

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013899

APPLICANT REQUESTS: in effect,

- an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge
- restoration of his rank/grade to private first class (PFC)/E-3
- issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) which reflects his:
  - entire period of service in the U.S. Army Reserve (USAR) from 21 December 2006 to 29 April 2009
  - rank/grade at the time of his discharge as PFC/E-3
  - final unit of assignment as B Company, 324th Integrated Theater Signal Battalion (ITSB), 719 15th Street, Building 14401, Fort Gordon, GA 30905

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period ending 24 October 2007
- Defense Finance and Accounting Service (DFAS) Military Leave and Earnings Statement (LES) for the pay period ending 12 December 2007
- DA Form 4651 (Request for Reserve Component Assignment or Attachment)
- B Company, 324th ITSB, Fort Gordon, GA memorandum, Subject: Notification of Separation Proceedings Under Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), Chapter 12, undated (First page)
- B Company, 324th ITSB, Fort Gordon, GA memorandum, Subject: Notification of Separation Proceedings Under Army Regulation 135-178, Chapter 12, dated 29 January 2009
- B Company, 324th ITSB, Fort Gordon, GA memorandum, Subject: Request for Conditional Waiver - Separation Under Army Regulation 135-178, Chapter 12, dated 29 January 2009
- Department of Veterans Affairs (VA) Form 26-1880 (Request for a Certificate of Eligibility), dated 13 March 2011
- Letter From Dorn VA Medical Center, Columbia, SC, dated 10 March 2014

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), Section 1552 (b); however, the Army Board for Correction of Military Records 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, he desires a DD Form 214, which shows he was honorably discharged from the USAR in the rank/grade of PFC/E-3 on 29 April 2009; and that his final unit of assignment was B Company, 324th ITSB, 719 15th Street, Building 14401, Fort Gordon, GA 30905. The applicant indicates on his DD Form 149 that mental health issues/conditions are related to his request.
3. On 21 December 2006, the applicant enlisted in the USAR in the rank/grade of private (PV1)/E-1 for a period of 8 years.
4. Orders show the applicant was ordered to initial active duty for training (IADT) for a period of approximately 16 weeks for the purpose of completing Basic Combat Training (BCT) and Advanced Individual Training (AIT) with an initial reporting dated of 12 June 2007.
5. A DD Form 214 shows the applicant entered active duty on 12 June 2007. Upon completion of AIT, he was awarded military occupational specialty 25L (Cable System Installer/Maintainer). On 24 October 2007, he was released from active-duty training upon completion of required active service and returned to his unit, B Company, 324th Signal Battalion, Building 14401, 15th Street, Fort Gordon, GA 30905. His characterization of service was honorable. He was credited with completion of 4 months and 13 days of net active service and held the rank of PV1.
6. The specific facts and circumstances surrounding the applicant's separation are not available in his Army Military Human Resource Record (AMHRR). However, the applicant provides the following documents which are available in their entirety for the Board's consideration.
  - a. A DFAS LES for the pay period ending 12 December 2007 shows he held the rank/grade of PV1/E-1 at the time.
  - b. DA Form 4651, dated 27 February 2008, shows the applicant requested a voluntary transfer to a unit located in Baltimore, MD. (Request for Reserve Component Assignment or Attachment)
  - c. The first page of an undated memorandum addressed to Commander, B Company, 324th ITSB, Fort Gordon, GA, Subject: Notification of Separation

Proceedings Under Army Regulation 135-178, Chapter 12, shows the applicant acknowledged receipt of the Notification of Separation Proceedings Under Army Regulation 135-178, Chapter 12, dated 11 August 2008. He understood he may expect to encounter substantial prejudice in civilian life if his service was characterized as General (under honorable conditions), or UOTHC. He further understood that, as the result of issuance of a discharge where the service is characterized as UOTHC, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He consulted with counsel and was advised of the basis for the contemplated action to separate him for unsatisfactory participation and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He waived his right to consult with an appointed counsel. The remainder of the memorandum was not provided.

d. The first page of B Company, 324th ITSB, Fort Gordon, GA memorandum, Subject: Notification of Separation Proceedings Under Army Regulation 135-178, Chapter 12, dated 29 January 2009, shows the applicant's commander notified the applicant he was initiating action to separate him from the USAR for misconduct. The reason for this proposed action was because the applicant had been arrested and jailed since 3 September 2008. The commander advised the applicant he was recommending that he receive a UOTHC characterization of service, but the separation authority would decide whether he received a characterization of honorable, general (under honorable conditions), or UOTHC. The commander suspended action for 45 days to give the applicant an opportunity to exercise his rights. The remainder of the memorandum was not provided.

e. The first page of B Company, 324th ITSB, Fort Gordon, GA memorandum, Subject: Request for Conditional Waiver - Separation Under Army Regulation 135-178, Chapter 12, dated 29 January 2009, shows the applicant submitted a request for conditional waiver. In doing so, he waived his right to consult with an appointed counsel for consultation; or military counsel of his own choice, or civilian counsel at his own expense, and his right to submit written statements. The remainder of the memorandum was not provided.

7. Orders 09-119-00007 issued by Headquarters, 335th Signal Command (Theater), East Point, GA on 29 April 2009, show the applicant was reduced from PFC/E-3 to PV1/E-1 effective 29 April 2009. He was also discharged from the USAR under the authority of Army Regulation 135-178 effective 29 April 2009, with an UOTHC discharge.

8. On 20 May 2024, a staff member of the Case Management Division, Army Review Boards Agency (ARBA), requested the applicant provide medical documents that support his claim of mental health conditions and afforded him a 30-day suspense date. To date, the applicant has not provided a response.

