

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005189

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his uncharacterized service as honorable.

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

- ACTs Online Application
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), for the period ending 8 August 2008
- Civilian Medical Records (28 pages), dated 9 April 2009 to 28 September 2022

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 that the traumatic brain injury (TBI) he sustained while on active duty and subsequent seizure disorder have had a significant and long-term impact on his life. Not only have the injuries endangered his health but significantly impaired his ability to lead a normal post-service life. He has persistent health challenges, including but not limited to depression and anxiety that severely impact his quality of life and ability to work. The psychological toll has been substantial. He strives to adapt and manage his condition. However, the trajectory of his life has been fundamentally altered. A correction reflecting the true nature of his service would aid in his ongoing recovery and reintegration into civilian life.

3. The applicant enlisted in the Army National Guard of the United States on 15 November 2007. He entered active duty on 26 May 2008 for the purpose of completing his initial entry training. His service record indicates he did not complete initial entry training prior to his discharge.

4. A DA Form 2173 (Statement of Medical Examination and Duty Status) and associated documents, show the applicant was diagnosed with a left ankle sprain and

upper respiratory infection (acute) on 12 June 2008 following a heat related incident during physical training. The incident was determined to be in the line of duty.

5. The applicant underwent a mental status evaluation on 25 June 2008. He was diagnosed with depressive disorder NOS [not otherwise specified]. The evaluating provider remarked that the applicant complained of feeling depressed, inability to sleep, difficulty focusing and concentrating, decreased energy and interest in normal activities, anxiety, irritability, and decreased appetite. It was the provider's opinion that the applicant would not respond to rehabilitation efforts, and he met the criteria for administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, due to his diagnosis. He was psychiatrically cleared for any administrative action deemed appropriate by the command.

6. The applicant was counseled by his immediate commander on 11 July 2008. Areas of emphasis covered in the counseling included his evaluation and diagnosis by the behavioral provider and the commander's intent to initiate the recommended separation action.

7. On that same date, the applicant was counseled by the Army National Guard (ARNG) liaison regarding his commander's intent to initiate his separation under the provisions of Army Regulation 635-200, paragraph 5-17, by reason of physical or mental condition. The applicant acknowledged understanding the probable discharge type, character and re-entry probability, with or without a waiver. The ARNG liaison concurred with the recommended separation action.

8. Subsequently, the applicant was notified of his commander's intent to initiate separation action against him under the provisions of Army Regulation 635-200, paragraph 5-17, due to his physical or mental condition. As the specific reason for the action, the commander noted the applicant's diagnosis of depressive disorder.

9. The applicant was advised by consulting counsel of the basis for the contemplated separation action, and its effects; of the rights available to him; and the effect of waiving his rights. He elected not to submit a statement in his own behalf.

10. The applicant's immediate and intermediate commanders formally recommended the applicant's separation, prior to the expiration of his term of service, under the provisions of Army Regulation 635-200, paragraph 5-17, and further recommended an uncharacterized discharge.

11. On 31 July 2008, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirement, and directed the issuance of an uncharacterized discharge.

12. The applicant was discharged on 8 August 2008, under the provisions of Army Regulation 635-200, paragraph 5-17, by reason of condition, not a disability. His DD Form 214 shows his service was uncharacterized, with separation code JFV and reentry code 3. He completed 2 months and 13 days of net active service. He was not awarded a military occupational specialty.

13. An NGB Form 22 also shows he was discharged from the Indiana ARNG and Reserve of the Army on 8 August 2008, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-36y, by reason of discharge of Soldiers who were previously discharged from the Reserve of the Army by the Active Component of the U.S. Army. His service was uncharacterized. He completed 8 months and 24 days of net service.

14. The applicant provides 28 pages of medical documentation, dated 9 April 2009 to 28 September 2022, which will be summarized in the "MEDICAL REVIEW" section of this Record of Proceedings (ROP).

