

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240001127

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to honorable.

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Attorney Letter
- Department of Veterans Affairs (VA) Rating Decision, 15 November 2023

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 is requesting an upgrade of his uncharacterized discharge to honorable due to his status as a disabled Veteran. He is unable to work due to his injury at the time of his military service. On 15 November 2022, the VA granted a service-connected rating decision which he believes is related to his uncharacterized discharge. In his self-authored letter, the applicant further identifies his attorney and his son as his representatives related to his discharge and his inability to receive mail unless due to updated procedures at the jail. He has been limited to the receipt of legal documents only.

3. The applicant provides the following documents:

- a. Two duplicate copies of his DD Form 214 for the service period ending 6 November 1997.
- b. A letter from his attorney notifying him of the decision regarding the supplemental claim filed with the VA. He included the VA Rating Decision dated 15 November 2023,

which indicated the applicant was granted a 20% service-connected disability rating for his lumbar disorder (also claimed as low back condition).

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

a. He enlisted in the Regular Army on 7 May 1997.

b. There is no evidence to shows which initial training phase the applicant was in, basic combat training or advance individual training at the time of discharge.

c. On 24 October 1997, the applicant underwent a mental health evaluation and was diagnosed with adjustment disorder with depressed mood. The applicant noted he was having difficulty dealing with the death of his father. He also had concerns about his medical condition, which prevented him from doing any physical activity. The applicant did not demonstrate any motivation for continued service. The mental health provider recommended he be removed from training immediately, with no further physical or verbal stress.

d. On 28 October 1997, the immediate commander requested the applicant be dropped from training as recommended by the mental health provider.

e. On 28 October 1997, the applicant's immediate commander notified the applicant of her intent to separate him under the provisions of Chapter 11, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for entry level status performance and conduct. The specific reasons for his recommendation were based on the applicant's diagnosis of adjustment disorder with depressed mood. The applicant acknowledged receipt on the same day.

f. On 28 October 1997, after waiving consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

g. On 28 October 1997, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct due to his diagnosis of adjustment disorder with depressed mood.

h. On 28 October 1997, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 11, AR 635-200 for entry level status performance and conduct. His term of service deemed uncharacterized.

i. On 6 November 1997, the applicant was discharged from active duty. His DD Form 214 show she was discharged in accordance with chapter 11 of AR 635-200 with an uncharacterized characterization of service. His DD Form 214 shows he completed 6 months of active service with no lost time. He was assigned separation code JGA and the narrative reason for separation listed as "Entry Level Performance and Conduct," with reentry code 3.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 15-185), the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

7. By regulation (AR 635-200), service will be described as uncharacterized under the provisions of Chapter 11. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

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

9. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a change in characterization of service from

uncharacterized to honorable. This is a request for reconsideration from a previous decision (15Nov2022). He stated that Other Mental Health condition is related to his request and contends that his service-connected medical issues were the basis of his discharge.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service 07May1997. He was discharged about six months later on 06Nov1997 under AR 200-635 chapter 11 for entry level performance and conduct.

3. The applicant's statement at the time indicated he was depressed because his father died a month prior while he was in basic training; he had a back injury which did not allow him to train for 21 days; and his wife told him that their son was in the hospital with a serious illness, and he couldn't be there. He underwent a command directed mental health evaluation on 24Oct1997, and symptoms of nervousness, anger and depression were documented. The applicant reported loss of motivation to remain in the military. The BH examiner assessed that the applicant did not meet criteria for major depressive disorder, psychotic disorder or other condition that warranted discharge through medical channels. There was no evidence of physical illness impacting the brain. He denied suicide/homicide ideation and intent. The BH specialist diagnosed Adjustment Disorder with Depressed Mood. The specialist stated the condition was a result of the applicant's difficulty in adapting to a specific external stressor. The specialist opined the disorder would likely recur in future stressful circumstances, particularly in combat. They recommended removal from training immediately and separation under AR 635-200 chapter 11.

4. The applicant did not submit any service treatment records. He did submit a 15Nov2022 VA Rating Decision which showed the VA service-connected Lumbar Disorder at 20% and Posterior Trunk Scar (status post back surgery) effective 21Aug2022. Search in JLV nor the November 2022 VA Rating Decision showed a BH diagnosis. In the 15Nov2010 C&P Examination Note, it was documented the applicant hurt his back during exercise training in 1997 while in service. The VA examiner indicated the back film at the time showed mild degenerative changes at L5-S1 and facet joints. There was no indication of the time elapsed between the date of the back injury and the date of the x-ray which already showed degenerative changes which takes some time to develop. He was treated with rest, pain medication (Motrin) and physical therapy. The back pain worsened in 2001 when he was working with a local truck parts company. The 18Oct2010 lumbar spine MRI showed herniated discs at L4-L5 and L5-S1 with spinal canal stenosis and degenerative disc disease bulging at L2-L3 and L3-L4

5. The applicant contends that his service incurred medical conditions were the reason for his discharge from service and because of this, his service should be deemed

honorable. He had suffered personal life stressors and an in-service back injury which resulted in the development of Adjustment Disorder with Depressed Mood. At the time, he endorsed (in the Soldier's Questionnaire dated 23Oct1997) that even if he had not sustained the back injury, he did not want to stay in the military due to his BH symptoms (depression, sleep issues). Liberal Consideration policy guidance was considered. There was no misconduct documented. The applicant was in service for 6 months. There was no indication in the applicant's statements or in the available records, that would lead one to reasonably conclude that the applicant experienced psychosis or MST; or performed an extreme act of heroism, while in the military that might warrant a change in characterization of service from 'Uncharacterized'. Based on review of the applicant's record, the chapter 11 separation was not in opposition to the available medical evidence. The back injury resulted in temporary duty restrictions. Based on available records, there was insufficient medical evidence to support that the back condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. In addition, the applicant's adjustment disorder did not warrant medical discharge processing.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. The applicant was diagnosed with Adjustment DO with Depressed Mood. This is a transient condition which, under liberal consideration, is mitigating only if it is associated with another mitigating BH condition.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with Adjustment DO with Depressed Mood while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no misconduct to mitigate. The applicant is applying for a change in his discharge to Honorable essentially based on his contention that service connection for his back issues merits such a change. However, VA service connection for medical issues potentially incurred during active service has no bearing on the accession/retention decisions made by the US Army. VA regulations are determined by the Department of Veterans Affairs whereas the Army regulations are determined by the Department of Defense.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was diagnosed with an adjustment disorder that affected

his ability to complete initial entry training. As a result, his chain of command initiated separation action against him. He was separated after completing 6 months of active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board found no error or injustice in his separation processing. Also, the Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official and agreed that there was no misconduct to mitigate. The fact that the VA awarded him service-connection disability compensation has no bearing on the accession/retention decision made by the Army. As such, the Board determined that a change to his uncharacterized discharge is not warranted.

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. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. 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. An honorable discharge is a separation with honor. 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.

b. Chapter 11 of the regulation states service will be described as uncharacterized under the provisions of this chapter. Separation of a Soldier in entry level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- inability
- lack of reasonable effort
- failure to adapt to the military environment
- minor disciplinary infractions

4. 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 post-traumatic stress disorder (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.

5. 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, on 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.

6. 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.

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 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.

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.

7. 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//