

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240002329

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

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Outpatient Clinic Letter, 15 May 2023
- VA Letter, 15 January 2024

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 looking at getting his discharge upgraded to honorable so he can have a higher chance at getting a service animal due to his disabilities with the VA.
3. The applicant enlisted in the U.S. Army Reserve on 8 February 2012.
4. He entered a period of active duty training (ADT) on 24 April 2012.
5. He was counseled by his drill sergeant on 13 July 2012, for refusal to train. His immediate commander counseled him on 7 August 2012, notifying him of his intent to initiate separation action on him.
6. On 14 August 2012, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 11 for entry level performance and conduct. The specific reason for the proposed action was inability to adapt, refusing to train. He acknowledged receipt of the notification.

7. Before completing his election of rights, he was afforded the opportunity to consult with appointed counsel for consultation, or military counsel of his own choice, if they are reasonably available; or civilian counsel at his own expense. He chose to decline the opportunity.

8. His immediate commander recommended he be separated from the Army prior to the expiration of his current term of service with an uncharacterized character of service.

9. On 15 August 2012, the separation authority directed he be separated under the provisions of AR 635-200, chapter 11 with an uncharacterized character of service.

10. Accordingly, he was discharged on 23 August 2012. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 months of active service. It also shows in:

- Item 11 (Primary Specialty): None
- Item 24 (Character of Service): Uncharacterized
- Item 25 (Separation Authority): AR 635-200, chapter 11
- Item 26 (Separation Code): JGA
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Entry Level Performance and Conduct

11. The applicant applied to the Army Discharge Review Board (ADRB) on 28 June 2014, for upgrade of his discharge. After careful review of his application, military records and all other available evidence, the ADRB determined that he was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied.

12. The applicant provides:

a. A VA outpatient clinic letter, 15 May 2023, stating the applicant is patient at the Veterans Administration Outpatient Clinic located in Rothschild, WI where he has been accessing mental health treatment services to address Major Depression and Post Traumatic Stress Disorder. He has been under treatment with the clinic for his mental health since 2016. He is currently receiving treatment weekly to bi-weekly. (The entire letter is available for review in documents).

b. VA letter, 15 January 2024, which shows he is 90% combined service-connected evaluation effective 1 December 2023.

13. By regulation, (AR 635-200):

a. An uncharacterized separation is an entry-level separation; for Soldiers ordered to initial ADT, entry-level status terminates 180 days after beginning training. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.

b. Current guidance states Reserve Component Soldiers completing active duty that results in the award of an MOS, even when the active-duty period was less than 90 days (for example, completion of the advanced individual training component of Army National Guard (ARNG) Alternate Training Program or USAR Split Training Program) will receive a character of service of Honorable unless directed otherwise by the separation approval authority.

14. 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.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from uncharacterized to honorable. On his DD Form 293, the applicant indicated Other Mental Health Issues is 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 U.S. Army Reserve (USAR) on 08 February 2012. He entered a period of active duty training (ADT) on 24 April 2012, 2) he was counseled by his drill sergeant on 13 July 2012 for refusal to train, 3) on 14 August 2012, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 11 for Entry Level Performance and Conduct. The specific reason for the proposed action was inability to adapt, refusing to train. He was discharged accordingly on 23 August 2012. His DD Form 214 shows he completed 4 months of net active service, a separation code of JGA, a reentry code of 3, and the narrative reason for separation noted as Entry Level Performance and Conduct, 4) the applicant's previous application to the Army Discharge Review Board (ARDB) on 28 June 2014 was denied as it was determined he was properly and equitably discharged.

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. There were in-service medical records available for review via JLV from 26 April 2012 through 31 July 2012, none of which were BH related. The applicant initiated medical treatment for his knee on 24 May 2012 and continued evaluation and treatment for knee-related issues through 31 July 2012. It was documented that he was placed on various profiles due to his knee-related issues beginning 24 May 2012 though there was no indication that he was on profile for BH reasons nor that he was reporting any BH-related concerns. It was documented by his medical providers on several occasions that the applicant was actively seeking to get out of the military pending resolution of his symptoms. At the time of his final visit on 31 July 2012 it was documented that he was returned to duty for administrative purposes. It was also documented that his command was supportive of an entry-level separation (ELS).

