

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230007382

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Orders 339-0113, Transition Orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 respectfully requests an upgrade of his uncharacterized discharge to allow him to receive medical benefits from the Department of Veterans Affairs. He is unable to receive benefits with the current discharge. He was unable to complete his military training as a result of his "imminent spouse marriage rupture," and was under too much pressure which ultimately resulted in his discharge. He comes from a long line of Soldiers and is very proud of his heritage. He would like to continue to serve and uphold the United States' standards.
3. The applicant provides his DD Form 214 and transition orders, to be referenced in his service record. Additionally, he marks post-traumatic stress disorder and other mental health on his application as conditions related to his request; however, medical documentation was not included.
4. A review of the applicant's service record shows:
  - a. He enlisted in the U.S. Army Reserve on 14 August 2006.

b. On 25 October 2006, the applicant underwent a mental health evaluation. The notes indicated the applicant complained of abdominal pain, had been there about 8 weeks and struggled physically and mentally. He was not going to make it academically and missed home.

c. A memorandum for the Commander from Behavioral Analysis Services, dated 26 October 2006, diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood. The applicant reported poor sleep, decreased energy, decreased appetite, low concentration, and experienced thoughts of hurting himself by jumping off a flight of stairs, but denied current suicidal ideations and agreed to a crisis response plan. The psychologist further noted the applicant's diagnoses did not meet retention standards for continued military service and his disorder was so severe that his ability to function in a military environment was significantly impaired. The applicant reported a strong desire to separate from the U.S. Army.

d. A DA Form 4856 (Development Counseling Form) shows on 28 October 2006, the applicant was counseled on duty restrictions and recommendation for separation. The applicant's duty restrictions were further supported by medical examination received 30 October 2006 and the below listed medical documents:

- WHMC Form 3530 (Training Temporary Duty Restriction Form)
- Standard Form 600 (Chronological Record of Medal Care)

e. On 3 November 2006, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11 for failure to adapt to the military environment. The applicant acknowledged receipt of the notification of separation action on 6 November 2006. The reasons for his proposed action were the applicant's diagnoses with adjustment disorder mixed with depressed mood.

f. On 9 November 2006, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he elected not to submit statements on his own behalf

g. On 9 November 2006, the immediate commander initiated separation action against the applicant for failure to adapt to the military environment. He recommended that the applicant receive an uncharacterized characterization of service. The intermediate commander recommended approval.

h. On 28 November 2006, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 11, paragraph 11-2c for failure to adapt to the military environment. He would be issued an Uncharacterized Discharge Certificate.

i. Orders 333-0113 dated 29 November 2006, discharged the applicant from active duty with an effective date of 1 December 2006.

j. On 1 December 2006, he was discharged from active duty with uncharacterized service. His DD Form 214 shows he completed 3 months and 10 days of active service with no lost time. The narrative reason for separation was listed as "Entry Level Performance and Conduct."

k. On 2 June 2007, a Request for Waiver (NGB 22-3) was submitted on behalf of the applicant which indicated he was unable to complete his training at Lackland Air Force Base (AFB) due to a family emergency and his wife being hospitalized; however, his wife was in great health and approval was recommended of the waiver. The applicant further submitted a statement in support of the request which noted he was at the language school and due to his wife's hospitalization, his mind was not focused on training. He did not receive the help requested from the drill sergeants and the only solution was to be with his wife in that difficult moment. His wife was in great health, and he desired to be a part of the [REDACTED] Army National Guard ([REDACTED] ARNG).

l. The [REDACTED] ARNG leadership recommended approval and on 12 June 2007, the applicant enlisted in the [REDACTED] ARNG.

m. The service record is void of the facts and circumstances leading to the applicant's discharge from the [REDACTED] ARNG.

n. Orders 051-510, dated 20 February 2008, discharged the applicant from the [REDACTED] ARNG with an effective date of 15 December 2007.

o. On 15 December 2007, the applicant was discharged from the [REDACTED] ARNG with an uncharacterized characterization of service. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 6 months and 4 days of net service for the period. It also shows:

- Block 12 (Military Education) – NA
- Block 13 (Primary Specialty) – NA
- Block 18 (Remarks) – Original Discharge and NGB 22 will be available upon request at the Directorate of Personnel, ATTN: Personnel Services Branch, [REDACTED] ARNG, [REDACTED]//NOTHING FOLLOWS

- Block 23 (Authority and Reason) – Para 8-35e, Implementation Policy NGR 600-200, 1 Oct 06, Entry level performance and conduct separations

5. On 24 August 023, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his claim of mental health issues. The applicant was provided 30 days to submit supporting documentation with a suspense of 24 September 2023. The applicant has not provided a response to date.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 15-185), the ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

8. By regulation (AR 635-200), service will be described as uncharacterized under the provisions of Chapter 11. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

9. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized discharge. 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 U.S. Army Reserve on 14 August 2006.
- The applicant underwent a mental evaluation on 25 October 2006. A memo dated 26 October 2006 diagnosed the applicant with an adjustment disorder with mixed anxiety and depressed mood. The psychologist noted the applicant's

diagnoses did not meet retention standards for continued military service and his disorder was so severe that his ability to function in a military environment was significantly impaired. The applicant reported a strong desire to separate from the U.S. Army. It was recommended he be discharged.