15. 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 simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

16. Regulatory guidance states, commanders who are special court-martial convening authorities may approve separations under the provisions of Army Regulation 635-200, paragraph 5-17 based upon other physical or mental conditions, not amounting to disability, that potentially interfere with assignment to or performance of duty.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

18. 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 change from 'uncharacterized' to 'honorable'.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army National Guard on 15Nov2007. He entered active service on 26May2008. He was separated 2.5 months

later on 08Aug2008 under provisions of AR 635-200, para 5-17 for a condition not a disability. His service was designated as uncharacterized.

3. Summary of pertinent medical records and related while in service.

a. 10Jun2008 the applicant presented for headache status post heat related injury. He was placed on a head injury profile from 10Jun to 17Jun2008. His creatine kinase (CK) level was 667.0 high (41-217). Elevated CK is an indication of muscle injury/stress which can occur with excess heat exposure.

b. 12Jun2008 the applicant was returning for follow-up of left foot/ankle pain. He was requesting an x-ray of the area. He had also had an outside head CT (Providence) completed for heat related injury that revealed sinusitis. He had headache/sinus pain and dizziness when standing up. He also reported painful urination during this visit with a history of past urinary tract infection. Diagnosis: Head Injury; Acute Sinusitis; and Left Ankle Sprain. He was placed on quarters for 24 hours.

c. 13Jun2008 the note indicated that the applicant had multiple complaints including depression and insomnia, and headache/sinus pain.

d. 14Jun2008 the provider noted that the applicant had been a heat casualty on 10 June, and he had significant CK elevation which was consistent with that injury. The applicant reported having loss of consciousness (LOC) on the 10th. He had been in medical quarters until yesterday. The CK level was back to normal at 176.0. He also reported depression without suicidal ideations or other harmful thoughts. He stated that depression runs in family. He endorsed loss of pleasure and energy. Diagnoses: Effects of Heat and Light; Ankle Joint Pain; and Adjustment Disorder. He was given iv fluids.

e. 16Jun2008 the applicant reported a history of ankle problems before joining the military. He reported that at some point he was supposed to have surgery on both ankles due to a history of fracture of the growth plates. During this visit, he expressed that he was unsure if he wanted to continue training. He already had Community Mental Health Service (CMHS) request for possible EPTS.

f. 20Jun2008 he was seen for chronic left ankle pain status post a fracture 8 years prior. He reported prior depression and seeing school counselor but was not prescribed medication at the time.

g. 25Jun2008 Report of Mental Status Evaluation. The examiner noted depressed mood and affect. Memory, and thinking process/content were normal. He was mentally responsible; he had the mental capacity to participate in the proceedings; and he was psychiatrically cleared for any administrative action. He was diagnosed with Depressive

Disorder, Not Otherwise Specified. His symptoms included feeling depressed, inability to sleep, difficulty focusing/concentrating, decreased energy and interest in normal activities, anxiety, irritability, and decreased appetite. He currently denied suicide ideation but disclosed having experienced it in the past under extreme stress. The examiner deemed that treatment was not necessary at the time. The examiner opined that the applicant would not respond to Command efforts at rehabilitation. The examiner deemed that the applicant met criteria for discharge under chapter 5-17.

h. 23Jul2008 Statement of Medical Exam and Duty Status. This document was confusing but appeared to describe 3 injuries (head injury, ankle sprain (left) and right shin pain) which occurred on 03Jun2008 and/or on 12Jun2008 due to falling (fainting from the heat), twisting his ankle and he may or may not have hit his head. EMS was called to transport him to the hospital on 03Jun2008.

