

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230011005

APPLICANT REQUESTS: his uncharacterized service be characterized as honorable.

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

DD Form 149 (Application for Correction of Military Record), 18 July 2023

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, while attempting to serve he was discharge due to asthma. Due to the amount of time served he is unable to be considered a veteran. The applicant notes other mental health as a condition related to his request.
3. Prior to his enlistment, the applicant underwent a medical examination on 27 January 1997. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show he reported being in fair health. The examination determined he had pes cavus, mild. However, the examining provider determined he was medically qualified for enlistment.
4. The applicant enlisted in the Regular Army on 17 March 1997, for a period of 3 years. He reported to Fort McClellan, Alabama, 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 31 March 1997, shows the following:
 - a. He admitted to fraudulent enlistment without admission of a previous medical condition.

b. He was symptomatic after physical training run in which he had difficulty recovering.

c. He was treated for some years with inhalers by civilian medical doctor.

d. He was diagnosed with reactive airway disease.

e. The physicians recommended that he be separated from the military by reason of failure to meet medical procurement standards.

f. He concurred with the proceedings and requested to be discharged from the US Army without delay on 2 April 1997.

6. The applicant was counseled about his rights in connection with the processing of an EPSB. He was informed he did not meet procurement medical fitness standards at the time of his enlistment. He understood legal advice was available for him if he initiated the action himself, and further understood he may request retention on active duty. He applied for separation and requested a commercial ticket for his transportation to his home of record.

7. On 2 April 1997, the applicant's immediate commander further recommended his discharge based on the EPSBD findings. The separation authority approved the recommended discharge action, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, with uncharacterized service.

8. The applicant was discharged on 9 April 1997, under the provisions of AR 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized, with separation code JFW and reentry code RE-3. He was credited with 1 month and 3 days of net active service. He was not awarded a military occupational specialty.

9. In the processing of this case, the Army Review Boards Agency (ARBA), Case Management Division, contacted the applicant, on 26 October 2023, to request medical documentation in support of his mental health issues. To date, no additional documentation has been received.

10. 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 their character of service to be rated as honorable or otherwise.

11. 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.

MEDICAL REVIEW:

1. The applicant requests upgrade of his Uncharacterized Discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues.

2. 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 into the Regular Army on 17 March 1997; 2) A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings, dated 31 March 1997 shows, in part, the applicant admitted to fraudulent enlistment without admission of a previous medical condition, that he was treated with an inhaler for years, that the examining physicians recommend he be separated for failing medical procurement standards, and that the applicant concurred, and on 2 April 1997 requested to be separated without delay; 3) On 2 April 1997, the applicant's immediate commander further recommended his discharge based on the EPSBD findings. The separation authority approved the recommended discharge action, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11, with uncharacterized service; 4) The applicant was discharged on 9 April 1997, under the provisions of AR 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards.

3. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is his Report of Medical History and Report of Medical Examination, dated 27 January 1997, that shows he was medically qualified for enlistment. Also included in the casefile is the applicant's EPSBD Proceedings document, dated 31 March 1997, that shows the applicant admitted to multiyear treatment for Asthma and admitted to fraudulently enlisting without admission of his previous medical condition. No military BH-related documentation was provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability. No civilian BH-related records were provided for review.

4. The applicant requests upgrade his Uncharacterized Discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to support his misconduct was related to or mitigated by Other Mental Health Issues. Records suggest the applicant was separated due to Asthma that EPS.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

6. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The contends his misconduct was related to Other Mental Health Issues.

b. Did the condition exist or experience occur during military service? Yes.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to support his misconduct was related to or mitigated by Other Mental Health Issues. Records suggest the applicant was separated due to Asthma that EPS.

BOARD DISCUSSION:

1. The Board carefully considered the applicant request for his uncharacterized service be characterized as honorable, his contentions, his military record, and regulatory guidance. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The answer to the first two critical Kurta questions is yes, and no to the third. There was no behavioral health diagnosis or treatment history for preservice, during service, or post service. Additionally, the record suggest he was separated from asthma that existed prior to service. This was an entry level discharge, so "uncharacterized" is correct; there is no evidence of any error, injustice, or irregularities.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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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. Title 10, U.S. Code, Section 1556, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. 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.

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 post-traumatic stress disorder; 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.

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//