

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008496

APPLICANT REQUESTS: His service in the U.S. Army Reserve (USAR) be characterized as honorable and issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty). Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Certification of Military Service
- Veterans Affairs (VA) summary of benefits
- In-service personnel documents

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 completed Basic Training; however, he was unable to attend advanced individual training due to physical injuries and mental illness. He was instructed to return to his USAR unit to recover within a year. Since he did not recover within a year's time, his service was terminated with an honorable release.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) and other mental health issues are related to his request.
4. The applicant enlisted in the USAR on 23 October 1987. He entered active duty for initial active duty training (IADT) on 13 January 1988.
5. DA Form 2496 (Disposition Form) dated 15 March 1988, shows the applicant's advanced individual training (AIT) orders were amended from location: Fort Leonard Wood, MO, report date 13 March 1988 to read: "Upon graduation from basic training,

terminate IADT and return to control of reserve unit of assignment. Soldier will be scheduled by troop program unit for AIT within one year of release.”

6. The applicant's Certification of Military Service shows his service was terminated by an Honorable Release from Active Duty for Training, on 17 March 1988.

7. Orders 139-118, issued by Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, on 20 July 1989, shows the applicant was ordered to active duty for the purpose of completing his military occupational specialty training, reporting no later than 7 August 1989.

8. Orders 150-124, issued by Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, on 4 August 1989, show his active duty orders were revoked.

9. Orders 199-18, issued by Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, on 4 August 1989, discharged the applicant from the USAR effective 16 October 1989, under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), paragraph 4-7, for entry-level status separation.

10. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

11. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service. Entry-level status for members of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty. The evidence of record shows the applicant was in an entry-level status at the time of his separation, as he had not yet begun the second phase (AIT) of his IADT. As a result, his service was appropriately described in accordance with governing regulations.

12. The USAR does not issue a Report of Separation or Record of Service when a Soldier separates from the USAR, similar to the DD Form 214 or National Guard Bureau Form 22 (Report of Separation and Record of Service), issued by the Regular Army and the Army National Guard, respectively.

13. The applicant provides VA documents that show his combined service-connected evaluation is 100% for various injuries and illnesses to include a major depressive disorder.

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

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting his service in the U.S. Army Reserve (USAR) be characterized as honorable and issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty). He contends he experienced mental health conditions including PTSD that mitigates his separation.

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 in the USAR on 23 October 1987. He entered active duty for initial active duty training (IADT) on 13 January 1988; 2) On 15 March 1988, the applicant's advanced individual training (AIT) orders were amended from location: Fort Leonard Wood, MO, report date 13 March 1988 to read: "Upon graduation from basic training, terminate IADT and return to control of reserve unit of assignment. Soldier will be scheduled by troop program unit for AIT within one year of release. The applicant's Certification of Military Service shows his service was terminated by an Honorable Release from Active Duty for Training, on 17 March 1988; 3) Orders 139-118, issued by Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, on 20 July 1989, shows the applicant was ordered to active duty for the purpose of completing his military occupational specialty training, reporting no later than 7 August 1989. Orders 199-18, issued by Headquarters, Fifth U.S. Army, Fort Sam Houston, TX, on 4 August 1989, discharged the applicant from the USAR effective 16 October 1989, under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), paragraph 4-7, for entry-level status separation; 4) The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

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

d. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his separation. There is insufficient evidence the applicant reported mental health symptoms while on active service. A review of JLV provided evidence the applicant reported experiencing a knee injury during his Basic Training. He described having a negative experience with a Drill Instructor during a rifle ranger, which he then began to experience depressive symptoms. The experience did not fit criteria for a potentially traumatic event. The applicant after his military experience went on to be a police officer. He has been diagnosed and treated for service-connected Major Depression (100% SC since 2009).

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 separation. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A, there is insufficient evidence to support the applicant had condition or experience that mitigates his separation. He has been diagnosed with service-connected Major Depression by the VA, but there is insufficient evidence that this diagnosis, which occurred after his discharge, was related to his inability to complete his initial training beyond other factors including other physical injuries. Also, there is insufficient evidence the applicant has been diagnosed with service-connected PTSD. Lastly, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding insufficient evidence to conclude that a mental health condition mitigated the basis for his separation. Based on a preponderance of the evidence, the Board determined the applicant's entry level status separation was 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.

6/27/2024

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

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.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 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. Chapter 5 prescribes criteria and procedures for separation of enlisted soldiers while in an entry level status. This policy applies to Soldiers who voluntarily enlisted in the Army National Guard of the United States or USAR, who have completed no more than 180 days of continuous and creditable active military service on their current enlistment by the date of separation.

5. Army Regulation 635-5 (Separation Documents), paragraph 2-1, provides the instructions for preparing the DD Form 214. This regulation provides that:

a. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge.

b. The DD Form 214 will be prepared for Reserve Component members completing initial ADT that results in the award of a military occupational specialty, even when the active duty period was less than 90 days.

c. The characterization or description of service is determined by directives authorizing separation.

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. It provides that 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.

b. A member of a Reserve component who is not on active duty, or who is serving under a call or order to active duty for 180 days or less, begins entry-level status upon enlistment in a Reserve component. Entry-level status of such a member of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty.

7. 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, 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.

8. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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.

9. 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, 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//