

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240006561

APPLICANT REQUESTS: upgrade of his uncharacterized discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Certificates of training (ten)

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 had undiagnosed addiction issues; he failed a urinalysis test for marijuana.
3. On his DD Form 149, the applicant notes other mental health issues are related to his request.
4. On 16 September 2008, the applicant enlisted in the Regular Army, for 6 years and 18 weeks. His record shows he was not awarded a military occupational specialty.
5. On 4 November 2008, the applicant received formal counseling for failing the Army Physical Fitness Test.
6. On 16 January 2009, he tested positive for marijuana, and was subsequently command referred into the Army Substance Abuse Program.
7. On 29 January 2009, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for wrongfully using marijuana, between on or about 20 December 2008 and 6 January 2009. His punishment included reduction to E-1, forfeiture of \$647.00 per month for two months, and 45 days extra duty and restriction.

8. On 6 February 2009, he underwent a mental status evaluation and was psychologically cleared for any administrative actions deemed appropriate by the command.

9. The applicant's commander notified the applicant on 13 February 2009, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c(2), for commission of a serious offense. He noted the applicant's wrongful use of marijuana.

10. The applicant consulted with counsel and was advised of the basis for the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He declined to submit a statement in his own behalf.

11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2).

12. Consistent with the chain of command's recommendations, the separation authority approved the recommended separation on 24 February 2009, with issuance of an entry-level separation (uncharacterized).

13. The applicant was discharged on 5 March 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct (drug abuse). His service was uncharacterized. He completed 5 months and 20 days of net active service this period.

14. On 7 August 2024, the ABCMR staff requested that the applicant provide medical documents to support his mental health conditions. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

15. The applicant provides various certificates of training that highlight his post service educational and professional accomplishments.

16. 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.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his uncharacterized discharge. On his DD Form 149, the applicant indicated Other Mental Health Issues are 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 Regular Army (RA) on 16 September 2008, 2) on 04 November 2008, the applicant was formally counseled for failing the Army Physical Fitness Test (APFT), 3) on 16 January 2009 the applicant tested positive for marijuana and was command referred to the Army Substance Abuse Program (ASAP), 4) the applicant received an Article 15 on 29 January 2009 for wrongfully using marijuana between on or about 20 December 2008 and 06 January 2009, 5) the applicant was discharged on 5 March 2009 under the provisions of AR 635-200, paragraph 14-12c(2), for misconduct (drug abuse). His service was uncharacterized. He completed 5 months and 20 days of net active service this period.

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. In-service medical records available via JLV and included as part of his application were reviewed. Records were available in JLV from 17 September 2008 through 10 February 2009. An encounter dated 23 January 2009 shows the applicant presented for an intake through ASAP and was diagnosed with Alcohol Abuse and Cannabis Abuse. An undated ASAP enrollment form shows he was referred due to THC and his performance and behavior were rated as 'good.' The applicant underwent an MSE on 06 February 2009 for the purposes of Chapter 14 separation. The evaluating provider noted that the applicant did not have any psychological conditions that required disposition through medical channels and screened negative for PTSD and mild Traumatic Brain Injury (mTBI). The provider documented that the applicant was psychologically cleared for any administrative action deemed appropriate by command. A Report of Medical Examination dated 10 February 2009 for the purposes of separation shows the applicant was not on a profile at the time of the encounter.

d. A review of JLV shows there is no documentation available indicating that the applicant is service connected through the VA for any conditions. There was no VA documentation available for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a BH condition or experience during his time in service that mitigated his misconduct. However, he contends that his

misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records shows the applicant was diagnosed with Alcohol Abuse and Cannabis Abuse in-service, which do not constitute mitigating BH conditions. Review of JLV shows the applicant is not service connected through the VA for any conditions. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. Given that the preponderance of evidence available does not indicate the applicant had a mitigating BH condition at the time of discharge, his Uncharacterized separation under provisions of AR 635-200, paragraph 14-12c(2), for misconduct (drug abuse) appears proper and equitable. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a BH condition or experience during his time in service that mitigated his misconduct.

2. The Board determined the applicant did not complete initial entry training or receive a military occupational specialty. His record reflects formal counseling for failing the Army Physical Fitness Test and a positive drug test for marijuana, which led to nonjudicial punishment under Article 15 of the Uniform Code of Military Justice. The Board found the insufficient evidence of in-service mitigating factors to overcome the misconduct of drug use. Although the applicant submitted certificates of post-service training, he did not respond to requests for documentation supporting his claimed mental health conditions. In light of the regulatory guidance, the nature of his misconduct, and the fact that he did not complete training, the Board determined that the uncharacterized discharge was both proper and equitable and denied the request for upgrade.

3. 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.

4. Consideration as given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records shows the applicant was diagnosed with Alcohol Abuse and Cannabis Abuse in-service, which do not constitute mitigating BH conditions. Review of JLV shows the applicant is not service connected through the VA for any conditions. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. Given that the preponderance of evidence available does not indicate the applicant had a mitigating BH condition at the time of discharge, his Uncharacterized separation under provisions of AR 635-200, paragraph 14-12c(2), for misconduct (drug abuse) appears proper and equitable. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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, 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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

d. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. 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.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised post-traumatic stress disorder (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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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.

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//