

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230003737

APPLICANT REQUESTS, in effect:

- the characterization of his service be upgraded to under honorable conditions, general
- a personal appearance before the Board by video/telephone

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

- 2-DD Forms 149, Application for Correction of Military Record
- Department of Veterans Affairs (VA) Rating Decision

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 indicates that his request is related to post-traumatic stress disorder (PTSD) and other mental health conditions. He states, in effect, that the VA is denying him treatment for his service-connected disabilities because his service is uncharacterized. Further, he needs the characterization of his service upgraded in order to be eligible for a VA Home Loan.
3. The complete facts and circumstances of the applicant's discharge are not available. The applicant's record shows that he enlisted in the Regular Army on 2 January 1992. He was discharged on 3 April 1992 in accordance with Army Regulation 635-200, Personnel Separations-Enlisted Personnel, paragraph 11-3a, by reason of entry level status.
4. His DD Form 214 shows, that he held the rank and pay grade of private (PV2)/E-2. He completed three months and two days of net active service. There is no primary military specialty listed on the DD Form 214. His service was uncharacterized.

5. The applicant provides his VA Rating Decision, 22 June 2023. This document shows the VA deferred their decision to grant the applicant's claim for service-connection for his condition of PTSD with panic disorder (claimed as depression, generalized anxiety, PTSD, alcoholism, and panic disorder. The VA granted service-connection for his conditions or bilateral flat foot.

6. There is no indication he applied to the Army Discharge Review Board for an upgrade to his discharge within its 15-year statute of limitations.

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

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his uncharacterized nature of service to honorable. He contends he was experiencing mental health conditions including PTSD that mitigate his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The complete facts and circumstances of the applicant's discharge are not available; 2) The applicant was enlisted in the Regular Army on 2 January 1992; 3) The applicant was discharged on 3 April 1992, Chapter 11-3a, by reason of entry level status. He completed three months and two days of net active service, and his service was uncharacterized.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions and PTSD as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability. He did engage in behavioral health treatment at the VA. He reported being exposed to typical experiences during his basic training, but he also described being exposed to a traumatic event several years after his discharge. He has been diagnosed with PTSD, Depression and Anxiety predominately related to this event.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience during his active service that mitigates his discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition while on active service, which mitigates his misconduct. He was diagnosed with PTSD and Depression and Anxiety related to an event after his active service by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The applicant has been exposed to a traumatic event after his discharge, and he has been engaged in behavioral health care for PTSD, Depression, and Anxiety predominately related to his exposure to this traumatic event. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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 medical review, the Board concurred with the advising official finding insufficient

evidence to support the applicant had condition or experience during his active service that mitigates his discharge.

2. The Board found insufficient evidence beyond the applicant’s self-report that he was experiencing a mental health condition including PTSD while on active service. The Board noted the applicant’s record is absent evidence surrounding the events which resulted in his discharge in order to provide an appropriate opine on possible mitigation as the result of mental health condition or experience. The applicant provided no post service achievements or character letters of support for the Board to weigh a determination. The Board noted, Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS.

3. Evidence shows the applicant served 3 months and 2 days of service, did not complete training and was discharged from active duty for entry level status. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. As such, the applicant’s DD Form 214 properly shows the appropriate characterization of service as uncharacterized, therefore, the Board denied relief.

4. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 Army Board for Correction of Military Records (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) 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3 contains guidance on Entry Level Separations (ELS). It states 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. Chapter 11 provides for the separation of personnel due to unsatisfactory performance, conduct, or both, while in an entry level status.
 - b. An uncharacterized service description is normally granted to Soldiers separating under this chapter. A general discharge is not authorized under ELS conditions and an honorable discharge is rarely ever granted. An honorable discharge may be given only in cases which are clearly warranted by unusual circumstances involving outstanding personal conduct and/or performance of duty.
 - c. 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.

3. AR 635-40, Physical Evaluation for Retention, Retirement, or Separation, sets forth policies, responsibilities, and procedures in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. Paragraph 3-1, Standards of unfitness because of physical disability, of this regulation, provided that the mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability.

4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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, 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.

7. Title 10, U.S. Code, section 1556, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

8. 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 ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//