

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240008949

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Form 21-4138 (Statement in Support of Claim)
- Screen Print (Personal Information), source unknown

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 has mental health and other chronic adjustment disorders with anxiety. He would like to remove his wife from "dependency," and is involved in a lot of charities. He helps out children in a crisis center and involved in fundraising activities for other charities in need.
3. The applicant provides a VA Form 4138 dated 16 January 2018 which notes he requests a waiver on the overpayment amount of \$15, 912.31 due to financial hardships. It is unclear if the applicant is requesting assistance with this request; however, petitions to clear debts with the Department of Veterans Affairs is not an action that falls within the purview of the Board. However, the Board will consider his request for an upgrade of his discharge.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular army on 12 November 1996.

b. On 18 April 1997, he accepted nonjudicial punishment two specifications of failure to be at his appointed place of duty, two specifications of failure to complete his homework for which he was derelict in the performance of his duties, and one specification of failure to obey a lawful order by reporting to physical training (PT) formation without his complete PT uniform.

c. A Report of Mental Status Evaluation completed on 22 April 1997, shows, in part, there was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels (psychiatric medical board). He was psychiatrically cleared for any administrative action deemed appropriate.

e. On 8 May 1997, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for lack of effort and failure to adapt to a military environment. The applicant acknowledged receipt on the same day.

f. On 8 May 1997, after waiving consulting with legal counsel, the applicant acknowledged

- if approved, he would receive an entry level separation with uncharacterized service.
- he would not be permitted to apply for reenlistment in the Army within two years of his separation
- he did not desire to make any statements on his own behalf

g. On 19 May 1997, consistent with the chain of command recommendations, the separation authority approved his discharge under the provisions of AR 635-200, Chapter 11, for entry level separation. He would be issued an uncharacterized characterization of service.

h. On 3 June 1997, he was discharged with an uncharacterized characterization of service. His DD Form 214 shows he completed 6 months and 22 days of active service.

4. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized discharge to honorable. The applicant contends OMH as related to his request.

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 12 November 1996.
- On 18 April 1997, he accepted nonjudicial punishment for two specifications of failure to be at his appointed place of duty, two specifications of failure to complete his homework for which he was derelict in the performance of his duties, and one specification of failure to obey a lawful order by reporting to physical training (PT) formation without his complete PT uniform.
- The service record shows repeated counseling forms due to academic performance, absences, and rule violations.
- On 8 May 1997, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for lack of effort and failure to adapt to a military environment. The applicant acknowledged receipt on the same day.
- On 3 June 1997, he was discharged from active duty under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct, with an uncharacterized characterization of service. His DD Form 214 shows he completed 6 months and 22 days, his separation code is listed as JGA, and RE code 3.

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 has mental health issues and chronic adjustment disorder with anxiety. He would like to remove his wife from "dependency," and is involved in a lot of charities. He helps children in a crisis center and is involved in fundraising activities for other charities in need.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a Mental Status Evaluation completed on 22 April 1997, showing there was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels (psychiatric medical board). He was psychiatrically cleared for any administrative action deemed appropriate by command. In addition, in a medical examination for the purpose of separation, the applicant did not endorse any mental health concerns including depression, anxiety or memory issues.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 50% for Chronic Adjustment Disorder. The VA record shows limited, sporadic participation in mental health services with the treatment focus on the applicant's distress related to upgrading his disability compensation.

f. A C and P evaluation dated 26 May 2021, diagnosed the applicant with Chronic Adjustment Disorder due to his experiencing difficulty adjusting to chronic pain, recovery from frequent surgeries, and changes to his functional abilities. The evaluation specifically states, "service records show no history of mental health condition prior to or during service. VHA records are negative for mental health diagnosis or treatment." A second C and P evaluation dated 24 January 2022, also diagnosed the applicant with Chronic Adjustment Disorder. The report states the applicant's declining health negatively impacts his mood, and notes his stress as related to his VA compensation and "not being taken care of".

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that would mitigate his discharge.

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? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant was service connected, over 20 years post military service, for Chronic Adjustment Disorder related to his declining health; there is no evidence the applicant had an adjustment disorder for longer than 6 months while in military service. In order to meet diagnostic criteria for Chronic Adjustment Disorder, the condition must be present for longer than 6 months. The available record shows the applicant did not endorse any symptoms of anxiety or depression during his separation medical examination nor during his mental status evaluation for the purpose of separation. In addition, the two available C and P evaluations indicate the lack of any mental health condition in the applicant's service record. Given the applicant did not complete AIT and the lack of any evidence of a behavioral health condition while in service, his separation and character of service are both proper and equitable.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The Board noted the available record shows the applicant did not endorse any symptoms of anxiety or depression during his separation medical examination nor during his mental status evaluation for the purpose of separation. 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. As such, his DD Form 214 properly shows his service as uncharacterized.

2. 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. As a result, there is no basis for granting the applicant's request.

3. The Board considered the 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? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant was service connected, over 20 years post military service, for Chronic Adjustment Disorder related to his declining health; there is no evidence the applicant had an adjustment disorder for longer than 6 months while in military service. In order to meet diagnostic criteria for Chronic Adjustment Disorder, the condition must be present for longer than 6 months. The available record shows the applicant did not endorse any symptoms of anxiety or depression during his separation medical examination nor during his mental status evaluation for the purpose of separation. In

addition, the two available C and P evaluations indicate the lack of any mental health condition in the applicant's service record. Given the applicant did not complete AIT and the lack of any evidence of a behavioral health condition while in service, his separation and character of service are both proper and equitable.

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, 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 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. 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. 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. 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 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. 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.

6. 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//