

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230006943

APPLICANT REQUESTS: reconsideration of his request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his:

- characterization of service as "Honorable" rather than "Uncharacterized"
- narrative reason for separation as the result of a mental health condition rather than "Entry Level Performance and Conduct"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- excerpts from Army Regulation 635-200 (Active Duty Enlisted Administrative Separations)
- Under Secretary of Defense, Washington, DC, memorandum subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations, dated 25 July 2018 (Wilkie Memorandum)
- Commonwealth of Virginia General Educational Development (GED) certificate
- Prince William Circuitry Court-Criminal receipts (2)
- Commonwealth of Virginia Restoration of Rights letters
- Federal Bonding Program letter
- Department of Veterans Affairs (VA) Form 21-0960P-2 (Mental Disorders (Other than Post-traumatic Stress Disorders (PTSD)) Disability Benefits Questionnaire
- Commonwealth of Virginia, Secretary of the Commonwealth letter, dated 8 May 2000
- Clemency and Parole Examination Progress Notes, dated 3 June 2020
- Character reference letters (2)
- Associate degree
- Bachelor degree
- Psychotherapy initial evaluation, 5 April 2023
- Therapy sessions April – September 2023
- excerpts from VA mental health record

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number AR20080019811 on 19 May 2009, AR20150011344 on 28 June 2016, and AR20200003085 on 23 July 2021.

2. The applicant states he is again respectfully requesting that the Board take another look at his case now that new information has been added to his Army Military Human Resource Record (AMHRR) record that was previously unavailable and in light of the recent settlement in Kennedy v. McCarthy and the memoranda issued in 2014, 2016, 2017, and 2018. He is providing his post-service mental health treatment records and proof of his post-service conduct that should merit an upgrade.

a. He had no disciplinary actions in the military and feels the entry level performance and conduct narrative is unjust because he was unable to complete any training to be able to merit a fair service rating due to being pulled from basic training because of a pre-service criminal matter that according to Army Regulation 635-200 should not have been used as a sole driver for separation. His chain of command caused the injustice because he had a previously undocumented and undiagnosed adjustment disorder with anxiety that was exacerbated due to them confining him to the company orderly room on permanent daylight Charge of Quarters (CQ) duty and confined to quarters at night due to their belief that he was a flight risk. They listed repeated counseling when he only got one counseling statement from each person in his immediate chain of command, and they did not offer any chance of rehabilitation as required by Army Regulation.

b. His discharge was approved on 28 July 2004, and he was not allowed to see a lawyer until 3 August 2004. By the time he was permitted to attempt to be retained, the discharge had already been approved. Additionally, that type of discharge was mandated to be accomplished within 3 days of approval by the separation authority, and he was not discharged until 18 August 2004, which was 19 days after approval by the separation authority and leads to his belief that the separation process was procedurally flawed, and the chain of command acted capriciously and maliciously.

c. He believes post-service conduct should outweigh the circumstances surrounding the discharge as he has resolved the criminal matter issues that contributed to his discharge by getting his rights reinstated. He has also attained his GED, an associate degree, and a bachelor degree. He had multiple support letters written on his behalf to obtain a pardon from the Governor of Virginia.

3. On 23 June 2003, the applicant enlisted in the U.S. Army Reserve in the rank/pay grade of private (PV1)/E-1 for a period of 8 years.

4. On 15 June 2004, the applicant was ordered to initial active duty for training (IADT) for the purpose of completing Basic Combat Training (BCT) at Fort Jackson, SC, followed by Advanced Individual Training (AIT) at Aberdeen Proving Ground, MD.

5. The applicant failed to complete high school and an exception was granted to retain him in the USAR and ship to BCT, based on the fact that his projected military occupational specialty did not require a high school diploma.

