

IN THE CASE OF: ██████████

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230010128

APPLICANT REQUESTS: upgrade her uncharacterized discharge to general under honorable conditions or honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120015902 on 5 March 2013.

2. The applicant states, in effect:

a. She was released from service during basic training and was told she was being released due to a physical condition; however, she was never seen by a doctor to be diagnosed. She was also told that her discharge would be amended to a "general" discharge after a period of time. That was not the case and when she looked into it, she was told that her discharge was being changed to dishonorable.

b. She feels as though she was targeted by her drill sergeant at the time, as there were several instances that caused her to feel that way. She was sent to the Chaplain due to suspected mental health issues. She alleges the Chaplain said to her that she "needed to stop being a pussy, cut ties with her family or she was never going to get better. " Three days following her visit to the chaplain, she was given her discharge papers and placed on a bus.

c. She was never given a chance to work through any "mental health" issues, but rather pushed out. She is unable to get any help from the Department of Veterans Affairs (VA) due to her discharge from the military. She has spent a great amount of time attempting to get help for her mental health issues.

3. A review of the applicant's service records shows:

a. She enlisted in the Army National Guard on 20 June 2002 for eight (8) years.

b. A Report of Mental Status Evaluation, dated 6 November 2002, reflects an evaluation was conducted on the applicant and she was found to have normal behavior, fully alert, fully oriented, depressed, clear thinking process, normal thought content, good memory, have the mental capacity to understand and participate in the proceedings, and was mentally responsible. The "Remarks" section states the applicant was evaluated "for symptoms of depression manifesting in suicidal ideations and a decrease in sleep, appetite and concentration sufficiently sever so that the Soldier's ability to perform military duties is significantly impaired. Command is advised that this will potentially interfere with assignment or performance of duty, including military training. There is no indication that this disorder has been aggravated by the service member's (SM) relatively short period of active duty. This condition is not amenable to rehabilitation while in initial entry training and does not amount to a disability. This soldier should be removed from training. Training with weapons is specifically not recommended. This SM was placed on unit watch 6 November 2002."

c. On 8 November 2002, the commander informed the applicant of the initiation of separation proceedings under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-17, other designated physical or mental condition. The reasons for the commander's proposed action were "other medical conditions," for emotional control and behavioral problems incompatible with military service.

d. The applicant acknowledged receipt of the commander's intent to separate her on 8 November 2002. She elected to waive consulting with legal counsel and representation by military counsel and civilian counsel at no expense to the Government. She acknowledged that she:

- understood she could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to her
- understood she could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if she received a discharge characterization of less than honorable, she could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but she understood that an act of consideration by either board did not imply her discharge would be upgraded

e. On 13 November 2002, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 5-17, other designated physical

or mental conditions, and directed that she be issued an Entry Level Separation (uncharacterized).

f. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects she was discharged on 15 November 2002, under the provisions of AR 635-200, paragraph 5-17, physical condition, not a disability, with uncharacterized service. She completed 1 month and 9 days of net active service this period.

g. Military Department [REDACTED] Office of The Adjutant General Orders 326-005, dated 22 November 2002, reflect the applicant was discharged from the Army National Guard and as a Reserve of the Army on 16 November 2002 with uncharacterized service.

h. NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) reflects the applicant was separated from the Army National Guard of Arkansas and as a Reserve of the Army on 16 November 2002, under the provisions of NGR 600-200, paragraph 8-26c, Entry Level Status and Conduct, with uncharacterized service. She served 4 months and 27 days of net service this period.

4. AR 635-200, paragraph 5-17, provides that when a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation.

5. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her uncharacterized discharge be upgraded to general under honorable conditions or 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: 1) The applicant enlisted in the Army National Guard on 20 June 2002. She was placed on active duty to attend Initial Training on 07 October 2002; 2) The applicant was discharged on 15 November 2002, Chapter 5-17, physical condition, not a disability, with a character of service of uncharacterized. She completed 1 month and 9 days of net active service; 3) The applicant was separated from the Army National Guard of Arkansas and as a Reserve of the Army on 16 November 2002, under the provisions of NGR 600-200, paragraph 8-26c, Entry Level Status and Conduct, with a character of service of uncharacterized.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) 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.

d. The applicant was provided a mental status evaluation from a military behavioral health provider on 6 November 2002. The applicant was found to meet retention standards from a psychiatric perspective. However, she was reported to be experiencing depression and suicidal ideation. The applicant was found to not be adjusting to her military duties, and she was recommended for administrative separation. A review of JLV provided insufficient evidence the applicant has been diagnosed with service-connected mental health condition, and she does not receive service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant was experiencing difficulty adjusting the military. She was accurately identified, assessed, and administratively separated from the military from a behavioral health perspective.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No, there is sufficient evidence to support the applicant was experiencing difficulty adjusting the military. She was accurately identified, assessed, and administratively separated from a behavioral health perspective.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

#### BOARD DISCUSSION:

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 discharge upgrade requests. The Board considered the applicant's statement, her record of service, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA BH Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that the evidence supports the decision to separate her based on a condition that was not a disability. The evidence confirms that she was an entry level Soldier, and therefore her service was uncharacterized in accordance with the governing regulation. Uncharacterized service is neither positive nor negative; it simply means the Soldier had

not served long enough to have his or her character of service fairly assessed. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is not in error or unjust.

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.

8/18/2024

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 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 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Paragraph 3-7a(1) provides that only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty (AD) or active duty training (ADT) or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

c. Paragraph 3-7b provides that 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 5-17 of the regulation provides, in pertinent part, that Commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to a disability and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13 that potentially interfere with assignment to or performance of duty.

e. Entry-level status is defined as, for Regular Army Soldiers, the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

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 based on 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.

//NOTHING FOLLOWS//