

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230010592

APPLICANT REQUESTS: correction of his military records as follows:

- change his rank/grade from private first class (PFC)/E-3 to specialist (SPC)/E-4
- change his "entry level performance and conduct" discharge to a disability discharge
- add a marksmanship badge

APPLICANT'S SUPPORTING DOCUMENT(S) 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, 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 the commander that wrote his discharge did not know him as a person and she characterized him as a "She" in the discharge when his pronouns are he/him. They forcefully reframed him from properly training and also verbally forced him to discharge from the Army by making threats on his life and wellbeing if he had stayed. [The applicant marked Post-Traumatic Stress Disorder (PTSD) and Other Mental Health on his application].
3. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) already lists the applicant's rank/grade as SPC/E-4. Additionally, the applicant did not specify in what weapon system he qualified and the degree of qualification. As such, neither of these two issues will be discussed further in this Record of proceedings.
4. The applicant enlisted in the Army National Guard (ARNG) on 16 April 2002. He was discharged with an uncharacterized discharge on 5 March 2003 for failure to report to initial active duty training, Phase 1 or 2.

5. After a break, the applicant enlisted in the Regular Army in the rank and grade of SPC/E-4 on 9 February 2011. He was assigned to Fort Leonard Wood, MO, for training. During training the applicant was frequently counseled for infractions including:

- Failure to follow orders
- Disregard of the Army values
- Lying to a noncommissioned officer
- Lack of motivation

6. On 19 April 2011, the applicant accepted nonjudicial punishment under Article 15 for failing to obey an order by wrongfully consuming unauthorized food while in a training status. His punishment consisted of reduction to PFC/E-3 and extra duty for 14 days.

7. On 12 May 2011, the applicant's immediate commander notified the applicant of her intent to initiate separation action against him under the provisions of chapter 11 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), due to entry-level performance and conduct. The reasons for the commander's proposed action are: The applicant has willfully refused to adapt socially and emotionally to military life. He has also refused to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, and self-discipline. Therefore, he is qualified to be discharged from service in accordance with AR 635-200, Chapter 11. He has been provided with the counseling and rehabilitation required by paragraph 11-4.

8. On 12 May 2011, the applicant acknowledged receipt of the separation notification in accordance with chapter 11 of AR 635-200. He waived consulting with counsel. He was advised by his commander of the basis for the contemplated action to separate him for entry level performance, the effects of this separation, the rights available to him, and the effects of any action taken by him in waiving his rights. He acknowledged he understood if the request for discharge were approved, he would receive an entry-level separation with uncharacterized service. He further elected not to submit a statement in his own behalf.

9. Subsequent to the applicant's acknowledgement, the immediate commander initiated separation action against him in accordance with chapter 11 of AR 635-200 for willfully refusing to adapt socially and emotionally to military life and refusing to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, and self-discipline.

10. On 17 May 2011, the separation authority waived the rehabilitation requirements and approved the applicant's discharge under the provisions of chapter 11, AR 635-200, and directed the applicant's service be uncharacterized. Accordingly, the applicant was discharged on 31 May 2011.

11. The applicant's DD Form 214 confirms he was discharged in the rank/grade of SPC/E-4 due to entry-level performance and conduct in accordance with chapter 11 of AR 635-200 with uncharacterized service (Separation Code JGA, Reentry Code 3). He completed 3 months and 22 days (112 days) of creditable active military service. He was not awarded a military occupational specialty and he did not complete his first full term of service. He was not awarded any awards or decorations.

12. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge processing within that board's 15-year statute of limitations.

13. On 5 October 2023, a staff member of the Case Management Division emailed the applicant and informed him that in order for the Army Board for Correction of Military Records (ABCMR) to consider his application, he must provide a copy of the medical documents that support his mental health issues (PTSD). The applicant did not respond to the email.

14. On 17 October 2023, a staff member of the Case Management Division mailed a letter to the applicant informing him that in order for the ABCMR to consider his application, he must provide a copy of the medical documents that support his mental health issues (PTSD). The applicant did not respond to the letter.

