

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240005907

APPLICANT REQUESTS: in effect:

- correction of his separation orders for the period ending 30 January 1991 to show his characterization of service as honorable instead of uncharacterized
- he was discharged due to a medical condition
- issued a DD Form 214 (Certificate of Release or Discharge from Active Duty)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from the National Personnel Records Center (NPRC), 1 April 2019
- Request Pertaining to Military Records, 16 January 2024
- Letter, NPRC, 18 January 2024
- Leave and Earnings Statement (LES) from January 1987 to September 1989
- Email from the U.S. Army Resources Command (HRC), 1 February 2024
- DA Form 5016 (Chronological Statement of Retirement Points), 1 February 2024
- Letter, NPRC, 6 February 2024
- Applicant's Official Military Personnel File (OMPF)

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 that he is asking to change his letter of separation from uncharacterized to honorable/medical due to a debilitating knee surgery. He has the appropriate number of hours and points.
3. The applicant provides the following:

a. A letter from the NPRC, dated 1 April 2019 and 18 January 2024, which states the applicant was not issued a DD Form 214 because he had no active service or less than 90 consecutive days of active duty for training.

b. His military LES from January 1987 to September 1989, showing his pay, entitlements, and deductions as a U.S. Army Reserve (USAR) Soldier.

c. An email from HRC, dated 1 February 2024, in which the Customer Care Representative states they provided the applicant with a DA Form 5016, accounting for all points that they were able to verify in his military service record.

d. A copy of his DA Form 5016 dated 1 February 2024, which shows he was in the USAR as an enlisted Soldier. It shows from 16 January 1988 to 15 January 1989 he had 19 active-duty points.

e. A letter from the NPRC, dated 6 February 2024, which states the applicant was not issued a DD Form 214 because he had no active service or less than 90 consecutive days of active duty for training. The NPRC stated that they had no authority to review and approve amendments or corrections to military records and informed the applicant that this was a function of the Review Boards of the military service departments and provided him with a copy of DD Form 149.

f. A copy of his complete OMPF.

4. A review of the applicant's service record shows:

a. He enlisted in the USAR on 16 January 1987 for a period of 8 years.

b. Orders Number 11-11, issued by the Military Entrance Processing Station (MEPS), Cleveland, OH on 16 January 1987, ordered the applicant to Initial Active Duty for Training (IADT) at Fort Sill, OK, with a report date on 17 June 1987 for approximately 8 weeks or completion of initial "split" training.

c. Orders Number 117-24, issued by the MEPS, Cleveland, OH on 5 June 1987, which ordered the applicant to IADT for Advanced Individual Training (AIT) with a report date of 21 June 1988, for approximately 8 weeks or completion of military occupational specialty (MOS) training.

d. A DD Form 220 (Active-Duty Report), which shows the applicant entered active duty on 17 June 1987 and his tour of duty was terminated on 22 August 1987. It shows he completed basic combat training on 21 August 1987.

e. A Disposition Form, dated 22 June 1988, shows the applicant was temporarily disqualified due to knee surgery/braces, and was not to return until 22 March 1989.

f. On 8 July 1988, the Operations Officer, USAR, U.S. Army Recruiting Battalion Cleveland, submitted an Exception to Policy (Second Phase Shipper) on behalf of the applicant.

g. A document which shows the applicant was deleted from unit training orders due to being temporarily medically unfit. The period of training was from 23 July 1988 through 6 August 1988.

h. A medical note from [REDACTED], dated 17 September 1988, shows the applicant was released to return to his regular Army training.

i. On 5 July 1990, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), chapter 5, for failure to ship to Phase II of initial training (Split Option). The commander informed the applicant that if he was separated under this program, he would receive an entry level separation. He explained to the applicant that he had the right to present a written rebuttal or statements in his own behalf or he may waive these rights.

j. A receipt for certified mail, dated 12 July 1990, shows the notification of separation was mailed to the applicant.

k. A memorandum from the applicant's commander, dated 4 December 1990, shows the applicant failed to ship for Phase II training on 21 June 1988. The commander requested that the applicant be reevaluated for continued service/completion of MOS/AIT.

l. On 12 December 1990, the request for Phase II training was disapproved. The Strength Management Officer stated Phase II training must start within one year of completion of basic training, unless a delay is authorized in accordance with AR 601-25 (Delay in Reporting for and Exemption from Active Duty, Initial Active Duty for Training, and Reserve Forces Duty), which can not exceed six months for medical reasons. If the disqualification exceeds six months but less than one year the Soldier must be transferred to USAR Control Group Standby. If the period exceeds one year, the Soldier must be discharged.

m. Orders Number 30-6, issued by Headquarters, Fourth United States Army and Fort Sheridan, Fort Sheridan, IL on 30 January 1991, shows the applicant was

discharged on 30 January 1991 from the USAR, under the provisions of AR 135-178, and his service was uncharacterized.

5. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

6. 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 (AHLTA), 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 30 January 1991 uncharacterized discharge. He states he underwent "a debilitating knee surgery."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. Orders published by the Fourth United States Army and Fort Sheridan show he was discharged from the USAR with an uncharacterized discharged on 30 January 1991 under the separation authority provided AR 135-178, Separation of Enlisted Personnel. They do not cite a reason or paragraph for his discharge.

d. Supporting documentation shows the applicant entered basic combat training on 17 June 1987 and completed the course on 22 August 1987.

e. A 17 September 1988 note from [REDACTED] states "[Applicant] is released to return to his regular army training." There is no associated medical documentation so the neither the nature of the medical condition nor its relationship to his service are known.

f. Almost two years later, his commander notified him on 5 July 1990 that he was initiating separation action for "Failure to ship for Phase #2 of initial training (Split Option)." This would have been his advanced individual training. On 12 December 1990, his request for phase II training was disapproved as required by regulation.

g. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete AIT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge.

h. It is the opinion of the Agency Medical Advisor that a discharge upgrade is unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the regulatory guidance on separations initiated within the first 180 days of military service and the findings outlined in the medical opinion, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

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.


X

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, 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 (AR) 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), in effect at the time, established policies, standards, and procedures governing the administrative separation of enlisted Soldiers from the Army National Guard of the United States and the United States Army Reserve.

a. Chapter 5 prescribed criteria and procedures for the separation of enlisted Soldiers while in an entry level status. This policy applies to:

(1) Soldiers who were voluntarily enlisted in the Army National Guard of the United States or United States Army Reserve, and who have not completed more than 180 days of continuous and creditable active military service on current enlistment by the date of separation.

(2) Have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct which does not qualify 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.

(3) Have failed to respond to counseling.

b. Soldiers in an entry level status and all applicants for enlistment will be counseled that they may be separated should it be determined that they are unqualified for further military service by reason of unsatisfactory performance or conduct. The immediate commander will advise the Soldier in writing of the proposed separation and reasons using the notification procedures. It will be presented to the Soldier during a training assembly for completion of the endorsement section of the letter. If the Soldier cannot be personally notified of the proposed discharge, the notification letter will be mailed to the Soldier's last known address by certified mail.

c. The service of Soldiers discharged under this chapter will be characterized as entry level separation (uncharacterized). A separation will be described as an entry level separation if separation processing is initiated while a Soldier is in an entry level status.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

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 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

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. 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.

//NOTHING FOLLOWS//