

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008828

APPLICANT REQUESTS: his DD Form 214 (Certificate of Release or Discharge from Active Duty) be corrected to show:

- an upgrade of his characterization of service from uncharacterized to honorable
- a change to his Narrative Reason for Separation

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

- DD Form 149 (Application for Correction of Military Record), 26 April 2023
- Department of Veteran Affairs Rating Decision Letter, 11 March 2023
- 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 was approved by the Department of Veterans Affairs (VA) for service-connected major depressive disorder with anxious distress, and post-traumatic stress disorder (PTSD). He was seen for depression while on active duty. His discharge should be upgraded because the VA has determined that his mental health conditions are related to his service and his medical records show that he was seen for depression while on active duty. [The applicant identified other mental health, as an issue/concern related to his request].

3. On 27 February 1995, prior to enlisting in the Army National Guard(ARNG), the applicant completed a Standard Form 88 (Report of Medical Examination) and a DD Form 2246 (Applicant Medical Processing Form) which do not show any prior service cocaine use or treatment for depression.

4. On 9 March 1995 the applicant enlisted in the ARNG. On 1 August 1995, he was ordered to active duty for training (ADT).

5. The applicant received the following counseling's that show, in part:

- On 21 August 1995, he complained that he does not want to be there, indicating he wanted to break his contract with the ARNG
- On 21 August 1995, he failed to perform his duties
- On 23 August 1995, unsatisfactory performance during training and disciplinary infractions in third platoon
- On 23 August 1995, he showed a lack of positive attitude and motivation
- On 23 August 1995, an unwillingness to train
- On 26 August 1995, he exhibited attitudes and actions that detracted from and disrupted good discipline

6. The applicant has four psychiatric evaluations, that were completed at the Troop Medical Health Clinic, that show, in part:

a. On 22 August 1995, a diagnosis of "adjustment disorder with mixed emotional fractions." [Applicant] is not suicidal, and he wants to be out of the military. [Applicant] reports history of cocaine abuse, and treatment for depression with no medical record documentation.

b. On 24 August 1995, a diagnosis of "deferred." [Applicant] placed on a line of sight, he states he wants out of the military, or he will kill himself.

c. On 25 August 1995, a diagnosis of "occupational problem." [Applicant] signed no harm contract and maintained that he wanted out of the Army. He is currently disruptive to training environment. Retention in service may escalate disruptive behavior.

7. On 28 August 1995, a Medical Examination for Separation Statement Option shows the applicant selected "I do not desire a separation medical separation".

8. On 28 August 1995, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Enlisted Personnel), Chapter 11, for serious misconduct. He further stated separation is specifically recommended because of the applicant's unwillingness to be a Soldier or a member of the unit. The applicant has expressed his need to get out of the Army, and that he could not handle the stress. Even though Troop Medical has cleared the applicant for training, he states that he would keep going to Mental Hygiene and create problems until they let him leave.

9. On 30 August 1995, the Troop Mental Health Clinic stated the applicant was psychiatrically cleared for administrative action deemed appropriate by command.

10. On 30 August 1995, the applicant acknowledged receipt of notification of his proposed separation from the U.S. Army. He understood that, if approved, he will receive an entry level separation with uncharacterized service. Further, he understood that he will not be permitted to apply for reenlistment in the Army within two years of his separation. Under the provisions of paragraph 2-2, AR 635-200, he made the following elections:

- he did desire to consult with consulting counsel
- he did not desire to make any statements on his own behalf
- he did not obtain copies of documents to be sent to the separation authority supporting the proposed separation
- he did not waive the above in writing

11. On 1 September 1995, consistent with the chain of command recommendations, the separation authority approved his discharge under the provisions of AR 635-200, Chapter 11, an entry level separation.

