

IN THE CASE OF: ██████████

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230008779

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his uncharacterized discharge to honorable.

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

- request for reconsideration, in lieu of DD Form 149 (Application for Correction of Military Record), 23 April 2023
- photographs, presumably of applicant, October 1985 to December 1985
- letter, ██████████ 19 April 2023
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20220002405, Record of Proceedings, 24 February 2023
- Decision Letter, ABCMR, 05 March 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220002405 on 24 February 2023.

2. As a new argument, the applicant states

a. He does not want to play a victim but wants to point out the circumstances and the unfair treatment he believes he suffered during his time in the Army. When he arrived at Fort Jackson, NC, he weighed approximately 240 pounds, and when he finished, he weighed 180 pounds, a weight loss of 60 pounds.

b. When he arrived at Fort Jackson, he was greeted by a Drill Sergeant who told him he should not have made it past the MEPS (Military Entrance Processing Stations) because he arrived overweight and obese. Another Drill Sergeant humiliated him in front of everyone his first time going to the chow hall because of his weight and the amount of food piled on his tray. The first three weeks of training were difficult for him. Drill Sergeants and Officers constantly yelled and screamed at him because of his weight.

c. During week three or four, he developed pneumonia and was hospitalized for three days. After being discharged from the hospital, he lost a lot of weight and body strength. He could not complete the required pushups when he took his final APFT (Army Physical Fitness Test). He knew three other Soldiers, including one Soldier in his platoon, who were given a waiver for pushups, but he was not. He felt betrayed and singled out. He worked hard to get where he was and could not understand why he was being treated differently than others. He did not know it, but at the time, he was suffering from anxiety, panic attacks, and depression.

d. He went home on leave after finishing basic training. He had orders in hand to report to Fort Gordon for AIT (Advanced Individual Training) upon his return. He knew he was supposed to return to Fort Jackson and asked a Sergeant at the airport what he should do. The Sergeant told him to follow his orders, so he went to Fort Gordon. However, after arriving at Fort Gordon, he was informed that his command at Fort Jackson was angry and ordered him to return. After this experience, he decided he could no longer be in the Army.

e. He respects those who currently serve and have served in the past. He asks the board to reconsider his previous request and grant him relief. He only wants an honorable discharge and a certificate to show his son.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 16 August 1985. He was ordered to initial active duty for training (IADT), with a report date of 17 October 1985. He did not complete IADT and was never awarded a military occupational specialty. The highest rank/grade he attained was private/E-1.

4. Three DA Forms 4856 (General Counseling Form), a DA Form 705 (Army Physical Readiness Test Scorecard), and a Record of Informal Counseling show the applicant was counseled on four occasions between 23 October 1985 and 27 November 1985. Areas of emphasis covered in the counseling included:

- being overweight
- failure to meet minimum pushup standards
- positive attitude and desire to meet standards
- recommended advancement to phase II of training
- recommended advancement to phase III of training

5. A DA Form 2496 (Disposition Form) from the 2nd Brigade Troop Medical Clinic to the applicant's company commander, dated 13 December 1985, shows the applicant had a medical condition with his lungs, requiring three weeks of recovery. The attending physician requested a pushup waiver for the applicant and cleared him to ship to AIT.

6. The applicant was counseled on four additional occasions between 15 December 1985 and 27 January 1986. Areas of emphasis covered in the counseling included:

- failure to meet minimum standards on end of course (EOC) Physical Fitness (PT) test, pushup profile, incomplete EOC PT test, requirement to execute 30 good pushups upon retest, and disapproval of pushup waiver
- completion of 21 pushups on retest; failure to meet pushup standard (30)
- personal problems at home, mental attitude not allowing him to perform to standard, request to get out of the Army
- recommendation for immediate entry level separation

7. The applicant was notified on 27 January 1986 of his commander's intent to initiate separation actions against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11 (Entry Level Status Performance and Conduct), Trainee Discharge Program. The commander stated the reason for the proposed action was the applicant's inability to meet minimum PT standards, lack of physical aptitude, and failure to adapt socially to military life.

8. On 28 January 1986, the applicant acknowledged receipt of the proposed separation notification and was advised of the reasons for separation and of the rights available to him. He understood if approved he would receive an entry level separation with uncharacterized service. He elected not to consult counsel, waived a separation physical, and elected not to submit a statement in his own behalf.

9. On that same date, his immediate and intermediate commanders recommended the applicant's separation from service. His intermediate commander further noted, the applicant reported to basic training (BT) obese. He lost forty-three pounds during BT and was unable to meet minimum physical fitness standards. He had lost all desire and motivation and was not willing to put forth the necessary effort to be a winner.