6. DA Forms 4856 (General Counseling Form) show the applicant was counseled on the following dates for the indicated reasons:

- 19 July 2004 – his Drill Sergeant counseled him regarding exhibiting characteristics and values becoming of a Soldier
 - Military Police and Criminal Investigation Division (CID) interviewed him, and he admitted to passing checks with insufficient funds in an amount in excess of \$5,000; he was placed on permanent daylight CQ duty
 - he continued unsatisfactory behavior by pursuing inappropriate relationships with female Soldiers-in-Training
 - he did not display the Seven Army Core Values
 - he displayed an untrustworthy attitude by lying to cadre and other Soldiers
 - he was continually involved in other situations concerning other Soldiers-in-Training with discipline or motivational problems
- 22 July 2004 – his First Sergeant counseled him regarding his recommendation that he be administratively separated due to his lack of Army values and failure to adapt to the military environment
- 22 July 2004 – his Company Commander counseled him regarding his recommendation that he be administratively separated due to his lack of Army values and failure to adapt to the Solidarization process

7. On 26 July 2004, the applicant was counseled by a Training and Doctrine Command USAR/National Guard Liaison noncommissioned officer concerning his commander's recommendation for separation. He acknowledged his understanding that, if discharged, a resultant loss of medical and educational benefits would occur, as well as any other benefits or entitlements related to his enlistment. He also understood his probable discharge type, character, and current reentry probability, with or without waiver. The applicant had been at BCT for 4 weeks and was under investigation by CID for passing checks with insufficient funds. He exhibited no Army values. Separation under the provisions of Army Regulation 635-200, Chapter 11, had been explained to him and he was advised to contact his Reserve Component unit within 72 hours of release from

Fort Jackson, SC. The applicant rendered a statement wherein he disagreed with the separation because he committed the offense on 7 April 2004 and was never asked whether he had any outstanding debts and the fact that the reason for his separation (making a false official statement) was baseless and wrong. Given a choice, he would have remained in the Army because he felt he was fit for service and given reasonable time, he could correct his mistakes. He learned an abundance of things about himself and the military. First, not to be something he was not; and second, there are repercussions for every decision that he made.

8. On 28 July 2004, the applicant's immediate commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200, Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's failure to adapt to the military environment. He further advised the applicant that if his separation was approved, he would receive an entry level separation with an uncharacterized discharge. He advised the applicant that he had the right to consult with consulting counsel and to submit statements in his own behalf. The applicant acknowledged receipt of the separation notification on the same date.

9. On 28 July 2004, the applicant rendered his election of rights wherein he stated he had been advised of the basis for the contemplated action to separate him for the Entry Level Status Performance and Conduct under the provisions of Army Regulation 635-200, Chapter 11, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He indicated he desired to consult with counsel, and he would provide statements in his own behalf. The applicant rendered a statement, wherein he stated that he disagreed with the separation but would fully comply with the separation authority's decision.

10. On 28 July 2004, the applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11. In paragraph 2h, the commander noted repeated counseling as the rehabilitation attempts.

11. On 30 July 2004, the separation authority approved the recommended separation action with the issuance of an uncharacterized entry level discharge.

12. On 3 August 2004, the applicant rendered a memorandum wherein he requested disapproval of his separation action. He stated he comes from an Army family and had always wanted to be a Soldier and did not want to accept defeat. He requested to be retained and restarted in training so he could serve his country and be proud of being a Soldier. Given the chance, he would remedy his mistakes and embrace the Army Values. On 3 August 2004, the applicant's Defense Counsel indicated he had advised

the applicant and that he personally made the choices indicated in the foregoing statement.

13. Orders and the applicant's DD Form 214 show he was discharged from the USAR in the grade of E-1 on 18 August 2004, under the provisions of Army Regulation 635-200, Chapter 11, with Separation code "JGA" and Reentry code "3." His narrative reason for separation was "Entry Level Performance and Conduct." He was credited with completion of 2 months and 5 days of net active service this period. He did not complete his first full term of service.

14. The applicant petitioned the Army Discharge Review Board (ADRB) for a change in the character and/or reason for his discharge. On 10 June 2005, he was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined he was properly and equitably discharged and denied his request.

15. The applicant petitioned the ABCMR for correction of his DD Form 214 to show award of the National Defense Service Medal (NDSM) for his previous Reserve service prior to his discharge and to show he held the rank/grade of private first class (PFC)/E-3 at the time of his separation. On 20 May 2009, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request.

16. The applicant petitioned the ABCMR for correction of his DD Form 214 to show the characterization of his service as honorable vice uncharacterized; and the narrative for his separation as either for the convenience of the Government or Secretarial Authority. On 16 June 2016, the applicant was informed the ABCMR had denied his request.

17. The applicant petitioned the ABCMR to reconsider correction of his DD Form 214 to show award of the NDSM and to show he held the rank/grade of PFC/E-3 at the time of his separation. On 30 August 2021, the applicant was informed the ABCMR had reconsidered his application and granted him partial relief by showing award of the NDSM. On 30 November 2021, the applicant was provided a DD Form 215 (Correction to DD Form 214) showing the addition of the NDSM to his DD Form 214.

