

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230002463

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

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 14 November 2023
- Standard Form (SF) 600 (Chronological Record of Medical Care, 17 April 1991
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20200001678, 25 February 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the ABCMR in Docket Number AR20160012859 on 6 September 2018 and in Docket Number AR20200001678 on 25 February 2021.

2. The applicant provides a/an new argument and/or evidence not previously considered by the Board.

3. The applicant states, in effect, he had been suppressing the fact that he was sexually abused in the military; the abuse became known after undergoing taking medication and receiving proper therapy. He can finally say, after 31 years, that the military was directly responsible for his being sexually assaulted. His sexual assault was very relevant to his discharge in 1991 and to him seeking of an upgrade to his discharge classification.

a. He does not know who sexually assaulted him, as he never saw them, but he does remember he was by himself practicing military drills when he was told to stand at attention by someone who entered the room. He was then approached from behind and

the person rubbed their genitals on his backside and also reached around and fondled his genitals. When they were finished, they said if he ever spoke of this he would be court-martialed. He was placed in the prone position and told to do 50 pushups before he could leave the room.

b. Shortly after this incident he had a sleepwalking episode. He was deemed aggressive and told he was being separated from the military and he was lucky he was just going to be leaving and not sent to prison instead. Since all this happened, after the assault, he was just happy to be going home and no longer having to deal with the shame of abuse.

c. If this situation is added to the documented incident of him being tied to my bunk and left that way for hours; a clearer picture is shown of why the military made it impossible for him to adapt and possibly live up to his full potential.

d. The applicant notes his request is related to the below issues:

- post-traumatic stress disorder (PTSD)
- other mental health
- sexual assault/harassment
- reprisal/whistleblower

4. The applicant enlisted in the regular Army on 22 January 1991.

5. His record contains a series of SFs 600, dated from April to May 1991, which show he had been seen by the physical therapy clinic on numerous occasions for lower back pain after moving /lifting locker(s) in January 1991 . His back pain was determined to be a condition that existed prior to service, as he noted originally injuring his back 8.5 years ago. These SFs 600 show:

a. 17 April 1991 - The applicant told medical personnel, "guys in my barracks tied me up [with] dental floss last night and now my back hurts again." The record notes he was washing out of 91G (Fire Control Repairer) school, and he wanted to go home. He did not appear to be in any acute distress. He could move and walk well and had normal posture. His back exam was normal, but we complained of pain.

b. 17 May 1991 - The applicant complained of lightheaded/stated every time his back hurts he feel dizziness and a sore lower back. He was in the hospital twice during basic training for hyperventilation. He also complained of knee pain.

c. 22 May 1991 - The applicant complained of lower back pain, which has been intermittent since January 1991 when he was lifting lockers. Prior to basic combat

training the pain was well controlled by stretching. He was not currently on any medications. We was or had been on a 2 week profile.

6. On 29 May 1991, the applicant's first sergeant (1SG) counseled him after the applicant made the 1SG aware that he had a tendency for sleep walking. The applicant was to be scheduled for an appointment at Community Mental Health Services (CMHS)

7. A report of mental health evaluation was completed by a CMHS provider, on 10 June 1991. The report notes the applicant's behavior was aggressive, but he was fully alert and oriented. His mood or affect was depressed, his thinking process was clear, his thought content was normal, and he had a good memory. The CMHS provider states:

"Soldier is psychiatrically cleared for any administrative action deemed appropriate by command. It is recommended that administrative separation be processed in accordance with [Army Regulation] 635-200, Chapter 11, as it is anticipated that the soldier will not adapt socially or emotionally to military life."

8. On 12 June 1991, the applicant's 1SG counseled him for possessing a broken beer bottle and being (unaware) he was sleepwalking and communicating a threat to another Soldier. The counseling notes the applicant would return to CMHS for a follow-up evaluation, but that evaluation was not in the available record for review.

9. On 13 June 1991 -

a. The applicant's immediate rendered a counseling statement to inform the applicant he was initiating action to discharge the applicant from the Army under the provisions of Army Regulation 635-200 (Personnel Separations, Enlisted Personnel), chapter 11 (Entry Level Status Performance and Conduct).

b. The applicant's commander rendered a memorandum, wherein he formally notified the applicant, in writing, he was initiating action to separate the applicant from the Army under the provisions Army Regulation 635-200, chapter 11 for entry level status performance and conduct. The commander notes the specific reason for separation was the applicant's inability to adapt to military life. The commander also informed the applicant of his rights, which include, in part, the right to consult with counsel, the right to submit statements in his own behalf, the right to receive a physical/medical examination, and the right to waive his rights.

c. The applicant acknowledged his commander's formal notification, and he acknowledged understanding that if the separation action was approved, he would receive an entry level separation with uncharacterized service. He also noted the following elections of his rights:

- he did not desire to consult with counsel
- he did not desire to make statements in his own behalf
- he did not request a separation physical

d. A memorandum from the applicant's immediate commander notes, the commander felt it was appropriate to separate the applicant under the provisions of Army Regulation 635-200, chapter 11. The commander notes applicant expressed a strong desire to be released from his military obligation, and indicated he was having problems adjusting to the military and that he had experienced several personal problems since enlisting. The commander felt the applicant's poor performance and inability to adapt to the military seemed to be directly related to his personal problems.

