

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240006667

APPLICANT AND COUNSEL REQUESTS:

- reconsideration of his prior request for an upgrade of his uncharacterized discharge to an honorable conditions discharge.
- corrections to his DD Form 214, including an upgrade to Honorable, revisions to the separation authority and code to "Secretarial Authority"
- a person appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief (The complete 38-pages brief is available for review by the Board in supporting documents)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Two Character Letters – he has a positive attitude and traditional work ethic's; (The complete character letters are available for review by the Board in supporting documents)

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 AR20110024848 on 10 July 2012.

2. The applicant states that while stationed in an orderly room, he accepted a discharge to avoid an Article 15, waiving medical benefits in the process. After returning home, he obtained a medical release from a doctor and sought to upgrade his discharge status to enlist. However, upon presenting his paperwork to a recruiter, he was informed that he had lost his opportunity to return and that he could have secured an honorable discharge with medical benefits had he not waived them. Despite his efforts to rectify the situation, he was denied enlistment due to his RE-4 designation. Years later, during Operation Iraqi Freedom, a conversation with a new recruiter suggested a potential

waiver, but no follow-up occurred, leaving the matter unresolved and marking the conclusion of his attempt to return to military service.

3. Counsel states in a 25-page brief in support of the application, which is available for the Board's review in supporting documents:

a. Counsel contends that the applicant should receive a discharge upgrade based on the Kurta Memo's guidance. He feels the initial omission of medical information was an administrative error by the recruiter, which led to a discharge for fraudulent enlistment.

b. Counsel argues the applicant enlisted into the Army as a Combat Engineer. At the time of enlistment, the recruiter noted significant medical history, including serious injuries from a car accident in May 1979, but chose to exclude crucial information from the official medical record. This omission led to a series of events that culminated in an Article 15 inquiry and subsequent discharge for fraudulent enlistment. Counsel elaborates the following areas:

- Medical Condition: he suffered multiple injuries
- Recruiter's Decision: the recruiter determined that some medical information should be omitted
- Training Performance: he failed to qualify during weapons training due to experiencing pain in his right arm

c. Counsel concludes stating the derogatory information will be removed from the applicant's record. The applicant asks that this appeal be through the Army Review Board Agency and be given the utmost scrutiny. The success of the appeal and future actions by the United States Army and the Army Board for Correction of Military Records will have a significant impact on his ability to receive proper benefits and recognition. He will continue to fight this derogatory information up through the Secretary of the Army.

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

a. He enlisted in the Regular Army on 26 October 1983.

b. He received 12 DA Form 4856-R (General Counseling Form) on:

- 17 November 1983, Failure to zero weapon; lack of motivation
- 17 November 1983, lack of motivation
- 18 November 1983, Failure to zero weapon, poor attitude, lack of motivation, unwillingness to train

- 18 November 1983, Failure to zero weapon, failure to meet standards, attitude toward the Army
- 18 November 1983, Failure to zero weapon, commanders interview
- 19 November 1983, lack of motivation, unwillingness to train, failure to zero, he stated that he did not want to be in the service
- 19 November 1983, bad attitude
- 26 November 1983, no motivation, bad attitude, failure to follow instructions
- 5 December 1983, lack of motivation, negative attitude
- 7 December 1983, attitude and considering going absent without leave (AWOL)
- 9 December 1983, poor attitude
- 12 December 1983, his mental well being

c. On 13 December 1983, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 11 due to his personal problems which caused him to display a reluctant attitude to conduct training. Record is void of acknowledgement.

d. He was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance UP of Chapter 11, para 2-2, AR 635-200 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

e. His commander recommended approval of his discharge, UP of Chapter 11, AR 635-200.

f. On 14 December 1983, the separation authority approved separation UP of AR 635-200, chapter 11 for entry level status performance and conduct; he directed a uncharacterized be issued

g. Accordingly, he was discharged uncharacterized on 20 December 1983, he completed 1 month and 25 days of net active service this period.

5. In his previous request AR20110024848 on DD Month 2012, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

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

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request to change his uncharacterized discharge to an honorable conditions discharge. He contends mental health conditions 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 on 26 October 1983; 2) The applicant received multiple counseling between 17 November-12 December 1983 for a lack of motivation, attitude, and failure to zero on his weapon, and not wanting to be in the military; 3) The applicant was discharged on 20 December 1983, Chapter 11, for entry level status performance and conduct. His service was determined as uncharacterized. He completed one month and 25 days of active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional behavioral health documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his discharge. 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 reported or been diagnosed with a service-connected mental health condition. He also does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions on active service, which mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions on active service, which mitigates his 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, while he was on active service. There is evidence the applicant was experiencing difficulty adapting to the military environment. However, the presence of a difficulty to adapt is not sufficient evidence of the presence of a mental health condition at the time of active service. In addition, the applicant was identified early in his military training and provided an uncharacterized discharge due to his inability to meet the military standard. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his discharge, and per Liberal Consideration his contention alone is sufficient for 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. 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 record and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. The opine also noted there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service.

2. The Board determined the applicant completed 1 month and 25 days of net active service this period, did not complete training and was released from active duty for for entry level status performance and conduct. The Board found based on the applicant character of service discharge, changes to the applicant's separation authority, separation code and RE Code are not warranted. The Board agreed the presence of a difficulty to adapt is not sufficient evidence of the presence of a mental health condition at the time of active service. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for reversal of the previous Board determination. Therefore, relief is denied.

3. 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
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20110024848 on 10 July 2012.

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. 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.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), in effect at the time, governs eligibility criteria, policies and procedures for enlistment and processing of persons, with or without prior service, into the Regular Army and the U.S. Army Reserve. Reentry eligibility (RE) codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

a. RE-1 applies to persons immediately eligible for reenlistment at time of separation.

b. RE-3 applies to persons who may be eligible with waiver-check reason for separation.

c. RE-4 applies to persons ineligible for enlistment.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, 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. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

5. Army Regulation 635-5-1 (Separation Program Designators) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for

the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JGA is listed with narrative reason "Entry Level Status Performance and Conduct," under regulatory authority AR 635-200, Chapter 11.

6. 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.

7. 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

8. 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.

9. 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.

10. 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.

//NOTHING FOLLOWS//