

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240005288

APPLICANT REQUESTS: in effect, 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:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) correspondence (8 pages), dated 22 August 2023 to 9 July 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 was involved in a freak accident during basic training. Five days before graduating, on 8 July 1995, his battle buddy was killed by a bolt of lightning during their field training exercise. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant enlisted in the Regular Army on 7 April 1995 for 4 years. He was ordered to Fort Jackson, SC, for the completion of basic training and subsequently reported to Fort Gordon, GA, for the completion of advanced individual training. The highest rank he attained was private/E-2.
4. He was formally counseled on 28 July 1995 for failing a diagnostic Army Physical Fitness Test (APFT) and was placed in the Special Physical Training (PT) program. He failed a second diagnostic APFT on 14 August 1995, despite participating in remedial PT and rehabilitation efforts.
5. The applicant's immediate commander notified him on 30 August 1995 of his intent to initiate action to discharge him from active duty, under the provisions of Army

Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct. As the specific reason, the commander noted the applicant was an APFT failure.

6. On the same date, the applicant acknowledged receipt of the proposed separation notification, and acknowledged understanding, if approved, he would be receiving an entry level separation with uncharacterized service. He was advised of the reasons for separation and of the rights available to him. He elected not to consult with counsel or submit a statement in his own behalf. He did not request a separation medical examination.

7. The applicant was formally counseled on 31 August 1995 for failing a record APFT.

8. Subsequently, the applicant's immediate commander formally recommended the applicant's separation under the provisions of Army Regulation 635-200, Chapter 11, by reason of entry level status performance and conduct. The commander further stated he believed the APFT failure was due to a lack of motivation.

9. The separation authority approved the recommended separation action, waived further rehabilitation efforts, and directed the applicant's entry level separation (uncharacterized) from service.

10. The applicant was discharged on 20 September 1995, under the provisions of Army Regulation 635-200, Chapter 11, by reason of entry level performance and conduct. His DD Form 214 shows his service was uncharacterized, with separation code JGA and reentry code 3. He completed 5 months and 14 days of net active service. He was not awarded a military occupational specialty.

11. The applicant provides eight pages of VA correspondence, dated 22 August 2023 to 9 July 2024, which shows his service is considered honorable for VA purposes. He has a 70 percent combined disability rating for chronic adjustment disorder with depressed mood.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to show his uncharacterized service as honorable. On his application, the applicant indicated that Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are related to his request. More specifically, he stated that he was involved in a 'freak accident' five days before he graduated from basic training wherein his battle buddy was killed by a bolt of lightning during a field training exercise due to inadequate lightning protection. 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 Regular Army (RA) on 07 April 1994. He was ordered to Ft. Jackson, SC for basic training and subsequently reported to Ft. Gordon, GA (now known as Ft. Eisenhower) for the completion of Advanced Individual Training. 2) the applicant was counseled on 28 July 1995 for failing a diagnostic Army Physical Fitness Test (APFT) and failed a second diagnostic APFT on 14 August 1995 despite participating in remedial PT and rehabilitation efforts, 3) the applicant was counseled on 31 August 1995 for failing a record APFT, 4) the applicant was discharged on 20 September 1995 under the provisions of Army Regulation (AR) 635-200, Chapter 11, by reason for entry level performance and conduct. His service was uncharacterized with a separation code of JGA and reentry code of '3.' He completed 5 months and 14 days of net active service.

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) and Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Review of DD Form 398-2 (National Agency Questionnaire) for the purposes of enlistment dated 31 May 1995 shows the applicant marked 'yes' to having pre-military BH treatment. The attached continuation sheet explained that he was seen by BH from 1989-1992 as he had a problem with his parents because of their divorce and the impacts it had on him. It was also documented that he had previously experimented with marijuana in December 1991 without any intended future use of the drug.

d. Review of JLV was void of any medical documentation.

e. A VA Rating Decision Letter dated 28 February 2024 shows the applicant was granted 70% service-connection through the VA for Chronic Adjustment Disorder with Depressed Mood (Claimed as PTSD). An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 11 December 2023 shows the applicant did not meet criteria for PTSD at the time of the evaluation though was diagnosed with Chronic Adjustment Disorder with Depressed Mood. It was noted that there was no relevant military mental health history

based on the examination and review of available medical records. The stressor documented in the applicant's evaluation noted that he 'acted out in defense of his battle buddy.' It was documented that another trainee was killed in a lightning storm during a field training exercise on 08 July 1995. The provider also noted the applicant reported he 'had a hold of another Soldier by his throat in my sloop. Took 6 people to get me off of him. Forced into CQ duty on 09 July 1995.' He asserted that ever since the incident on 08 July 1995, his life has not been the same and 5 days after the incident graduated from basic training as if nothing had happened. The provider noted that the applicant's 'claimed condition of Chronic Adjustment Disorder with Depressed Mood is less likely than not proximately due to or is the result of an in-service stressor.' It was further noted that 'acquired psychiatric disorder did not manifest in service and is not otherwise attributable to service.' The applicant underwent a subsequent DBQ dated 27 August 2024 and the evaluating provider noted that his diagnosis of Chronic Adjustment Disorder with Depressed Mood was changed to PTSD. The stressor associated with his diagnosis was the previously mentioned lightning incident which he witnessed, adding that in addition to the death of a Soldier, two were severely injured and 11 others were injured with electrical burns.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed post-discharge through the VA with two potentially mitigating BH conditions, Chronic Adjustment Disorder with Depressed Mood and PTSD. Although it is acknowledged by this Advisor that he has been diagnosed with two BH conditions post-discharge that were associated with his service, there were no in-service medical records available for review and the applicant's VA DBQ's documented that there was no relevant military mental health history. Thus, there is insufficient evidence that the applicant met criteria for these conditions in-service. However, he contends that his discharge was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA with Chronic Adjustment Disorder with Depressed Mood. The diagnosis was recently updated via a C&P examination to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with Chronic Adjustment Disorder with Depressed Mood. The diagnosis was recently updated via a C&P examination to PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Post-discharge, the applicant has been 70% service-connected through the VA for Chronic Adjustment Disorder with Depressed Mood and it is noted that a recent C&P examination updated the diagnosis to PTSD (though it is unclear if his service connection diagnosis has been updated). It is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Thus, a subsequent diagnosis of Chronic Adjustment Disorder with Depressed Mood and/or PTSD through the VA is not indicative of misdiagnosis or other injustice at the time of service. It is also of note that Chronic Adjustment Disorder requires the presence of symptoms for 6 months, to which the applicant was in service for less than 6 months, and therefore he would not have met criteria for this condition at the time of his discharge. Furthermore, even an in-service diagnosis of Chronic Adjustment Disorder with Depressed Mood or PTSD is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Given that the preponderance of evidence available does not indicate the applicant had a condition at the time of discharge that would have required disposition through medical channels, a referral to IDES for further processing is not warranted and his Uncharacterized separation under provisions of Chapter 11 of AR 635-200 appears proper and equitable.

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 could not pass his APFT during initial entry training due to lack of motivation. As a result, his chain of command separated him for entry level performance and conduct. He completed 5 months and 14 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 information/evidence, there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate his discharge. Additionally, the preponderance of evidence available does not indicate the applicant had a condition at the time of discharge that would have required disposition through medical channels or referral to the disability system for further

processing. Therefore, the Board determined the applicant's uncharacterized separation under provisions of Chapter 11 of AR 635-200 appears proper and equitable.

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 (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 Correction 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 (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. 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.

d. 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.

e. 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. 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. 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.

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, 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//