

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20220010589

APPLICANT REQUESTS: reconsideration of his previous request to:

- change his U.S. Military Academy (USMA) academic discharge to a medical discharge
- allow him to earn his Bachelor of Science degree
- eliminate both the enlistment and recoupment obligations

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

- DD Form 149 (Application for Correction of Military Record)
- Appeal Argument
- Applicant Statement to Brigadier General C. J__ and Members of the Academic Board (USMA)
- Transcript from United States Military Academy (two pages), 6 October 2016.
- Freedom of Information Act request to the Army Board for the Correction of Military Records, dated 10 June 2022.
- Freedom of information Act request to the United States Military Academy, 10 June 2022.
- Email dated 16 February 2017, 22 May 2017, and 9 November 2017 from Sergeant Ni__ St Louis, Army recruiter at New Windsor, NY
- DD Form 214, Certificate of Release or Discharge from Active Duty, 16 December 2016
- DD Form 215, Correction to DD Form 214, 10 October 2017
- Written statement and Curriculum Vitae from Dr. EH, MD

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 AR20180002245 on 17 August 2020.

2. The applicant states the Board's original decision dismissed crucial medical evidence which supported his contention that his academic failure was not willful. If his failure was not willful, then he would not incur either a service obligation or the recoupment of the

cost of my education at USMA (approximately \$233,000). The Board also reviewed documents that he did not see before they were considered by the Academic Board which he believes is a violation of his due process rights under the Constitution. The USMA also apparently did not send his complete file down to the Board for its review which also violated his due process rights. Finally, because the USMA issued him an incorrect DD Form 214 and failed to correct it for several months, he was unable to enlist because he was under medical care and taking a prescription that prohibited his enlistment. If the correct DD Form 214 had been issued in a timely manner, he would have been able to enlist and fulfill his service obligation.

a. He is a former cadet at the USMA, West Point, NY. He was separated from USMA for academic failure and discharged effective 16 December 2016. Pursuant to Army Regulation (AR) 612-205, Appointment and Separation of Service Academy Attendees, he was also ordered to active duty for a period of three years. However, he was unable to enlist because USMA issued an incorrect DD Form 214 which it did not correct for several months. While he was waiting for the corrected DD Form 214, he sought treatment for an underlying mental health issue which was directly responsible for both his academic failure and his subsequent inability to enlist.

b. There are four bases for his request for reconsideration:

(1) First, the Academic Board and the ABCMR considered statements from USMA personnel and cadets which were not provided to him for his review and response. He believes this violates his due process rights under the United States Constitution.

(2) Second, the ABCMR did not receive his complete file from USMA as the opinion states he did not submit a statement to the Academic Board regarding his failed classes. However, he did submit a statement to the Academic Board. He believes this incomplete record also violates his due process rights under the United States Constitution.

(3) Third, the ABCMR stated the recoupment action at the heart of his appeal is the result of his failure to report to a recruiting station to enlist. However, the ABCMR ignored the facts pertaining to his efforts to enlist as required by the terms of his separation. He tried to enlist but was not able to do so because he had started ADHD (attention deficit hyperactivity disorder) medication by that time.

(4) Finally, his original ABCMR petition presented ample evidence of his underlying mental health issues which clearly demonstrated he did not willfully fail his two math classes. However, the ABCMR disregarded the expert medical evidence he provided and cited an unnamed ABCMR medical advisor who disagreed with the expert testimony he submitted. The ABCMR agreed that his academic failure partly resulted

from his preexisting behavioral health condition, but not from ADHD. They also found that an ADHD diagnosis was not supported by the complete evidentiary record. If the ABCMR believed his failure resulted from this preexisting condition, then it should not have concluded that his failure was willful. To further support his position that he did not willfully fail those classes, he is providing testimony from Dr. EH, a world-renowned expert, who explains clearly why he did not willfully fail those classes. A finding of willfulness is the driving force behind his separation and subsequent efforts before the ABCMR. If his failure was not deemed willful, then his academic separation would not have led to the recoupment action at the heart of this appeal.

c. He has a mental illness. It took him a long time to come to terms with that and to discern what was wrong and what to do. Until he was separated from USMA and sought care from civilian providers, he thought he was the problem. When he was in high school everything came easily to him. He excelled at everything he did. Given his family's military history, USMA seemed like the logical choice for him - it was a very challenging academic environment, and he would then be able to fulfill the dreams he had of serving his country while also fulfilling his parents' dream for him. As his transcript shows, he did well at USMA and made the Dean's List for several quarters. Based on his academic excellence, some of his professors encouraged him to switch to a very difficult major, Operations Research. He was more interested in other majors but made the decision to challenge himself. He did not understand the consequences that would flow from that decision.