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

16. MEDICAL REVIEW:

a. Background: The applicant is requesting a change in his "entry level performance and conduct" discharge to a disability discharge. In addition to a change in his rank/grade from private first class (PFC)/E-3 to specialist (SPC)/E-4 and the addition of a marksmanship badge. 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. 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 Army National Guard (ARNG) on 16 April 2002. He was discharged with an uncharacterized discharge on 5 March 2003 for failure to report to initial active-duty training, Phase 1 or 2.
- Applicant enlisted in the Regular Army in the rank and grade of SPC/E-4 on 9 February 2011.
- During training the applicant was frequently counseled for infractions including:
- Failure to follow orders

- Disregard of the Army values
- Lying to a noncommissioned officer
- Lack of motivation
- On 19 April 2011, the applicant accepted nonjudicial punishment under Article 15 for failing to obey an order by wrongfully consuming unauthorized food while in a training status.
- On 12 May 2011, the applicant's immediate commander notified the applicant of her intent to initiate separation action against him under the provisions of chapter 11 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), due to entry-level performance and conduct. The reasons for the commander's proposed action are: The applicant has willfully refused to adapt socially and emotionally to military life. He has also refused to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, and self-discipline.
- Applicant was discharged on 31 May 2011. His DD Form 214 confirms he was discharged in the rank/grade of SPC/E-4 due to entry-level performance and conduct in accordance with chapter 11 of AR 635-200 with uncharacterized service (Separation Code JGA, RE-3. He completed 3 months and 22 days (112 days) of active military service. He was not awarded an MOS; he did not complete his first full term of service.

b. 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, 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). Lack of citation or discussion in this section should not be interpreted as lack of consideration. The applicant states the commander that wrote his discharge did not know him as a person and she characterized him as a "She" in the discharge when his pronouns are he/him. They forcefully reframed him from properly training and also verbally forced him to discharge from the Army by making threats on his life and wellbeing if he had stayed.

c. Due to the period of service, limited active-duty electronic medical records were available for review. The one BH encounter, dated 8 April 2011, indicates the applicant possibly had anxiety due to a potential discharge from military service. The applicant submitted hardcopy documentation from his time in service evidencing an Enlisted Record Brief, dated 5 May 2011, showing his PULHES "111111". In addition, a Developmental Counseling Form, dated 24 March 2011, indicates the applicant's response to being counseled was his statement, "I do not believe I am fit for military service".

d. The VA electronic medical record available for review shows the applicant is not service connected and has not participated in any behavioral health treatment. The

applicant initiated supportive services with the VA in January 2017 due to homelessness, but he did not reconnect again until 14 September 2020, with the record evidencing intermittent contact with the VA through August 2023. The record evidences his encounters were related to problems with housing or economic circumstances. In addition, the applicant had repeated contact with the Veteran's Crisis Line where he would call about his benefits and his discharge upgrade; despite being informed that this was not the mechanism to obtain his requests.

e. 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 condition that mitigates his misconduct. In addition, there is insufficient evidence to support a referral to the IDES process, at this time, since the applicant has not been treated and is not service connected for any BH condition. Even if the applicant had a service connection based on a behavioral health diagnosis, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. Even if the applicant had received a subsequent diagnosis through the VA, it would not be indicative of an injustice at the time of service. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

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 and OMH as mitigating conditions.

(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:

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 of record shows the applicant was separated for entry level performance and

conduct (willfully refused to adapt socially and emotionally to military life; and refused to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, and self-discipline). He did not complete initial entry training and was not awarded a military occupational specialty. He completed 3 months and 22 days of net active service. His service was uncharacterized. An uncharacterized discharge is given to individuals on active duty 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 also reviewed and agreed with the medical reviewer's finding that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. In addition, there is insufficient evidence to support a referral to the integrated disability evaluation system process.

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, 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 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 11 of this regulation, in effect at the time, governed the entry level status discharge. It provided for the separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or have failed to respond to formal counseling. The regulation essentially requires that the service member must have voluntarily enlisted; must be in basic, advanced individual, on the job or service school training, and must not have completed of more than 179 days of active duty on their current enlistment by the date of separation. The regulation provided that Soldiers may be separated when they have demonstrated that they are not qualified for retention due to failure to adapt socially or emotionally to military life; cannot meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; or have demonstrated character and behavior characteristics not compatible with satisfactory continued service. The regulation required an uncharacterized description of service for separation under this chapter.

b. Chapter 3 describes the different types of characterization of service. It states that an uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable condition is authorized under the reason for separation and is warranted by the circumstances of the case or when The Secretary of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. For the purposes of characterization of service, the Soldier's status is determined by the date of notification as to the initiation of separation proceedings (emphasis added). Entry level status is defined as follows:

- Upon enlistment, a Soldier qualifies for entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active service after a service break of more than 92 days of active service.

- A member of a Reserve Component (RC) who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in an RC.

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//