- A DA Form 4856 (Development Counseling Form) shows on 28 October 2006, the applicant was counseled on duty restrictions and recommendation for separation.
- On 3 November 2006, the applicant's immediate commander notified the applicant of his intent to separate him under AR 635-200, Chapter 11 for failure to adapt to the military environment. Separation was initiated on 9 November 2006. Separation was approved on 28 November 2006.
- Orders 333-0113 dated 29 November 2006, discharged the applicant from active duty with an effective date of 1 December 2006. On 1 December 2006, he was discharged from active duty with uncharacterized characterization of service. His DD Form 214 shows he completed 3 months and
- 10 days of active service with no lost time. He was assigned separation code JGA and the narrative reason for separation listed as "Entry Level Performance and Conduct," with a reentry code of 3.
- On 2 June 2007, a Request for Waiver (NGB 22-3) was submitted on behalf of the applicant which indicated he was unable to complete his training at Lackland Air Force Base (AFB) due to a family emergency and his wife being hospitalized; however, his wife was in great health and approval was recommended of the waiver. The [REDACTED] ARNG leadership recommended approval and on 12 June 2007, the applicant enlisted in the [REDACTED] ARNG. The service record is void of the facts and circumstances leading to the applicant's discharge from the [REDACTED] ARNG. On 15 December 2007, the applicant was discharged from the [REDACTED] ARNG with an uncharacterized characterization of service. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 6 months and 4 days of net service for the period.

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 293, his ABCMR Record of Proceedings (ROP), DD Form 214, as well as his service and separation records from his time in the Army Reserves. Documentation from his service and separation from the [REDACTED] ARNG was not available. 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 is requesting an upgrade so that he may request VA medical benefits. He noted he was unable to complete his training due to his "imminent spouse marriage rupture." He noted he was under "too much

pressure and as a result was discharged.” It is unclear which period of service he is referencing. His records reflect he was having physical and mental health concerns during his first period of service, though there was no record of spousal/relationship issues. However, he was allowed a waiver to reenter service (National Guard) through claiming he was previously unable to engage in training due to his wife being in the hospital. His service records from his second period of service do not specify why he was discharged approximately 6 months later, with another uncharacterized period of service. There is nothing in his EHR to provide any clarity.

e. The applicant’s time in service predates consistent use of electronic health records (EHR). However, some of the applicant’s engagement with health care, to include mental health, can be found in his EHR. The applicant’s EHR shows the applicant first engaged in mental health care on 17 October 2006. He self-referred and was seen for a voluntary evaluation. He was diagnosed with phase of life circumstance and was returned to duty (minimal information was in the EHR). His records reflect he was seen again on 26 October 2006 (with further details below). His supporting documents and service records also contained relevant medical information. The applicant completed a mental health evaluation at the ER on 25 October 2006. His record indicates he complained of abdominal pain, had been there about 8 weeks and struggled physically and mentally. He was not going to make it academically and missed home. The assessing provided noted he presented with anxiety and depression. A memorandum for the Commander, dated 26 October 2006, diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood. The applicant reported poor sleep, decreased energy, decreased appetite, low concentration, and experienced thoughts of hurting himself by jumping off a flight of stairs, but denied current suicidal ideations. It was found that he did not meet retention standards for continued military service and his disorder was so severe that his ability to function in a military environment was significantly impaired. The applicant reported a strong desire to separate from the U.S. Army. It was recommended that he be administratively separated in accordance with appropriate Army regulation and that he be disqualified from PRP, security clearances and weapons handling.

f. There are no mental health records from his second period of service. There was one medical note from 28 November 2007 that shows he was seen for a backache.

g. Per the applicant’s VA EHR, he is 0% service connected for infections of the skin. He initiated care at the VA starting in 2023 and has had some engagement with mental health starting in October of 2023. His records reflect he initiated support through Vocational Rehabilitation Services / Compensated Work Therapy, has received orientation to some homeless services, and engaged in several sessions of brief therapy through PCMHI (primary care mental health), with his presenting concerns focusing on lack of employment and stable housing. There was some potential harassment discussed, relating to his time in service but no details were provided. The

applicant also noted experiencing racism, but it was unclear if this was during his time in service, and if so which period. He has been diagnosed with adjustment disorder with mixed anxiety and depressed mood, other symptoms and signs involving emotional state, problem related to housing and economic circumstance and unemployment. Through review of JLV, this applicant did not have any "Community Health Summaries and Documents" available for consideration. No other medical records were provided to substantiate his claims.

h. It is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a mitigating condition or experience during either period of service.

#### 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 other mental health and PTSD.

(2) Did the condition exist or experience occur during military service? Unclear, the applicant does not specify when he reportedly experienced PTSD. Other mental health was evident during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to fully opine. The applicant asserted other mental health and PTSD mitigate his discharge, though did not explain further in his application. The applicant was diagnosed with an adjustment disorder during his initial period of service; however, this is not typically considered a mitigating condition. There is no evidence the applicant has ever been diagnosed with PTSD and the applicant is not service connected. In addition, he had no known misconduct to mitigate (though his separation records from his second period of service were not available). Lastly, uncharacterized discharges are not punitive or negative; it simply reflects that he did not serve long enough to receive a characterization. Given his adjustment concerns during his initial service, a failure to adapt discharge would have been appropriate, and also appeared in line with the applicant's request and desire to get out of the Army. Given the lack of documentation from his second period of service, this advisor cannot fully opine regarding his discharge nor potential mitigation...though again, there is no evidence of any mitigating conditions or concerns during that time period.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 record of service, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA BH Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the basis for his discharge not being mitigated by a mental health condition. The Board further found the evidence confirms he was in an entry-level status when he was discharged, and his service was uncharacterized in accordance with the governing 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.

5/6/2024

X

CHAIRPERSON

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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge is a separation with honor. 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. Chapter 11 of the regulation states service will be described as uncharacterized under the provisions of this chapter. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

4. 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 post-traumatic stress disorder (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.

5. 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 DRBs and BCM/NRs 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, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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

7. 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//