

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230012282

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 he was undiagnosed with severe anxiety, depression, and extreme mental anguish due to the conditions within and out of his military assignment. His conditions were compounded by being newly wed and the start of Desert Storm. His mental condition at that time could not process all those outside stimuli causing him to nearly have a mental breakdown and at the time of discharged he was told that his discharge was under honorable conditions. When he started kidney dialysis and attempted to go to a Department of Veterans Affairs (VA) clinic he was refused because his discharge was listed as "uncharacterized". He was put in limbo status, because if his discharge is not dishonorable than why was he denied access to any Veteran benefits, services, or programs. He believes he had not done anything wrong nor was he court martialed; yet his discharge characterization is viewed negatively, and he would like to remedy this situation as soon as possible.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 27 November 1990.
 - b. His DA Form 2-1 (Personnel Qualification Record) shows he was in training at Presidio of Monterey, California and was assigned to C Company, Defense Language Institute Foreign Language Center on 4 February 1991.

c. He accepted nonjudicial punishment on 22 February 1991 for disobeying a lawful order.

d. A DA Form 3822-R (Report of Mental Status Evaluation shows on 27 February 1991 the applicant was referred for a mental evaluation. The practitioner noted in the remarks, the applicant was psychiatrically cleared for any administrative action deemed appropriate by command.

e. On 5 March 1991, the applicant completed a Medical Examination for Separation Statement of Option and indicated he did not desire a medical examination for separation.

d. On 18 March 1991, the applicant's immediate commander notified him of his intent to separate him under the provisions of Chapter 11, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for entry level performance and conduct. The reasons for his proposed action were because the applicant lacked self-discipline and motivation and resisted all efforts at rehabilitation and had demonstrated that he did not possess the potential for continued military service. He acknowledged receipt of the notification of separation action on the same day.

e. After consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge

f. The applicant submitted a personal statement which indicated he signed up at the spur of a moment and quickly realized there were aspects of the military that he would never be able to adjust to and despite his attempts, it only became worse. He hoped it would improve; however, he decided that his separation from the Army would be in the best interest of all concerned. As a final note, he bears no animosity towards the Army and hoped the Army would not hold any animosity towards him.

g. On 18 March 1991, the immediate commander initiated separation action against the applicant for entry level performance and conduct, he recommended an uncharacterized characterization of service.

h. On 20 March 1991 the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter

11, for entry level performance and conduct. He would be issued an uncharacterized discharge.

i. On 26 March 1991, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 shows he completed 4 months of active service. He was assigned separation code JGA and the narrative reason for separation listed as "Entry Level Status" with a reentry code of 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Sharpshooter Marksmanship Badge with Rifle Bar
- Expert Marksmanship Badge with Grenade Bar

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), a separation is described as an entry-level separation if processing is initiated while a member is in an entry-level status. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or initial active duty training (IADT) by the date of separation and have demonstrated they are not qualified for retention.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to his uncharacterized discharge to honorable. He contends he experienced mental health conditions that mitigates 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 Regular Army on 27 November 1990; 2) He accepted nonjudicial punishment on 22 February 1991 for disobeying a lawful order; 3) On 18 March 1991, the applicant's immediate commander notified him of his intent to separate him under the provisions of Chapter 11, for entry level performance and conduct. The reasons for his proposed action were because the applicant lacked self-discipline and motivation and resisted all efforts at rehabilitation and had demonstrated that he did not possess the potential for continued military service; 4) The applicant was discharged from active duty on 26 March 1991, Chapter 11, for entry level status with an uncharacterized characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. He underwent a mental status evaluation as part of his separation proceedings on 27 February 1991. He was not diagnosed with a mental health condition, and he was psychiatrically cleared for administrative action deemed appropriate by Command.

d. A review of JLV provided evidence the applicant has engaged with the VA for assistance for homelessness starting in 2023. There is insufficient evidence the applicant has been diagnosed with a mental health condition related to his military service, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions which mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions that mitigates his discharge while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant has been diagnosed with a mental health condition related to his military service, and there is insufficient evidence he was experiencing a mental health condition while on active service. It is likely the applicant was separated due to his inability to adjust to his military service. Therefore, he was provided an uncharacterized nature of service, which is consistent with his amount of time of active service. Thus, there is insufficient evidence at this time to warrant a change to the applicant's characterization of service from a behavioral health perspective.

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. 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 records and the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. The opine found the records is absent evidence beyond self-report the applicant has been diagnosed with a mental health condition related to his military service.

2. The Board determined the applicant competed 4 months of active service and did not complete training and discharged from active duty for entry level status. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized and narrative reason for separation and separation code. 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.

[REDACTED]

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, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 11 sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. It states when separation of a member in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by

inability, lack of reasonable effort, or failure to adapt to the military environment, the member normally will be separated per this chapter. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention for one or more of the following reasons:

- cannot or will not adapt socially or emotionally to military life
- cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline
- have demonstrated character and behavior characteristics not compatible with satisfactory continued service
- failed to respond to counseling

3. 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 post-traumatic stress disorder (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.

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 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, 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.

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/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 based on 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.

6. 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//