10. On 18 June 1991, the approval authority approved the applicant's discharge under the provisions of Army Regulation 635-200, chapter 11, with an entry level (uncharacterized) separation.

11. The applicant was discharged on 21 June 1991. His DD Form 214 contains the following information and/or entries:

- not awarded a military occupational specialty
- completed 5 months of net active service
- character of service - uncharacterized
- separation authority - Army Regulation 635-200, paragraph 11-3a
- narrative reason - entry level status
- separation code "JGA" and reentry code "3"

12. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitation.

13. ABCMR Docket Number AR20160012859, dated 6 September 2018, shows, in effect -

a. The applicant requested an upgrade of his character of service to honorable.

b. The applicant stated, he acknowledged his separation was due to his failure to adapt to military life, states he served for at least 6 months. and he was requesting the upgrade to make him eligible for Department of Veterans Affairs benefits.

c. The ABCMR denied the applicant's request and noted he was properly discharged in accordance with the regulatory guidance in effect at the time.

14. ABCMR Docket Number AR20200001678, 25 February 2021, shows, in effect -

a. The applicant requested an upgrade of his character of service to honorable.

b. The applicant stated, shortly after beginning basic training the whole situation with Iraq and Kuwait began. Due in part to this and the threat of war, his sleepwalking and night terrors started acting up. His recruiter knew about it. Needless, he was discharged. He started the process of pursuing an upgrade three years ago, with the assistance of a Veterans Affairs Office. The person who was assisting him told him he was on active duty during wartime, and he would be able to receive his educational benefits if he received an honorable discharge.

c. The ABCMR denied the applicant's request, stating, the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20160012859, dated 6 September 2018.

15. The applicant does not provide nor does the record does contain evidence to show he was a whistleblower (i.e., that he made a protected communication or disclosure) nor that he was reprimed against for making a protected communication.

16. The applicant provided argument and/or evidence the Board should consider, along with the applicant's overall record, in accordance with the published equity, injustice, or clemency determination guidance.

17. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status . Entry-level status for Regular Army Soldiers, is the first 180 days of continuous active duty (AD) or the first 180 days of continuous AD following a break of more than 92 days of active military service.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from uncharacterized to honorable. The applicant contends his discharge is mitigated by post-traumatic stress disorder (PTSD), other mental health, sexual assault/harassment, and reprisal/whistleblower.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 22 January 1991.
- On 13 June 1991 the applicant's commander rendered a memorandum, wherein he formally notified the applicant, he was initiating action to separate the applicant from the Army under the provisions Army Regulation 635-200, chapter 11, for entry level status performance and conduct. The commander notes the specific reason for separation was the applicant's inability to adapt to military life. The commander further notes the applicant expressed a strong desire to be released from his military obligation, and indicated he was having problems adjusting to the military and had experienced several personal problems since enlisting. The commander felt the applicant's poor performance and inability to adapt to the military seemed to be directly related to his personal problems
- The applicant was discharged on 21 June 1991, under the provisions of Army Regulation 635-200, chapter 11, with an entry level (uncharacterized) separation. His DD Form 214 confirms uncharacterized service, he was not awarded a military occupational specialty, and separation code "JGA" and reentry code "3".

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 293, ABCMR Record of Proceedings (ROP), DD Form 214, Standard Form (SF) 600, self-authored statement, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant reports suppressing he was sexually abused in the military. He states the abuse became known to him after taking medication and receiving therapy. He reports his sexual assault is relevant to his discharge and to his seeking an upgrade of his discharge classification. He states he does not know who sexually assaulted him, as he never saw the person, but he does remember he was by himself practicing military drills when he was told to stand at attention by someone who entered the room. He was then approached from behind and the person rubbed their genitals on his backside and reached around and fondled the applicant's genitals. When they were finished, they said if he ever spoke of this he would be court-martialed. He was placed in the prone position and told to do 50 pushups before he could leave the room. Shortly after this incident he had a sleepwalking episode. He was deemed aggressive and told he was being separated from the military and was lucky he was just leaving and not sent to prison. After the assault, he was just happy to be going home and no longer having to deal with the shame of abuse. The applicant reports his MST and the documented incident of being tied to his bunk and left that way for hours; provide a clear picture of why the military made it impossible for him to adapt and possibly live up to his full potential.

