

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230011305

APPLICANT REQUESTS: an upgrade of his characterization of service from uncharacterized to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 31 July 2023
- Department of Veterans Affairs (VA) decisions letter, 23 August 2022

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, he is 100 percent (%) disabled from his service due to his mental health conditions, which include post-traumatic stress disorder (PTSD), agoraphobia and triggered bipolar, he feels he was separated unfairly with an under other than honorable conditions characterization of service.
3. On his DD Form 149, he notes post-traumatic stress disorder (PTSD), and other mental health are related to his request.
4. The applicant enlisted in the Regular Army on 21 July 2005, for a period of 4 years. He reported to Fort Jackson, SC, for completion of his initial entry training.
5. His Enlisted Record Brief (ERB) shows the highest rank he attained was private first class (PFC)/E-3.
6. His DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 22 August 2005, shows the following:
 - the applicant was identified as having an existed prior to service condition
 - he was diagnosed with depressive disorder and polysubstance dependence

- he had a gun shot wound and a chest x-ray confirmed the presence of the bullet
- the board recommended that he be separated from the military for failure to meet medical procurement standards
- he concurred with the proceedings, waived his right to legal counsel, and requested to be discharged from the U.S. Army without delay

7. On 21 September 2005, the applicant was advised of the basis for the contemplated action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11 (Separation of Personnel who did not meet Procurement Medical Fitness Standards). He acknowledged that he understood he would receive an entry-level separation with an uncharacterized discharge. He elected to submit a statement in his behalf:

a. A DA Form 2823 (Sworn Statement) shows he stated he was being discharged due to a bullet in his lower ribs, his depression, and anxiety. His previous recruiter knew he was previously shot.

b. He agreed to the separation because he felt he was not mentally stable, and he did not meet the physical requirements to serve due to a bullet near his ribs.

8. A DA Form 4856 (Developmental Counseling Form), dated 22 September 2005, shows the command recommended separation from the Army based on the results of an EPSBD, the applicant agreed with the recommendation.

9. The applicant's immediate and intermediate commander recommended approval of his separation in accordance with AR 635-200, paragraph 5-11.

10. The separation authority approved the applicant's separation on 3 October 2005 under the provisions of AR 635-200, paragraph 5-11 and directed his service be characterized as entry-level, uncharacterized.

11. The applicant was discharged on 19 October 2005, under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical procurement standards, in the grade of E-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized, with separation code JFW and reentry code 3. He was credited with 2 months and 29 days of net active service. He was not awarded a military occupational specialty.

12. He provides documentation from the Department of Veterans Affairs showing he has service-connected disabilities which include PTSD with bipolar 1 with psychotic features and agoraphobia and receives 100% combined rating evaluation.

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. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

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. Based on the applicant's contention of other mental health, the Army Review Boards Agency (ARBA) medical staff provides a written review of the applicant's medical records, outlined in the "MEDICAL REVIEW" section of this Record of Proceedings.

16. MEDICAL REVIEW:

- a. Background: The applicant is requesting an upgrade of his characterization of service from uncharacterized to under honorable conditions (general) 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:
 - The applicant enlisted into the Regular Army on 21 July 2005.
 - His DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 22 August 2005, shows the following:
 - the applicant was identified as having an existed prior to service condition
 - he was diagnosed with depressive disorder and polysubstance dependence
 - he had a gunshot wound and a chest x-ray confirmed the presence of the bullet
 - the board recommended that he be separated from the military for failure to meet medical procurement standards
 - he concurred with the proceedings, waived his right to legal counsel, and requested to be discharged from the U.S. Army without delay
 - On 21 September 2005, the applicant was advised of the basis for the contemplated action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11 (Separation of Personnel who did not meet Procurement Medical Fitness Standards). He acknowledged that he understood he would receive an entry-level separation with an uncharacterized discharge. He elected to submit a statement in his behalf:

- A DA Form 2823 (Sworn Statement) shows he stated he was being discharged due to a bullet in his lower ribs, his depression, and anxiety. His previous recruiter knew he was previously shot.
 - He agreed to the separation because he felt he was not mentally stable, and he did not meet the physical requirements to serve due to a bullet near his ribs.
 - The applicant was discharged on 19 October 2005, under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical procurement standards, in the grade of E-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was uncharacterized, with separation code JFW and reentry code 3. He was credited with 2 months and 29 days of net active service. He was not awarded a military occupational specialty.
- 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 states he is 100 percent (%) disabled from his service due to his mental health conditions, which include post-traumatic stress disorder (PTSD), agoraphobia and triggered bipolar, he feels he was separated unfairly with an under other than honorable conditions characterization of service.

