

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009717

APPLICANT REQUESTS: his service be characterized as honorable.

APPLICANT'S SUPPORTING DOCUMENT 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 (USC), 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 while in the military, he began to suffer from post-traumatic stress disorder (PTSD). He was constantly being verbally assaulted by the drill sergeants and unfairly disciplined in the form of pushups for comprehending a little slower than his platoon. A few times, he was struck on his Kevlar helmet by drill sergeants. In short, he felt as if he was being bullied by his superiors. This led to severe anxiety, which later turned into PTSD. Because of these reasons, he departed his duty station; which led to him being discharged under other than honorable conditions.
3. On 4 March 1999, the applicant enlisted into the U.S. Army Reserve (USAR) in the rank/grade of private (PV1)/E-1 for a period of 8 years.
4. Orders and pertinent amendments show the applicant was ordered to initial active duty for training (IADT) on 5 May 1999 for completion of Basic Combat Training at Fort Benning, GA. He was scheduled to attend Advanced Individual Training (AIT) for military occupational specialty (MOS) 31U (Signal Support Systems Specialist) at Fort Gordon, GA, with a reporting date of 16 July 1999.
5. The applicant's orders were changed to show he would attend AIT for MOS 71D (Legal Specialist) at Fort Jackson, SC, with a reporting date of 6 August 1999. He arrived at Fort Jackson, SC on 29 July 1999.

6. Company A, 369th Adjutant General Battalion, Fort Jackson, SC, reported the applicant's duty status was changed from Present for Duty to Absent Without Leave (AWOL) at 1700 hours on 2 September 1999, and from AWOL to Dropped from Rolls at 1700 hours on 1 October 1999.
7. A DD Form 553 (Deserter / Absentee Wanted by the Armed Forces), dated 5 October 1999, shows the applicant was reported as a deserter to law enforcement agencies effective 1700 on 1 October 1999.
8. A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant on 5 October 1999 for violating the Uniform Code of Military Justice by being AWOL on or about 2 September 1999, from his unit to wit: Alpha Company 369th Adjutant General Battalion, Fort Jackson, SC, and remaining so absent.
9. A DD Form 616 (Report of Return of Absentee) shows the applicant surrendered to military authorities and was returned to military control on 24 April 2000.
10. Orders 01-026-008, issued by Headquarters, USAR Command, Fort McPherson, GA on 26 January 2001, show the applicant was retroactively released from attachment and assigned to Company A, 369th Adjutant General Battalion, Fort Jackson, SC, effective 0001 hours, 1 October 2000 by verbal order of the Commanding General on 1 October 2000. The purpose for this action was for administrative processing of the applicant under the provisions of Army Regulation 630-10 (Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings). The additional instructions portion of the orders stated the applicant would be deleted from USAR strength on the effective date of this order.
11. The applicant's available record is void of a separation packet, separation orders, or a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his period of active duty service. There is no evidence the applicant was awarded a MOS.
12. Orders 02-115-105, issued by Headquarters, 99th Regional Support, Coraopolis, PA on 25 April 2002 show the applicant was discharged from the USAR under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) effective 25 April 2002. His service was "Uncharacterized."
13. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting 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 the U.S. Army Reserve (USAR) on 4 March 1999.
- Company A, 369th Adjutant General Battalion, Fort Jackson, SC, reported the applicant's duty status was changed from Present for Duty to Absent Without Leave (AWOL) at 1700 hours on 2 September 1999, and from AWOL to Dropped from Rolls at 1700 hours on 1 October 1999.
- A DD Form 553 (Deserter / Absentee Wanted by the Armed Forces), dated 5 October 1999, shows the applicant was reported as a deserter to law enforcement agencies effective 1700 on 1 October 1999.
- A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant on 5 October 1999 for violating the Uniform Code of Military Justice by being AWOL on or about 2 September 1999, from his unit to wit: Alpha Company 369th Adjutant General Battalion, Fort Jackson, SC, and remaining so absent.
- A DD Form 616 (Report of Return of Absentee) shows the applicant surrendered to military authorities and was returned to military control on 24 April 2000.
- Applicant's available record is void of a separation packet, separation orders, or a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his period of active-duty service. There is no evidence the applicant was awarded a MOS.
- Orders 02-115-105, issued by Headquarters, 99th Regional Support, Coraopolis, PA on 25 April 2002 show the applicant was discharged from the USAR under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) effective 25 April 2002. His service was "Uncharacterized."

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 ABCMR Record of Proceedings (ROP), DD Form 149, 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 while in the military, he began to suffer from post-traumatic stress disorder (PTSD). He was constantly being verbally assaulted by the drill sergeants and unfairly disciplined in the form of pushups for comprehending a little slower than his platoon. A few times, he was struck on his Kevlar helmet by drill sergeants. In short, he felt as if he was being bullied by his superiors. This led to severe anxiety, which later turned into PTSD. Because of these reasons, he departed his duty station, which led to him being discharged under other than honorable conditions.

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. No VA electronic medical records were available for review and the applicant is not service connected for any BH condition.

f. 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 mitigates his discharge. However, Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD 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 no medical documentation substantiating any BH diagnosis or condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. Of note, the applicant's reported stressor event of being spoken to harshly by his drill sergeant and disciplined with pushups does not qualify or meet diagnostic criteria for PTSD.

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. The applicant, a USAR Soldier who was ordered to ADT, was charged with commission of an offense (AWOL from around 2 September 1999 to around 4 October 2000) that is

punishable under the UCMJ with a punitive discharge. His available record is void of a separation packet, separation orders, or a DD Form 214 for his period of active duty service. There is no evidence the applicant was awarded a MOS. His Reserve Command published orders discharging him from the USAR under the provisions of AR 135-178 with his service "Uncharacterized." Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, 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.
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. The regulation provides that 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.
4. Army Regulation 135-178 establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States and the USAR. Paragraph 2-7 of this regulation provides that at separation, the following types of characterization of service or description of separation are authorized under this regulation:
 - a. Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.
 - b. Separation with an uncharacterized description of service when separated –
 - (1) In an entry level status; or
 - (2) By order of release from custody and control of the Army by reason of void enlistment;
 - (3) By being dropped from the rolls of the Army.
5. 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. Chapter 3 provided that a separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. Paragraph 3-7a provided 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 3-9, in effect at the time of the applicant's separation, provided 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.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 (UOTHC) 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.

7. 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 to those conditions or experiences.

8. 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//