

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009714

APPLICANT REQUESTS: an upgrade of his characterization of service from uncharacterized to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 14 June 2023
- Department of Veteran Affairs (VA) summary benefits letter, 13 March 2023

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, his characterization of service needs to be honorable to receive Nevada state benefits. He has a 100% service-connected disability. When he went to his county accessors office to apply for states benefits, he was advised that he could not receive any benefits because his service was not characterized as honorable.
3. The applicant provided his VA summary of benefits letter showing his character of service listed as under honorable conditions.
4. A review of the applicants record show:
 - a. He enlisted in the Regular Army on 29 October 1996.
 - b. The DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows a physical evaluation board convened at Fort Lewis, WA, on 6 March 1997 to determine his medical fitness for continued service in the Army. The PEB determined he was physically unfit and recommended he be separated from service with severance pay.

c. On 11 March 1997, the applicant concurred with the PEB's findings and recommendations and elected to waive a formal hearing of his case.

d. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 27 March 1997 under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(3), by reason of disability, severance pay. He completed 4 months and 29 days of net active service. His service was uncharacterized. He was issued the separation code "JFL" and the reenlistment code "3". Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized), does not list any awards or decorations.

5. The applicant's DD Form 214 does not reflect he was awarded a military occupational specialty.

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

7. AR 635-40 governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. Paragraph 4-24b(3) provides separation for physical disability with severance pay.

8. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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, available military records and PEB, the Board determined the applicant did not receive a military occupational specialty (MOS) he was discharged by reason of disability, severance pay. He completed 4 months and 29 days of net active service. As such, his DD Form 214 properly shows his service as uncharacterized.

2. 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.

3. The Board agreed that the VA provides post-service support and benefits for service-connected medical conditions. The VA operates under different laws and regulations than the Department of Defense (DOD). In essence, the VA will compensate for all service-connected disabilities. Variance in ratings and/or characterizations of service does not indicate an error on the part of either entity.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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) 635-40 (Physical Disability Evaluation System) establishes the Army disability system and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for medical evaluation boards, which are convened to document a Soldier's medical status and duty limitations as far as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness). Paragraph 4-24b (3) provides that the final disposition, was based upon the final decision of the U. S. Army Physical Disability Agency or the Army Physical Disability Appeal Board. Personnel Command – HRC would issue retirement orders or other disposition instructions as follows: separation for physical disability with severance pay (Title 10 USC 1203 or 1206).

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of

unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

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//