4. Medical records and related after discharge from service.

a. 09Sep2009 Mental Disorders C&P Exam. The applicant reported depression which started after he was raped by an uncle at age 5 or 6. He participated in counseling around age 7 or 8. His. He said his depression got worse when he was injured in service. He developed seizures about 3 months prior to the exam. He had 3 seizures total—his condition was currently controlled on Keppra. He reported problems with memory. He admitted that he drank most days midway through service, typically consuming 10 to 12 beers. Diagnosis: Depressive Disorder, Not Otherwise Specified; Rule Out Bipolar Disorder. The examiner assessed that the applicant's mental disorder signs and symptoms were transient or mild and decreased efficiency and ability to perform occupational tasks only during periods of significant stress. The examiner opined that the applicant's pre-existing depression was at least as likely as not aggravated by military service due to his injuries.

b. 10Sep2009 TBI C&P Exam. The BH examiner endorsed that the applicant sustained traumatic brain injury approximately one year prior. He had loss of consciousness and fell and hit his head. He began to have headaches immediately and one year later developed a seizure disorder. The seizure disorder diagnosis was supported by EEG abnormalities and clinical picture (witnessed generalized tonic clonic seizure activity and post ictal state). The last seizure was in August 2009. The applicant reported headaches 2-3 times per week, lasting 3-4 hours. The headaches were associated with light and sound sensitivity. He complained of mild memory problems; however, there was no objective evidence on testing. MoCA (test for cognitive functioning) was normal. The head CT was negative. The BH examiner opined that the applicant's Seizure Disorder and Headaches condition were at least as likely as not the result of the mild TBI suffered during military service.

c. 17Sep2009 Ankles Conditions C&P Exam. The applicant reported that he broke

both ankles during basic training: The left ankle in June 2008 and the right ankle in July 2008. During the exam both ankles showed full range of motion. There was objective evidence of painful motion in the right ankle. Muscle strength was normal for both ankles. It should be noted that the left ankle film on 14Jun2008 and the right ankle films on 16Jun2008 and 24Jun2008 showed no evidence of fracture or dislocation. There was minor soft tissue swelling for the right ankle.

d. 13Aug2019 Neurology Consult. He was working from home as a software engineer. He was taking an abortive medication for chronic migraines. He was taking Keppra for seizures and he denied any seizures since 2011.

5. Summary/Opinion. The undersigned made the following observations.

a. In regard to the applicant's request for upgrade in discharge from uncharacterized to honorable, Liberal Consideration guidance was considered. While in service, the applicant was diagnosed with Adjustment Disorder and Depressive Disorder. However, there was no misconduct to be considered for mitigation.

b. While in service, the applicant experienced recurrence of depression symptoms. He denied any current suicide and homicide ideation, or self-harmful ideations, but disclosed that he had experienced suicide ideation in the past when under extreme stress. The condition was not currently disabling; however, it was deemed that continued retention would cause his condition to deteriorate. In addition, the long-term treatment that would be required for the condition would not be practical while he was in Basic Training. It was determined that the applicant's Depressive Disorder NOS condition met criteria under chapter 5-17 for separation. There was also consideration to have EPTS (existed prior to service) proceedings.

c. The Depressive Disorder NOS did not fail medical retention standards of AR 40-501 chapter 3. In addition, there was insufficient evidence to support that headaches, TBI, heat injury, bilateral ankle pain, sinusitis or dysuria substantively contributed to the reason for the applicant's discharge. The seizure condition developed one year after discharge from service.

d. 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'. However, it was noted that the applicant emphasized the long-term medical and psychological impact to his health he experienced after his military service. The undersign provided a review of the medical records submitted by the applicant and a few found in JLV.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the regulatory guidance related to separations initiated within the first 180 days of military service and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X	//SIGNED//
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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 (USC), 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 Army Board for Corrections of Military Records (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, USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) 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. 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 were 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.

d. Paragraph 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which is sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

4. National Guard Regulation 600-200 (Enlisted Personnel Management), Chapter 8 provides guidance and reasons for discharging a Soldier from both the State Army National Guard and the Reserve of the Army. Paragraph 8-36y outlines the specific conditions under which a Soldier can be discharged from service due to failure to meet medical standards for continued 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 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; 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. 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 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//