

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012442

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his service was characterized as either under honorable conditions (General) or honorable vice uncharacterized.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 15 December 2000
- Department of Veterans Affairs (VA) Rating Decision
- VA Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 suffering from PTSD while in training that was caused and aggravated by military service. This was caused by a sergeant who repeatedly abused him and singled him out for humiliation. He recently began treatment with mental health counseling through the VA. He filed a VA compensation claim and was granted a disability rating of 70 percent (%) for PTSD. In light of the fact that he was suffering from PTSD, he believes he did not receive fair and equitable treatment as he tried to honorably serve his country. Instead, he was prevented from doing so by circumstances out of his control. Granting him relief would be in the interest of justice.
3. The applicant's complete military records, including his DA Form 4707 (Entrance Physical Standards Board (EPSBD)) separation proceedings, are not available for the Board to review. Therefore, this case is being considered based on limited documents.
4. The applicant enlisted in the Regular Army on 24 October 2000.

5. He was discharged on 15 December 2000 with an uncharacterized characterization of service. He was credited with completion of 1 month and 22 days of active service. He did not complete initial entry training and was not awarded a military occupational specialty. The authority for his separation was Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of "Failure to Meet Procurement Medical Fitness Standards." His Separation Code was "JFW", and his Reentry Code was "3."

6. The applicant provides:

a. A VA Form 21-0781a, rendered by the applicant on 28 April 2023 states he was being hazed by a sergeant attached to his basis training unit. Every chance the sergeant got he would hit and abuse the applicant. It got so bad that he started having flashbacks of the abuse he suffered from his father. He became depressed, suicidal, and even wanted to harm the sergeant. He decided to seek help and spoke to a mental health counselor. Shortly thereafter, he was separated from the Army. Since then, he has had constant depression, occasional panic attacks, and does not like people yelling at him. He has experienced homelessness and has had problems with alcohol abuse in the past. He did manage to quit drinking alcohol.

b. A VA Rating Decision, dated 23 June 2023, which shows in part, the VA granted the applicant service connection for PTSD with an evaluation of 70% effective 28 April 2023.

7. Army Regulation 635-200, in effect at the time, stated commanders were to separate Soldiers who were not medically qualified under procurement medical fitness standards when they enlisted. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following:

- medical authority had identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entry on active duty
- the condition(s) would have permanently disqualified the Soldier from entry into military service, had they been detected earlier
- the medical condition did not disqualify him/her for retention in military service
- Soldiers disqualified under this provision could request retention on active duty; the separation authority made the final determination

8. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

## 9. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his service was characterized as either "General, Under Honorable Conditions" or "Honorable" rather than "Uncharacterized." He contends PTSD mitigates his discharge.

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:

- Applicant enlisted into the Regular Army on 24 October 2000.
- Applicant's complete military records, including his DA Form 4707 (Entrance Physical Standards Board (EPSBD)) separation proceedings, are not available for review. Therefore, this case is being considered based on limited documents.
- Applicant's DD Form 214 show he was discharged on 15 December 2000 with an "Uncharacterized" characterization of service. He was credited with completion of 1 month and 22 days of net active service. He did not complete initial entry training and was not awarded a military occupational specialty. The authority for his separation was Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of "Failure to Meet Procurement Medical Fitness Standards." His Separation Code was "JFW", and his Reentry Code was "3."

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. Given the period of service, no active-duty electronic medical records were available for review. However, the applicant states he was suffering from PTSD while in training that was caused and aggravated by military service. This was caused by a sergeant who repeatedly abused him and singled him out for humiliation. He recently began treatment with mental health counseling through the VA. He filed a VA compensation claim and was granted a disability rating of 70 percent (%) for PTSD. In light of the fact that he was suffering from PTSD, he believes he did not receive fair and equitable treatment as he tried to honorably serve his country. Instead, he was prevented from doing so by circumstances out of his control. Granting him relief would be in the interest of justice.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. Per a VA decision letter, the applicant's 100% service connection for PTSD is based on his pre-existing condition, related to childhood trauma, that was permanently aggravated by his experience during military service. VA electronic medical records available for review, indicate the applicant initially sought VA services in July 2023, after he was service connected, related to housing insecurity. He indicated having worked with a civilian mental health provider for over 18 years but was seeking to transfer his care to the VA since he was losing his medical insurance. A mental health note, dated 26 July 2023, indicates a history of the following diagnosis:

Bipolar Disorder, Schizophrenia, Multiple Personality Disorder along with PTSD. During that session, the applicant shared a history of childhood physical and sexual abuse, incarceration, and intensive mental health treatment for much of his life. A psychiatric assessment dated, 7 August 2023, also notes his history of PTSD, Schizophrenia, and Bipolar Disorder and his extensive treatment with medication management. Given his history and complex mental health presentation, the record appears to indicate the applicant sought and obtained approval from the VA to continue treatment via his civilian mental health provider, for the purpose of continuity of care.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service 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 a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Record review indicates that the applicant suffers from PTSD, childhood onset, with service aggravation. The service aggravation in this case was the repetitive abuse and humiliation the applicant endured from a superior NCO while in BCT. In the BH Advisor's opinion, had this repetitive abuse and humiliation not occurred, it is more likely than not that the applicant would have been able to finish his entry level training as well as his period of enlistment. In the BH Advisor's opinion, the applicant's experiences in BCT at the hands of an abusive superior NCO mitigate his Uncharacterized discharge and warrants a change in discharge to Honorable.

#### BOARD DISCUSSION:

1. 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. Soldiers in the are authorized an honorable discharge while in entry-level status only if they complete their active duty schooling and earn their designated military occupational specialty. The applicant did not complete training and was discharged from active duty due to failure to

meet procurement medical fitness standards. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized. The Board noted the medical advisor’s review finding sufficient evidence to support a behavioral health condition existed during military service that mitigated his discharge; however did not agree the characterization of service should be amended based on the preponderance of the evidence.

2. 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.

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.

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 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 (ABCMR) 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 has occurred by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

e. Paragraph 5-11 specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501. A Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

f. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation prescribed that the separation code "JFW" was the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the Soldier, based on his or her office, grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

//NOTHING FOLLOWS//