

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002044

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his characterization of service as either "Honorable" or "Under Honorable Conditions (General)" rather than "Uncharacterized."

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:  
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 when he was growing up, he was mentally, physically, and sexually abused by different family members. He never told this to anyone until he was incarcerated in a correctional institution. He joined the Army thinking it would give him strength, but after he was injured, he believed he did not have strength and hated himself and the entire world. Now that he has received help with his mental health, he knows himself. He wants to be involved with the American Veterans post in prison but needs a characterized discharge to become a member. He is serving a life sentence in prison and does not have access to his records. The applicant indicates on his DD Form 293 that post-traumatic stress disorder (PTSD), other mental health conditions, and sexual assault/harassment are related to his request.
3. On 23 April 1999, the applicant enlisted in the Regular Army in the rank/pay grade of specialist (SPC)/E-4 for a period of 4 years.
4. On 14 June 1999, the applicant was counseled regarding his constant demonstration of a lack of motivation and desire to train. He was advised his apathetic attitude toward his duties and responsibilities was intolerable. His lack of self-discipline and disruptive behavior were a constant distraction to the rest of the platoon. He was further advised that as a result of his negative behavior and inability to adapt to military service he

would be recommended to the chain of command for administrative separation from the Army.

5. On 30 June 1999, the applicant's immediate commander notified him that actions were being initiated to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reasons, the commander cited the applicant's lack of motivation and failure to adapt to the military environment. The applicant was advised that if his separation was approved, he would receive an entry level separation with an uncharacterized discharge. The applicant was further advised that he had the right to consult with consulting counsel and to submit statements in his own behalf.

6. The applicant acknowledged receipt of the separation notification and rendered his election of rights wherein he stated he had been advised of the basis for the contemplated action to separate him for the Entry Level Status Performance and Conduct under the provisions of Army Regulation 635-200, Chapter 11, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He indicated he did not desire to consult with counsel or to provide statements in his own behalf.

7. The applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 11, with an uncharacterized (entry level separation).

8. On 30 June 1999, the separation authority approved the applicant's separation with the issuance of an uncharacterized entry level discharge.

9. Orders and the applicant's DD Form 214 show he was discharged in the rank/grade of SPC/E-4 on 9 July 1999 under the provisions of Army Regulation 635-200, Chapter 11, for Entry Level Performance and Conduct with Separation code "JGA" and Reentry code 3. He was credited with completion of 2 months and 17 days of net active service this period. He did not complete his first full term of service. He did not complete the requisite training to be awarded a military occupational specialty.

10. On 14 May 2024, the applicant acknowledged receipt of a Case Management Division of the Army Review Boards Agency (ARBA) staff member's request to provide medical documents to support his diagnosis of PTSD and other mental health conditions. The applicant's mental health liaison advised him that since he is an inmate, he is considered property of the State, and ARBA must request his mental health documents directly with a release of information request.

11. 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 merely means the Soldier did not serve on active duty long enough for her or her character of service to be rated.

12. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized characterization of service to either honorable or under honorable conditions (general). The applicant selected on his application PTSD, OMH, and harassment as related to his request.

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:

- Applicant enlisted into the Regular Army on 23 April 1999.
- On 14 June 1999, the applicant was counseled regarding his constant demonstration of a lack of motivation or desire to train. He was advised his apathetic attitude toward his duties and responsibilities was intolerable. His lack of self-discipline and disruptive behavior were a constant distraction to the rest of the platoon. He was further advised that as a result of his negative behavior and inability to adapt to military service he would be recommended to the chain of command for administrative separation from the Army.
- On 30 June 1999, the applicant's immediate commander notified him that actions were being initiated to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reasons, the commander cited the applicant's lack of motivation and failure to adapt to the military environment. The applicant was advised that if his separation was approved, he would receive an entry level separation with an uncharacterized discharge. The applicant was further advised he had the right to consult with counsel and submit statements on his own behalf.
- Orders and the applicant's DD Form 214 show he was discharged in the rank/grade of SPC/E-4 on 9 July 1999 under the provisions of Army Regulation

635-200, Chapter 11, for Entry Level Performance and Conduct with Separation code "JGA" and Reentry code 3. He was credited with completion of 2 months and 17 days of net active service this period. He did not complete his first full term of service. He did not complete the requisite training to be awarded a military occupational specialty.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "when he was growing up, he was mentally, physically, and sexually abused by different family members. He never told this to anyone until he was incarcerated in a correctional institution. He joined the Army thinking it would give him strength, but after he was injured, he believed he did not have strength and hated himself and the entire world. Now that he has received help with his mental health, he knows himself. He wants to be involved with the American Veterans post in prison but needs a characterized discharge to become a member. He is serving a life sentence in prison and does not have access to his records."

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic medical records were available for review. On 14 May 2024, the applicant acknowledged receipt of a Case Management Division of the Army Review Boards Agency (ARBA) staff member's request to provide medical documents to support his diagnosis of PTSD and other mental health conditions. The applicant sent a letter stating his mental health liaison advised him since he is an inmate and considered property of the State; ARBA must request his mental health documents directly with a release of information request. No release of information was received from the applicant allowing ARBA to request his records.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD, OMH, and harassment on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted PTSD and OMH, he did not provide any medical documentation substantiating any BH diagnosis. Per his selection of harassment on his application, the applicant provides no further information, and it is unclear if his allegations are simply related to the expectations and rigors of military life.

h. Per Liberal Consideration guidelines, his contention of PTSD and OMH are sufficient to warrant consideration by the Board

#### 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 displayed a lack of motivation and desire to train, apathetic attitude, lack of self-discipline, and inability to adapt to military service, during initial entry training. As a result, his chain of command separated him for entry level performance and conduct, after completing 2 months and 17 days of net 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. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available evidence, there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

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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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.
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 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 has occurred by a preponderance of the evidence. It is not an investigative body.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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 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. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. 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.

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.

f. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) 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. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on entry level performance and conduct.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014 [Hagel Memorandum], 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 (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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (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 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. 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.

a. Guidance documents are not limited to UOTHC discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.



b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//