10. On 30 January 1986, the separation authority approved the recommended discharge, waived the rehabilitative transfer requirements, and directed the applicant's service be uncharacterized.

11. The applicant was discharged accordingly on 7 February 1986, under the provisions of Army Regulation 635-200, paragraph 11-3a, by reason of entry level status performance and conduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was entry level status (uncharacterized), with separation code of "JGA" and reenlistment (RE) code "RE-3." He was credited with 3 months and 21 days of net active service during this period.

12. As new evidence, the applicant provides the following documents which are available in their entirety for the Board's review within the supporting documents:

a. Two pages of photographs, presumably of the applicant, with the captions “Start of Basic Training, OCTOBER 1985, weight 240 pounds” and “End of Basic Training, December 1985, pictures taken last days of training, weight 180 pounds, weight loss approximately 60 pounds after 8 weeks.”

b. A letter, from licensed Psychologist [REDACTED], states, in effect, [the applicant] came to her for psychological treatment in November 2012. She has treated him sporadically for severe panic attacks with anxiety, depression with suicidal ideation, and post-traumatic stress disorder (PTSD) symptoms. His mental health issues date back to physical and psychological abuse by his alcoholic parents and further abuse while in the foster care system. He suffered verbal abuse from his father and his military superiors because of his weight. He tried to succeed and felt he was succeeding in training before he became ill and had to be hospitalized for pneumonia. He felt abused and unfairly treated and reverted to his childhood responses in a clear way that reflected his mental health problems.

13. The ABCMR considered the applicant's request for an upgrade of his uncharacterized discharge on 24 February 2023. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records. The Board denied the applicant's request for relief.

14. Regulatory guidance in effect at the time provided Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.

15. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his uncharacterized discharge to honorable.

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:

- Applicant enlisted in U.S. Army Reserve (USAR) on 16 August 1985.
- Three DA Forms 4856 (General Counseling Form), a DA Form 705 (Army Physical Readiness Test Scorecard), and a Record of Informal Counseling show the applicant was counseled on four occasions between 23 October 1985 and 27 November 1985. Areas of emphasis covered in the counseling included:

- being overweight
- failure to meet minimum pushup standards
- positive attitude and desire to meet standards
- recommended advancement to phase II of training
- recommended advancement to phase III of training
- A DA Form 2496 (Disposition Form) from the 2nd Troop Medical Clinic to the applicant's company commander, dated 13 December 1985, shows the applicant had a medical condition with his lungs, requiring three weeks of recovery. The attending physician requested a pushup waiver for the applicant and cleared him to ship to AIT.
- Applicant was counseled on four additional occasions between 15 December 1985 and 27 January 1986. Areas of emphasis covered in the counseling included:
  - failure to meet minimum standards on end of course (EOC) Physical Fitness (PT) test, pushup profile, incomplete EOC PT test, requirement to execute 30 good pushups upon retest, and disapproval of pushup waiver
  - completion of 21 pushups on retest; failure to meet pushup standard (30)
  - personal problems at home, mental attitude not allowing him to perform to standard, request to get out of the Army
  - recommendation for immediate entry level separation
  - Applicant was notified on 27 January 1986 of his commander's intent to initiate separation actions against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11 (Entry Level Status Performance and Conduct), Trainee Discharge Program. The commander stated the reason for the proposed action was the applicant's inability to meet minimum PT standards, lack of physical aptitude, and failure to adapt socially to military life.
  - Applicant was discharged accordingly on 7 February 1986, under the provisions of Army Regulation 635-200, paragraph 11-3a, by reason of entry level status performance and conduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was entry level status (uncharacterized), with separation code of "JGA" and reenlistment (RE) code "RE-3."
  - ABCMR considered the applicant's request for an upgrade of his uncharacterized discharge on 24 February 2023. The Board denied the applicant's request for relief.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's ABCMR Record of Proceedings (ROP), request for reconsideration, medical documentation, photograph, medical documentation, ABCMR Docket Number AR20220002405 proceedings, and documents from his service record and separation packet. 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 states he does not want to play a victim but wants to point out the circumstances and the unfair treatment he believes he suffered during his time in the Army. When he arrived at Fort Jackson, NC, he weighed approximately 240 pounds, and when he finished, he weighed 180 pounds, a weight loss of 60 pounds. When he arrived at Fort Jackson, he was greeted by a Drill Sergeant who told him he should not have made it past the MEPS (Military Entrance Processing Stations) because he arrived overweight and obese. Another Drill Sergeant humiliated him in front of everyone his first time going to the chow hall because of his weight and the amount of food piled on his tray. The first three weeks of training were difficult for him. Drill Sergeants and Officers constantly yelled and screamed at him because of his weight. During week three or four, he developed pneumonia and was hospitalized for three days. After being discharged from the hospital, he lost a lot of weight and body strength. He could not complete the required pushups when he took his final APFT (Army Physical Fitness Test). He knew three other Soldiers, including one Soldier in his platoon, who were given a waiver for pushups, but he was not. He felt betrayed and singled out. He worked hard to get where he was and could not understand why he was being treated differently than others. He did not know it, but at the time, he was suffering from anxiety, panic attacks, and depression. He went home on leave after finishing basic training. He had orders in hand to report to Fort Gordon for AIT (Advanced Individual Training) upon his return. He knew he was supposed to return to Fort Jackson and asked a Sergeant at the airport what he should do. The Sergeant told him to follow his orders, so he went to Fort Gordon. However, after arriving at Fort Gordon, he was informed that his command at Fort Jackson was angry and ordered him to return. After this experience, he decided he could no longer be in the Army.

