

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20230014335

APPLICANT REQUESTS: upgrade of his uncharacterized discharge to a general discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Statement of Support

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states it has been 30 years since he left basic training and he would now like to utilize his benefits. His time in service was unsuccessful due to his behavior. He is very sorry. He had a rough childhood growing up in the streets [REDACTED] and due to that part of his life, he believes he had mental issues known today as post-traumatic stress disorder (PTSD). He recognizes that he had issues at the time, from his young age and immaturity to lack of knowledge of how to act civilized. He is a different man today. He wishes he could change the past. He is a supervisor of a staff at a major airline and a long-time member of a professional and masonic organization. In addition, he has worked along service members and veterans in support of the local American Legion. He asks the Board to consider changing his character of service.
3. He provides a statement from a retired servicemember who has known the applicant for 12 years and attests to his dedication, commitment, and personal growth. He describes the applicant as one who consistently demonstrated an exceptional work ethic, professionalism, and a genuine desire to contribute to the mission at hand. The applicant has shown genuine remorse for any mistakes made in the past and is committed to making amends and proving their worthiness to serve their country.

4. The applicant enlisted in the Regular Army on 3 December 1992. He was assigned to Fort Jackson, SC for training.

a. During training the applicant was frequently counseled for infractions including:

- Failure to meet minimum standards on a diagnostic Army Physical Fitness Test (APFT) on 12 December 1992
- Failure to meet minimum standards on a diagnostic APFT on 9 January 1993
- Refusal to train and desire to be discharged, on 19 January 1992
- Lack of motivation, 22 January 1993

b. On 27 January 1993, the applicant's immediate commander notified the applicant of her intent to initiate separation action against him under the provisions of chapter 11 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), due to entry-level performance and conduct. The reason for the commander's proposed action was the applicant's lack of motivation to be trained in the military. The commander advised the applicant of his rights.

c. On 27 January 1993, the applicant acknowledged receipt of the separation notification in accordance with chapter 11 of AR 635-200. He waived consulting with counsel. He was advised by his commander of the basis for the contemplated action to separate him for entry level performance, the effects of this separation, the rights available to him, and the effects of any action taken by him in waiving his rights. He acknowledged he understood if the request for discharge were approved, he would receive an entry-level separation with uncharacterized service. He further elected not to submit a statement in his own behalf.

d. Subsequent to the applicant's acknowledgement, the immediate commander initiated separation action against him in accordance with chapter 11 of AR 635-200, indicating that the applicant's lack of motivation and negative attitude will not allow the applicant to become a productive Soldier. He does not have the desire to continue in the military. The intermediate commander recommended approval of the discharge action.

e. On 1 February 1993, the separation authority waived the rehabilitation requirements and approved the applicant's discharge under the provisions of chapter 11, AR 635-200, and directed the applicant's service be entry level status (uncharacterized). Accordingly, the applicant was discharged on 5 February 1993.

f. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged due to entry-level performance and conduct in accordance with chapter 11 of AR 635-200 with uncharacterized service. He completed

2 months and 3 days (63 days) of creditable active military service. He was not awarded a military occupational specialty and he did not complete his first full term of service.

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

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 3 December 1992.
- On 27 January 1993, the applicant's immediate commander notified the applicant of her intent to initiate separation action against him under the provisions of chapter 11 of Army Regulation (AR) 635-200, due to entry-level performance and conduct. The reasons for the commander's proposed action were: The applicant's lack of motivation to be trained in the military.
- The applicant was discharged on 5 February 1993 and completed 2 months and 3 days of credible 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 had a rough childhood and believes he had issues attributable to PTSD at the time of his misconduct. There were no mental health records included in the application. There are three counseling form signed by the applicant on 20, 22, and 23 January 1993 stating that the applicant, in summary, wanted out of the military. There was insufficient evidence that the applicant was diagnosed with a 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. 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.

f. 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 the misconduct.

(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? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. 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:

After review of the application and all evidence, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined there is insufficient evidence to grant relief. Based upon the available documentation and the findings of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service. The governing regulation provides that a separation will be described as uncharacterized, if the separation action is initiated within the first 180 days of active duty service. As such, his DD Form 214 properly shows his service as uncharacterized.

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.

3/6/2025

X

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, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 11 of this regulation, in effect at the time, governed the entry level status discharge. It provided for the separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or have failed to

respond to formal counseling. The regulation essentially requires that the service member must have voluntarily enlisted; must be in basic, advanced individual, on the job or service school training, and must not have completed of more than 179 days of active duty on their current enlistment by the date of separation. The regulation provided that Soldiers may be separated when they have demonstrated that they are not qualified for retention due to failure to adapt socially or emotionally to military life; cannot meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; or have demonstrated character and behavior characteristics not compatible with satisfactory continued service. The regulation required an uncharacterized description of service for separation under this chapter.

b. Chapter 3 describes the different types of characterization of service. It states that an uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable condition is authorized under the reason for separation and is warranted by the circumstances of the case or when The Secretary of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. For the purposes of characterization of service, the Soldier's status is determined by the date of notification as to the initiation of separation proceedings (emphasis added). Entry level status is defined as follows:

- Upon enlistment, a Soldier qualifies for entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active service after a service break of more than 92 days of active service.
- A member of a Reserve Component (RC) who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in an RC.

3. 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.

4. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part 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 that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//