

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240006635

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his uncharacterized discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision Letter, 13 February 2024
- ABCMR Decision Case AR20220006366

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20240006635 on 25 January 2023.

2. The applicant states he is seeking an upgrade of his uncharacterized discharge. As new evidence he presents his VA rating decision for his 50% service-connected major depressive disorder. The upgrade would facilitate the his access to additional Veteran benefits.

3. The applicant provides:

a. A VA Rating Decision, dated 13 February 2024, notified the applicant he was granted 50% service-connected disability for major depressive disorder effective 29 January 2021.

b. A copy of the ABCMR decision from 25 January 2023 Docket Number AR20240006635, to be referenced below.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 25 July 2003.

b. The applicant attended basic training at Fort Knox, KY. He was assigned to 4th Headquarters, 46th Adjutant General Reception Battalion and the Troop B, 5th, 15th Cavalry Troop.

c. The applicant's record is void of a complete separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his record does include a DA Form 5138 (Separation Action Control Sheet) that shows the following actions occurred:

- 10 February 2004 - Notification of initiation of separation procedures
- 10 February 2004 - Service member acknowledged receipt of notification
- 17 February 2004 - Service member indicated election of rights
- 1 March 2004 - Unit commander's recommendation forwarded for legal review

d. On 3 March 2004, the separation authority approved the applicant's separation under the provisions of Army Regulation 635-200, Chapter 5-13, for personality disorder. He noted the applicant had not been awarded a military occupational specialty and directed the applicant be issued an entry level separation (uncharacterized).

e. On 5 March 2004, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 shows he completed 1 month and 23 days of active service. The narrative reason for separation listed as "Personality Disorder." The applicant has no awards or decorations listed.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. On 25 January 2023, the ABCMR rendered a decision in Docket Number AR20240006635. The Board found upon review of the applicant's petition, available military records and the medical review, the Board concurred with the medical opinion finding no evidence in the records that the applicant had a condition or experience that mitigated his discharge characterization. The Board determined the applicant completed 1 month and 23 days of net active-duty service and did not complete training and was released from active duty for personality disorder as such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized and narrative reason for separation and separation code. Therefore, the Board denied relief. As a result, there is no basis for granting the applicant's request.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), a separation is described as an entry-level separation if processing is initiated while a member is in an entry-level status. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention.

9. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

10. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his uncharacterized discharge.

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:

- Applicant enlisted in the Regular Army on 25 July 2003.
- Applicant attended basic training at Fort Knox, KY.
- Applicant's record is void of a complete separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his record does include a DA Form 5138 (Separation Action Control Sheet) that shows the following actions occurred:
 - 10 February 2004 - Notification of initiation of separation procedures
 - 10 February 2004 - Service member acknowledged receipt of notification
 - 17 February 2004 - Service member indicated election of rights
 - 1 March 2004 - Unit commander's recommendation forwarded for legal review

- On 3 March 2004, the separation authority approved the applicant's separation under the provisions of Army Regulation 635-200, Chapter 5-13, for personality disorder. He noted the applicant had not been awarded a military occupational specialty and directed the applicant be issued an entry level separation (uncharacterized).
- On 5 March 2004, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 shows he completed 1 month and 23 days of active service. The narrative reason for separation listed as "Personality Disorder," with separation code JFX, and RE code 3.
- On 25 January 2023, the ABCMR rendered a decision in Docket Number AR20240006635 denying his request for an upgrade.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he is seeking an upgrade of his uncharacterized discharge. As new evidence he presents his VA rating decision for his 50% service-connected Major Depressive Disorder. He states the upgrade would facilitate his access to additional Veteran benefits.

d. Active-duty electronic medical records available for review show the applicant was psychiatrically hospitalized from 30 January 2004 to 9 February 2004, while the applicant was on active duty, in a training status. The applicant was voluntarily admitted into the hospital due to suicidal ideation, depressed mood, and stress; associated with military service. He also reported neck and back pain associated with an automobile accident he was reportedly in prior to starting BCT. In a psychiatry note dated 31 January 2004, the applicant stated he was unable to do the exercises in training and had back and neck problems from a previous car accident that he did not mention during recruitment because his recruiter told him not to do so. The applicant reported feeling stressed with the news that they may possibly be deployed to Iraq or Afghanistan. He denied suicidal thoughts and stated he wanted to live and never wanted to kill himself. Throughout his inpatient psychiatric hospitalization, the applicant reported he was unable to tolerate the military environment, feared potentially being sent to Iraq or Afghanistan, and stated he would kill himself if not allowed to be discharged from the military. An encounter dated 4 February 2004, notes the applicant "was not psychologically stable enough for training, as he is fixated on getting out of the military and willing to do something to himself if he can't." The applicant was discharged from the hospital on 9 February 2004, after providers deemed he was no longer benefiting from inpatient treatment. The applicant concurred with the clinical providers since the only avenue for separation from the military was through military channels. His diagnosis at the time of discharge was Adjustment Disorder with Depressed Mood. The applicant was separated from the Army soon after his release from inpatient hospitalization.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 50 % service connected for Major Depressive Disorder. A VA decision letter indicates a Higher-Level Review (HLR) granted him service-connection based on, his "records are silent for mental health condition upon entrance into service. As such the presumption of soundness is in effect. You then had a great deal of mental health treatment to include inpatient treatment at Louisville VA medical center. The only opinion that actually addressed your issue on a direct basis stated, 'The Veteran was deemed psychologically stable when he entered the military. He now meets DSM 5 criteria for major depressive disorder.' Therefore, the preponderance of evidence suggests that his currently diagnosed major depressive disorder is at least as likely as not related to his military service." However, the medical record contradicts this since there is evidence the applicant had a significant mental health history prior to military service, including childhood sexual trauma, psychiatric care around age 9 or 10 due to hallucinations, mental health issues as a teenager, and a motor vehicle accident prior to enlistment which he did not report during recruitment.