3. Review of the applicant's service records shows:

a. On 2 July 2012, with his appointment as a cadet of the USMA, the applicant signed an Oath of Allegiance. He agreed to complete the course of instruction at the USMA and to serve a total of 8 years from graduation from the USMA, any part of which not completed on active duty must be served in a Reserve Component. He also agreed:

(1) That if he failed to complete the course of instruction of the USMA, breach of service agreement, or declined to accept an appointment as a commissioned officer, he would serve on active duty as specified in the Statement of Policies; and

(2) That if he voluntarily or due to misconduct failed to complete the specified period of active duty, he would reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided him as the unserved portion of active duty bears to the total period of active duty he agreed to serve.

b. Included with the Oath of Allegiance is a Statement of Policies which outlined Department of Defense Directive 1332.23, dated 19 February 1988, as implemented by Army regulations, and provided direction concerning separation of cadets prior to the completion of the course of instruction or after graduation on refusal to accept an

appointment as a commissioned officer. The Statement of Policies states, in pertinent part:

(1) A cadet who has commenced his or her Second Class academic year and who resigns or is separated prior to completing the course of instruction, except for physical disqualification, unfitness, or unsuitability, will normally be transferred to a Reserve Component in an enlisted status and, if deemed to have breached his or her service agreement, may be ordered to active duty for not less than 2 years but no more than 4 years.

(2) Breach of service agreement” includes separation resulting from resignation, for any of the basis for separation listed in Army Regulation 210-26 (USMA) Table 7-1, including all additions to Table 7-1 after the date of this agreement or from other willful acts or omissions in paragraph 7-9.

c. On 8 August 2016, by memorandum, the Dean of Academic Board informed the applicant of the following:

(1) The Academic Board determined on 5 August 2016, the applicant failed his re-examination in MA476, which was administered on 21 July 2016. As a result of this failure, he would be recommended to the Superintendent for separation from the USMA.

(2) Pursuant to AR 210-26 (United States Military Academy), paragraph 7-9, cadets separated from the USMA for deficiency may be deemed by the Superintendent to have breached their service agreement if the failures are the result of the cadet’s willful act or omission. For the reasons listed below, the Academic Board on 5 August 2016, believes his failure may have been willful:

- Ability: His instructors and Training, Advising, and Counseling (TAC) team believe he had the ability to complete his academic work; however, he failed to consistently apply himself
- Academics: His instructors reported during Term 16-2 he consistently failed to apply himself, resulting in failing multiple graded events, and was late with assignments; he demonstrated a lack of discipline and drive, which illustrates he chose not to apply himself in the academic program he demonstrated a pattern of poor work ethic and a willful lack of commitment to his duties

(3) He was further advised that he may present a written rebuttal to the Academic Board’s allegation that his deficiencies were the result of willful acts or omissions on his part. His written rebuttal should be received by the Office of the Dean no later than the close of business on the 10th day after receipt of this letter. Failure to respond will result in his separation with the statement that his failures are believed to be willful. Should his actions be determined willful by the Academic Board, fulfillment of

his obligation will be mandated by way of service in the U.S. Army or financial recoupment to the U.S. Government.

d. On 25 August 2016, the applicant wrote a letter to the Brigadier General C. J___ and Members of the Academic Board. He stated:

(1) Having received and reflected upon the Academic Board's Recommendation that he be separated on the grounds of repeated academic failure, he asked to reconsider the decision. As an alternative to separation without recourse, he requested assignment to the Army Mentorship Program (AMP) so that he may demonstrate, through exemplary enlisted service, his capacity to successfully complete his West Point education and commission as an Army officer.

