

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240002215

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 16 January 2024
- birth certificate
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 7 May 2001
- DD Forms 214 (Certificate of Release or Discharge from Active Duty), 31 January 2003 (two)

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 there were no negative things on his discharge, and he never applied for an upgrade of his discharge because he did not have medical records.
3. On his DD Form 149, he indicates post-traumatic stress disorder (PTSD) is related to this request.
4. The applicant enlisted in the Regular Army on 22 May 2001 for a 3-year period. He was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.
5. The applicant received numerous counselings from 11 October 2001 to 2 August 2002. The areas of emphasis covered include, but are not limited to:
 - failing to achieve the minimum score on a diagnostic Army Physical Fitness Test
 - lying to a noncommissioned officer

- falsifying information on medical documents
- failure to report for duty

6. The applicant was notified by his immediate commander of the intent to initiate separation against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unsatisfactory Performance) for unsatisfactory performance. The commander noted the applicant's failure of his Army Physical Fitness Test on 20 August 2002 and his counseling for various misconduct to include lying to a noncommissioned officer, failure to report, and falsifying information on medical documents.

7. The applicant acknowledged the proposed separation action and consulted with counsel. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a less than honorable discharge was issued to him and that he may be ineligible for many or all benefits under both Federal and State laws. He waived consideration and a personal appearance before an administrative separation board. He requested consulting counsel and elected to not submit statements in his behalf.

8. The applicant's intermediate commander recommended him for separation under the provisions of AR 635-200, paragraph 13-2, by reason of unsatisfactory performance. Further recommending his service be characterized as under honorable conditions (general).

9. The separation authority approved the recommended separation action and directed the issuance of a under honorable conditions (general) discharge.

10. The applicant was discharged on 31 January 2003, under the provisions of AR 635-200, paragraph 13-2(f), by reason of physical standards, in the grade of E-3. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under honorable conditions (general). He was credited with 1 year, 8 months, and 9 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign medals:

- National Defense Service Medal
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

11. The applicant additionally provides his birth certificate and his NGB Form 22 (Report of Separation and Record of Service) showing he was honorably discharged from the National Guard of Texas on 7 May 2001, in the grade of E-3.

12. The Army Discharge Review Board considered the applicant's request for a change in his character and/or reason for discharge. After careful review of the application, military records, and all other available evidence, the Board determined he was properly and equitably discharged and denied his request for a change in his characterization of service and/or narrative reason.

13. Soldiers may be separated under the provision of AR 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) 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 22 May 2001.
- The applicant received numerous counselings from 11 October 2001 to 2 August 2002 (failing to pass APFT; lying to an NCO; falsifying medical documents; failure to report for duty). He was notified by his immediate commander of the intent to initiate separation against him under the provisions of Army Regulation (AR) 635-200, Chapter 13 for unsatisfactory performance.
- The applicant was discharged on 31 January 2003 and was credited with 1 year, 8 months, and 9 days of net 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 PTSD as a mitigating factor in his discharge. The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, 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. There is insufficient evidence, beyond self-report, of any history of mental health symptoms or diagnoses.

(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. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a 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:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for liberal consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his statement regarding PTSD, his record and length of service, the frequency and nature of his misconduct, the reason for his separation and the character of service he received upon discharge. The Board considered the review and conclusions of the medical advising official. The Board agreed that there was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service. The Board found that: (1) The applicant asserts that he had an undiagnosed mental health condition at the time of the misconduct, but there is insufficient evidence beyond his self-report of mental health conditions or diagnoses; (2) The applicant asserts that he was experiencing a mental health condition while on active service, and; (3) There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service that would mitigate his misconduct or

performance deficiencies as a matter of liberal consideration. 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.

6/10/2025

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. Section 1556 of Title 10, U.S. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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 is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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 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 post-traumatic stress disorder (PTSD); traumatic brain injury; 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.

5. 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, 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//