

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012575

APPLICANT REQUESTS:

- Upgrade of his uncharacterized character of service to honorable, based on having incurred post-traumatic stress disorder (PTSD) and becoming addicted to drugs while on active duty
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Three letters of support
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Army Review Boards Agency (ARBA) letter
- Letter from applicant's therapist

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 has rehabilitated and graduated from programs sponsored by the Department of Veterans Affairs (VA) and the Salvation Army. In August 2023, he will be graduating from Veterans Treatment Court and he currently participates in several men's groups. While in basic combat training, the applicant's drill sergeants abused him, and the resulting trauma led to his first exposure to drug use and caused his mental instability. He has since received treatment for his drug addiction, and he requires this upgrade to be able to obtain more help.

3. The applicant provides:

a. Three letters of support, respectively from the applicant's Veterans' treatment court coordinator, Veterans' treatment court case manager, and mental health and addiction counselor. All attest to the applicant's tenacity and resilience in overcoming his drug addiction and that he has been fully engaged in his recovery process. Additionally, the applicant has embraced his therapy, actively participated in support groups, and in or around July 2023, he successfully completed a residential treatment program.

b. In December 2023, the applicant's mental health and addiction counselor [REDACTED] PhD (Doctor of Philosophy), LMHC (Licensed Mental Health Counselor) stated that he has been working with the applicant for the past two years and has been engaged in providing the applicant ongoing treatment for substance abuse, stemming from anxiety, depression, PTSD, and acculturative stress resulting from the applicant's military experiences.

(1) Dr. [REDACTED] notes the applicant still suffers from a severe startle response, which makes the applicant extremely sensitive to loud noises, loud voices, and social confrontations. That startle response has contributed to the applicant's abuse of drugs as a maladaptive coping mechanism and led to the applicant's involvement in decades of criminality and drug use. "[Applicant] is now recognizing that the source of many of the issues that sent him spiraling down that long road of adverse behavior was his military experience, with many of his most intense reactive behaviors starting in Boot Camp."

(2) As part of his therapy, the applicant has been involved in CBT (Cognitive Behavioral Therapy), DBT (Dialectical Behavior Therapy), Exposure Therapy, Cognitive Therapy, Narrative Therapy, and Trauma-Based Behavioral Therapy. Additionally, the applicant has engaged in a 12-step self-help and support group.

(3) While the applicant has made progress, he still suffers from moments when he experiences flashbacks, nightmares, anxiety, and depression, which paralyzes his ability to maintain adequate social functioning. Recent screening showed results indicative of severe anxiety, moderate depression, and PTSD. "The fact that it is now recognized that his maladaptive behavior only began after enduring Boot Camp, it is surmised that he should receive benefits from the VA to assist him in his continued journey of healing."

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

a. On 16 May 1984, the applicant enlisted into the Regular Army for 4 years; he was 20 years old. On 6 June 1989, he arrived at Fort Jackson, SC for initial entry training, and, on or about 20 July 1989, he graduated from basic combat training and transferred to another training unit at Fort Jackson for military occupational specialty 76Y (Unit Supply Specialist) advanced individual training (AIT).

b. On or about 8 August 1989, the applicant accepted company-grade nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for violating a lawful regulation by distributing alcohol to a minor, on 2 August 1989, and for absenting himself without authority (AWOL) from his places of duty as a company roving guard and company charge of quarters runner, between 5 and 6 August 1989.

c. On 21 August 1989, the applicant's AIT commander referred the applicant to the supporting Community Mental Health Service (CMHS) because the applicant had been "getting himself into trouble, one incident after another." The applicant had become a disruptive influence for his fellow trainees. The CMHS noted the applicant was in his 5th week of AIT, and the CMHS staff offered the following evaluation:

(1) Mental Status. "Alert and oriented x 4, with no evidence of cognitive or thought disorder. Affect appropriate to thought content. Mood was normal. No evidence of suicidal/homicidal ideation or psychosis. No somatic complaints. Soldier was neat, clean, appropriately dressed, and cooperative."

(2) Diagnostic Impression. "V623.89, Phase of Life Problem, DSM III-R (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised), Axis I."

(3) Assessment. "Soldier was and is mentally responsible, able to distinguish right from wrong and adhere to the right; therefore, any and all disruptive acts in the future should be handled administratively. From a psychiatric point of view, this Soldier demonstrates motivation for continued service. It is felt that this individual has the potential to become an effective Soldier; however, he must learn to keep his professional and private life separate. If Soldier continues to be a disruptive influence in the unit, he should (be separated)."

