

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230007686

APPLICANT REQUESTS: upgrade of his uncharacterized discharge to honorable.

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 at the time of his service, he was undiagnosed with severe clinical depression, bipolar disorder, and anxiety disorder. It made it difficult for him to adapt to military life and he was not given treatment at that time during the course of his military service. He is requesting that the correction be made so that he may obtain benefits allowed to him due to his illness. He has been diagnosed and am still under the care and treatment of a licensed clinical physician. His treatment has been effective and expensive. He is asking for an upgrade in discharge so that he may obtain VA (Department of Veterans Affairs) benefits.
3. Review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 20 August 1998. After completing basic combat training, the applicant was assigned to Fort Sam Houston to complete advanced training.
  - b. On 8 December 1998, the applicant's immediate commander notified the applicant of the initiation of separation action against him under the provisions of chapter 11-31, Entry Level Status Performance and Conduct, of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The commander stated the applicant had shown an inability to adapt. Administrative separation would be in the best interests of the Army. The immediate commander recommended an entry level separation.

c. The applicant acknowledged receipt of the separation notification in accordance with chapter 11 of AR 635-200. He acknowledged that he had been afforded the opportunity to consult with counsel, but he declined that opportunity. He understood if the request for discharge was approved, he would receive an entry level separation with uncharacterized service. He further acknowledged that he had received adequate counseling and rehabilitative measures concerning his inability to become a productive member of the armed forces.

d. After the applicant's acknowledgement, his immediate commander recommended separation action against him in accordance with chapter 11 of AR 635-200, by reason inability to adapt

e. The separation authority waived the rehabilitation requirements and approved the applicant's discharge from the Army under the provisions of chapter 11, AR 635-200. Accordingly, the applicant was discharged on 22 January 1999.

f. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was issued confirms he was discharged on 22 January 1999 with an uncharacterized character of service (Separation Code JGA, Reentry Cod 3). He completed 5 months and 3 days of creditable active military service. He did not complete initial entry training and was not awarded a military occupational specialty

4. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

#### 5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her uncharacterized discharge to honorable. She contends she had mental health conditions that mitigated her discharge.

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 was enlisted in the Regular Army on 20 August 1998; 2) On 8 December 2008, the applicant's immediate commander notified her of the initiation of separation action against her under the provisions of chapter 11-31, Entry Level Status Performance and Conduct, of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The commander stated the applicant had shown an inability to adapt; 3) The applicant was discharged on 22 January 1999, Chapter 11, by reason inability to adapt with an uncharacterized character of service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy

Viewer (JLV) was also examined. No additional medical documentation was provided by the applicant.

d. The applicant noted mental health conditions as contributing and mitigating factors in the circumstances that resulted in her separation. There was no indication the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and she does not receive service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing mental health conditions that contributed to her administrative separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions while on active 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. However, the applicant contends she was experiencing a mental health condition that mitigated her discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the regulatory guidance found in AR 635-200 related to separations initiated within the first 180 days of military service and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/15/2024

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 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 3 describes the different types of characterization of service. It states an uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in an entry-level status, except when the characterization of under other than honorable condition is

authorized or when the Secretary of the Army, on a case-by-case basis, determines that an honorable discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. For Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break in service of more than 92 days of active military service.

b. Chapter 11 sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in entry level status. It states when separation of a member in 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, the member normally will be separated per this chapter. This separation policy applies to enlisted members of the Regular Army who have completed no more than 180 days active duty on current enlistment by the date of separation have demonstrated that they are not qualified for retention for one or more of the following reasons: Cannot or will not adapt socially or emotionally to military life; cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline; have demonstrated character and behavior characteristics not compatible with satisfactory continued service; or failed to respond to counseling

3. 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. 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. 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. 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.

6. 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//