

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230010037

APPLICANT REQUESTS: his uncharacterized service be characterized as honorable, and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 18 July 2023
- medical diagnosis of post-traumatic stress disorder (PTSD)
- disability benefits questionnaire
- Department of Veterans Affairs (VA) benefits rating
- personal statement
- military medical record
- Official Military Personnel File (OMPF)

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, in effect, the correction of a discharge upgrade should be made due to him suffering from an undiagnosed and untreated mental health condition, PTSD, while in basic training.
3. The applicant enlisted in the Regular Army on 12 September 1997, for a period of 4 years. He was not awarded a military occupational specialty and the highest rank he attained was private/E-1.
4. The applicant received initial entry training counseling for Soldiers, dated 14 November 1997, on the expectations during basic combat training. It additionally shows during phase 1 and phase 2 he had failed the Army Physical Fitness Test and had not met all requirements to pass on to the phase 2 and phase 3 portion of basic combat training.

5. Numerous DA Forms 4856 (General Counseling Forms), dated between 22 November and 19 December 1997 show he was counseled for:

- multiple failures to pass the Army Physical Fitness Test
- multiple failures to meet the standards for basic rifle marksmanship
- missing training due to being on code and using crutches for 7 days
- retraining to aid basic rifle marksmanship

6. On 19 December 1997, the applicant's platoon sergeant counseled him on his recommendation for entry level separation due to basic rifle marksmanship failure. He was given 10 attempts to qualify with his rifle, and remedial training to try and correct his short comings. Specifically adding, a Soldier must pass basic rifle marksmanship to proceed to the next phase of basic training. The applicant had failed to qualify.

7. On 19 December 1997, the first sergeant and the company commander counseled him for his recommendation for elimination from service due to his inability to pass basic rifle marksmanship training.

8. The applicant's immediate commander notified him on 6 January 1998 that he was initiating actions to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11 (Entry Level Status Performance and Conduct). As the specific reason, the commander cited the applicant's failure to complete the basic rifle marksmanship test.

9. The applicant acknowledged receipt of the proposed separation notification on the same date. He was advised of the reasons for separation and of the rights available to him. He consulted with counsel and elected to waive his rights.

10. The applicant's immediate commander formally recommended her separation under the provisions of AR 635-200, Chapter 11. The separation authority approved the recommendation on 8 January 1998 and directed the issuance of an entry level separation (uncharacterized).

11. The applicant was discharged on 12 January 1998, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized with a separation code of JGA and reentry code of 3. He was credited with 4 months and 1 day of net active service and his service was uncharacterized.

12. The applicant provides the following:

a. A psychiatrist assessment that diagnosed him with having chronic PTSD, panic disorder, generalized anxiety disorder, and recurrent major depressive episodes (moderate).

b. His PTSD disability benefits questionnaire referencing his diagnosis of PTSD, panic disorder, generalized anxiety disorder and major depressive disorder.

c. His VA benefits rating letter, showing he receives service-connected benefits for PTSD of 50 percent.

d. A personal statement submitted to the VA referencing his personal trauma. He recounts an incident where he was stepping off the transportation truck, and was shoved by Drill Sergeants causing him injuries to his wrists, forearms, his left knee, and the bottom of his feet. The injuries were aggravated from training and resulted in his inability to perform basic rifle marksmanship and the required physical training. He was harassed by Drill Sergeants which led to his assault by fellow Soldiers. He was choked almost to death, placed in a headlock, lost consciousness and fell to the ground, and he overheard Drill Sergeants saying "make it look like an accident next time". He was put into continuously dangerous, violent, and life threatening environments. The stress, fear, and trauma was so extreme it manifested itself emotionally, psychologically, and physically, causing him significant distress and impairment which he suffers from to this day.

e. His military medical record in its entirety sent from the VA Records Management Center.

d. His OMPF in its entirety sent from National Personnel Records Center.

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 can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of his uncharacterized service be characterized as honorable.

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:

- The applicant enlisted into the Regular Army on 12 September 1997.
- The applicant received numerous counselings while in basic training as related to failure to pass the APFT and failure to pass basic rifle marksmanship. He was recommended for elimination from service on 19 December 1997.
- The applicant was discharged on 12 January 1998 under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct. He was credited with 4 months and 1 day of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he suffered from PTSD while in basic training. A psychiatric assessment dated 8 May 2023 was reviewed and noted symptoms of PTSD, which were attributed to the applicant's experiences in basic training. The document noted no history of mental health diagnosis or treatment but briefly discussed suicidal thoughts in 1998. The diagnoses were PTSD, Panic Disorder, Generalized Anxiety Disorder, and Recurrent Major Depressive Episodes, and the applicant was started on an antidepressant. A VA Disability Benefits Questionnaire (DBQ) for PTSD was reviewed and showed similar symptoms and diagnoses. It was authored by the same psychiatrist who completed the evaluation and was dated 22 May 2023. A VA disability rating letter dated 19 July 2023 was included and indicated that the applicant is service-connected at 50% for PTSD effective 16 May 2023. The application also includes a letter signed by the applicant delineating his experiences while in basic training. A Report of Medical Assessment signed by the applicant and dated 6 January 1998 indicated "no" (problems) to all questions about his physical and mental health, and the medical records provided showed evidence that he was not adapting well to the military or basic training environment. There was insufficient evidence that the applicant was diagnosed with PTSD, or any mental health condition, while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant initially engaged mental health care at the VA on 28 August 2023, and he endorsed symptoms of depression, anxiety, and PTSD. He attended three group sessions and one individual follow up visit, and his most recent prescription for the antidepressant was dated 1 April 2024.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates the characterization of his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the discharge, and he has been diagnosed with PTSD by a VA psychological examiner.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he has PTSD as a result of his experiences in basic training.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence that the applicant was experiencing a mental health condition, including PTSD, while on active service. Medical records from his time in service do not indicate any report of mental distress, and there is insufficient evidence that the applicant was exposed to an experience at initial training that was atypical. However, there is documentation that the applicant was diagnosed with PTSD by the VA in 2023, but he had no mental health diagnosis or treatment history prior to that, which makes it unclear of the exact onset of symptoms. However, the applicant contends he experienced PTSD as a result of his active service, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was separated under the provisions of chapter 11 of AR 635-200, due to entry level status and performance. He completed 4 months and 1 day of active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. The Board found no error or injustice in his separation processing. 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. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official's finding insufficient evidence of a medical condition that failed medical retention standards and necessitated his entry into the disability system and insufficient evidence to support that the applicant had a condition or experience that mitigates the characterization of his discharge. Based on a preponderance of evidence, the Board determined that neither a discharge upgrade nor a referral of her case to the DES is warranted.

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.

█

█ █

---

█

█

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 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. 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.

e. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

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 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. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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//