicant was affected emotionally and physically. He was a marginal Soldier; discharge was recommended.
5. The applicant received formal counseling on the following dates/for:

- 9 June 1995, being late to formation
- 10 June 1995; returning one day late from leave

6. By memorandum on 19 June 1995, the applicant's commander noted that the applicant wanted to go home and take care of his family. He was preoccupied with personal concerns, and wasn't productive at all.

7. On an unspecified date, the applicant's commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, paragraph 11-3a, for entry level status performance and conduct. As the specific reason, the commander cited the applicant was unable to adapt physically or emotionally to the military environment. He had demonstrated character and behavior characteristics not compatible with satisfactory continued service. The applicant would not develop into a productive Soldier due to his own physical difficulties, and family problems at home.

8. 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 elected not to make any statements in his own behalf. He indicated he understood he would receive an uncharacterized discharge and he would be ineligible to apply for enlistment in the Army for a period of two years after discharge.

9. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11. The separation authority approved the separation recommendation and directed the issuance of an entry level separation with uncharacterized service.

10. The applicant was discharged on 30 June 1995. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 11, for entry level performance and conduct. His service was uncharacterized. He was assigned Separation Code JGA and Reentry Code 3. He completed 4 months and 9 days of net active service this period.

11. In the processing of this case, a search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no sexual assault/harassment reports pertaining to the applicant.

12. 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. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his uncharacterized discharge to under honorable conditions (general) or honorable. He contends he experienced discrimination under the “don’t ask, don’t tell” (DADT) policy and military sexual trauma (MST) that mitigates his discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 22 February 1995; 2) The applicant received formal counselings on 9 and 10 June 1995 for being late to formation and returning a day late from leave; 3) By memorandum on 19 June 1995, the applicant’s commander noted that the applicant wanted to go home and take care of his family. He was preoccupied with personal concerns was not productive; 4) On an unspecified date, the applicant’s commander notified the applicant that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 11, paragraph 11-3a, for entry level status performance and conduct. As the specific reason, the commander cited the applicant was unable to adapt physically or emotionally to the military environment. He had demonstrated character and behavior characteristics not compatible with satisfactory continued service. The applicant would not develop into a productive Soldier due to his own physical difficulties and family problems at home; 5) The applicant was discharged on 30 June 1995, Chapter 11, for entry level performance and conduct. His service was uncharacterized, and he completed 4 months and 9 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant’s available military records. The VA’s Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experienced discrimination under DADT policy and MST while on active service, which mitigates his discharge. There is insufficient evidence the applicant reported MST or any resultant mental health condition while on active service. In addition, there is insufficient evidence DADT policy was related to the applicant’s discharge.

d. A review of JLV was void of any medical information regarding the applicant, and he currently does not receive any service-connected disability for a mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported experiencing discrimination related to the DADT policy and MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported experiencing discrimination related to the DADT policy and MST during active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Partial, there is insufficient evidence beyond self-report the applicant experienced discrimination related to DADT, and his discharge was unrelated to DADT. However currently, the applicant reported experiencing MST during his initial training and also was found to be experiencing difficulty adapting to the military. The applicant reported being distressed as a result to his wife's ongoing illness and personal concerns at home while on active service, which impacted his military performance mentally and physically. Yet if he had experienced MST, active avoidance of military duties is a natural sequelae of MST. Per Liberal Consideration, the applicant's contention of MST is sufficient for the Board's consideration.

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 request, available military records and the medical review, the Board notwithstanding considered the advising official opine finding sufficient evidence to support the applicant had a condition or experience that partially mitigates his discharge.

2. The Board noted there is insufficient evidence beyond self-report the applicant experienced discrimination related to DADT, and his discharge was unrelated to DADT. The Board found the applicant completed 4 months and 9 days of net active service this period and did not complete training and was discharged under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct. 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

BOARD VOTE:

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

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.

REFERENCES:

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2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. 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.

4. 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. 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.

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//