(2) In the process of gathering information and support for his appeal, he came to understand more precisely why the Academic Board did not deem him suitable for continued enrollment at the Academy. Given that he has failed two classes and a re-exam despite the high level of ability that his SAT/ACT scores and previous grades imply, his recent performance reflects a lack of maturity on his part. His inability to effectively manage time, apply an appropriate level of focus to his studies, and seek outside help indicates that he is not yet prepared to take upon the hefty responsibilities of officer ship. This lack of preparedness can be found both in those classes that he failed along with those that he passed.

(3) He accepts full responsibility for all the actions (or lack thereof) that have brought him into this current predicament, and he has neither the desire nor cause to make excuses. Furthermore, he recognizes the validity of the Academic Board's concern that he is presently unprepared for officer ship. It is for these reasons that he is not requesting immediate reinstatement. Instead, he seeks the opportunity to develop and overcome his deficiencies for the purpose of ultimately returning to West Point and finishing what he has started. He wishes to demonstrate to the Academic Board that he is indeed prepared to graduate and commission as an officer of superior merit-merit that is commensurate with the reputations of West Point and its graduates. He believes that the AMP gives him the chance to do both. Through enlisted service in the operational Army, he can mature both as a Soldier and as a person, and he is confident that he will emerge as a better man from the experience. Those two years will give him the opportunity to demonstrate that he is capable of exemplary military service and prepared to commission. Ultimately, if he is allowed to return to West Point via the AMP, he would be a better officer for having experienced his branch from the perspective of the junior enlisted. In this manner, he hopes to transmute his presently negative situation into a golden opportunity for self-improvement. He understands that participation in the AMP is an unconventional approach to cases of academic failure, but he firmly believes that this solution will rectify the underlying causes of his recent

failures. He asked to allow him to demonstrate that he can become an excellent officer by letting him serve as an excellent Soldier first.

(4) He understands that the numerous late and missed assignments combined with the unexcused absences in his record do not speak well to his ability to successfully complete his education, nor does the failure of his re-exam despite extensive studying over the course of the summer. However, he submits that these failures are not representative of his intellect, character, and leadership ability. His company's tactical officer, his instructors, and numerous West Point graduates (including his former classmates) will attest to these qualities, and he has enclosed character statements that they have generously written on his behalf. Additionally, he has also attached statements from his former congressman and his father. He hopes the confidence that these individuals hold in his future potential further advances the case for his redemption through the AMP.

(5) In closing, he wishes to extend a personal appeal. Except for the two classes that he failed he has completed all graduation requirements over the course of four years as a West Point cadet. The Academy and the Corps have become part of who he is during this time, and he dreads having to part ways from them in this fashion. He wants nothing more than to see his journey to officer ship through to its end--even if it takes him a few more years to accomplish. He has aspired to military service for as long as he can remember, and commissioning through the USMA has been his dream for the better part of a decade. His request to serve and develop through the AMP reflects the same spirit of commitment and determination that first brought him to West Point, and he will do what is necessary to reclaim the privilege of leading Soldiers in the future. He asks the Academic Board to assign him to the Army Mentorship Program.

e. With his letter to Brigadier General C. J__ and Members of the Academic Board, the applicant submitted numerous letters of support addressed to the USMA Academic Board, from family friends, fellow former cadets, his Tactical Officer, prior instructor, a prior Member of Congress, and other USMA graduates. They attest to his growth in maturity over his 4 years at the USMA, his excellent character, intelligence, future ability to perform as an officer in the U.S. Army, and request the Academic Board consider his reinstatement.

f. A USMA Center for Personal Development (CPD) Progress Note, dated 15 August 2016, shows the applicant was seen on a follow-up visit while his separation for academics was in progress. He had failed one course in each semester last year and was separated with the right to re-test. He reposted studying on his own all summer and although he felt confident going into the math re-test, the exam was much more difficult than he anticipated, and he was not surprised to learn he failed the re-test. He was in the process of mounting an appeal, but realized his separation was not likely to be reversed. He was hoping to stave off money recoupment, even if that necessitated

payback via Army service, but was hoping for an unqualified “no recoupment” decision, in which case he planned to finish his college education at a civilian school. He was assessed as having separation-related adjustment stress with not suicidal/homicidal issues and felt highly supported by family, friends, and instructors.