12. On 7 September 1995, the applicant was released from ADT. His DD Form 214 shows he was released in accordance with Chapter 11, AR 635-200 for entry level performance and conduct with an uncharacterized characterization of service. His DD Form 214 shows:

- He completed 1 month, and 7 days of active service.
- He was awarded or authorized the National Defense Service Medal.
- He was issued separation code "LGA" and reentry code "3".

13. The applicant provides a Department of Veterans Affairs Rating Decision letter, 11 March 2023, that shows service-connected PTSD, with an evaluation of 70% effective 20 January 2022.

14. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his uncharacterized discharge and a change to his Narrative Reason for Separation. He contends he was experiencing mental health conditions including PTSD that mitigates his misconduct and 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) On 9 March 1995 the applicant enlisted in the ARNG. On 1 August 1995, he was ordered to active duty for training (ADT); 2) The applicant received multiple counseling from 21-26 August 1995 for misconduct and demonstrated difficulty with military training; 3) On 7 September 1995, the applicant was released from ADT. He was released in accordance with Chapter 11, for entry level performance and conduct with an uncharacterized characterization of service. He completed 1 months and 7 days of active service.

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) was also examined. The applicant asserts he was experiencing mental health conditions including PTSD, which resulted in his misconduct and separation. Despite the applicant denying any history of mental health conditions prior to his enlistment, he reported a history of cocaine abuse and treatment for depression on 22 August 1995 to his assessing military behavioral health provider. He was diagnosed with Adjustment Disorder with Mixed Emotional Features, and the applicant stated he wanted out of the military. On 24 August 1995, he again reported to want out of the military or he would kill himself. Again, on 25 August 1995, he stated that he wanted out of the Army. It was noted that if he was retained the applicant may escalate his disruptive behavior.

d. A review of JLV provided evidence the applicant engaged in a Compensation and Pension evaluation in 2022. He reported a history of trauma, drug use, and mental health concerns prior to his enlistment. He stated that he did not experience any trauma while in active service, but he felt stressed over a family concern, and he did not want to attend ADT or continue his military service. The applicant underwent another evaluation a few months later after requesting a higher percentage. The applicant has been found to be 70% disabled for Major Depression. 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 he was experiencing mental health conditions including PTSD. The applicant reports experiencing trauma and mental health conditions including depression prior to his enlistment, and he has been diagnosed with service-connected depression since 2022.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was likely experiencing mental health conditions including depression while on active service as indicated by his service-connected depression diagnosis.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was experiencing difficulty adapting to the military due to his history of mental health conditions and current family stressors. The applicant admitted he was not exposed to trauma, but he was unwilling to attend training, and he was experiencing family stress. The applicant failed to disclose his history of mental health concerns prior to his enlistment, and he was quickly identified as not meeting standards for entry level performance. He was repeatedly provided access to behavioral health personnel, but the applicant did not want to engage in behavioral health care and wanted to be discharged from military service. His uncharacterized discharge was not a negative discharge and appropriate characterization of his one month of military service.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant was separated for entry level performance and conduct following his chain of command's assessment of his unwillingness to be a Soldier or a member of the unit and his expression of the need to get out of the Army after contending he could not handle the stress. Even though Troop Medical had cleared the applicant for training, he stated he would keep going to Mental Hygiene and create problems until they let him leave. He completed 1 month and 7 days of initial entry training and was not awarded an MOS. He received an uncharacterized discharge. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

b. Regulatory guidance provides that service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Because the applicant had not completed IET, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. Based on the totality of the applicant's case, the Board determined that neither a change in his characterization of service nor a change to the narrative reason for separation is warranted.

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. 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 (Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. 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.

a. 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.

b. 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.

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.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, implemented Department of Defense policy for standardization of certain entries of DD Form 214 and has been revised to update the separation program designator codes to be used and the authorities and reasons for their control. The SPD code "LGA" corresponded to "Entry Level Performance and Conduct," and the authority, Army Regulation 635-200, Chapter 11.

//NOTHING FOLLOWS//