(4) Recommendations. "Return to duty."

d. On or about 26 August 1989, the applicant accepted company grade NJP for the following UCMJ violations:

- AWOL from kitchen police duty, on 20 August 1989 from 0800 to 1000
- AWOL from muster formation, starting 1800 on 27 August 1989 until 0230, on 28 August 1989
- AWOL from bed check, from 2130, on 27 August 1989, until 0230, on 28 August 1989
- AWOL, from 0430 to 0500, on 28 August 1989

e. On 12 September 1989, the applicant accepted field-grade NJP for breaking restriction, on 1 September 1989, and wrongfully using marijuana, on 5 August 1989.

f. On 13 September 1989, the applicant's AIT commander advised him, via memorandum, that he was initiating separation action against the applicant, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14 (Separation for Misconduct).

(1) The commander stated his basis was "Your recent pattern of misconduct, which includes two company-grade Article 154s (i.e., NJP) and a field-grade Article 15. You have been caught drinking on duty, have been missing from your place of duty on several occasions, have used a controlled substance, and have broken restriction four times."

(2) The commander added that he intended to recommend the applicant for a general discharge under honorable conditions, but the separation authority would make the final determination.

g. On 15 September 1989, after consulting with counsel, the applicant affirmed counsel had advised him of the basis for his pending separation action and had explained the effects of this action and the applicant's rights. The applicant requested consideration by an administrative separation board but waived his right to appear personally before the board; the applicant opted to submit a statement in his own behalf, in which he wrote the following:

(1) "I came into the Army for the challenge and to get away from a few personal problems. I wanted to better myself and explore ever and greater horizons. While in AIT, I have been kind of lonely and depressed about my father's recent death; thinking about home and how I should be there."

(2) "...I was informed about going to Panama. I was deeply disturbed about being sent there because all of the problems in Panama now. I spoke to my drill sergeant and administrative sergeant but was told that there was no way for me to change duty stations. The thought of having to go to Panama was very upsetting to me and I began to slack off and run from the Army."

(3) "At that point, I wanted to either be dismissed from the Army or try and get someone to listen to me, so I missed formations and found out where I could get marijuana. I know that what I've done is wrong and I'm not trying to make excuses, but I know that I can Soldier my way back. I am a good Soldier. I trained hard in basic training and my average at the 76Y School was 92. I received 22 out of 22 in Vanguard and scored 254 on my last PT test. I have finished (sic) my MOS training and I am ready to go to Panama."

(4) "I had a long talk with a member of my family concerning the fact that I didn't want to go to Panama, and they really opened my eyes and heart to see that I need to

be in the Army and that the Army needs me. The Army has spent a great deal of money training me. I'd like the chance to serve the Army in the area in which I was trained. I would like very much to be given a second chance."

h. On 15 September 1989, the applicant's AIT commander submitted his recommendation to the separation authority and, as his authority, he cited paragraph 14-12b (Pattern of Misconduct), AR 635-200. The commander summarized the applicant's disciplinary record and observed that, despite scoring well during training and declaring he was ready to be a Soldier, the applicant's continued misconduct "did not substantiate his claims or justify his continued service in the United States Army." The commander further added that the applicant had requested, and the unit had allowed, the applicant to see a chaplain for help with his personal problems.

i. On 19 September 1989, the applicant's AIT commander issued the applicant a DA Form 4856 (General Counseling Form) because, on 17 September 1989, the applicant broke restriction.

j. On 26 September 1989, the separation authority approved the commander's separation request and directed the applicant's uncharacterized character of service. On 29 September 1989, orders discharged the applicant accordingly. His DD Form 214 shows he completed 4 months and 14 days of his 4-year enlistment contract. The report additionally reflects the following:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12b
- Item 26 (Separation Code (SPD)) – "JKM"
- Item 27 (Reenlistment (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Misconduct – Pattern of Misconduct"

5. In reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

6. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his uncharacterized service to honorable. He contends he experienced PTSD while on active duty.