d. The applicant provided a letter dated 15 May 2023 authored by his VA BH provider. The letter indicates that the applicant was being treated by the VA clinic for Major Depression and Posttraumatic Stress Disorder (PTSD) and had been undergoing treatment in that clinic since 2016. In effect, the provider addressed notification from the applicant that his service-connected disability percentage for Major Depressive Disorder (MDD) may be reduced and specified the concerns the provider had about reducing his percentage given his ongoing mental health issues and stressors.

e. A review of JLV shows the applicant is 100% service-connected through the VA, 70% for Major Depressive Disorder. He is service-connected for numerous physical health problems to include knee condition (20%) and limited extension of knee (10%). There were four BH Compensation and Pension (C&P) examinations available for review via the Veterans Benefits Management System (VBMS). At the time of his initial evaluation on 18 October 2018, the applicant was diagnosed with MDD. It was noted that he had a severe knee problem that was greatly affecting his mobility and overall quality of life and had fears that it could lead to amputation which was noted to be a major factor behind his depression. The evaluator noted that his knee injury occurred after 6 weeks of training and there were no mental health issues identified during that time. His diagnosis of MDD was reaffirmed at his subsequent evaluations on 07 December 2021 and 21 June 2022 and updated the diagnosis as MDD, recurrent, moderate to severe. It was documented that he had been in BH treatment with his provider at the time since 2014 and was prescribed Mirtazapine and Fluoxetine. It was also noted that the initial C&P examiner opined that the applicant's MDD began subsequent to his service-connected disorder related to his knee and is the 'direct result of efforts to control or cope with, or a direct psychological response to, the antecedent condition. The mental disorder has been continuously present since it began, and therefore, there is a nexus between the secondary disorder and the antecedent condition.' At the time of his most recent C&P examination on 26 June 2023, he was diagnosed with MDD, Recurrent, Severe and Unspecified Anxiety Disorder. A BH clinical note dated 09 June 2017 documented that the applicant has had three knee surgeries since 2013 and with each surgery he became 'seriously depressed.'

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a BH condition in-service that mitigated his discharge. Review of available in-service records was void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been 70% service-connected through the VA for MDD which was noted to be in response to his service-connected knee problems. He was also diagnosed with Unspecified Anxiety Disorder at the time of his most recent C&P examination though it was not documented if this was related to his military service. Thus, although the applicant has developed MDD secondary to his service-connected physical health issues post-discharge, the C&P examiner noted that there were no BH symptoms identified at the time of his in-service injury. Moreover, there is insufficient evidence that the applicant had a BH condition in-service that contributed to his discharge. As such, an upgrade for BH reasons is not supported at this time.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Other Mental Health Issues which contributed to his discharge. Post-discharge, the applicant has been 70% service-connected through the VA for MDD, Recurrent, Severe.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced Other Mental Health Issues. Post-discharge, the applicant has been 70% service-connected through the VA for MDD, Recurrent, Severe.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service medical records were void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been 70% service-connected through the VA for MDD, Recurrent, Severe and it was noted that his MDD developed secondary to his service-connected knee problems. The applicant was discharged due to Entry Level Performance and Conduct, and it was specifically noted as due to a failure to train. There is no documentation available in his military medical records indicating that the applicant reported any symptoms consistent with depression and/or BH-related concerns while in-service and his VA C&P examiner noted that there were no BH symptoms identified in-service at the time of his injury. As the applicant served less than 180 days and there is insufficient evidence indicating that he met criteria for a BH condition in-service that fell below medical retention standards, his discharge for Entry Level Performance and Conduct appears to be fair and equitable from a BH perspective. As such, an upgrade based on BH reasons is not supported.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 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. Soldiers in the U.S. Army Reserve are authorized an honorable discharge while in entry-level status only if they complete their active duty schooling and earn their designated military occupational specialty. The applicant did not complete training and was released from active duty due to entry level performance and conduct. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence the applicant had a behavioral health condition while in service that mitigated his conduct. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

2. 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.

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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, 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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel. The regulation stated in:

a. Paragraph 3-7a – an honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b – a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a member whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9a (1), states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in an entry-level status, except when characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

d. Chapter 11 sets policy and provides guidance for the separation of Soldiers because of unsatisfactory performance and/or conduct while in entry-level status.

e. 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

3. A member of a Reserve component 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 a Reserve component. Entry-level status of such a member of a Reserve

component terminates (a) 180 days after beginning training if the Soldier is ordered to active duty for training (ADT) for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active 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.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (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 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. 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 under other than honorable conditions 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.

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//