

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005991

APPLICANT REQUESTS: in effect, an upgrade of his characterization of service from uncharacterized to honorable and a personal appearance 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 enlisted after his junior year in high school. His intention was there, but mentally he was not. From what he remembers, he never went to court, and he may have been served some paperwork, but he does not remember formally being told what he was kicked out for. This change should be made because of his age, and after he was tested in Columbia, SC, he knew for a fact that he failed a drug test. During the time he was in Columbia, he smoked marijuana up until he was shipped out. He is a hazmat driver, and he currently holds a "TWIC" card. He has lived a good life since 1993.
3. A review of the applicant's service record shows:
 - a. He enlisted in the U.S. Army Reserve on 15 December 1992.
 - b. Orders Number 244-17, issued by the Military Entrance Processing Station, Fort Jackson, SC on 15 December 1992 ordered the applicant to initial active duty for training (IADT) at Fort Leonard Wood, MO, with a reporting date on 11 June 1993.
 - c. The applicant was counseled for the following:

- 25 June 1993 – loss of military bearing and disrespect to a noncommissioned officer (NCO)
- 26 June 1993 – lack of motivation and self-discipline
- 5 July 1993 – disobeying a lawful order and lying to an NCO
- 6 July 1993 – disobeying a lawful order, breaking restriction, not being at the appointed place of duty (extra duty), lying, lack of motivation, lack of self-discipline, and failure to adapt
- 13 July 1993 – recommendation for entry level separation (ELS) by commander

d. On 13 July 1993, the Reserve Component (RC) Liaison NCO counseled the applicant. The applicant was referred to the RC liaison office for ELS counseling. The DA Form 4856 (General Counseling Form) shows the applicant completed three weeks of training. He received an Article 15 for disrespect and one for taking pass privileges while on restrictions. The applicant received several counseling's for numerous violations throughout his training period. The RC Liaison NCO stated that he felt the applicant had been given enough opportunities to rehabilitate and had not taken advantage of the chances that had been given to him to change his attitude, behavior, and prove he could be a Soldier.

e. On 20 July 1993, the applicant's immediate commander notified him of his intent to initiate separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 11, for motivational reasons. The commander noted the specific reasons for his proposed action: the applicant lacked the motivation and self-discipline needed to become a productive Soldier. He was counseled numerous times in an effort to improve his substandard performance but made no effort to respond. The commander informed him that he was recommending he receive an entry level separation and explained his rights. After being advised of his rights, the applicant waived all his rights, to include the opportunity to consult with counsel.

f. On an unspecified date, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 11.

g. On 21 July 1993, the separation authority approved the recommended discharge under provisions of AR 635-200, chapter 11, and directed the applicant receive an entry level separation - uncharacterized. The request for waiver of rehabilitation transfer was waived.

h. The applicant was discharged on 26 July 1993. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status performance and conduct, in the rank/grade of PV1/E-1. This form also shows in:

- Item 11 (Primary Specialty): None
- Item 12c (Net Active Service This Period): 1 month, 16 days
- Item 12e (Total Prior Active Service): 5 months, 26 days
- Item 24 (Character of Service): Uncharacterized
- Item 26 (Separation Code): JGA
- Item 27 (Reentry Code): 3

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

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

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 available documentation and the regulatory guidance related to administrative separations initiated within the first 180 days of active duty service, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| :XXX | :XXX | :XXX | 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.

//SIGNED//
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 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 635-200 (Personnel Separations – Enlisted Personnel), 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. It stated:
 - a. 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.
 - b. Chapter 11 provided guidance for the separation of personnel because of unsatisfactory performance, or conduct (or both) while in an entry level status. Chapter 11-3 applied to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve, and in an entry level status and, before the date of the initiation of separation actions, had completed no more than 180 days of creditable continuous active duty or initial active-duty training; and demonstrated they could not or would not adapt socially or emotionally to military life.

c. Paragraph 11-8 stated service would be described as uncharacterized under the provisions of chapter 11.

d. Entry-level status is defined as: for 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.

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//