

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240007790

APPLICANT REQUESTS: correction of his uncharacterized discharge, narrative reason for separation, and associated codes.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Personal Statement.

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 while at the reception station, an incident of horseplay took place. While waiting to leave for boot camp, he was accused of sexual assault which he did not commit. A group of guys were playing around, hitting each other, so he got up and went over near them where he got added to what they were doing. After that, he left and went back to his bunk. Two weeks into boot camp, he was told about the incident that took place at boot camp. The truth is that he did not do what he was accused of doing. That is why he is asking for an upgrade or to expunge his records.

3. The applicant enlisted in the Florida Army National Guard (FLARNG) on 29 October 2018.

a. He entered active duty for training on 2 January 2019. He was assigned to Fort Jackson, SC.

b. A Law Enforcement Report, dated 26 November 2019 shows:

(1) Summary: A Special Agent was notified by the Sexual Assault Response Coordinator (SARC), 193rd Infantry Brigade, Fort Jackson who reported Private (PVT)

J____ was inappropriately touched by an unknown male. PVT J____ stated an unknown male poked him in the anus with his finger through his clothing while he laid on his bed. PVT Q____ witnessed [Applicant] poke PVT J____ in the buttocks. [Applicant] denied he poked PVT J____ in the anus, but admitted he poked him in the buttocks through his clothing.

(2) Legal Coordination: Trial Counsel, Office of the Staff Judge Advocate, FJSC, opined probable cause existed to believe [Applicant] committed an offense of Sexual Assault. No additional investigative efforts are required. There is sufficient evidence to provide to command for consideration of action.

c. On 1 May 2019, the applicant's immediate commander notified him of his intent to initiate separation action against him under chapter 14-12c, commission of a serious offense, of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for misconduct. The commander recommended an uncharacterized discharge. The reasons for the proposed action are: On 4 April 2019, the applicant received an Article 15 for poking Private J____ in the anus with your finger.

d. On 1 May 2019, the applicant acknowledged receipt of the commander's notification. He acknowledged that having been afforded the opportunity to come to the Trial Defense Service (TDS) office and having received the administrative briefing from TDS personnel, i.e. the basis for his contemplated separation and its effects, the rights available to him, and the effect of a waiver of those rights, he voluntarily, knowingly, and intelligently waived the opportunity to speak with counsel. He understood he could expect to encounter substantial prejudice in civilian life he received a general under honorable conditions character of service and he also understood he could be deprived of many or all veterans, state, and federal benefits if he received an under other than honorable conditions character of service. He elected to submit a statement wherein he stated:

(1) In May of 2018, he graduated from high school and wanted to join the Army National Guard to serve the state of Florida and the United States. Also, to further his studies since his parents do not have sufficient financial means to pay for college. He had done a lot of community service at his church, in his community, and at the schools he previously attended. He had worked with all types of people, males, female, and children from diverse backgrounds and never been accused of inappropriate actions.

(2) On 7 January 2019, he was in Bay 2 to Alpha Company. He was laying down in the bunk and heard some trainees playing and laughing at the other end of the bay. When he got up to use the latrine, he noticed they were playing "meat tap" and hitting each other with broom sticks on the buttocks. As he walked to the latrine, he was hit in his private area. Out of surprise and anger, he poked the trainee that touched him on the outer part of his buttock near his hip with his index finger.

(3) He apologizes and realizes that he was wrong for touching him in any way, regardless of how violated and upset he was. There were other ways he could have handled the situation. He can honestly say with certainty that nothing like this will never happen again. Although he did poke him, he did not poke him in-the anus as he described. He was in summer PT uniform, the lights, were on, there were several trainees in the bay. He has been told by several trainees in his company that the other person stated himself that he "used me to get out the Army." He is asking for another chance to stay in the Army and continue to train so that he can proudly serve our country and attend school. The Army is the only chance that he must make something productive out of his life and make his family proud. He understands that putting on this uniform is a privilege, one that he is proud to have had the opportunity of having.

e. Following the applicant's acknowledgement and election of rights, the applicant's commander initiated separation action against him under provisions of AR 635-200, chapter 14-12c. The intermediate commander recommended approval.

f. On 7 May 2019, the separation authority approved the applicant's discharge and directed the applicant's separation under the provisions of AR 635-200, chapter 14-12c, with an uncharacterized discharge.

g. On 10 May 2019, the applicant was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 14-12c with an uncharacterized discharge, Separation Code JKQ and Reentry Code 3. His DD Form 214 shows he completed 4 months and 9 days of active service. He did not complete initial entry training and was not awarded a military occupational specialty.

h. Also on 10 May 2019, he was discharged from the FLARNG and issued an NGB Form 22 (report of Separation and Record of Service) that captured his ARNG service. This form also reflects an uncharacterized discharge.

4. On 13 March 2023, after careful review of his application, military records, and all other available evidence, the Army Discharge Review Board determined that he was properly and equitably discharged. Accordingly, his request for a change in the characterization of service and/or narrative reason of discharge is denied.

5. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12b of AR 635-200 for a pattern of misconduct or 14-12c for commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter unless the Soldier is still in entry level status. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

6. 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.

BOARD DISCUSSION:

After review of the application and all evidence, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined there is insufficient evidence to grant relief. The governing regulation provides that a separation will be described as uncharacterized, if the separation action is initiated within the first 180 days of military service. As such, his DD Form 214 properly shows his service as uncharacterized.

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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:X	:X	:X	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 //signed//

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), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
 - a. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in an entry-level status, except when the characterization of under other than honorable condition is authorized or when the Secretary of the Army, on a case-by-case basis, determines that an honorable discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. 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 in service of more than 92 days of active military service.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active duty. The "JKQ" SPD code is the correct code for Soldiers separating under chapter 14-12c of Army Regulation 635-200, for misconduct, commission of a serious offense (other than drugs). The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE code. The table in effect at the time of his discharge shows that SPD code "JKQ" has a corresponding RE code of "3."

4. Army Regulation 601-210 (Regular Army (RA) and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for enlistment and processing into the RA/U.S. Army Reserve. Individuals would be assigned RE codes based on their service records or the reason for discharge prior to discharge or release from active duty. List of RA RE codes.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable; they are ineligible unless a waiver is granted
- RE-4 applies to Soldiers separated from their last period of service with a nonwaivable 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 (BCM/NRs) 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. 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 based on 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. 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//