g. The applicant’s separation packet was forwarded to the Department of the Army, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)).

h. On 16 December 2016, by memorandum to the Superintendent of the USMA, pursuant to the authority delegated to him by the ASA (M&RA), the Deputy Assistant of the Army (Military Personnel and Quality of Life) (DASA (MPQ)) approved the Superintendent’s recommendation to separate the applicant from USMA under the provision of AR 210-26, paragraph 6-32a., for academic program deficiency. Pursuant to AR 612-205, table 3, rule 7, the DASA (MPQ):

(1) Directed the applicant be transferred to the United States Army Reserve in the grade of specialist (SPC)/E-4 for three (3) years and immediately ordered to active duty for three years; or

(2) In the event the applicant is ineligible for enlisted service, or fails to complete his three-year active duty service, he will repay a proportionate amount of the advanced education assistance expended on his behalf.

i. On 13 February 2017, Orders Number 044-0001, issued by Department of the Army, G1, USMA, ordered the applicant to active duty enlisted service in the rank/grade of SPC/E-4 no later than 17 December 2016 and reassigned him to the USAR Control Group (Individual Ready Reserve (IRR)). He was to report to his local Army Recruiting Station no later than 13 March 2017 to be assigned a military occupational specialty and Advanced Individual Training date, with subsequent order to active duty for a period of 3 years. The orders stipulate in the Additional Instruction:

(1) Pursuant to USMA Regulations and the Office of the ASA (M&RA) memorandum dated 16 December 2016, [Applicant] will be transferred to the United States Army Reserves as an E4 and Immediately ordered to active duty for a period of three years.

(2) This order complies with actions directed by the Superintendent, USMA at West Point and the Assistant Secretary of the Army (Manpower & Reserve Affairs) In accordance with AR 612-205 and 10 USC 4348 (b).

(3) Failure to complete three years of active duty enlisted service under honorable conditions will result in service member (SM) debt to the United States government for accrued education costs.

(4) Subsequent disqualification for enlisted service may result in SM debt to the United States government for accrued education costs.

(5) [Applicant] will report to your local Army Recruiting Station no later than 13 March 2017 to be assigned a Military Occupational Specialty (MOS) and Advanced Individual Training (AIT) date. He is encouraged to communicate his MOS preference to his local recruiter. However, his recruiter may limit his MOS selection to any extent, based on needs of the Army.

(6) Failure to report to your assigned AIT will result in the initiation of financial recoupment procedures for education costs as described above.

j. The applicant was honorably discharged from the USMA on 16 December 2016. His DD Form 214 shows the date of entry and date of separation erroneously transposed. Item 18 (Remarks) clarify his service was as a USMA cadet from 2 July 2012 to 16 December 2016 and his service was not creditable for any purpose in commissioned officer status. He was discharged in accordance with AR 612-205 and AR 210-26. The Narrative Reason for Separation is shown as "Academic." He was transferred to the USAR Control Group (IRR) for order to active duty in another status.

k. On 10 October 2017, the applicant was issued a DD Form 215 that corrected the transposed entry and separation dates.

l. On 30 April 2018, by letter to the applicant, the Assistant Chief of Staff, Army G-1 informed the applicant that the USMA Office of the Adjutant General/G1 received notification that he has been unable to enlist as directed by the ASA (M&RA) in a memorandum dated 16 December 2016.

(1) Based on these circumstances, in accordance with the ASA (M&RA) memorandum, unless the applicant could provide documentation that specifically prohibited him from entering the Army as instructed, his action would be submitted to the Defense Finance and Accounting Service (DFAS) on 1 July 2018, to initiate recoupment of his educational costs in the amount of \$223,769.00 in accordance with paragraph d of his Orders Number 044-0001, dated 13 February 2017 which state subsequent disqualification for enlisted service may result in the applicant's debt to the U.S. Government for accrued education costs.