e. No active-duty electronic medical records were available for review. However, the applicant submitted SF 600 dated 17 April 1991, where he reported to medical personnel, "guys in my barracks tied me up with dental floss last night and now my back hurts again." Another note, dated 17 May 1991, indicates the applicant was seen twice in the hospital during basic training for hyperventilation; typically a symptom of anxiety. On 29 May 1991, the applicant was counseled after he made his first sergeant aware he tended to sleepwalk. The applicant was to be scheduled for an appointment with Community Mental Health Services (CMHS). On 12 June 1991, the applicant was counseled for possessing a broken beer bottle and communicating a threat to another soldier, he was unaware of his behavior since he was sleepwalking. The counseling note states the applicant would return to CMHS for a follow-up evaluation, but the evaluation was not in the available record for review. A Mental Health Evaluation dated 10 June 1991 notes the applicant's behavior was aggressive and his mood and affect were depressed. The provider indicated: "Soldier is psychiatrically cleared for any administrative action deemed appropriate by command. It is recommended that administrative separation be processed in accordance with Army Regulation 635-200, Chapter 11, as it is anticipated the soldier will not adapt socially or emotionally to military life." The applicant appeared to be struggling with mental health issues during his time in service, however, there is no diagnosis available in the record.

f. The applicant is not service connected and, although he reports receiving treatment via therapy and medication, he did not provide any medical documentation indicating a mental health diagnosis. The available VA electronic records indicate the applicant has had six encounters with Veteran's Justice Outreach while at Kettle Moraine Correctional Institute from 22 November 2022 to 03 October 2023, with a focus on re-entry planning when the applicant is released from prison. A note dated 03 October 2023 indicates the provider met with the applicant at Kettle Moraine Correctional Institution to discuss re-entry planning, benefits, and treatment needs. He is slated to be release on 23 February 2024. The note further states the applicant "described the incident that ultimately led to his 'uncharacterized' discharge. A fellow serviceman came into his barracks at night and sexually assaulted him, threatening him with court martial if he reported the incident. He does not know who assaulted him. After the assault, his mental health deteriorated. He failed to meet his obligations or maintain his hygiene. He had increased anxiety and depression and was often terrified. He isolated and would fall asleep when he was supposed to be completing certain tasks. There was an incident in which he was sleepwalking and approached another member of the military with a broken bottle and said, "let's go kill some people". He does not recall the sleepwalking incident but was told of the event by others." The provider states in the note, the applicant first reported the MST to a corrections' social worker and psychologist within the last year and has not undergone specific treatment to address the effects of the assault.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is credible evidence the applicant had an experience during military service that mitigates his discharge.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends various issues mitigate his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserted MST during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is no medical documentation of the applicant having been diagnosed with any BH condition while in military service. However, the available record appears to indicate the applicant was struggling with mental health issues, including his reporting of hazing, issues with sleepwalking, hyperventilation, a recommendation for mental health services, and a mental status report noting depressed mood. In addition, the applicant did not provide any medical documentation evidencing his reported post-service treatment for a BH condition with therapy and medication. However, despite the lack of medical documentation, per Liberal Consideration, the applicant's self-assertion of MST is sufficient to warrant consideration. Given the nexus between MST, depressed mood and difficulty with performance, the applicant's inability to adapt to military life, which was the specific reason for his discharge, is mitigated by his reported experience of MST.

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board noted that the applicant did not complete an initial period of active duty or awarded a military occupational specialty. The applicant was afforded a mental health evaluation and recommended for administrative separation in accordance with applicable regulatory guidance in effect at the time. Documentation available for review does indicate that the applicant appeared to have mental health issues; however, his record does not reveal a diagnosis and none were provided on his own behalf for consideration by the Board as mitigating factors for the misconduct. After due consideration of the request, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 Board determined 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 to amend the decision of the Army Board for Correction of Military Records (ABCMR) set forth in Docket Number AR20200001678 on 25 February 2021.



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. Army Regulation 635-200 sets 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3–9a.

b. Paragraph 3-7a states 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.

c. Paragraph 3-7b states 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.

d. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) HQDA on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

e. Chapter 11 sets policy and provides guidance for the separation of Soldiers because of unsatisfactory performance and/or conduct while in entry-level status. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by: Inability; Lack of reasonable effort; Failure to adapt to the military environment; and/or Minor disciplinary infractions. This policy applies, in pertinent part, to Soldiers who enlisted in the Regular Army, ARNG, or USAR, are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous AD or IADT or no more than 90 days of Phase II under a split or alternate training option. (See the glossary for precise definition of entry-level status.) The Soldiers to whom this applies, in pertinent part have failed to respond to counseling and have demonstrated that they are not qualified for retention. The

following conditions are illustrations of conduct and/or performance that disqualify Soldiers for retention: (a) Cannot or will not adapt socially or emotionally to military life; (b) Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; and/or (c) Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

f. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

2. 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.

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.

3. 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.

//NOTHING FOLLOWS//