

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009747

APPLICANT REQUESTS: an appearance before the Board via video or telephone, and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- his uncharacterized service as honorable
- his name as [REDACTED] in Item 1 (Name)

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

- DD Form 149 (Application for Correction of Military Record)
- letter, Department of Veterans Affairs (VA), dated 25 April 2023

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 his current legal name is [REDACTED]. His discharge for medical reasons was not his choice. He wanted to finish his tour and commitment but was deemed medically unable to do so. He served more than 90 days, which is considered sufficient for Veteran status. He has been informed this is a standard request. The applicant notes post-traumatic stress disorder (PTSD) as a condition related to his request.

3. Prior to his enlistment, the applicant underwent a medical examination on 29 October 1992. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show he reported being in good health. The examination determined he had pes planus, mild, bilateral. However, the examining provider determined he was medically qualified for enlistment.

4. The applicant enlisted in the Regular Army on 10 November 1992 for a 3-year period. He reported to Fort Benning, GA, for initial entry training. His service record indicates he did not complete initial entry training prior to discharge.
5. A DA Form 4707 (Entrance Physical Standards Board [EPSBD] Proceedings), dated 27 January 1993, shows the following:
  - the applicant was seen and evaluated during his 7th week of initial entry training
  - he presented with flat feet, which he had his “whole life”
  - he was diagnosed with positive pes planus (moderate) feet, bilaterally
  - the condition would not get better in training and existed prior to service
  - the board recommended that he be separated from the military by reason of failure to meet medical procurement standards
  - the applicant concurred with the proceedings and requested a discharge from the U.S. Army without delay
6. On 4 February 1993, the applicant's immediate commander recommended his discharge based on the EPSBD findings. The separation authority approved the recommendation on 9 February 1993.
7. The applicant was discharged on 16 February 1993, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards/no disability. His DD Form 214 confirms his service was uncharacterized. He was credited with 3 months and 7 days of net active service. He was not awarded a military occupational specialty.
8. The applicant's enlistment documents, and subsequent service records, consistently show his name as [REDACTED].
9. The applicant provides a letter from the VA, dated 25 April 2023, which shows he has a combined service-connected disability rating of 40 percent (%) for lumbar back strain, pes planus, left ankle strain, and left knee strain.
10. The applicant does not provide evidence confirming a court-ordered name change.
11. 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. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.
12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

### 13. MEDICAL REVIEW:

a. Background: The applicant is requesting a change in his uncharacterized service to honorable.

b. This opine will narrowly focus on the applicant's request for a change in discharge. The other portions of the applicant's request will be deferred to the Board.

c. 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 Regular Army on 10 November 1992.
- Applicant was discharged on 16 February 1993, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards/no disability. His DD Form 214 confirms his service was uncharacterized, with separation code JFT and reentry code RE-3. He was credited with 3 months and 7 days of net active service. He was not awarded a military occupational specialty.

d. 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 completed DD Form 149, DD Form 214, VA letter, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV).

e. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic medical record available for review shows the applicant is 70% service connected for medical issues but has no service connection for any behavioral health condition. The VA record further indicates the applicant has not participated in any behavioral health treatment.

f. Based on the information available, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his discharge misconduct.

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 self-asserts PTSD.

(2) Did the condition exist or experience occur during military service? No. The applicant did not submit any medical documentation substantiating any BH condition.

(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.

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 requests for changes to discharges. The Board considered the applicant's statement and the reason for his separation. The Board considered the applicant's BH claim and the review and conclusions of the ARBA BH Advisor. The Board concurred with the conclusion of the medical advising official regarding the absence of any evidence of BH conditions that had any bearing on his discharge processing. The evidence confirms the applicant was in an entry-level status when he was discharged by reason of not meeting procurement medical fitness standards, and therefore his service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is not in error or unjust.
  
3. Regarding the applicant's name change, the Board determined there is no basis for granting the requested relief in the absence of documentation confirming a court-ordered name change.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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.

8/27/2024

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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, USC, 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing. 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. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release

from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 3-9, 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.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. The character of

service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

6. 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 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 sexual assault or sexual harassment was unreported, or 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.

7. 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//