

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006028

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his characterization of service as either "General, Under Honorable Conditions" or "Honorable" rather than "Uncharacterized."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he was told he would receive a general, under honorable conditions discharge, however, his DD Form 214 shows his characterization of service as "Uncharacterized." He contends he should be granted the requested relief because it is the right thing to do. On his DD Form 149, the applicant notes mental health conditions are related to his request.
3. On 30 August 1994, the applicant underwent a pre-enlistment medical examination and was deemed qualified for service.
4. On 31 August 1994, the applicant enlisted in the Mississippi Army National Guard (MSARNG) for a period of 8 years.
5. The applicant was ordered to initial active duty for training with a reporting date of 29 December 1994 for Basic Combat Training (BCT) at Fort Jackson, SC, and a follow-on reporting date of 3 March 1995 for Advanced Individual Training at Fort Gordon, GA.
6. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing. Additionally, a mental status evaluation is not available for review.

7. The applicant did not complete BCT, his DD Form 214 shows he was released from active duty training at Fort Jackson, SC on 19 June 1995. He was discharged from the Reserve of the Army and returned to the MSARNG under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of Entry Level Performance and Conduct. His service was uncharacterized. He was credited with completing 5 months and 22 days of net active service this period. He was not awarded a military occupational specialty and did not complete his first full term of service.

8. Orders 121-091, issued by Military Department, State of Mississippi, The Adjutant General's Office, Jackson, MS on 5 July 1995, and the applicant's National Guard Bureau Form 22 (Report of Separation and Record of Service), show he was discharged from the ARNG, effective 19 June 1995. The authority for his separation was National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-26n, by reason of "Entry Level Performance and Conduct." He was assigned Reenlistment Eligibility code "RE3."

9. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting to change his uncharacterized discharge. He contends that he experienced mental health conditions 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 Mississippi Army National Guard (MSARNG) on 31 August 1994, and he entered active duty for initial training for Basic Combat Training (BCT) on 29 December 1994 and a follow on report date of 03 March 1995 for Advance Individual Training; 2) The available record is void of a separation packet containing the specific facts and circumstance surrounding the applicant's discharge processing. However, the applicant did not complete BCT; 3) The applicant's DD214 shows he was released from active duty training on 19 June 1995-Chapter 11 for entry level performance and conduct. His service was determined to be uncharacterized. He completed 5 months and 22 days of net active service. The applicant was discharged from MSARNG, effective 19 June 1995, by reason of Entry Level Performance and Conduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical or separation documentation was provided for review.

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with any service-connected mental health condition. He had engaged with the VA initially for assistance with homelessness and limited mental health treatment beginning 06 April 2023 until as recently as 19 February 2024. During his initial VA mental health triage, he indicated recurrent anxiety and depression with a remote history of a limited trial of psychotropic medication without further detail. Since that time, the applicant appeared to be intermittently treated through the VA for housing and mental health concerns including depression and suicidal ideation through outpatient individual therapy.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition during service to warrant a change to his uncharacterized discharge status. In addition, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions are related to his request to change his uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition during his active service which is related to his request to a change to his uncharacterized discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition during his enlistment in military service, which would mitigate his uncharacterized discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. However, the applicant's contention a mental health condition mitigates his discharge status is sufficient for the board's consideration per Liberal 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 regulatory guidance, a separation under Chapter 11 for Entry Level Performance and Conduct is appropriately characterized as "uncharacterized" when the service member is in an entry-level status—defined as the first 180 days of continuous active duty. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition during service to warrant a change to his uncharacterized discharge status.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions are related to his request to change his uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition during his active service which is related to his request to a change to his uncharacterized discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition during his enlistment in military service, which would mitigate his uncharacterized discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. However, the applicant's contention a mental health condition mitigates his discharge status is sufficient for the board's consideration per Liberal Consideration.

3. The Board determined there is insufficient evidence to in-service mitigating factors to support the applicant's contention for an upgrade. The Board noted, the applicant was released from active duty on 19 June 1995, after completing 5 months and 22 days of net active service, under the provisions of Army Regulation 635-200, by reason of Entry Level Performance and Conduct. He did not complete Basic Combat Training, was not awarded a military occupational specialty, and did not complete the first 180 days of continuous active duty required for a characterization of service beyond

uncharacterized. The Board agreed based on the advising opine the applicant's characterization of service as uncharacterized is proper and equitable based on the length and nature of his service. Relief is denied.

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//

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, 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 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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body.

4. 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 provided policy and guidance for the separation of personnel in an entry level status for unsatisfactory performance or conduct as evidenced by inability, lack of reasonable effort or a failure to adapt to the military environment. These provisions applied only to individuals that were in an entry-level status, undergoing Initial Entrance Training, and, before the date of the initiation of separation action, had completed no more than 180 days of creditable continuous active duty. Before initiating separation action, commanders would ensure that the Soldier received adequate counseling and rehabilitation. An uncharacterized separation was mandatory under this chapter.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. 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.

5. Army Regulation 135-178 (Reserve Component – Enlisted Separations), establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the ARNG of the United States (ARNGUS) and the USAR. In pertinent part, this regulation stipulates that IET is mandatory training each Army Soldier must complete upon initial entry in the service to qualify in a military specialty or branch. This training is required by law for deployability on land outside the continental limits of the United States in accordance with Title 10, USC, Chapter 671. IET encompasses the completion of basic training and specialty or branch qualification while serving on active duty or active duty for training. For ARNG and USAR Soldiers it includes completion of initial active duty for training, the officer basic course, and the warrant officer basic course.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

d. Paragraph 2-11 provides that. Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status

6. National Guard Regulation 600-200 (Enlisted Personnel Management) provides for the management of ARNG enlisted personnel. Chapter 8 of this regulation sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG. It states, in pertinent part, that the separation of a Soldier from the ARNG is a function of State military authorities in accordance with State laws and regulations. Paragraph 8-26n, stipulates that Soldiers who fail to attend IET phase 1 or 2 within 24 months will be separated.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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, 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 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//