

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012923

APPLICANT REQUESTS: A personal appearance before the Board and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 14 January 2000, to show:

- his uncharacterized service as honorable
- a change in his narrative reason for separation from “entry level performance and conduct” to “service-related disability”

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 14 January 2000
- Department of Veterans Affairs (VA) Rating Decision, dated 18 September 2023
- VA Decision Letter, dated 20 September 2023

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, in effect, his honorable service should be reflected as such. Additionally, having an incorrect discharge category puts him at a catastrophic disadvantage as a disabled Veteran. The applicant noted post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. Prior to enlisting in the U.S. Army Reserve, the applicant underwent a medical examination. The relevant Standard Form 88 (Report of Medical Examination), dated 24 March 1998 shows he was found medically qualified for service.
4. The applicant enlisted in the U.S. Army Reserve on 11 January 1999 for an 8-year period. He entered active duty on 21 September 1999 for the completion of initial entry training.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was released from active duty on 14 January 2000, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct, with separation code JGA and reentry code 3. His service was uncharacterized. He was credited with 3 months and 24 days of net active service this period. He was not awarded a military occupational specialty.

6. The applicant provides a VA Rating Decision, dated 18 September 2023, and a corresponding VA Decision Letter, dated 20 September 2023, which shows he was granted service connection for PTSD with alcohol use disorder, stimulant disorder, and cannabis use disorder, resulting in a combined disability rating of 70 percent (%).

7. Regulatory guidance states that Soldiers separated under the provisions of AR 635-200, Chapter 11 with separation code “JGA,” are assigned the corresponding narrative reason “entry level status performance and conduct.”

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 processing.

9. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change of his uncharacterized service to honorable and a change to the narrative reason for separation to “service-related disability.” He contends he experienced an undiagnosed mental health condition, including PTSD, during his service.

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 U.S. Army Reserves on 11 January 1999 and entered active duty on 21 September 1999 for the completion of entry training.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing, but his DD Form 214 shows he was released from active duty on 14 January 2000, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct, with separation code JGA and reentry code 3. His service was uncharacterized.
- The applicant was discharged on 14 January 2000 and was credited with 3 months and 24 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD and "other mental health" as conditions related to his request and that his discharge be changed to a service-related disability. The application includes a VA Rating Decision letter dated 18 September 2023 indicating an overall disability rating of 70% for PTSD, Alcohol Use Disorder, Stimulant Use Disorder, and Cannabis Use Disorder. A Report of Medical Examination dated 24 March 1998 shows him as qualified for service and has no indication of any mental health condition. 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 history of mental health related treatment or diagnoses.

e. A review of the Initial PTSD Disability Benefits Questionnaire (DBQ) dated 9 September 2023 showed that the applicant suffered from abuse and neglect as a child, and he had a history of substance use both prior to and after joining the military. The documentation discusses being teased, harassed, and bullied while in basic training, and it noted an event where he was sexually assaulted (grabbed by genitalia) and subjected to name-calling ("faggot") by a female superior. Documentation indicates he tried to report this, but that resulted in retaliation. The applicant stated that he was "kicked out of the military" after being "constantly written up." Documentation indicates he endorsed the requisite number of symptoms to warrant a diagnosis of PTSD, and he reported a history of marijuana and cocaine use as a means of self-medicating and this resulted in an arrest and legal problems. He indicated he has not used drugs in over 13 years. The applicant reported he was seeing a psychiatrist and therapist for ADHD and anxiety with use of medication for ADHD and an anxiolytic.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that despite the absence of the specific facts and circumstances surrounding his discharge processing, there is sufficient evidence that the applicant experienced a fully mitigating behavioral health experience, MST. As to a change in the narrative reason for his discharge, there is evidence that in 2023, 23 years post-discharge, he was diagnosed with PTSD resulting from a MST and that he is receiving service-connected disability from the VA. However, there are no in-service documents or records indicating the presence of any experiences or behaviors associated with a mental health condition and no current mental health records were provided by the applicant.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition,

including PTSD, at the time of his discharge. A VA disability evaluation from 2023 resulted in a diagnosis of PTSD associated with a military sexual trauma (MST).

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant is requesting consideration of a change in his uncharacterized discharge to an honorable discharge. It is likely that, had the MST never occurred, the applicant would have been able to successfully complete his military training and term of service. Under Liberal Consideration, there is sufficient evidence to support the board's consideration of this change.

In regards to his request for consideration of a change to the narrative reason for discharge to service-related disability, documentation does not support that the applicant was psychiatrically unfit at the time of discharge for any condition as there is not evidence of persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Therefore, a referral to the Disability Evaluation System (DES) is not supported.

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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding a referral to the Disability Evaluation System (DES) is not supported. The Board noted, based on the opine, the applicant's request for a change of his narrative reason is not supported by the lack of documentation showing he was psychiatrically unfit at the time of discharge for any condition.

2. Under liberal consideration, despite the absence of the specific facts and circumstances surrounding his discharge processing, the Board carefully considered the advising official finding sufficient evidence that the applicant experienced a fully mitigating behavioral health experience, MST. The Board recognized there is evidence that in 2023, 23 years post-discharge, the applicant was diagnosed with PTSD resulting from a MST and that he is receiving service-connected disability from the VA. However, the Board found no in-service documents or records indicating the presence of any

experiences or behaviors associated with a mental health condition and no current mental health records were provided by the applicant.

3. The Board noted the applicant completed 3 months and 24 days of net active service this period. Evidence show he was not awarded a military occupational specialty. 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, a change in his narrative reason for separation from "entry level performance and conduct" to "service-related disability" or referral of his case to the DES. Therefore, the Board denied relief.

BOARD VOTE:

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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.

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, USC, Section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30%.
3. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.
4. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.
5. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. 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 by a preponderance of the evidence.
 - b. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
6. AR 635-5-1 (Separation Program Designator 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. The regulation shows that Soldiers separated under the provisions of AR 635-200, Chapter 11 with separation code "JGA," are assigned the corresponding narrative reason "entry level status performance and conduct."

7. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in AR 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

8. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9 provides 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. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an 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, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records

(BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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, Boards 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.

//NOTHING FOLLOWS//