e. Due to the period of service, no active-duty electronic medical records were available for review and no medical documentation was provided of his time in service. However, the applicant provides service records including his Army Physical Readiness Test evidencing that he was able to meet standards on the sit-up and 2-mile run requirement and was recommended to pass on to phase II and III of training. An informal counseling form, dated 3 November 1985, shows he did not meet the minimum push-up standards, but his attitude was positive, and he had a desire to meet standards. However, after repeated attempts to pass the push-up requirement the applicant appeared to become angry and discouraged, with a counseling form dated 21 January 1986 indicating he wanted out of the military. Another counseling form, dated 24 January 1986, notes his negative attitude with no motivation to train. The applicant was again counseled on 27 January 1986 for disrespect towards his superiors and lack of motivation to train. The applicant's negative attitude surfaced subsequent to his failure to meet standards, this willful behavior appears to be the result of his feeling angry and disappointed, not as a result of a BH condition. If the applicant had a BH

condition that was impacting physical readiness, it would have manifested in all areas, including the sit-up and 2-mile run requirement, not only in the push-up requirement.

f. No VA electronic medical records were available for review and the applicant is not service connected for any BH condition. A letter from a civilian provider, dated 19 April 2023, indicates he has been treated intermittently since November 2012 for severe panic attacks with anxiety, depression with suicidal ideation, and post-traumatic stress disorder (PTSD) symptoms. The clinician indicates his mental health issues date back to physical and psychological abuse by his parents and further abuse while in the foster care system. She notes the applicant reports he felt he was succeeding in his training in the Army before he became ill and had to be hospitalized for pneumonia. He felt abused and unfairly treated while in service and reverted to his childhood responses reflective of his mental health problems.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that could mitigate his discharge. However, Per Liberal Consideration guidelines, the applicant's self-assertion of other mental health condition merits consideration by the Board.

#### 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 a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. The applicant did not provide any medical documentation of his time in service, and none was available in the electronic medical record available for review.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides a letter from a clinician indicating childhood trauma and symptoms of anxiety and depression. However, the applicant started treatment with this clinician 26 years post-military service and there is no evidence that the applicant was experiencing anxiety and depression during his time in service. In addition, if the applicant had been impacted by these symptoms during his time in service, they would have hindered all aspects of physical readiness not just the push-up requirement. The applicant also evidenced disrespectful behavior towards his superiors and a lack of motivation to train secondary to not meeting standards, if his behavior were due to symptoms of anxiety and depression, one might expect it to surface during his first three weeks when he described being "constantly yelled and screamed at".

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical advisory the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health diagnosis that could mitigate his discharge. The opine noted applicant started treatment with this clinician 26 years post-military service and there is no evidence that the applicant was experiencing anxiety and depression during his time in service.

2. The applicant was credited with 3 months and 21 days of net active service during this period. He did not complete training and was released from active duty by reason of entry level status performance and conduct. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. The Board determined reversal of the applicant's request for an upgrade of his uncharacterized discharge to honorable is without merit and denied relief.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220002405 on 24 February 2023.

4/11/2024

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 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.
2. Army Regulation 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
  - 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 3-7b states 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.

d. Paragraph 3-9 provides 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.

e. 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.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 to those conditions or experiences.

4. 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, 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.

//NOTHING FOLLOWS//