

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230011592

APPLICANT REQUESTS, in effect, a correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 8 October 2021 to reflect a general or honorable discharge instead of an uncharacterized discharge and to change the following:

- Item 26 (Separation Code): to reflect disabilities
- Item 27 (Reentry Code): change to something favorable
- Item 28 (Narrative Reason for Separation): something different that reflects his disabilities

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Department of Veterans Affairs (VA) decisional letter, 22 June 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, due to his injuries from his time in the service, he now has disabilities and they have worsened over time. He is requesting that his discharge accurately reflects those issues.
3. The applicant provides a decision letter from the VA, dated 22 June 2023 that provides his service-connected disability ratings for insomnia disorder, to include depressive disorder due to chronic pain with anxious distress at the following ratings:
 - 20 percent (%) effective 9 October 2021
 - 30% effective 31 May 2022
 - 50% effective 26 April 2023

- His restless leg syndrome, bilateral lower extremities was denied

4. The applicant's service record shows the following information:

a. On 2 August 2021, the applicant enlisted in the Regular Army for 3 years and 32 weeks. He was assigned to Fort Jackson, SC for training.

b. DA Form 4856 (Developmental Counseling Form) dated 13 September 2021 shows that the applicant was counseled due to his diagnosis of an injury or illness by a medical provider. Due to his condition, it would have been unlikely for him to respond to any command efforts at rehabilitation or any treatment methods. He was recommended for separation.

c. On 21 September 2021 his commanding officer recommended discharge prior to the applicant's expiration term of service (ETS), under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-17, Other Designated Physical or Mental Conditions, due to left hip, femoral head stress injury. The applicant acknowledged the separation notice and after consulting with legal counsel he further acknowledged:

- he was not entitled to consideration of his case by an administrative board
- he was advised he could submit any statements he desired in his own behalf, and he elected not to do so
- he waived consulting with counsel and representation
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life

d. On 27 September 2021, his battalion commander also recommended that the applicant be separated from the Army before his ETS.

e. On 1 October 2021, the separation authority directed the applicant's separation from the Army prior to his ETS. He further directed that the applicant be issued an "uncharacterized" characterization of service and to not be transferred to the Individual Ready Reserve (IRR).

f. His DD Form 214 for the period ending 8 October 2021 shows he was discharged with an "uncharacterized" characterization of service, pursuant to Army Regulation 635-200, chapter 5-17, Other Designated Physical or Mental Conditions. He was assigned Separation Code JFV and Reentry Code 3. He completed 2 months and 7 days of net active service this period. He was not awarded a military occupational specialty and he did not complete first term of service.

5. 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 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 in essence requesting a referral to the Disability Evaluation System (DES). On his DD form 293, the applicant has indicated that other mental health issues are related to his request. He states:

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 August 2008 and was discharged on 8 October 2008 under authority provided by paragraph 5-14 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Other designated physical or mental conditions.

d. Paragraph 5-14a of AR 635-200:

“Excluding conditions appropriate for separation under paragraph 5–10, commanders specified in paragraph 1–20 may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (see DoDI 1332.18, AR 40 – 501, and AR 635 – 40) that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- (1) Airsickness, motion, and/or travel sickness.
- (2) Phobic fear of air, sea, and submarine modes of transportation.
- (3) Attention-Deficit/Hyperactivity Disorder.
- (4) Sleepwalking.
- (5) Enuresis.
- (6) Adjustment Disorder (except Chronic Adjustment Disorder).
- (7) Personality disorder.”

e. The EMR shows he was first seen for a two-week history of bilateral hip pain early on 25 August 2021. Because of the potential for the applicant having femoral neck

stress fractures, he was placed on crutches and an MRI was ordered. This study was obtained on 26 August 2012 and revealed multiple areas of significant stress injuries involving the left femoral head with possible subchondral damage, bilateral femoral necks and greater trochanters, and trace of a left hip joint effusion.

f. The applicant was seen in follow-up the next day at which time the MRI results were discussed with him and he was placed on quarters. The provider wrote:

Plan: Soldier states that he thinks that the Army is not for him; I will recommend SIQ [sick in quarters] thru the weekend and follow-up on Monday to see if he possibly has a change in heart (my gut tells me that he will not); I may consider having him stay in SIQ for 2 weeks and do a repeat MRI then to see if it has improved, as I am not currently in favor of rehab at the WTRP due to decreased motivation

g. The Warrior Training and Rehabilitation Program (WTRP) provides a modified basic combat training (BCT) and/or one station unit training (OSUT) environment designed to return Soldiers to regular initial military training programs with higher levels of motivation, fitness, training, and education than when they entered, while providing them the quality health care they need to rehabilitate their injuries.

h. Because of his depressed mood, the applicant was seen by behavioral health on 30 August 2021. The provider documented a normal examination, diagnosed the applicant with "Other problems related to employment," no follow-up was scheduled, and he was released without limitations.

i. At the two-week follow-up appointment on 9 September 2021, the decision was made to administratively separate the applicant:

"Plan: Discussed option of WTRP one more time and Soldier does not wish to go there; I do not want to send an unmotivated Service Member to the WTRP; I will recommend a chapter 5-17; will remain on profile (non-trainer) and this should not hinder his bone stress.

j. On 21 September 2021, his commander notified him of the initiation of separation action for other designated physical or mental conditions stating "The reasons for my proposed action are: Left hip, femoral head stress injury.

k. The brigade commander approved the recommended separation action on 1 October 2021.

l. His stress injuries did not constitute a permanent disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). Given

the nature of these injuries and the treatment thereof in a healthy individual, they would be expected to heal once she was removed for the rigors of military training.

m. It is the opinion of the ARBA medical advisor that a referral to the DES is unwarranted.

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.

a. Discharge upgrade; Deny. The evidence shows the applicant was separated under the provisions of chapter 5-17 of AR 635-200, due to Other Designated Physical or Mental Conditions. He completed 2 months and 7 days of active service. The applicant did not complete initial entry training and was not awarded an MOS. The applicant's service was uncharacterized. 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 found no error or injustice in the applicant's separation processing.

b. Narrative Reason for Separation: Deny. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence that the stress injuries constituted a permanent disability in accordance with AR 635-40, Physical Evaluation for Retention, Retirement, or Separation. Given the nature of these injuries and the treatment thereof in a healthy individual, they would be expected to heal once the applicant was removed for the rigors of military training. Therefore, the Board determined that a referral to the disability evaluation system is not warranted.

c. Separation Code and RE Code: Deny. By regulation, enlisted Soldiers separated under the provisions of chapter 5-17 of AR 635-200 due to Other Designated Physical or Mental Conditions, are assigned Separation Code JFV, which has a corresponding RE Code of 3. Thus, the Board determined the Separation Code and RE Code the applicant received at the time of separation were 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.

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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 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. 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. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status except when the Soldier is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

3. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFV" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 5, Condition Not a Disability. If the narrative reason for separation, discharge, or release

from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release will be a condition, not a disability.

6. 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.

7. 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, traumatic brain injury (TBI), sexual assault, or sexual harassment. 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

9. Title 10, U.S. Code, section 1556 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//