(2) If he wished to submit matters for consideration by the ASA (M&RA) he must submit matters by 15 June 2018.

4. In August 2020, the ABCMR considered the applicants petition through counsel to correct his records as follows: physical disability discharge in lieu of academic discharge; relief from his service obligation; relief from educational benefit reimbursement debt, and the opportunity to earn his Bachelor of Science degree.

a. Prior to adjudicating his case, the Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's academics and military medical records. The ARBA medical advisor indicated that a review of all medical documentation supports the applicant had Persistent Depressive Disorder while at West Point. His sporadic use of treatment coinciding with significant stressors and self-reported improvement in symptoms with medication masked his underlying condition of Persistent Depressive Disorder and delayed its diagnosis. With this underlying condition, his symptom severity would be the only discriminator between an additional diagnosis of MDD episode, or adjustment disorder, with Depressed Mood. His depressed mood, difficulty focusing, low motivation, poor concentration, and diminished interested are consistent with MDD and Persistent Depressive Disorder. An additional diagnosis of ADHD isn't supported as most symptoms are explained by his depressive diagnoses. The inability to complete assignments as a separate symptom isn't sufficient to support an ADHD diagnosis especially because it would have been an issue in high school which by all reports was not an issue. His Persistent Depressive Disorder existed prior to enrollment at West Point and the increased stress contributed to his more severe depressive episodes. In addition, his behavioral health diagnoses do not meet accession standards in accordance with AR 40-501 (Standards of Medical Fitness).

b. On 20 August 2020, after review of the complete evidentiary record, including the applicant's statement, the Medical Advisory opinion, and supporting documents, the Board found insufficient evidence to grant the applicant's requests for a physical disability discharge in lieu of academic discharge, relief from his service obligation, relief from educational benefit reimbursement debt, and the opportunity to earn his Bachelor of Science degree. The Board agreed with the ARBA Medical Advisory Opinion that the applicant had a preexisting behavioral health condition that did not meet accession standards and his academic failure partly resulted from this preexisting behavioral health condition and not ADHD; an ADHD diagnosis is not supported by the complete evidentiary record. The Board also found that statements by classmates and cadre indicate the perception that the applicant intentionally failed academic requirements. The applicant's records indicate he succeeded academically in High School and his High School academic record was sufficient for entrance into West Point. Furthermore, on 16 December 2016, the Deputy Assistant Secretary of the Army directed that the applicant be transferred to the USAR in the grade of E-4 for three years and the applicant failed to comply. Therefore, the Board found no basis on which to grant relief.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous request to:

- change his U.S. Military Academy (USMA) academic discharge to a medical discharge
- allow him to earn his Bachelor of Science degree
- eliminate both the enlistment and recoupment obligations

b. This medical opine will only address the applicant's request for a medical discharge. The applicant's request to eliminate both the enlistment and recoupment obligations and allow him to earn his Bachelor of Science degree will be deferred to the board. His concern regarding his discharge being described as willful, will also be deferred to the board.

c. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant is a former cadet at the USMA, West Point, NY. He was separated from USMA for academic failure and discharged effective 16 December 2016. His DD Form 214 shows the date of entry and date of separation erroneously transposed. Item 18 (Remarks) clarify his service was as a USMA cadet from 2 July 2012 to 16 December 2016 and his service was not creditable for any purpose in commissioned officer status. He was discharged in accordance with AR 612-205 and AR 210-26. The Narrative Reason for Separation is shown as "Academic." He was transferred to the USAR Control Group (IRR) for order to active duty in another status.
- On 10 October 2017, the applicant was issued a DD Form 215 that corrected the transposed entry and separation dates.
- On 30 April 2018, by letter to the applicant, the Assistant Chief of Staff, Army G-1 informed the applicant that the USMA Office of the Adjutant General/G1 received notification that he has been unable to enlist as directed by the ASA (M&RA) in a memorandum dated 16 December 2016.
- Based on these circumstances, in accordance with the ASA (M&RA) memorandum, unless the applicant could provide documentation that specifically prohibited him from entering the Army as instructed, his action would be submitted to the Defense Finance and Accounting Service (DFAS) on 1 July 2018, to initiate recoupment of his educational costs in the amount of \$223,769.00 in accordance with paragraph d of his Orders Number 044-0001, dated 13 February 2017 which state subsequent disqualification for enlisted service may result in the applicant's debt to the U.S. Government for accrued education costs.

d. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), medical documentation, and DD Form 214. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

e. The applicant states the Board's original decision dismissed crucial medical evidence which supported his contention that his academic failure was not willful. If his failure was not willful, then he would not incur either a service obligation or the recoupment of the cost of education at USMA (approximately \$233,000). The applicant further states the Board also reviewed documents that he did not see before they were considered by the Academic Board which he believes is a violation of his due process rights under the Constitution. The USMA also apparently did not send his complete file down to the Board for its review which also violated his due process rights. Finally, since the USMA issued him an incorrect DD Form 214 and failed to correct it for several months, he was unable to enlist because he was under medical care and taking a prescription that prohibited his enlistment. If the correct DD Form 214 had been issued in a timely manner, he would have been able to enlist and fulfill his service obligation.

f. The applicant's electronic medical record indicates that during his time in service he evidenced a clear pattern of mood stability and capacity to excel when the applicant engaged in treatment and took his prescribed medication. However, he experienced a deterioration and recurrence of depressive symptoms when he would stop taking his medication. A 08 November 2013 psychiatric evaluation indicates he was diagnosed with Adjustment Disorder with Depressed Mood and treated with antidepressant medication and therapy. At the time, the applicant reported a history of depressive symptoms dating back to his junior year of high school. He also reported having a depressive episode during his senior year of high school, after the breakup of a romantic relationship. The applicant denied feeling significant depression during his freshman year at USMA but his sophomore year he reported feeling "stuck being here ". He did not feel like he belonged at USMA but reported needing to complete at least one more year. He described the following depressive symptoms including, decreased energy, poor motivation and concentration, sleeping more than usual, and fleeting passive suicidal ideation. A mental health encounter dated 22 November 2013, indicates the applicant was taking antidepressant medication and reported an improvement in his mood and general outlook. He was finding it easier to concentrate, had improved energy and sleep, as well as less ambivalence about remaining at USMA. A follow-up encounter on 16 December 2013 indicates a good response to medication with a recommendation for continued individual psychotherapy. However, the applicant stopped taking his prescribed medication and his symptoms returned. An encounter dated 06 November 2014 indicates he reported being off medication for months and experienced a recurrence of depressive symptoms including, decreased energy along with concentration difficulties, lower motivation, feeling negative and questioning

whether he was fit to be an officer. A follow-up appointment on 17 November 2014 shows an improvement in his symptoms when he resumed his medication. The applicant was again diagnosed with Adjustment Disorder with Depressed Mood. With consistent use of his prescribed medication, in a note dated 22 January 2015, the applicant reported definitive improvement in his symptoms and described himself as being more focused and generally productive. Another appointment dated 12 March 2015 clearly indicates the applicant responded positively to antidepressant medication with improved mood and productivity. At the time, he reported continuing to do well since remaining on the medication with a positive mood, improved academic performance, and a good level of productivity. However, an encounter dated 22 April 2015 indicates he discontinued his medication for several days and experienced a recurrence of symptoms. Per a mental health encounter dated 20 May 2015, his mood once again improved when he resumed his prescribed medication. However, a note dated 07 December 2015 indicates the applicant reported having a challenging semester since he had stopped taking his medication for a few weeks but once again indicated improved mood upon restarting the medication. Overall, a note dated 05 April 2016 summarized the applicant's mood stability and ability to function well when he was on medication. It indicated he first presented with depression during the fall semester of his sophomore year and received treatment with antidepressant medication. He had stopped taking the medication on occasions but, at that time, had resumed treatment and found the benefit of the medication on maintaining a positive attitude and functioning effectively. The note further indicated the applicant had a 3.0 academic GPA and functioned adequately in the other pillars of performance.

