

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012363

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

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

- DD Form 149 (Application for Correction of Military Record)
- Illinois ID Card
- Social Security Card
- NGB Form 22 (Report of Separation and Record of Service), 27 April 1990

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 is requesting his current characterization of service to be upgraded to under honorable conditions (General). He claims a diagnosis of post-traumatic stress disorder related to time in service, disability compensation requested.
3. The applicant provides his Illinois ID card and social security card.
4. The applicant enlisted in the Mississippi Army National Guard (MSARNG) on 17 April 1989.
5. He was discharged from the MSARNG on 27 April 1990. His NGB Form 22 shows he completed 1 year and 11 days. It also shows:
 - Item 18 (Remarks): Individual was discharged without personal notice due to erroneous enlistment
 - Item 23 (Authority and Reason): National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-26t Erroneous Enlistment
 - Item 24 (Character of Service): Uncharacterized

6. The applicant claimed PTSD and sexual assault/harassment in his application. A letter was sent to the applicant requesting documentation in support of his claim. The applicant did not respond.

7. During the processing of his case a request to U.S. Army Criminal Investigation Division for Sanitized Report of Investigation (ROI) and/or Military Police Report was made. On 6 October 2022, a search of the Army criminal file indexes utilizing the information provided revealed no records pertaining to the applicant. Records at this center are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

8. 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.

9. By regulation, National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Chapter 8, in effect at the time, states to refer to Army Regulation 135-178 for erroneous enlistment or extension and failure to attend Initial Entry Training (IET) within 24 months.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge to general under honorable conditions. He contends he experienced military sexual trauma (MST) and resultant PTSD that mitigate his misconduct. 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 Mississippi Army National Guard (MSARNG) on 17 April 1989; 2) The applicant's service records are not available for review. The only documents available were the documents provided by the applicant.; 3) The applicant was discharged from the MSARNG on 27 April 1990. His NGB Form 22 shows he completed 1 year and 11 days. It also shows he was discharged without personal notice due to erroneous enlistment. His character of service was uncharacterized.

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

c. The applicant asserts he experienced MST and resultant PTSD that mitigate his misconduct while on active service. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD while on active service.

d. A review of JLV provided evidence the applicant passed away on 13 October 2023. The applicant had been engaged with the VA since 2010 for assistance for homelessness, substance dependence, schizophrenia, and various personality disorders. He was diagnosed with PTSD unrelated to his active service but predominately due to his childhood trauma. The applicant did 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 misconduct of erroneous enlistment. The applicant has been diagnosed with PTSD, but there is no nexus between PTSD and this type of misconduct. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced MST while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? N/A. There is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct of erroneous enlistment. The applicant has been diagnosed with PTSD by the VA, but there is no nexus between PTSD and this type of misconduct. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced MST while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 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. The applicant did not complete training and was discharged from the Army National Guard for an erroneous enlistment. The Board determined his DD Form 214 accurately reflects the applicant's service at his discharge.

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. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Chapter 8, in effect at the time, states to refer to Army Regulation 135-178 for erroneous enlistment or extension and failure to attend Initial Entry Training (IET) within 24 months.

3. Army Regulation 135-178 sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of ARNG and Army National Guard of the United States (ARNGUS) and USAR enlisted Soldiers.

a. Paragraph 7-2 (Erroneous enlistment, reenlistment, and extension), in effect at the time, states a Soldier may be discharged on the basis of an erroneous enlistment, reenlistment, or extension of enlistment.

(1) An enlistment, reenlistment, or extension of enlistment is erroneous in the following circumstances:

(a) It would not have occurred had the relevant facts been known by the Government or had appropriate regulations been followed;

(b) It was not the result of fraudulent conduct on the part of the Soldier; and

(c) The defect is unchanged in material respects

(2) In those cases in which the disqualification was waivable or the defect is no longer present and retention is deemed to be in the best interest of the Army and the Soldier the applicant will be retained.

(3) In all cases in which the disqualification was nonwaivable, separation proceedings will be initiated. In these cases the separation will be described as a release from custody and control of the Army and service will not be characterized and reenry code will be 3

b. Chapter 1 provides guidance on authority to order and accomplish separation. It stipulates a Soldier is ineligible for retention in or transfer/reassignment to the Individual Ready Reserve or Standby Reserve (Active List) and will be separated from the military service if he/she has not completed IET (phase I or phase II) within 24 months. Service will not be characterized and the reentry code will be 3.

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 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; sexual harassment. Boards were directed 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 that misconduct which 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. 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. 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//