

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230006798

APPLICANT REQUESTS: in effect:

- Change his uncharacterized discharge to an honorable or a medical discharge
- Acknowledgement of his serious and permanent knee injury he sustained during his service
- Acknowledgement of false and/or misleading information he was given at the time of his discharge
- Service connected disability rating of 30 percent (%) effective the date his discharge
- Department of Veterans Affairs (VA) health care benefits effective immediately at no cost to him
- Provide medical and mental health evaluations for post-traumatic stress disorder (PTSD)
- If diagnosed with PTSD due to the humiliating and degrading manner he was forced out of the Army, then he also requests appropriate compensation for the life he was deprived

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

- DD Form 149 (Application for Correction of Military Record) and continuation pages
- VA Form 21-22A (Appointment of Individuals as Claimants Representative)
- Three letters from the applicant's representative (father)

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, his discharge should be changed to honorable or medical, because he was not afforded due process, or treatment.

a. Shortly after he began basic combat training (BCT) he had to seek medical attention for knee pain, where he was diagnosed with "flat spots" on both knees due to running. Before he was to depart for his advanced individual training (AIT) he fell, injuring both his knees, once again he had to seek medical attention. While in AIT, he failed to pass one segment of the training, and was not afforded the opportunity outlined in the standard operating procedures (SOP), which at the time stated he was to repeat that portion of training. He was advised he was receiving an entry level separation for his knee problems.

b. He should have been provided counsel by a qualified and unbiased person(s). If he had been afforded that opportunity, it is his belief, the Army would not have stripped him of all rights, trashed his career plans, treated him as if he was worthless; and made him believe that for most of life. He was faced with depression, thoughts of suicide, marital, financial and employment concerns, but had no access to any veteran benefits such as medical or educational. The DD Form 149 and continuation pages are available in their entirety for the Boards review.

3. The Board's jurisdiction under Title 10 (Armed Forces), U.S. Code, section 1552, extends to any military record of the Department of the Army. The Army Review Boards Agency (ARBA) does not have jurisdiction to provide a response from the VA or to grant the requested relief on the applicant's VA benefits. Therefore, these issue will no longer be discussed in these proceedings.

4. It is not clear what information the applicant is referring to as it pertains to his request for acknowledgement of false and/or misleading information he was given at the time of his discharge. The applicant can submit a new application with supporting documents to support his claim, until such time, this issue will no longer be discussed in these proceedings.

5. The applicant's service record shows:

a. He enlisted in the Regular Army on 17 September 1992.

b. DA Forms 4856 (Developmental Counseling Form), dated 2 February 1993, show a consolidated record of the applicant's counseling statements which he concurred he understood the reason of the counseling sessions for the following:

(1) Two-time academic failure.

(2) Past performance and current physical condition.

c. In a memorandum subject: separation under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) Chapter 11, his immediate commander-initiated action to separate the applicant prior to his expiration term of service (ETS), for academic failure. Reasons for the proposed action were due to him not demonstrating any potential for being capable of comprehending course material, which was evident in his two-time academic failure. He further recommended the applicant received an entry level discharge. The applicant acknowledged the separation notice, and if approved, he would receive an entry level discharge. After being afforded the opportunity to consult with legal counsel, he declined the opportunity, and he waived the following rights:

- he could submit any statements he desired in his own behalf
- consulting with counsel and representation
- to receive copies of documents supporting the proposed separation
- he may up until the date the separation authority orders, directs, or approves his separation, withdraw the waiver of any of the above rights

d. On 8 February 1993, the separation authority approved the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 11. He further directed that the applicant be issued an "uncharacterized" characterization of service.

e. His DD Form 214 shows he was discharged on 12 February 1993 in accordance with Army Regulation 635-200, Chapter 11, Entry Level Status with an uncharacterized discharge. He was assigned separation code JGA and reentry code 3. He completed 4 months and 26 days of active service. He was not awarded a military occupational specialty and he did not complete first term of service. His grade at the time of discharge was private (E-2).