9. The applicant provides the following documents which are available in their entirety for the Board's consideration.

a. A VA Form 26-1880, dated 13 March 2011, shows the applicant applied for a Certificate of Eligibility for a VA home loan.

b. A letter from a Health Care for Re-entry Veterans Specialist at the Dorn VA Medical Center, Columbia, SC, dated 10 March 2014, was rendered in response to the applicant's inquiry regarding assistance with transitional housing upon his release from prison.

10. Army Regulation 600-8-19, paragraph 10-15 provides that when the separation authority determines that a Soldier is to be discharged UOTHC, the Soldier will be reduced to the lowest enlisted grade.

11. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge and other upgrades to his rank and changes to his DD214. He contends he experienced mental health conditions that mitigates 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 USAR on 21 December 2006; 2) The specific facts and circumstances surrounding the applicant's separation are not available in his Army Military Human Resource Record (AMHRR). However, the applicant provided military documents for review; 3) The applicant provided a Notification of Separation Proceedings Under Army Regulation 135-178, Chapter 12, dated 29 January 2009. This demonstrated the applicant's commander him that he was initiating action to separate him from the USAR for misconduct. The reason for this proposed action was because the applicant had been arrested and jailed since 3 September 2008; 4) The applicant was discharged from the USAR under the authority of Army Regulation 135-178 effective 29 April 2009 with an UOTHC discharge.

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

c. The applicant asserts he experienced mental health conditions that mitigate his misconduct while on active service. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV was void of any mental health information in regard to the applicant, and he did not provide any additional medical documentation to review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge beyond his arrest and incarceration to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge beyond his arrest and incarceration to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced mental health condition 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:

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 opinion of the Agency Behavioral Health Advisor that there is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is

insufficient evidence surrounding the events which resulted in the applicant's discharge beyond his arrest and incarceration to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

## 2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge beyond his arrest and incarceration to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced mental health condition 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.

3. The Board determined the applicant request for: (1) an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable, (2) restoration of rank/grade to private first class (PFC)/E-3, and (3) issuance of an updated DD Form 214 reflecting his entire service in the U.S. Army Reserve (USAR) from 21 December 2006 to 29 April 2009, including his final unit of assignment and rank at separation are without merit. The Board noted that the specific facts and circumstances surrounding the applicant's discharge are not available in his Army Military Human Resource Record (AMHRR). Moreover, the applicant provided only self-reported accounts of a mental health condition with no independent verification or corroborating documentation. The record also lacks sufficient evidence of any in-service mitigating factors or rehabilitation efforts.

4. Based on the available documentation—which includes evidence of arrest and incarceration—the Board found no justification to support restoration of the applicant's rank or amendment to reflect a different unit of assignment. In accordance with regulatory guidance at the time of discharge, and consistent with the Army's commitment to preserving historical record accuracy, changes to the DD Form 214 require compelling evidence of error or injustice. No such evidence was presented.

The Board concluded that the discharge characterization under UO THC was appropriate, and that the applicant failed to demonstrate by a preponderance of evidence that an error or injustice occurred. Accordingly, the Board denies relief.

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.

X	
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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, 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. 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 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 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

d. Chapter 12 provides a Soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2, section I, that the Soldier is unqualified for further military service by reason of one or more of the following circumstances.

(1) Minor disciplinary infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a Soldier in entry level status is warranted

solely by reason of minor disciplinary infractions, the action will be processed under Entry Level Performance and Conduct (chap 8).

(2) A pattern of misconduct. A pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(3) Commission of a serious offense. Commission of a serious military or civilian offense if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ.

(4) Abuse of illegal drugs. Abuse of illegal drugs is serious misconduct. Discharge action normally will be based upon commission of a serious offense. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more disciplinary infractions or incidents of other misconduct and processed for discharge under (1) or (2) above, as appropriate.

(5) Civil conviction. A Soldier may be discharged for misconduct when it is determined under the guidance set forth in chapter 2, section I, that the Soldier is unqualified for further military service by reason of a civil conviction. Discharge action may be initiated against Soldiers under the following circumstances:

(a) When initially convicted by civil authorities, or action is taken that is tantamount to a finding of guilty (to include a similar adjudication in juvenile proceedings).

(b) When a punitive discharge would be authorized for the same or a closely related offense under the UCMJ, or the sentence by civil authorities includes confinement for 6 months or more without regard to suspension or probation.

(c) When specific circumstances of the offense warrant discharge.

(d) If the sole basis for discharge is conviction of a civil offense, counseling and rehabilitative efforts are not required prior to initiation of discharge action.

(e) When a board hearing has been properly waived, the case will be processed under the Notification Procedure and the separation authority will take action under paragraph 3-9.

(6) Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in chapter 2, section III.

(a) For Soldiers who have completed entry level status, characterization of service as Honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. In such cases, separations for misconduct with an Honorable characterization will be approved by the separation authority (para 1-10). As an exception, the separation authority will approve separations with service characterized as Honorable when the sole evidence of misconduct is command-directed urinalysis results, which cannot be used for characterization of service, or when an administrative discharge board has recommended separation with an Honorable characterization of service.

(b) When characterization of service Under Other Than Honorable Conditions is not warranted for a Soldier in entry level status under chapter 2, section III, the service will be described as uncharacterized.

5. Army Regulation 600-8-19, paragraph 10-15 provides that when the separation authority determines that a Soldier is to be discharged from the Service UOTHC, the Soldier will be reduced to the lowest enlisted rank. Further board action is not required for this reduction.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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.

7. 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.

8. 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.

//NOTHING FOLLOWS//