

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2025

DOCKET NUMBER: AR20240010922

APPLICANT REQUESTS: an upgrade of his uncharacterized service to honorable, and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 27 July 2024
- Report of Medical Examination, 16 September 1996
- DD Form 214 (Certificate of Release or Discharge from Active Duty) 11 July 1997

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 request for an upgrade of his discharge is because he knows he did not conceal his arrest as noted by his discharge documentation. His discharge prevents him from obtaining Department of the Veterans Affairs benefits.

3. A review of the applicant's service records shows the following:

a. He enlisted in the Regular Army on 17 January 1997, for a 4-year period. The highest rank he attained was private/E-1.

b. He accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) on 25 June 1997 for absenting himself without authority on or about 22 June 1997 at 10:30 a.m. and remaining absent until on or about 22 June 1997 at 3:45 p.m. His punishment imposed was forfeiture of \$210.00 per month for one-month, extra duty for 14 days, and restriction for 14 days.

c. On 18 June 1997, the applicant's immediate commander notified him of his intent to initiate action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-14 (Separation for Convenience of the

Government – Concealment of Arrest Record). The commander cited the applicant's concealed arrest record as the reason for the proposed separation.

d. He acknowledged receipt of the proposed separation notification. He consulted with military counsel and was advised of the basis for the contemplated action and its effects; of the rights available to him; and the effect of any action to waive his rights. He understood Veterans Affairs and other benefits normally associated with completion of active service would be affected, additionally he did not desire to make a statement in his own behalf, a separation medical examination, or to consult with military legal counsel nor civilian counsel.

e. The immediate commander formally recommended his separation prior to his expiration term of service, under the provisions of AR 635-200, paragraph 5-14. His intermediate commander recommended approval.

f. The separation authority approved the recommended separation action on 9 July 1997. Further adding, he would be issued an entry level separation – uncharacterized.

g. The applicant was discharged on 11 July 1997, under the provisions of AR 635-200, paragraph 5-14, by reason of miscellaneous/general reasons. His DD Form 214 shows his service was uncharacterized with reentry code 3. He completed 5 months and 25 days of net active service this period. He was awarded a military occupational specialty of 88M (Motor Transport Operator).

4. The applicant additionally provides a report of medical examination, dated 16 September 1996, highlighted in the notes section is an entry of law violation.

5. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 active-duty 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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//

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) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

d. Chapter 5 provides Unless the reason for separation requires a specific characterization, a soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions or an uncharacterized description of service if an entry level status.

e. Chapter 5-14 stated a soldier who concealed an arrest record (not followed by a civil court conviction and not reflecting charges pending at the time of enlistment) for any (juvenile or adult) offense and such concealment does not amount to a fraudulent

entry (chap 7) may be separated. Separation is based on the false statements made in enlistment documents regarding the existence of an arrest record. In determining whether discharge is appropriate, the following will be considered:

(1) Concealing a pattern of arrests strongly suggests that the soldier was intentionally attempting to mislead recruiting officials regarding enlistment eligibility. The pattern may include misdemeanors and lesser offenses in addition to a felony.

(2) The age of the individual when enlisted, when arrested, and the period of time that elapsed since the arrest.

(3) The nature and the circumstances surrounding the arrests.

(4) The nature of the soldier's service since enlistment.

f. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were 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 Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) 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.

//NOTHING FOLLOWS//