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 16 May 1989.
- During AIT, the applicant engaged in a pattern of misbehavior in August and September 1989 that included: distributing alcohol to a minor; AWOL on several occasions; breaking restriction; and wrongfully using marijuana. His commander initiated separation under the provisions of Army Regulation (AR) 635-200, chapter 14 (Separation for Misconduct), and the applicant provided a lengthy response explaining his behavior.
- The applicant was discharged on 29 September 1989 with an uncharacterized character of service and was credited with 4 months and 14 days of net 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 he was abused by a drill sergeant during basic training, which led to his substance abuse. A letter dated 19 December 2023 from a licensed mental health counselor indicates the applicant has been in substance abuse treatment stemming from anxiety, depression, and PTSD related to his military experience, which makes him "sensitive to loud noises, loud voices, and social confrontations." The letter lists seven psychotherapy treatments as well as 12 step and support group programs he has engaged in and indicates he continues to suffer from "flashbacks, nightmares, anxiety, and depression." There is another letter dated 29 June 2023 on letterhead of a different organization but by the same mental health provider that indicates the applicant has "fully engaged in the recovery process." There is documentation indicating the applicant completed a residential treatment program with the Salvation Army. An in-service document titled Community Mental Health Service Findings/Recommendations showed that the applicant was psychiatrically cleared for administrative or judicial action deemed appropriate by command, and he was diagnosed with Phase of Life Problem. He was returned to duty. A self-authored memorandum to the commander (signed; not dated) by the applicant was reviewed and indicated that the applicant wished to remain in the Army, and he attributed his behavior to feeling lonely and depressed about his father's death and being informed he would be going to Panama. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no record of the applicant.

e. 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 his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD, which led to substance abuse, while on active service. The applicant provided letters from a treating provider indicating he has successfully recovered from substance abuse, which was attributed to mental health symptoms associated with his time in basic training.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing PTSD while on active service. The applicant provided documentation from a mental health provider that attributed his substance abuse to an underlying mental health condition that began during his time in basic training. However, there is no indication he experienced an event that would be considered traumatic or outside the norm for basic training. Therefore, there is no nexus between his substance abuse or mental health problems and the typical stressors associated with the military environment.

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

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. The Board noted that the applicant was an entry-level Soldier at the time of his discharge; therefore his service was uncharacterized in accordance with the governing regulation. Uncharacterized service is neither negative nor positive. It simply means a Soldier has not performed a period of duty of sufficient length to be fairly assessed. 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
:GB	:GG	:AM	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.

12/19/2024

X Gabriele Barrett

CHAIRPERSON

Signed by: USA

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 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. Title 10, United State Code, section 1556 (Ex Parte Communications Prohibited) 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense.

(2) Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was 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.

c. Paragraph 3-9 (Uncharacterized Separations). Effective 1 October 1982, a revision of AR 635-200 mandated the issuance of uncharacterized characters of service to Soldiers separated while in an entry-level status; for Regular Army Soldiers, entry-level status began upon their entrance on active duty and ended after 180 days of continuous active duty. The regulation stated the Secretary of the Army could issue an honorable character of service, on a case-by-case basis, when clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

d. Paragraph 5-3 (Secretarial Authority). The separation of enlisted personnel for the convenience of the government was the prerogative of the Secretary of the Army and, except as delegated, was to be implemented only by the Secretary's authority. Such a discharge or release from active duty was to be based on the determination that separation was in the best interests of the Army.

e. Paragraph 14-12b (A Pattern of Misconduct) stated members were subject to separation under this provision when they showed a pattern of misconduct involving

acts of discreditable involvement with civil or military authorities, and/or displayed conduct that was prejudicial to good order and discipline.

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, included policies and procedures for enlisted promotions and reductions. Paragraph 6-11 (Other Reasons for Reductions – Approved for Discharge from Service Under Other than Honorable Conditions) stated separation authorities were to reduce Soldiers to the lowest enlisted grade when the Soldiers were being separated per an approved under other than honorable conditions discharge. Board action was not required.

5. AR 635-5 (Separation Documents), in effect at the time, stated the entries for items 25 (Separation Authority), 26 (Separation (SPD) Code), and 27 (Reentry Code) were linked, and the regulation referred DD Form 214 preparers to AR 635-5-1 (SPD) for the SPD code associated with the regulatory separation authority. For RE Codes, the 1979 version of the regulation directed DD Form 214 preparers to the iterations of AR 601-280 (Army Reenlistment Program) that was then in effect; however, the Army subsequently moved guidance on RE Codes to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, stated the following:

a. The regulation defined RE codes:

- RE-1 – qualified for reentry into the Army
- RE-3 – not fully qualified for reentry at the time of separation, but the disqualification can be waived

b. Paragraph 4-4 (Listings of Disqualifications), Table 4-1 (Waivable Moral and Administrative Disqualifications) stated in Line AC that former members of the U.S. Armed Forces separated for misconduct required a waiver to reenter the Army.

7. AR 635-5-1 indicated that Soldiers released from active duty under chapter 14, paragraph 14-12b, AR 635-200 were issued the SPD of "JKM."

8. 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.

9. 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 to 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.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

11. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//