

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240003873

APPLICANT REQUESTS:

- In effect, change his uncharacterized character of service to honorable
- Correct the following on his DD Form 214 (Certificate of Release or Discharge from Active Duty):
  - item 12 (Record of Service)
  - item 12a (Date Entered AD (Active Duty) This Period)
  - item 12b (Separate Date This Period)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 the Army medically discharged him due to mental illness; this can be verified with a review of his service treatment records. On his application, the applicant has checked blocks for PTSD (post-traumatic stress disorder) and other mental health issues; he has not included any supporting documentation.
  - a. The applicant argues, because the reason for his separation was medical, his character of service should not have been uncharacterized; additionally, he believes items 12a and 12b are inaccurate; he maintains the length of his active-duty service was just short of 6 months.
  - b. The foregoing errors are impacting his ability to receive Department of Veterans Affairs (VA) benefits, are affecting his chances for being paroled, and his standing in his community as he fights a wrongful conviction.
3. A review of the applicant's service record shows the following:

a. On 29 June 2004, the applicant entered active duty into the Regular Army.

b. On 22 October 2004, the Army separated the applicant with an uncharacterized character of service. His DD Form 214 shows he completed 3 months and 24 days of net active-duty service. The report additionally reflects the following:

- Item 11 (Primary Specialty) – "None"
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – "None"
- Item 14 (Military Education) – "None"
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards)
- Item 26 (Separation (Separation Program Designator (SPD) Code) – "JFW"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Failure to meet Procurement Medical Fitness Standards

4. The absence of the applicant's separation packet means we are unable to determine the complete circumstances of his discharge; however, given the availability of the applicant's record copy DD Form 214, which lists the applicant's regulatory separation authority, the Board presumes the applicant's leadership completed his separation properly.

a. AR 15-185 (ABCMR), currently in effect, states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence must be sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

#### 5. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of his uncharacterized discharge to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD.

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 29 June 2004.
- The applicant's separation package was not available, but his DD Form 214 showed he was separated due to not meeting procurement medical fitness standards.
- The applicant was discharged on 22 October 2004 and completed 3 months and 24 days of net active-duty service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was separated due to his mental illness and should have been medically discharged, and he indicated PTSD and other mental health on his application. There were no medical or mental health records included in the application. 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 discharge.

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 his discharge. No mental health records were included in the application or available through JLV.

(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 discharge, and per Liberal Consideration his contention is sufficient for 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. In accordance with governing regulations, a separation is classified as an entry-level separation with uncharacterized service when the action is initiated while a Soldier is still in entry-level status. Upon review of the applicant's petition, available military records, and accompanying medical review, the Board concurred with the advising 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 discharge.

## Kurta Questions:

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2. The Board noted the applicant served 3 months and 24 days of net active-duty service, did not complete initial training, and was released from active duty for failure to meet medical procurement standards. The Board noted that an uncharacterized discharge is not intended to reflect negatively on a Soldier's military service. Rather, it denotes that the service member was not in the military long enough to merit a formal character of service determination. Accordingly, there is no regulatory basis to upgrade the applicant's discharge status. Furthermore, the Board found no errors in the applicant's record that would justify changes to his record of service, separation date, or

date of entry on active duty. Based on the available evidence and governing guidance, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. 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.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense.

(2) Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued general discharges to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Soldiers separated in an entry-level status receive an uncharacterized character of service. A separation was considered to be entry level when processing was initiated during the Soldier's first 180 days of continuous active duty. The Secretary of the Army was authorized, on a case-by-case basis, to direct the issuance of an honorable character of service when such action was clearly warranted by unusual circumstances involving personal conduct or duty performance.

d. Paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards) provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment were to be separated. Medical proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following:

- Medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty
- The findings were to result in an entrance physical standards board that had to convene within the Soldier's first 6 months of active duty
- The condition(s) would have permanently or temporarily disqualified the Soldier from entry into military service, had it been detected at the time; and
- The medical condition did not disqualify him/her for retention in military service; a Soldier disqualified under this provision could request but did not have a right to retention on active duty; the separation authority made the final determination.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (RE Code), the regulation referred preparers to AR 601-210 (Active and Reserve Components Enlistment Program).

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 5-11, AR 635-200 were to receive an SPD of "JFW" and have, "Failed Medical/Physical/Procurement Standards" entered in item 28 of their DD Form 214.

6. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "JFW" had a corresponding RE code of "3."

7. AR 601-210, in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers. Paragraph 3-22 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

8. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

9. 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 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.

10. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (TBI); 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 to 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.

11. 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//