

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230012303

APPLICANT REQUESTS: an upgrade of her uncharacterized discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision, 2 March 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 she is requesting her uncharacterized discharge be upgraded to honorable, as listed on the VA website. She was young at the time of her misconduct and believes an upgrade will help her because not many people want to see an uncharacterized discharge and/or entry level performance and conduct. She has had untreated mental health issues since her discharge that were not seen nor diagnosed at the time. She is now receiving treatment through the VA and further recognizes she made a mistake when she was younger. The applicant annotated other mental health as an issue/condition related to her request.
3. The applicant provides a VA Rating Decision, dated 2 March 2023, which states the applicant is entitled to individual employability with an effective date of 16 February 2023. Additionally, she was assigned a 70% rating for major depressive disorder, recurrent, moderate and generalized anxiety disorder, previously rated as adjustment disorder with mixed anxiety and depressed mood, chronic.
4. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 5 February 2002.

b. The DA Form 2-1 (Personnel Qualification Record) shows the applicant was in basic combat training at the time of discharge.

c. The applicant's available service record is void of the facts and circumstances pertaining to the separation processing.

d. On 22 April 2002, the applicant was discharged with an uncharacterized characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 2 months and 18 days of active service. The narrative reason for separation is listed as "Entry Level Performance and Conduct."

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of her uncharacterized discharge to 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 5 February 2002.
- The applicant was in basic combat training at the time of discharge, and her application did not include the facts and circumstances pertaining to her separation.
- The applicant was discharged on 22 April 2002, and her DD214 shows she completed 2 months and 18 days of active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she had an undiagnosed mental health condition at the time of her discharge. She provided a VA rating decision letter dated 2 March 2023, which entitled her to unemployability and permanent and total disability status as well as a 70% service connection for Major Depressive Disorder and Generalized Anxiety Disorder. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant initially engaged services with the VA in March 2023 due to risk of homelessness, and documentation primarily addresses her involvement with the VA's Supportive Housing program. She has a prescription for an antidepressant medication, which was filled on 25 April 2024.

e. A review of three Disability Benefits Questionnaire documents were reviewed. The initial two documents were dated 17 November 2022 and reported a claimed condition of Adjustment Disorder with mixed anxiety and depressed mood and the “in-service injury, event, or illness” as difficulty coping with stressors and regulating emotions. The rationale alludes to records from October 2022 noting anxiety, irritability, and depressed mood, and concludes that the diagnosis is at least as likely as not incurred during military service. A re-examination was conducted by the same psychologist on 8 February 2023, and the documentation indicates that the applicant’s symptoms had worsened and created more impairment in occupational functioning. The provider concluded that the applicant met full criteria for Major Depressive Disorder and Generalized Anxiety Disorder.

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

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed mental health condition at the time of her discharge from basic training, and she has been diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder by a VA psychological examiner.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Without knowledge of the basis for separation, no decision regarding mitigation under liberal consideration can be made. There is evidence that that applicant was diagnosed with a mental health condition by the VA following her discharge. However, it is unclear of the exact onset of symptoms, especially given that the applicant only served in basic training for two months, and the facts and circumstances related to her separation are unavailable.

h. However, the applicant contends she was experiencing mental health condition or an experience that mitigated her misconduct, and per Liberal Consideration her contention is sufficient for the board’s consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense

guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, and the reason for her separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient information available to determine if a mental health condition contributed to the performance and conduct that led to her separation. The evidence confirms she was an entry-level Soldier, and her service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is not in error or unjust.

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.

11/1/2024

X

CHAIRPERSON

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. 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. Chapter 11 of the regulation states service will be described as uncharacterized under the provisions of this chapter. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

4. 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.

5. 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.

6. 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.

7. 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//