

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012053

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- VA Form 21-4138 (Statement in Support of Claim), dated 10 April 2023
- List of Medication, 3 February 2023
- Medical Records
- VA Forms 21-10210 (Lay/Witness Statement), dated 21 February 2023, 22 March 2023, and 3 April 2023
- Bachelor of Arts Degree, Norfolk State University, dated 2 May 2023
- E-mail Correspondence, Appointment Reminder

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 his characterization of service was based on an undiagnosed mental health disorder to include post-traumatic stress disorder (PTSD) and major depressive disorder. He began seeking treatment in 2023 and his claim is currently being processed with the Department of Veterans Affairs (VA). He had no gross disciplinary issues while enlisted and has carried tremendous shame on not completing his term of enlistment. His current discharge does not impact his ability to access health care through the VA. He is seeking this upgrade in discharge for personal reasons and considering his recent diagnosis related to mental health, which is related to military service. He notes PTSD and other mental health issues are related to his request.
3. In a separate statement in support of his claim to the VA, the applicant states:

a. He deals with a life of withdrawal, agitation, anxiety, depression, emptiness, uncertainty, fear, and shame. These issues have impacted the progression of his life. He has not worked in 5 years due to his symptoms. He has a nonexistent social life. He does not trust and has a hard time in public. His anxiety prevents him from having a social life in public with his son. He has periods of depression; he is hyper vigilant and guarded. His hygiene has been terrible the past 15 plus years.

b. His issues started at Fort Benning, GA and Fort Bragg, NC in 2007 and 2008 when an angry Soldier pointed his rifle towards him and other Soldiers and threatened to shoot everyone, one of the cadre tackled him to the ground. He also had to render aid to a Soldier who was suffering from a heat stroke in which he almost died from. He has dreams about these events and sometimes think about hurting himself. He began to self-medicate with courtesans and has had two failed relationships.

4. A review of the applicant's service record shows:

a. DA Form 2807-1 (Report of Medical History) and DD Form 2808 (Report of Medical Examination), dated 5 July 2007, medically cleared the applicant for entry into the military, he noted that he was in excellent health.

b. On 12 July 2007, the applicant enlisted in the Regular Army.

c. The applicant's service record contains the following DA Form 4856 (Developmental Counseling Forms) showing he was counseled on 15 January 2008 for his lack of application and failure to report to formation.

d. Memorandum, dated 23 March 2008 shows the applicant was released from the special forces assessment and selection.

e. The applicant's service record contains the following DA Form 4856 showing he was counseled on the following occasions:

- 3 April 2008, for missing 0615, 0900, and 1300 formations on 1 April 2008 and still absent the next morning of 2 April 2008 for 0615 formation, counseling was recommended due to applicant's personal interaction with his fellow service members
- 17 April 2008, for exhibiting anti-social and introverted behavior

f. DA Form 4187 (Personnel Action), dated 23 April 2008 was submitted by the applicant's commander to request separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-17, for other designated physical or mental conditions (Acute Adjustment Disorder).

g. The applicant underwent a command directed mental status evaluation on 5 June 2008. The DA Form 3822 (Report of Mental Status Evaluation) shows the following:

(1) Diagnosis: Adjustment disorder with Disturbance of Conduct.

(2) Based upon this evaluation, the diagnostic impression is Adjustment Disorder with Disturbance of Conduct, within the meaning of Army Regulation 40-501, Army Regulation 635-200, and Diagnostic and Statistical Manual of Mental Disorders (DSM) IV. Since it is apparent that many of the situational factors contributing to his condition are not likely to change given his current circumstances, this condition and the problems presented by this individual are not, in the opinion of this examiner, amendable to transfer, disciplinary action, training or reclassification to another type of duty within the military. It is unlikely that efforts to rehabilitate or develop this individual into a satisfactory member of the military will be successful. This individual is psychiatrically cleared for any administrative (or judicial) action deemed appropriate by command.

(3) This Soldier is not deployable from a psychiatric perspective. In accordance with paragraph 5-17, Army Regulation 635-200, it would be in the best interests of both the individual and the Army to separate him from active duty in an expeditious manner. Otherwise, the Soldier is likely to become/continue as a disruptive influence to unit morale and mission.

h. DA Form 4856, dated 20 June 2008 shows he was counseled for lack of motivation.

i. On 18 July 2008, the applicant's immediate commander informed him of the intent to initiate actions to administratively separate him from service under the provisions of Army Regulation 635-200, Chapter 5, Section III, paragraph 5-17, by reason of other designated physical or mental conditions. He advised the applicant of his rights and indicated he was recommending a general, under honorable conditions characterization of service.

j. On 21 July 2008, the applicant consulted with counsel and acknowledged receipt of the notification memorandum. He was not entitled to consideration of his case by a board of officers, or a personal appearance before a board of officers. He was given the opportunity to confer with counsel and elected not to submit a statement in his own behalf.

k. On 25 July 1980, the applicant's commander formally recommended his separation for the aforementioned reasons.

l. On 30 July 2008, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-200, chapter 5, Section III, paragraph

5-17, directed the issuance of a General Discharge Certificate, and that he will not be transferred to the Individual Ready Reserve.

m. On 21 August 2008, the applicant was discharged from active duty. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was separated under the provisions of Army Regulation 635-200, paragraph 5-17 (Condition, not a Disability), with an under honorable conditions (General) characterization of service (Separation Code JFV, Reentry Code 3), and credited with completing 1 year, 1 month, and 13 days of active service, with lost time from 8 to 11 April 2008.