6. Due to the applicant's claim of PTSD, other mental health conditions, and injuries he sustained while on active duty, the case is being forwarded to the Behavioral Health and Medical Staff at the Army Review Boards Agency.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade or, in essence, a referral to the Disability Evaluation System (DES). He states:

t1. Change my Discharge to either ""Honorable" or "Medical".

2. Recognize that I sustained a serious & permanent knee injury while on active duty in the US Army, and that I was given false/misleading information at the time of discharge.

3. Grant me Service-Connected Disability at 30% effective the date of my Discharge in February 1993.

4. Grant me Veterans Health Care henceforth at no cost to me.

5. Grant me medical and mental health evaluations to determine whether I have PTSD from the humiliating and degrading manner I was forced out of the Army. Further, that if it is determined that I do in fact have PTSD, that I be appropriately compensated for the life I didn't get to live."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's signed DD 214 shows he entered the regular Army on 17 September 1992 and was discharged on 12 February 1993 under provisions provided in paragraph 11-3a of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990), for falling below entry level performance and conduct standards.

d. On 2 February 1993, the applicant's First Sergeant counseled him on his recommendation the applicant me separated from the Army:

"PV2 [Applicant], you have not demonstrated any potential of being capable of comprehending course material. Your inability to comprehend is evident in your two-time academic failure. I recommend that you be discharged IAW AR 635-200, chapter 11."

e. A second counseling that day was similar stating "You are being recommended for entry level separation at this time based upon your past performance and your current physical condition."

f. On 4 February 1993, his company commander informed him of the initiation of action to separate him under chapter 11 of AR 635-200 for academic failure:

“Reasons for my proposed action are: You have not demonstrated any potential of being capable of comprehending course material. Your inability to comprehend is evident in your two-time academic failure.”

g. The separation action was approved on 8 February 1993 with the battalion commander noting:

“The request for waiver of rehabilitation transfer is waived for the following reason(s):

Soldier has had one rehabilitative transfer.”

h. No medical evidence was submitted with the application and there are no encounters in the EMR. JLV shows the applicant is not registered with the VA.

i. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented him from performing his academic duties in a satisfactory manner. Thus, there is no cause for referral to the Disability Evaluation System.

j. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade, change in this narrative reason for separation, nor a referral of his case to the Disability Evaluation System remain is warranted.

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. 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 the medical advisory the Board concurred with the advising official finding that neither a discharge upgrade, change in this narrative reason for separation, nor a referral of his case to the Disability Evaluation System remain is warranted. The opine noted, there is no evidence the applicant had any medical condition which would have failed the medical retention standards.

2. The Board determined there is insufficient to support the applicant's contentions for referral to the disability evaluation system (DES). The Board noted, the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. The Board noted the applicant completed 4 months and 26 days of active service and did not complete training and was released from active duty for entry level status. 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 for upgrade of his uncharacterized character of service or referral of his case to the DES.

3. Furthermore, the Board found insufficient evidence to support the applicant's contentions to provide medical and mental health evaluations for post-traumatic stress disorder (PTSD), a service-connected disability rating of 30 percent (%) effective the date his discharge and Department of Veterans Affairs (VA) health care benefits effective immediately at no cost to him. The Board agreed, the applicant's request for acknowledgement of false and/or misleading information he was given at the time of his discharge is outside of the ABCMR purview and can not be addressed by this Board. Based on the preponderance of evidence the Board determined relief is not warranted.

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.

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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - a. 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.

b. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 11 (Entry Level Separation), sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in entry level status. Service will be uncharacterized for separation under the provisions of this chapter. This policy applies to Soldiers who were voluntarily enlisted in the Regular Army, are in entry level status and before the date of initiation of separation, have completed no more than 180 days of credible continuous AD or IADT or no more than 90 days of phase II under a split or alternative training option and, have demonstrated that they are not qualified for retention.

4. Title 10 (Armed Forces), U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated"

receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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.

//NOTHING FOLLOWS//