g. Post military service, the applicant was evaluated by [REDACTED] who opined that he was suffering from both Persistent Depressive Disorder and episodes of Major Depressive Disorder while at USMA. His civilian psychiatrist, [REDACTED] agreed with the diagnosis of Major Depressive Disorder and also began treating the applicant for Attention-Deficit Hyperactivity Disorder (ADHD). A memorandum by [REDACTED] also diagnosed the applicant with ADHD. However, the diagnosis was based on a subjective listing of self-reported symptoms by the applicant, not on objective neuropsychological testing. In addition, the diagnosis did not fully account for the applicant's longstanding academic success that enabled him to gain admission to a world class academic institution of higher education that is USMA.

h. Overall, given the applicant's symptoms and his positive response to treatment, the clinical team at USMA's understanding of the applicant's presentation as a student who was having difficulty adjusting to the rigorous environment at USMA and experiencing depressive symptoms, was consistent with his clinical presentation. However, regardless of diagnosis, while at USMA the applicant was not on medical profile, his diagnosis did not require hospitalization, and he met retention standards. The applicant was treated with antidepressant medication and therapy, and the record clearly indicates he responded positively to antidepressant medication with improved

mood and productivity. While at USMA, the applicant was provided ample opportunity and treatment to improve his academic functioning but, at times, lacked adherence to the prescribed treatment protocol as evidenced by his discontinuation of medication and he self-selected out of the academy. Per the applicant's self-authored statement in a letter dated 25 August 2016: "My inability to effectively manage time, apply an appropriate level of focus to my studies, and seek outside help indicates that I am not yet prepared to take upon the hefty responsibilities of officership. This lack of preparedness can be found both in those classes that I failed along with those that I passed. I accept full responsibility for all the actions (or lack thereof) that have brought me into this current predicament, and I have neither the desire nor cause to make excuses. Furthermore, I recognize the validity of the Academic Board's concern that I am presently unprepared for officership".

i. It is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. The applicant was diagnosed with Persistent Depressive Disorder and Attention-Deficit Hyperactivity Disorder (ADHD) post military service and this clinician will not counter the diagnosis of these providers. However, per medical documentation, at the time of service, his clinical presentation was consistent with his diagnosis of Adjustment Disorder with Depressed Mood since he reported depressive symptoms and difficulty adjusting to the rigors of the environment at USMA. Of note, the applicant evidenced significant improvement in both mood and productivity when he was on antidepressant medication. The medical documentation evidences a clear pattern of improvement in symptoms, while on medication, and a recurrence of symptoms when he would abruptly discontinue his medication, against medical advice. Overall, the applicant's BH condition was well-managed while in service with medication and therapy. He was not on profile, did not require hospitalization, evidenced A + grades in certain subjects, as well as a 3.0 academic GPA and functioned adequately in other pillars of performance. However, the applicant did not avail himself of the recommended treatment protocol, as evidenced by his discontinuation of medication. His subsequent diagnosis of Persistent Depressive Disorder and Attention-Deficit Hyperactivity Disorder via civilian providers post military service is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Persistent Depressive Disorder and/or Attention-Deficit Hyperactivity Disorder are not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing since his symptoms were well-managed via prescribed medication. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's contentions, military record, and regulatory guidance. Evidence of record shows that the applicant had a behavioral health condition while attending the United States Military Academy. The applicant was afforded medical treatment which when adhered to enabled the applicant to maintain academic standards. As he did not consistently adhere to the prescribed medical protocol, he could not maintain required standards and separated. The Board determined there was not error or injustice and deny the request.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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 to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180002245 on 17 August 2020.



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 210-26 (United States Military Academy (USMA)) provides direction and guidance for the general governance and operating policies of the USMA.

a. Paragraph 4-6 states cadets of the USMA must meet the medical accession standards of Army Regulation 40-501 (Standards of Medical Fitness), chapter 2 (Physical Standards for Enlistment, Appointment, and Induction), for retention at USMA and for appointment as officers upon graduation. The Superintendent may, however, grant medical waivers for continuation at USMA, provided the cadet meets the retention standards of Army Regulation 40-510, chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement).

b. Chapter 5 provides guidance on graduation and commissioning. Paragraph 5-3 states:

(1) First class cadets who have successfully completed the requirements of the course of instruction, including the Academic, Military, and Physical Programs, have maintained prescribed standards of conduct, and who have demonstrated proper moral-ethical qualities, leadership, and character may receive a diploma. These cadets will have earned the Bachelor of Science degree and will be designated as graduates of the USMA.

