

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230014881

APPLICANT REQUESTS: his uncharacterized service be upgraded.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 16 October 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 February 2006

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 he continued to exhibit the leadership values of the military. On his DD Form 293, he annotates post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health are related to his request.
3. Prior to enlisting, the applicant underwent a medical examination on 5 November 2005. The relevant DD Form 2808 (Report of Medical Examination) shows he was medically qualified for enlistment.
4. The applicant enlisted in the Regular Army on 11 January 2006, for a period of 3 years and 19 weeks.
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 discharged on 23 February 2006, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), by reason of failure to meet medical/physical procurement standards, with separation code JFW and reentry code 3. He was credited with 1 month and 13 days of net active service this period. His service was uncharacterized, and he was not awarded a military occupational specialty.

6. 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.

7. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his uncharacterized characterization of service. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. 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 Regular Army (RA) on 11 January 2006, 2) his record is void of the separation packet containing the specific facts and circumstances surrounding his discharge processing, 3) His DD Form 214 shows that he was discharged under the provisions of Army Regulation (AR) 635-200, paragraph 5-11, by reason of failure to meet medical/physical procurement standards with a separation code of JFW and reentry code of 3. He was credited with 1 month and 13 days of net active service and was not awarded a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's enlistment physical (date illegible) documented that item 40, psychiatric, was normal on clinical evaluation and he was cleared for service.

d. The applicant's military service treatment records (STR) were available for review in JLV from 17 January 2006 through 26 February 2006. He first presented to BH on 27 January 2006. It was documented that the applicant reported he was claustrophobic and afraid of going to Iraq. It was noted that the applicant reported he did not want to be in the military and did not think he could handle it. He reported a childhood history of BH treatment starting in third grade when he was diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) and was prescribed Ritalin (stimulant medication). It was further documented that the applicant said he was diagnosed with Bipolar

Disorder at age 16 and was prescribed Trileptal (anticonvulsant that may be prescribed for symptoms of Bipolar Disorder). He reported he had suicidal ideation and received psychiatric inpatient treatment in February 2005. He also reported a history of auditory hallucinations at age 16 (non-command). The provider documented that the applicant denied experiencing suicidal or homicidal ideation at the time of the visit and that although he was anxious and depressed, he was stable. He was returned to duty though without a weapon and was placed in a 'pending records group.' The provider diagnosed the applicant with Adjustment with Depressed Mood and was scheduled to follow-up in the BH clinic in three days. At the time of follow-up on 06 February 2006 and stated he 'could not take being in the bay, it's way too stressful.' He reported he was having difficulty with emotional control. He was scheduled to return to the clinic in 2 days. The applicant was seen twice on 01 February 2006. After his initial follow-up, he later returned to the clinic stating that he wanted to be moved from his unit as he did not feel comfortable there and wished to see his family. The provider noted uncertainty regarding the change in emotional state between his earlier visit and the unscheduled walk-in. It was noted that the applicant was reporting vague, non-specific suicidal ideation without plan or intent. The applicant continued to follow-up with BH through 09 February 2006.

e. On 03 February 2006, the applicant underwent an existed prior to service (EPTS) evaluation for BH purposes. It was documented that the condition was identified on 27 January 2006. The provider noted that the applicant had a history of two psychiatric hospitalizations, 2002 and 2005, due to depression and suicidality. It was noted that he had been diagnosed with Bipolar Disorder, Mood Disorder Not Otherwise Specified (NOS), and Personality Disorder NOS. His pre-service medication history included Zoloft (antidepressant), Depakote (anticonvulsant used to treat Bipolar Disorder), Trileptal, and Strattera (ADHD medication). The provider documented that he discontinued his treatment a few months prior to enlistment against medical advice and that medical records were received confirming this information. Since arriving to Ft. Benning, the applicant had reported recurrent symptoms of depressed and anxious mood, inability to handle stress, poor concentration, panic attacks, and poor duty performance. It was noted that he did not feel capable of functioning in the Army and did not desire to remain on active duty. The provider diagnosed the applicant with Mood Disorder, NOS, Recurrent, Chronic, EPTS. It was documented that the applicant did not meet fitness standards for enlistment IAW AR 40-501, Chapter 2, Paragraph 2-28, that the condition existed prior to service, was not aggravated by service, and that he did not meet retention standards. It was recommended that the applicant be separated from service under AR 635-200, paragraph 5-11.

f. There were no VA records available for review in JLV and the applicant is not service connected through the VA for any conditions.

g. The applicant is applying to the ABCMR requesting his characterization of service be upgraded from uncharacterized. The applicant indicated PTSD, TBI, and Other Mental Health Issues are related to his request. Although the applicant's service records are void of the specific circumstances that led to his discharge, review of his medical records demonstrate that the applicant was discharged due to EPTS. The provider documented that the applicant's EPTS condition as Mood Disorder, NOS, did not meet procurement standards, and that his condition was not service-aggravated. The provider documented that review of his civilian treatment records confirmed the EPTS condition(s). There is no documentation in the record that the applicant has ever been diagnosed with TBI or PTSD, however, per liberal guidance, his assertion alone is worthy of the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends that PTSD, TBI and Other Mental Health Issues are related to his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends that PTSD, TBI and Other Mental Health Issues are related to his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. In-service treatment records show that the applicant was diagnosed with Adjustment Disorder with Depressed Mood. Upon further evaluation, it was determined that the applicant had an EPTS condition that failed procurement and retention standards, which was documented to be confirmed by review of his pre-military medical records. The provider noted the applicant had pre-service BH diagnoses of Mood Disorder NOS, Bipolar Disorder, and Personality Disorder NOS. It was further documented that he had discontinued treatment against medical advice prior to his enlistment. The evaluating provider determined documented the applicant's EPTS condition as Mood Disorder NOS, that it existed prior to service, was not service aggravated, and did not meet retention standards. As such, the applicant's discharge due to failure to meet medical/physical procurement standards appears to be fair and equitable and an upgrade for BH purposes is not supported.

i. Regarding his assertion of TBI and PTSD, although there is no evidence in the record that the applicant has ever been diagnosed with these conditions, per liberal guidance, his assertion alone is worthy of the Board's consideration.

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. 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding no evidence in the record that the applicant has ever been diagnosed with these conditions. The opine determined that the applicant had an EPTS condition that failed procurement and retention standards, which was documented to be confirmed by review of his pre-military medical records.

2. The Board noted that Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. The Board found the applicant was credited with 1 month and 13 days of net active service this period. His service was uncharacterized, and he was not awarded a military occupational specialty and released for reason of failure to meet medical/physical procurement standards. As such, the applicant's DD Form 214 properly shows the appropriate characterization of service as uncharacterized. Therefore, relief is denied.

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.

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. Title 10, U.S. Code Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. AR 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 by a preponderance of the evidence. It is not an investigative body.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. AR 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

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 Oservice 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 3-9, 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.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, 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. 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.

6. 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; TBI; 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.

7. 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//