

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230005049

APPLICANT REQUESTS: his uncharacterized service be changed to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 17 February 2023
- self-authored statement, 17 February 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 24 April 2006
- Standard Form 180 (Request Pertaining to Military Records), 17 February 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, in effect, while in Basic Combat Training (BCT), one morning he passed out and hit his mouth on a wooden handrail, his throat tightened, and he could not breathe. He was told by a medical examiner that this was caused from bronchial spasms. The episodes continued through basic training; on a run he passed out and fell into a ditch, injuring his knee. An additional time he passed out tying his shoe which caused him to have bright yellow vision and not see for a few moments. After he departed the Army, he was weary of strenuous exercise because of the traumatic experience he had. He battles diabetes to this day, and states the issues sustained in basic training have caused him to be depressed, anxious, have weight gain, knee pain, as well as being withdrawn from his friends and family. The applicant notes post-traumatic stress disorder (PTSD) and other mental health is related to his request.
3. The applicant underwent an initial entry medical examination on 20 February 2005, wherein he was found qualified for enlistment.

4. The applicant enlisted in the Regular Army on 1 February 2006, for a period of 5 years and 22 weeks. He reported to Fort Jackson, SC, for completion of his initial entry training.

5. His Enlisted Record Brief (ERB) shows the highest rank he obtained was private first class (PFC)/E-3 with a date of rank of 1 February 2006.

6. A BCT Soldier in Training Performance Record shows while the applicant was in "white phase" of BCT his diagnostic Army Physical Fitness Test (APFT) was a no-go on 27 February 2006 and also a no-go on 18 March 2006.

7. An additional BCT Soldier in Training Performance Record shows while the applicant was in "blue phase" of BCT his record APFT was a no-go on 30 March 2006, he did not have an entry in the Army Physical Fitness Re-Test block.

8. DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 3 April 2006, shows the following:

- the applicant was identified as having an existed prior to service (EPTS) condition
- he was diagnosed with exercise induced bronchospasm, mild
- the board recommended that he be separated from the military for failure to meet medical procurement standards, asthma
- he concurred with the proceedings, waived his right to legal counsel, and requested to be discharged from the U.S. Army without delay

9. A DA Form 4856 (Developmental Counseling Form), dated 11 April 2006, shows the command recommended separation from the Army for EPTS, the applicant agreed with the recommendation.

10. On the same date, the applicant was notified of his recommendation for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5, paragraph 5-11 (Separation of Personnel who did not meet Procurement Medical Fitness Standards).

11. The applicant was advised of the rights available to him and the effect of any action taken by him in waiving his rights. He elected not to consult with legal counsel and to submit a statement in his behalf. However, the available record is void of a statement.

12. The applicant's immediate and intermediate commanders further recommended his separation in accordance with the board's findings. The separation authority approved the recommended separation action on 18 April 2006 and directed characterization of service as entry-level, uncharacterized.

13. The applicant was discharged on 24 April 2006. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical procurement standards. He received a separation code of "JFW" and reentry code "3". His service was uncharacterized. He was credited with 2 months and 24 days of net active service.

14. The Army Discharge Review Board (ADRB) reviewed the applicant's petition for an upgrade of his discharge on 30 December 2011. After careful consideration, the Board determined that he was properly and equitably discharged. Accordingly, his request for relief was denied.

15. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

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

17. MEDICAL REVIEW:

a. Background: The applicant is requesting his uncharacterized service be changed to under honorable conditions (general) or honorable. The applicant contends other mental health and PTSD mitigate his discharge.

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:

- The applicant enlisted in the Regular Army on 1 February 2006.
- A BCT Soldier in Training Performance Record shows while the applicant was in "white phase" of BCT his diagnostic Army Physical Fitness Test (APFT) was a no-go on 27 February 2006 and also a no-go on 18 March 2006. While in "blue phase" his record APFT was a no-go on 30 March 2006
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 3 April 2006, shows the following: the applicant was identified as having an existed prior to service (EPTS) condition; he was diagnosed with exercise induced bronchospasm, mild; the board recommended that he be separated from the military for failure to meet medical procurement standards, asthma; and he concurred with the proceedings, waived his right to legal counsel, and requested to be discharged from the U.S. Army without delay.

- On 11 April 2006 the applicant was notified of his recommendation for separation under AR 635-200, Chapter 5, paragraph 5-11 (Separation of Personnel who did not meet Procurement Medical Fitness Standards).
- The applicant was discharged on 24 April 2006 under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical procurement standards. His service was uncharacterized. He was credited with 2 months and 24 days of net active service.
- The ADRB denied his request for relief submitted 30 December 2011.

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, his ABCMR Record of Proceedings (ROP), DD Form 214, service and separation records as well as a self-authored statement and Standard Form 180 (Request Pertaining to Military Records). 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 asserts that other mental health and PTSD are related to his request for an upgrade. The applicant reported that he experienced a trauma while in basic and changing his uncharacterized discharge to honorable would enhance his chances of acquiring better employment. In his self-authored statement, the applicant reported that he passed out and hit his mouth during physical training secondary to bronchial spasms. He noted numerous incidents occurring, to include other injuries. He asserts that the "issues sustained during basic training caused depression, anxiety, weight gain, as well as knee pain." Please see his statement for additional information.

e. The applicant's electronic health records (EHRs) from his time in service show he had no engagement with mental health and held no mental health diagnoses. The applicant was seen for the health conditions discussed in his statement. His supporting documents and service records also contained relevant medical information. The applicant underwent an initial entry medical examination on 20 February 2005, wherein he was found qualified for enlistment. As summarized above, his EPSBD showed that he experiences exercise induced bronchospasms – mild, which impacted his ability to run or pass a PT test. He was found to have asthma and restrictive lung disease, which were labeled as existing prior to service. Due to this he was found not medically qualified and recommended for separation. His medical records do not reflect his account of ever being injured during any of his episodes while running, though there is note of joint pain in his knee.

f. Per the applicant's VA EHR, he is not service connected. He has not been engaged in any mental health care through the VA and he holds no mental health diagnoses with the VA. However, given the characterization of his discharge, he would not typically be eligible for most VA benefits. Through review of JLV, this applicant did have "Community Health Summaries and Documents" available. His problems list indicates psychophysiological insomnia (with an onset of 2021) and adjustment disorder with depressed mood (with an onset of 2020). No other medical records were provided to substantiate his claims.

g. It is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence the applicant was diagnosed with depression, anxiety or PTSD during his time in service. There is only evidence that the applicant was diagnosed with insomnia and an adjustment disorder, approximately 14 years after discharge, with neither typically considered mitigating conditions. In addition, symptoms or mental health problems developing years later, even if stemming from him having asthma, would not be a mitigating factor in his discharge. Furthermore, this applicant has no misconduct to mitigate. In addition, uncharacterized discharges are not punitive or negative; it simply reflects that he did not serve long enough to receive a characterization. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable (NA).

(2) Did the condition exist or experience occur during military service? NA

(3) Does the condition or experience actually excuse or mitigate the discharge? NA

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was discharged due to a preexisting condition, while in initial entry training, and received an uncharacterized discharge. A separation will be described as entry-level with service uncharacterized if processing is initiated within the first 180 days of service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors. The EPSBD clearly determined his EPTS

condition(s) failed the enlistment standards in chapter 2 AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service. The applicant agreed with these findings, marking, and initialing the option "I concur with these proceedings and request to be discharged from the U.S. Army without delay." Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

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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. Section 1556 of Title 10, U.S. 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.

3. AR 635-200 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. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become

medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. 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.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

//NOTHING FOLLOWS//