

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230005299

APPLICANT REQUESTS: an upgrade of his United States Army Reserve (USAR) uncharacterized discharge to an under honorable conditions (general) or honorable discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 he was diagnosed with post traumatic stress disorder (PTSD) and Bipolar-2 which was undiagnosed while he was in service and became worse due to being a chemical operations specialist.
  
3. The applicant's record shows:
  - a. On 25 April 1991, the applicant enlisted in United States Army Reserve for an 8 year service obligation. He agreed to an alternate training program in accordance with Army Regulation 601-200 (Regular Army and Reserve Components Enlistment Program) in the military occupational specialty of 54B (Chemical Operations Specialist).
  
  - b. The available record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, Orders 069-063, issued by U. S. Army Reserve Command on 7 January 1993 discharged the applicant from the USAR, under the provisions of Army Regulation 135-178 (Separation of Enlisted Personnel), effective 7 January 1993. His service was uncharacterized.
  
4. The applicant's record includes a DA Form 5016 (Chronological Statement of Retirement Points) which shows he earned the following retirement points:

- 25 April 1991 to 24 April 1992 - 37 points
- 25 April 1992 to 24 April 1993 - 17 points
- 25 April 1993 to 24 April 1994 - 15 points
- 25 April 1994 to 24 April 1995 - 15 points
- 25 April 1995 to 24 April 1996 - 15 points

#### 5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his United States Army Reserve (USAR) uncharacterized discharge to an under honorable conditions (general) 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:

- Applicant enlisted in the USAR on 25 April 1991.
- The available record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, Orders 069-063, issued by U. S. Army Reserve Command on 7 January 1993 discharged the applicant from the USAR, under the provision of Army Regulation 135-178 (Separation of Enlisted Personnel), effective 7 January 1993. His service was uncharacterized.

c. 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), 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 states, he was diagnosed with Post Traumatic Stress Disorder (PTSD) and Bipolar-2 which was undiagnosed while he was in service and became worse due to his being a chemical operations specialist. Additionally, his application to the Board notes his request is related to PTSD and other mental health issues.

e. Due to the period of service, no active-duty electronic medical records were available for review. No VA electronic medical records were available for review. There is no evidence the applicant is service connected for any BH condition. Further, the applicant has not provided any medical documentation indicating he engaged in any behavioral health care services or has been diagnosed with PTSD or other behavioral health condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that could potentially mitigate his discharge. However, Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD and other BH condition merits consideration by the Board.

**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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. The applicant did not provide any medical documentation and none was available in the electronic medical record available for review.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the applicant did not provide any medical documentation substantiating his asserted BH conditions.

**BOARD DISCUSSION:**

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that without a documentation showing the facts and circumstances that led to his discharge, it cannot be determined if his mental health is a mitigating factor. The Board found the evidence indicates the applicant did not complete training for a military occupational specialty, which means he remained in an entry-level status until he was discharged and therefore his service was uncharacterized as required by regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is 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 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.

6/25/2024

X █

CHAIRPERSON

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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. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service 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.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as under other than honorable conditions (UOTHC) when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

3. 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.

4. 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//