f. C and P evaluations dated 2 October 2009 and 13 August 2018 both show the examiners determined the applicant met diagnostic criteria for Unspecified Depressive Disorder, with Anxious Distress and both found the disorder not related to military service, but instead the result of pre-military experiences and cluster B personality traits (e.g. affective instability, difficulty controlling anger). C and P evaluation dated 29 July 2021, also diagnosed him with Unspecified Depressive Disorder and notes his significant psychiatric history prior to military service including psychiatric hospitalization as a child due to visual and auditory hallucinations and suicidal ideation as a teenager. A C and P evaluation dated 21 October 2022, diagnosed the applicant with Major Depressive Disorder, with anxious distress. During this evaluation, the applicant denied his psychiatric history prior to military service. A C and P evaluation dated 24 August 2023, diagnosed the applicant with Major Depressive Disorder, however, the applicant denied his psychiatric history prior to military service and attributed his depression to being "picked on by his drill sergeant during basic training".

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant had a behavioral health condition during military service, however, it does not mitigate his discharge. The applicant was issued an uncharacterized discharged when it was discovered he entered military service with pre-existing mental health issues that made him unstable for basic training.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was psychiatrically hospitalized during military service due to voicing suicidal ideation if he were not released from military service. Upon discharge, from his psychiatric hospitalization, the applicant was diagnosed with Adjustment Disorder with Depressed Mood.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was psychiatrically hospitalized, while on active duty, due to suicidal ideation and depressed mood associated with the stress of being in the military. Upon discharge from the hospital, he was diagnosed with Adjustment Disorder with Depressed Mood and it was noted that he was not sufficiently psychologically stable for military training. He was subsequently administratively separated under the provisions of AR 635 – 200, Chapter 5-13, personality disorder, and given an uncharacterized discharge. The applicant was issued an uncharacterized discharged when it was discovered he entered military service with pre-existing mental health issues that made him unstable for basic training. Post-discharge, after repeated compensation evaluations noting his pre-existing mental health condition, the applicant participated in two C and P evaluations where he denied his prior psychiatric history. Following a Higher-Level Review (HLR), the VA granted the applicant service connection based on the presumption of soundness since his entrance records were silent for any mental health concerns. However, the medical record consistently indicates a significant pre-military mental health history that was apparently withheld during his enlistment, including, childhood trauma, psychiatric hospitalization due to hallucinations, and chronic mental health issues. Given the above, this advisor finds no evidence in the medical record to justify an upgrade of his characterization of service.

i. Per Liberal Consideration guidelines, his contention of OMH is sufficient to warrant consideration by the Board.

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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant had a behavioral health condition during military service, however, it does not mitigate his discharge. The applicant was issued an uncharacterized discharged when it was discovered he entered military service with pre-existing mental health issues that made him unstable for basic training.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was psychiatrically hospitalized during military service due to voicing suicidal ideation if he were not released from military service. Upon discharge, from his psychiatric hospitalization, the applicant was diagnosed with Adjustment Disorder with Depressed Mood.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was psychiatrically hospitalized, while on active duty, due to suicidal ideation and depressed mood associated with the stress of being in the military. Upon discharge from the hospital, he was diagnosed with Adjustment Disorder with Depressed Mood and it was noted that he was not sufficiently psychologically stable for military training. He was subsequently administratively separated under the provisions of AR 635 – 200, Chapter 5-13, personality disorder, and given an uncharacterized discharge. The applicant was issued an uncharacterized discharged when it was discovered he entered military service with pre-existing mental health issues that made him unstable for basic training. Post-discharge, after repeated compensation evaluations noting his pre-existing mental health condition, the applicant participated in two C and P evaluations where he denied his prior psychiatric history. Following a Higher-Level Review (HLR), the VA granted the applicant service connection based on the presumption of soundness since his entrance records were silent for any mental health concerns. However, the medical record consistently indicates a significant pre-

military mental health history that was apparently withheld during his enlistment, including, childhood trauma, psychiatric hospitalization due to hallucinations, and chronic mental health issues. Given the above, this advisor finds no evidence in the medical record to justify an upgrade of his characterization of service.

3. The Board determined there is insufficient evidence to support any new evidence or documentation to support his request, nor has he provided post-service achievements or character references that might warrant clemency. Additionally, the Board previously reviewed this case in Docket Number AR20240006635 and concurred with the medical opinion that no mitigating condition or experience existed to justify a change in discharge characterization. Evidence shows the applicant discharged under Chapter 5-13, for a diagnosed personality disorder, as an entry-level separation with an uncharacterized characterization of service, which is standard for individuals separated prior to completing 180 days of continuous active duty. The applicant served for 1 month and 23 days and did not complete initial entry training or receive a military occupational specialty.

4. The Board agreed the applicant's characterization of service as uncharacterized is not punitive and is consistent with regulatory guidance for separations occurring within the first 180 days of service. Based on the absence of compelling evidence and the appropriateness of the original discharge action, the Board found no basis to grant relief. The applicant's DD Form 214 accurately reflects the circumstances of his separation. Relief is denied.

5. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separation), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 11 sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. It states when separation of a member in 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, the member normally will be separated per this chapter. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention for one or more of the following reasons:

- cannot or will not adapt socially or emotionally to military life
- cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline
- have demonstrated character and behavior characteristics not compatible with satisfactory continued service
- failed to respond to counseling

3. Army Regulation 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

4. 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 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. 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 DRBs

and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, 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, 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 Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

7. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//