The record evidence an Entrance Physical Standards Board (EPSBD) Proceedings evaluation, dated 22 August 2005, that states: "PVT Overton had a difficult childhood from birth. His mother and father were on drugs at his birth. He has an extensive history of chaos due to their behavior. He experienced severe physical and emotional abuse. He was placed in foster care three times. Parents were incarcerated each time. He was given drugs by his parent. At 15 years old the Soldier took an overdose of sleeping pills. He quit school in the 10th grade because he had difficulty concentrating. He has a history of alcohol and drug abuse in the past. He attended rehabilitation due to abuse of prescription drugs He married at 16 years old and was a father of 5 children (3 stepchildren and 2 biological) by 18 years old. In 2002, the Soldier was having difficulty with his wife and his father was killed. He shot himself in the chest, passed out, and woke up at the hospital 3 days later. The surgeons chose not to remove the bullet due to its location. Soldier was court ordered to medication. Never took the medication due to no insurance." The result of that evaluation diagnosed the applicant with Depressive Disorder, NOS, and Polysubstance Dependence, that existed prior to service and was not permanently service aggravated. Overall, the applicant had engaged in repeated suicide attempts prior to military service including food poisoning, overdosing with sleeping pills, and at age 22 a self-inflicted gunshot to the chest. He had a significant history of childhood trauma, parental incarceration,

- residential placement, juvenile detention placement, and mental health issues that included anxiety, depression, and panic attacks. The applicant was provided ongoing behavioral health care during his brief time in service, with the record showing nearly daily behavioral health encounters until his discharge. His treatment included medication management and supportive therapy.
- d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service-connected for PTSD effective 12 April 2022. The VA electronic medical record indicates the applicant sought VA services starting in February 2020. A Homeless Program assessment note, dated 6 February 2020, indicates the applicant was release from prison on 10 January 2020 after having been incarcerated for 6 years. He sought VA services to support him as he was transitioning out of the criminal justice system. The applicant received housing, ongoing case management services, and obtained permanent housing in October 2020. The applicant participated in a psychiatric evaluation on 6 April 2021, while in the hospital due to chronic medical conditions. The applicant's most recent diagnoses per the available VA electronic medical record indicates Schizoaffective Disorder, bipolar type; Attention Deficit Disorder with Hyperactivity (ADHD), and Agoraphobia with panic attacks. The applicant's VA treatment team does not have the applicant diagnosed with PTSD, although, they note his service-connection for PTSD.
- e. A C and P Examination specifically focused on PTSD was completed on 3 May 2022. The examination diagnosed the applicant with PTSD, Bipolar I with psychotic features, and Agoraphobia. The examination states the applicant was discharged during bootcamp due to preexisting mental health issues and a bullet in his body, which occurred before military service, but was aggravated during training. The report goes on to indicate the following as the index trauma that led to his PTSD: "due to his abusive and traumatic history before the military, when the veteran was yelled at during camp this brought up "old feelings" from terror to being abused to wanting to fight back. When he had female drill sergeants, "I wanted to fight back and I began to feel like a psychopath". He scared some of his fellow soldiers with his acting out with his episodes of hitting his head against a wall, kicking his metal locker, head butting the wall, throwing his bed up in the air and flipping it over. Lots of rage outbursts and screaming. Being surrounded by many males in what he calls a "hostile, aggressive and volatile environment". "I was not meant to be broken down and rebuilt". He experienced reliving his mother's abuse". Although, the examination cites this as his index trauma, this advisor opines that this stressor event does not meet diagnostic criteria for PTSD. This advisor would argue that the applicant was incorrectly diagnosed with PTSD, and concurs with the findings of the EPSBD proceedings, that the applicant's mental health problems existed prior to service and were not permanently service aggravated. His ongoing mental health issues appear to be a progression of his

preexisting mental health issues that existed prior to military service. The examination further documents his post-military legal history as follows. "In 2009, he went to jail for a couple of assaults, two strangulations and two menacing charges. He went to Lane County jail for one month and had three years of probation. He also went to prison for 6 years for use of a minor for sexually explicit material. He was in prison from 2014 to 2020".

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant had both a medical and mental health condition which did not meet medical enlistment standards.

(2) Did the condition exist or experience occur during military service? No. The applicant had a medical and a mental health condition that existed prior to service (EPTS), he failed the enlistment standard of AR 40-501, and per the Entrance Physical Standards Board (EPSBD) Proceedings his condition was not permanently aggravated by his military service and was not compatible with continued service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant had both a physical and a mental health condition that failed enlistment standards and had he revealed these conditions he would have been barred from enlistment. However, the applicant engaged in deception, in order to gain access to the military, and soon into his service was unable to fulfill his duties due his conditions that existed prior to service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding the applicant engaged in deception, in order to gain access to the military, and soon into his service was unable to fulfill his duties due his conditions that existed prior to service.

2. The Board found the applicant did not complete training and was not awarded a military occupational specialty. Evidence shows the applicant completed 2 months and 29 days of net active service and was discharge by reason of failed medical/physical

procurement standards. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. The Board determined there is insufficient evidence to support the applicant's contentions for an upgrade. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized. Therefore, relief is denied.

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. 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. 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 PTSD; 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. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//