

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230011951

APPLICANT REQUESTS: correction of his records to show his service in the United States Army Reserve (USAR) was characterized as either under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 11 August 2023
- self-authored statement
- DD Form 4 Series (Enlistment/Reenlistment Document - Armed Forces of the United States), 18 June 1996
- USAR Discharge Order, 12 June 1997

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 believes with support and guidance from his recruiter he would have been able to succeed in the Army.

a. He joined the USAR in June 1996 and was proud he was going to serve this great nation. When he was scheduled to leave for basic training, he failed the physical due to being overweight and was unable to go. The unit he was attached to did not support him and his recruiter refused to help him. For six months he attended drills, he cleaned barracks, and he did anything which was asked of him. However, he was not allowed to participate in activities such as physical training or any drills. He asked his recruiter if he could attend the physical training classes at the recruiting but was not allowed. He became ashamed and depressed, and everything spiraled downhill. His drinking became worse, and he started smoking and overeating.

b. He met a Navy Veteran who was dealing with post-traumatic stress disorder (PTSD) and he introduced the applicant to a program that changed his life. He has lost over 120 pounds and is living a healthy lifestyle.

c. He finds himself having to explain his military discharge at job interviews and relives his nightmare. He believes if his recruiter treated him equally and allowed him to participate in physical training with the other recruits, he could have received the guidance he needed to lose the weight.

d. On his DD Form 149, the applicant indicates PTSD and other mental health conditions are related to his request.

3. On 18 June 1996, the applicant enlisted into the USAR in the rank/pay grade of private (PV1)/E-1 for a period of 8 years.

4. His Army Reserve Reservation Processing Record Copy shows he was scheduled to ship to Advanced Individual Training for military occupational specialty 54B (Chemical Operations Specialist) on 29 July 1996 with a class date of 2 August 1996. It additionally shows, in order for the applicant's reservation to remain valid, he must have remained physically and morally qualified for enlistment.

5. There is no evidence showing the applicant shipped to training nor evidence of the applicant being issued a DD Form 214 (Certificate of Discharge or Release from Active Duty).

6. Orders 163-13, issued by Headquarters, 310th Theater Army Area Command, Fort Belvoir, Virginia, dated 12 June 1997, show he was discharged from the USAR effective 21 March 1997 under the authority of Army Regulation 135-178 (Enlisted Administrative Separations) with an uncharacterized type of discharge.

7. The applicant provides a letter from the National Personnel Records Center, St. Louis, MO wherein he was informed that he was not issued a DD Form 214, Report of Separation, because he either had no active service or less than 90 consecutive days of active duty for training (ADT).

8. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. Entry-level status for members of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty. The evidence of record shows the applicant was in an entry-level status at the time of his separation, as he did

not attend or complete his ADT. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

9. 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.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from uncharacterized to Under Honorable Conditions (General) or Honorable. He contends he experienced PTSD and Other Mental Health Issues that contributed to his discharge. 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 in the U.S. Army Reserves (USAR) on 18 June 1996, 2) the applicant's self-statement asserts that he did not ship to basic training after failing his physical due to being overweight, 3) the applicant stated he was not permitted to participate in physical training classes with recruiting, 4) the applicant stated he attended drill for six months though was not permitted to participate in physical training, 5) the applicant said he became depressed, drinking became worse, started smoking and overeating, 6) he was discharged on 12 June 1997 under Army Regulation (AR) 135-178, #5-2.1, ND, uncharacterized, 7) the evidence indicates the applicant was discharged under entry level separations.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, MEDCHART, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No civilian behavioral health (BH) records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant is petitioning the Board to upgrade his discharge from uncharacterized to Under Honorable Conditions (General) or Honorable. He contends his discharge was related to PTSD and Other Mental Health Issues. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. Moreover, the specific circumstances that led to his discharge were not available in his military records. In absence of documentation supporting his assertion there is insufficient evidence to establish that his discharge was related to PTSD and Other Mental Health Issues and insufficient evidence that the applicant had a BH condition or experience that contributed to his discharge or would otherwise require disposition through medical channels.

d. 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 contributed to his discharge or would otherwise require disposition through medical channels. However, he contends he was discharged due to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

e. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts his discharge was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. Moreover, his military records available for review did not specify circumstances that lead to the applicant's discharge. Although orders from 310th Theater Army Area Command indicate the applicant was discharged under the provisions of AR 135-178, #5-2.1, ND, there are several conditions of conduct that fall under the purview of this administrative action and is therefore non-specific. Given insufficient information surrounding the circumstances for discharge and lack of medical documentation, a nexus between the applicant's assertion of PTSD and Other Mental Health Issues and the reason for his discharge cannot be established. As such, there is insufficient evidence to support and upgrade based on BH medical mitigation.

f. Regarding the applicant's assertion of PTSD and Other Mental Health Issues, while there is no evidence to support these diagnoses, the applicant's self-assertion of PTSD and Other Mental Health Issues alone merits consideration by the Board.

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. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising

official finding insufficient evidence that the applicant had a condition or experience during his time in service that contributed to his discharge or would otherwise require disposition through medical channels.

2. The Board noted the applicant was in an entry-level status at the time of his separation, as he did not attend or complete his AD training. The Board found his military records available for review did not specify circumstances that lead to the applicant's discharge. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for upgrade of his uncharacterized character of service. Therefore, the Board denied relief.

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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.
3. Army Regulation 15-185 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 by a preponderance of the evidence. It is not an investigative body.
4. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.
 - a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.
 - c. Chapter 5 prescribes criteria and procedures for separation of enlisted soldiers while in an entry level status. This policy applies to Soldiers who voluntarily enlisted in the Army National Guard of the United States or USAR, who have completed no more than 180 days of continuous and creditable active military service on their current enlistment by the date of separation.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. It provides 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 an entry-level status (except when the characterization of under other than honorable condition is authorized), or when the Secretary of the Army, on a case-by-case basis, determines that an honorable discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

b. A member of a Reserve component 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 a Reserve component. Entry-level status of such a member of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty.

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/NR) 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, 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//