4. The applicant provides:

- a medication information sheet, dated 3 February 2023
- three doctor follow-up reports with his chief complaints being problems with PTSD and sleep, stemming from the loss of two fellow service members in his unit by gunshot wounds
- a compensation and pension appointment reminder email, dated 2 August 2023 shows the applicant was scheduled for a virtual compensation and pension claim exam on 9 August 2023
- photocopy of his Bachelor of Art degree from Norfolk State University

5. The applicant also provides three lay/witness statements from his mother, military friend, and coworker which attest to him being a hard worker who struggles with panic attacks, anxiety, personal and job-related relationships. He was threatened and taunted by a drill sergeant while in the military and had a loaded rifle pointed at him and other Soldiers at the gun range during qualification. He helped a fellow Soldier who had an almost fatal heat stroke. He has not been the same since leaving the military.

6. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

7. 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.

8. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests an upgrade in characterization of service. He

stated that the characterization of his service was based on undiagnosed PTSD/Major Depressive Disorder.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the Regular Army 12Jul2007. His MOS was Infantryman. He did not deploy. He was discharged 21Aug2008 under provisions of AR535-200 chapter5-17 for other designated physical or mental condition, not a disability. The misconduct noted as the reason for the discharge, was he was absent without leave (AWOL) 08Apr2008 to 11Apr2008. His service was characterized as General, Under Honorable Conditions.

3. During the applicant's 05Jul2007 enlistment exam, the psychiatric portion was normal, and he did not endorse any BH related symptoms during the Report of Medical History. Likewise, the 07Jun2008 Report of Medical History for separation was negative for the applicant endorsing any BH symptoms, and the accompanying exam was normal. He did divulge 'use of illegal drugs or abuse of prescription drugs'.

4. Notwithstanding the lack of findings during the entrance and separation exam, records showed the applicant was sent to the emergency room by his COC upon his return from being AWOL due to concerns about possible risk of self-harm based on the tone of the note he left. During the 11Apr2008 Psychology (Womack AMC) follow up visit, it was noted he went AWOL 2 days following non selection after completing Special Forces school. During the clinic visit, he convincingly denied any suicide/homicide ideation. After non selection, he lost motivation and did not participate in some required tasks/events and was command referred for a Mental Status Evaluation on 05Jun2008. During the evaluation, the psychiatric exam did not reveal any abnormalities in behavior, thinking or mood/affect. The examiner opined the applicant was mentally responsible and that he had the mental capacity to understand and participate in the separation proceedings. The examiner diagnosed him with Adjustment Disorder with Disturbance of Conduct.

5. The applicant did not deploy; however, in his April 2023 claim for VA benefits (VA Form 21-4138), he described 2 instances that impacted him emotionally: During rifle marksmanship, a fellow soldier pointed his rifle and threatened to kill them—variations of this incident are replayed in his dreams. And while at Fort Benning, a fellow soldier who had just notified the applicant and Drill Sergeants that he wasn't feeling well, collapsed in front of him "and almost died". And although he rendered aid, the applicant continues to feel guilt that he didn't do more to convince the Drill Sergeants that the other soldier was in distress.

6. With his ABCMR application, the applicant submitted documentation he was diagnosed with PTSD in February 2023 and was in treatment for the same. The BH specialist recorded symptoms they deemed were consistent with DSM-5 criteria for non-

combat stressors associated with his military service: Loss of a fellow service member in 2007-2008; loss of 2 unit members by gunshot wounds.

7. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered. The applicant was diagnosed with PTSD which under Liberal Consideration, is mitigating for the AWOL offence which led to the applicant's General, Under Honorable Conditions characterization of service.

8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant has been diagnosed with PTSD. While the applicant was diagnosed with Adjustment Disorder with Disturbance of Conduct while in service, it is noted that it is not uncommon for veterans diagnosed with adjustment disorders while in service, to be diagnosed with PTSD later.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant has been diagnosed with PTSD, the result of in-service stressors.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. PTSD can be manifested by avoidant behavior, in this case, an AWOL misconduct.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was diagnosed with "other designated physical or mental condition" that did not amount to a disability. Accordingly, his chain of command separated him with a general, under honorable conditions discharge. The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding the applicant has been diagnosed with PTSD. While the applicant was diagnosed with Adjustment Disorder with Disturbance of Conduct while in service, it is noted that it is not uncommon for veterans diagnosed with adjustment disorders while in service, to be diagnosed with PTSD later. Based on this finding, the Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 21 August 2008 as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change



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, sets forth the basic authority for the separation of enlisted personnel.

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.

c. Paragraph 5-17, in effect at the time, set forth the basic authority for the separation of enlisted personnel. Paragraph 5-17 stated a service member may be separated for physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty when diagnosed by a medical authority. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies. A Soldier separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service 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, 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.

4. 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//