18. In addition to the previously discussed evidence, the applicant provides:

- various excerpts from Army Regulation 635-200 pertaining to pre-separation rehabilitation requirements and separations for physical or mental conditions
- "Wilkie memorandum," dated 25 July 2018

- Commonwealth of Virginia certificate showing he fulfilled the requirements for a GED in lieu of a high school diploma
- Prince William Circuitry Court-Criminal receipts for payments made on 14 February 2002 and 10 February 2014
- Commonwealth of Virginia documents showing the Governor had restored the applicant's civil rights
- letter showing the applicant was eligible to participate Federal Bonding Program
- VA Form 21-0960P-2 showing the applicant applied for disability benefits associated with Mental Disorders other than PTSD
- Commonwealth of Virginia, Secretary of the Commonwealth letter, dated 8 May 2000, acknowledging receipt of his clemency petition
- Clemency and Parole Examination Progress Notes, dated 3 June 2020, showing, in part, he was treated for Adjustment Disorder with depressed mood and anxiety
- character reference letters submitted to the Governor of Virginia and the Virginia Parole Board in support of granting the applicant clemency and a pardon
- documents showing the applicant was awarded an Associate of Arts and Sciences degree in General Studies in August 2021
- Diploma showing the applicant was conferred a Bachelor of Arts degree in Political Science on 24 December 2022
- document showing the applicant underwent an initial evaluation for Psychotherapy services on 5 April 2023
- documentation of mental health therapy sessions from April thru September 2023
- excerpts from the his VA mental health record

19. 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. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for her or her character of service to be rated.

20. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

21. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his characterization of service as "Honorable" rather than "Uncharacterized" and change to the narrative reason for his separation to show he was discharged due to a mental health condition rather than "Entry Level Performance and Conduct." He contends he experienced mental health conditions that mitigates his misconduct.

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 applicant enlisted into the U.S. Army Reserve on 23 June 2003. On 15 June 2004, the applicant was ordered to initial active duty for training (IADT); 2) The applicant was counseled on 19 July 2004 for passing checks with insufficient funds in an amount in excess of \$5,000, unsatisfactory behavior, lying to cadre, and problems with disciplinary behavior; 3) On 18 August 2004, the applicant was discharged, Chapter 11, with Separation code "JGA" and Reentry code "3." His narrative reason for separation was "Entry Level Performance and Conduct."

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and civilian medical documentation provided by the applicant were also examined.

d. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition while on active service. A review of JLV provided evidence the applicant has been diagnosed with service-connected chronic adjustment disorder by the VA. A review of his Compensation and Pension Evaluation completed 30 June 2020 provided evidence the applicant has been diagnosed with chronic adjustment disorder related to his experience of tinnitus. It was noted the applicant's behavioral health conditions predominately occurred after his discharge. In addition, the applicant provided civilian documentation that he has been diagnosed with anxiety related to his experiences of having to remain in the orderly room while on active service.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct. In addition, there is insufficient evidence to warrant referring the applicant to IDES at this time to assess for his suitability for a medical discharge.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions that mitigates his misconduct. The applicant was diagnosed with service-connected chronic adjustment disorder. However, these symptoms are reported to have occurred after his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service. The

applicant was diagnosed with service-connected chronic adjustment disorder. However, these symptoms are reported to have occurred after his military 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 while on active service. Also, there is no nexus between adjustment disorder and the applicant's misconduct of passing checks with insufficient funds and lying to cadre in that: 1) these types of misconduct are not part of the natural history or sequelae of adjustment disorder; 2) adjustment disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right. Lastly, there is insufficient evidence to warrant referring the applicant to IDES at this time. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board determined there is insufficient evidence, beyond self-reporting, the applicant was experiencing a mental health condition while on active service. Also, there is no nexus between adjustment disorder and the applicant's misconduct of passing checks with insufficient funds and lying to cadre in that these types of misconduct are not part of the natural history or sequelae of adjustment disorder; and adjustment disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right. Lastly, there is insufficient evidence to warrant referring the applicant to IDES at this time.

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. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on entry level performance and conduct.

2. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of

the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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 has occurred by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 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. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or

failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014 [Hagel Memorandum], 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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//