(2) A cadet who is discharged or separated from the Academy under provisions of this regulation or for any other good cause, will not be graduated, awarded a diploma, or commissioned. However, when the Superintendent proposes that a cadet be separated for failure to meet medical retention standards under paragraph 4-6 of this regulation and when the Academic Board determines the cadet successfully completed all requirements of the Academic, Military, and Physical Programs, the Superintendent may approve graduation and the award of a diploma with a Bachelor of Science degree. Such a cadet will not be commissioned. If the medical separation is not approved, the cadet will be commissioned.

c. Chapter 6 provides guidance on misconduct, honor, disciplinary, and other grounds for separation.

(1) Paragraph 6-30 pertains to medically disqualified cadets and specifies whenever the Surgeon, USMA, determines that a USMA cadet does not meet the fitness requirements to perform all duties as a member of the Corps of Cadets during the current academic term or summer training period, or will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning, the Superintendent will review the case and, at his discretion, take one of the following actions:

- afford the cadet an opportunity to resign
- recommend that, in the case of medical disqualification under cadet retention standards as provided in Army Regulation 40-501, the cadet be separated
- for cadets of the first class, recommend they be retained and graduated if otherwise qualified, by being granted a waiver and commissioned
- recommend that the cadet be discharged if physically disqualified for any military service
- permit the cadet, upon his/her request, to complete the academic year in which the defect is noted and, in those cases, where the disqualifying defect is clearly remediable, continue for an additional period beyond the current academic year for further observation and treatment
- grant leave without pay, at the cadet's request, not to exceed 1 year, at which time the cadet will be reexamined to determine if the medical disqualification has been remediated
- for those cadets with service obligations, who are deemed medically disqualified, the Superintendent will make recommendations for submission to the Department of the Army for final action, to include medical waivers

(2) Paragraph 6-32a specifies cadets who are deficient in the Academic Program may be separated from the Academy or subject to other remedial action.

d. Chapter 7 provides guidance on separations and Resignations. Paragraph 7-1 states cadets who enter the USMA directly from a civilian status assume a military service obligation of 8 years when they enter the USMA.

(1) Paragraph 7-7 provides guidance on separation documents and states a cadet who has been separated and discharged under any provision of this regulation normally will be issued an Honorable or General Discharge Certificate unless Headquarters, Department of the Army, determines that the facts and circumstances of the case warrant issuance of a discharge of lower character.

(2) Paragraph 7-9 pertains to breach of service agreement and reimbursement of educational costs. It states cadets who resign from the USMA, or who are separated from the USMA under the procedures contained in table 7-1 (Separations Deemed to Be a Breach of Service Contract), will be deemed to have breached their service agreement. Cadets separated from the USMA under procedures other than those contained in Table 7-1 may be deemed by the Superintendent to have breached their service agreement if the cadet's failure to meet the standards for continued attendance at USMA or for commissioning resulted from a willful act or omission.

(3) A cadet who voluntarily, or because of misconduct, fails to complete the period of active duty service specified by the Secretary in the cadet's agreement to serve may be required to reimburse the U.S. Government for educational costs pursuant to the law and implementing regulations. If the Secretary determines that such active duty service is not in the best interests of the Army, the cadet will be considered to have failed to complete the period of active duty and may be required to reimburse the government for educational costs.

e. Table 7-1 lists the types of separations deemed to be a breach of service contract. Academic deficiency is not listed.

2. Army Regulation 612-205 (Appointment and Separation of Service Academy Attendees), provides instructions on the disposition of personnel records and on the separation of cadet candidates from the USMA. Table 3 (USMA Cadet Separation Policies) rule 7 states if the separation of the USMA cadet is started after commencement of the 4th academic year (senior year), then he/she will be transferred to the U.S. Army Reserve in grade of E4 for 3 years and may be immediately ordered to active duty for not less than 2 years.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation): Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical

Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

b. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

//NOTHING FOLLOWS//