

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230010463

APPLICANT REQUESTS: Reconsideration of his request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his service as "Under Honorable Conditions (General)" rather than "Uncharacterized."

APPLICANT'S SUPPORTING DOCUMENT 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 AR20190000762 on 19 November 2019.

2. The applicant states he was suffering from mental health issues while serving because his grandfather died, and he did not attend the funeral. He also has trauma from being thrown off the top of a bunk bed by a Drill Sergeant because he overslept and was late for duty cleaning the halls and latrine. As a result, he hit his head hard and suffers from floaters in his left eye and hearing loss. His legs, back, and neck still have not fully healed and he still suffers pain from this incident that occurred while he was serving. He is coming forward because he has been living with these injuries and trauma ever since, but it seems it is getting worse and he would like to receive treatment at a Department of Veterans Affairs healthcare facility.

3. On 2 November 2000, the applicant enlisted in the Regular Army in the rank/grade of private/E-1 for a period of 3 years.

4. DA Forms 4856 (General Counseling Form) show the applicant was counseled on the following dates for the indicated reasons. He was repeatedly advised that failure to meet the standards set by the Army could and would result in administrative action being taken against him that could result in him being discharged from the Army.

- 20 November 2000 – a Drill Sergeant counseled him regarding willfully disobeying a direct order from a noncommissioned officer (NCO) and his

recommendation that the applicant receive summarized nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ)

- 19 January 2001 – a Drill Sergeant counseled him regarding his failure to obey an order or regulation and his recommendation that the applicant receive summarized NJP under the provisions of Article 15, UCMJ

5. On 26 January 2001, the applicant accepted company grade summarized NJP under the provisions of Article 15, UCMJ for disobeying an order from an NCO on 5 January 2001. His punishment consisted of extra duty and restriction for 14 days.

6. On 26 January 2001, the applicant was counseled by a Drill Sergeant regarding his failure to obey an order from an NCO on 26 January 2001. The applicant was advised that he was being recommended to receive NJP and to be administratively separated from the Army due to his inability to conform to established standards of conduct.

7. On 6 February 2001, the applicant's immediate commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's failure to adapt to the military environment. He failed to meet the minimum standards prescribed for successful completion because of lack of aptitude, motivation, or self-discipline. He had failed to respond to counseling and required time which took away from the training of other Soldiers. He further advised the applicant that if his separation was approved, he would receive an entry level separation with an uncharacterized discharge.

8. The applicant acknowledged receipt of the separation notification and rendered his election of rights wherein he stated he had been advised of the basis for the contemplated action to separate him for Entry Level Status Performance and Conduct, under the provisions of Army Regulation 635-200, Chapter 11, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He indicated he desired to consult with counsel but declined his right to provide statements in his own behalf. On 14 February 2001, he elected not to undergo a separation medical examination.

9. The applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11, with an uncharacterized (entry level separation).

10. On 22 February 2001, the separation authority approved the recommended separation with the issuance of an uncharacterized entry level discharge.

11. Orders and the applicant's DD Form 214 show the applicant was discharged on 27 February 2001 under the provisions of Army Regulation 635-200, Chapter 11, with Separation code "JGA" and Reentry code "3." His narrative reason for separation was "Entry Level Performance and Conduct." He was credited with completion of 3 months and 26 days of net active service this period. He was not awarded a military occupational specialty.

12. The applicant petitioned the ABCMR for relief. On 7 February 2020, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request.

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 merely means the Soldier did not serve on active duty long enough for her or her character of service to be rated.

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. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the applicant's previous ABCMR denial, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reconsideration of their prior denial of his request for an upgrade of his 27 February 2001 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). On his DD Form 149, the applicant has indicated that PTSD and other mental health concerns are related to his request. He states:

"I would like my discharge changed to Under Honorable Conditions. I was suffering from Mental Health Issues while serving because I lost my grandpa while serving and I was not able to attend the funeral.

I also have trauma from being thrown off the top bunk bed by DI [drill instructor SSGT B. because I was on a late duty for cleaning the halls and Latrine and overslept, because of this I hit my head hard and suffer from floaters on my left eye and hearing lost. My legs/ back/ neck still have not fully healed and there is still pain till this day which started during my service."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 2 November 2000 and was discharged on 27 February 2001 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000), for falling below entry level performance and conduct standards. His separation code of JGA denotes "Entry level status performance and conduct."

d. This request was denied by the ABCMR on 19 November 2019 (AR20190000762). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

e. No additional evidence was submitted with this application and there was no documentation submitted with AR20190000762.

f. A documented influenza vaccination is the applicant's only clinical encounter in JLV and there are no diagnoses listed on his medical problem list.

g. There is no probative evidence the applicant had a service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

h. It is the opinion of the Agency Medical Advisor that neither a discharge upgrade nor a referral of his case to the Disability Evaluation System is warranted.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD and other mental health conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts PTSD and other mental health conditions occurred while he was in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition. However, as per Liberal Consideration guidance, the applicant's self-assertion alone merits consideration by the board.

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 applicant was separated for entry level status and her service was uncharacterized. He completed 3 months and 26 days of net active service. 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 reviewed and agreed with the medical reviewer's finding no probative evidence the applicant had a service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The Board determined that a discharge upgrade is unwarranted.

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 to amend the decision of the ABCMR set forth in Docket Number AR20190000762 on 19 November 2019.

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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 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.
  
2. 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 has occurred by a preponderance of the evidence. It is not an investigative body. 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.

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. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on entry level performance and conduct.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014 [Hagel Memorandum], to carefully consider the revised post-traumatic stress disorder (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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//