

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 15 September 2023

DOCKET NUMBER: AR20230001938

APPLICANT REQUESTS: in effect, physical disability separation or retirement in lieu of existed prior to service (EPTS) physical disability separation.

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)

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 served in the Army between 27 January 1981 and 22 June 1981. He is requesting help in obtaining his disability from the Army that was awarded to him, but was stopped when he was sent to prison. His Narrative Reason for Separation is Physical Disability – EPTS – Medical Board.

3. The applicant enlisted in the Regular Army on 27 January 1981.

4. A Narrative Summary (NARSUM), dated 19 May 1981, shows the following:

a. The applicant was admitted to the Moncrief Army Hospital, Fort Jackson, SC on 13 May 1981. He had been on active duty for about 3 months and was currently in his fifth week of Advanced Individual Training (AIT). He was admitted to the hospital through Community Mental Hygiene Activity because he was reportedly shaking his head and trying to drink gasoline. He presented with a long history of poly drug abuse since age 16 and continuing until he entered Fort Jackson about 5 months ago. He has done fairly well until recently, but he had lost interest in military life and he started having increasing difficulty functioning. He appeared to be having some loose associations and it was felt that his problems were a little bit worse than merely drug

abuse. It was felt the applicant was suffering from a schizophreniform disorder and that psychiatric hospitalization in the psychiatric unit was appropriate for him.

b. The applicant related poly drug abuse consisting of LSD, PCP, and speed. He related prior psychiatric history consisting of in-patient hospitalization for hallucinations and other psychiatric difficulties. He was hospitalized in Vanderbilt Medical Center in Nashville, TN, on two occasions.

c. A mental status examination revealed the applicant was in no noticeable distress. He had completely shaved his head. He was alert and in no apparent physical distress. He was rather passive and defensive in responding to questions. He was cooperative and controlled in general. He was relevant but rather vague and unclear. His affect was blunted with occasional grimacing and superficial smiles. His thoughts were vague, and there was quite a great deal of religious preoccupation with some guilt and some depression. There were some strange ideals about military life and some signs of autistic thinking. There were no hallucinations elicited or observed. The applicant was oriented in all three spheres. Memory was intact. Attention and concentration were fair. Intelligence was average. Judgment and insight were impaired.

d. The applicant had an essentially uneventful hospital stay. He was started on psychotropic medication and this was gradually increased until he was taking Navane 15 mg PO q.i.d. as well as Cogentin 2 mg PO b.i.d. This medication appeared to help bring the applicant's psychosis under fairly good control and by the 20th of May it was felt he could be presented to a Medical Evaluation Board (MEB) with the recommendation for separation from service. While the applicant was in the hospital, he was actively involved in group and supportive psychotherapy and through these different therapeutic modalities, he managed to gain some insight into the nature of his difficulties.

e. The applicant's diagnosis is schizophreniform disorder, moderate, acute, manifested by autistic thinking, inappropriate affect, and marked ambivalence. External precipitating stress: minimal stress of routine duty. Severe premorbid personality and predisposition as manifested by a past history of psychiatric hospitalization. Marked impairment for further military duty. Definite impairment for social and industrial adaptability. EPTS.

f. At this time the applicant is being presented to an MEB with the recommendation for separation from service. At this time it is not felt that he would require continued hospitalization, but is recommended that he be air evacuated to the Veterans Administration (VA) Hospital close to home for facilitation of further aftercare follow up and treatment.

g. Military capabilities and recommendations show the applicant was not qualified for retention in the military service, not fit for retention under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), paragraph 3-19, LOD: EPTS. The applicant's case is presented to an MEB for evaluation and disposition. He cannot perform basic training duties in the Army and has been informed of the right to appeal these proceedings to a Physical Evaluation Board (PEB) if so desired. Legal counsel was made available to the applicant. He requires medical care enroute home and should be transferred to a VA Hospital by medical evacuation aircraft. The applicant is mentally competent to understand MEB proceedings and participate in them on his own behalf and is competent for pay purposes.

5. A DA Form 3947 (Medical Board Proceedings) shows the following:

a. A MEB convened on 22 May 1981, where the applicant was found medically unfit for schizophreniform disorder, moderate, acute, manifested by autistic thinking, inappropriate affect, and marked ambivalence. External precipitating stress: minimal stress of routine duty. Severe premorbid personality and predisposition as manifested by a past history of psychiatric hospitalization. Marked impairment for further military duty. Definite impairment for social and industrial adaptability.

b. The applicant was mentally competent to understand the MEB proceedings and participate in them on his own behalf and was competent for pay purposes. He was not considered dangerous to self or others.

c. Line of Duty (LOD) shows no, EPTS; not incident to service; not aggravated by active service; optimum hospital improvement for disposition purposes and maximum hospital benefit received.

d. A brief summary of the medical conditions or physical defects in nontechnical language shows a mental disorder. The Board recommended the applicant be discharged due to being unfit for enlistment or retention pursuant to chapters 2 and 3 of Army Regulation 40-501. Authority for discharge is Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 5.

6. A Statement of Change of Medical Status, dated 22 May 1981, shows the applicant signed the form indicating he underwent a medical examination in the past 180 days and his medical records were appended to show his condition since that time was changed to nervous disorder and he understood this condition was an EPTS condition.

7. A DA Form 2496 (Disposition Form), signed and dated by the applicant on 22 May 1981, shows the following:

a. The applicant requested discharge for physical disability based upon the findings and recommendations of an MEB. The MEB considered him unqualified for retention in the military service because of a physical disability that was found to have existed prior to his entry into active service (EPTS). The MEB found the disability neither incident to nor aggravated by his military service.

b. He was fully informed and understood that he was entitled to the same consideration and processing as any other member of the Army separated for physical disability. He understood this included consideration of his case by the adjudicative system established by the Secretary of the Army for processing disability separations. However, he elected not to exercise this right. He also understood the VA would determine entitlement to VA benefits.

c. If this application is approved, he understood he would be separated by reason of EPTS physical disability. He also understood he would receive a discharge in keeping with the character of his service, as decided by the officer designated to effect his separation.

8. Headquarters, U.S. Army Medical Department Activity Orders 166-3, dated 11 June 1981, relieved the applicant from attachment at Moncrief Army Hospital with further attachment to the VA Medical Center (VAMC) Nashville, TN, effective 18 June 2021 to 22 June 1981, for the purpose of separation from military service effective 22 June 1981.

9. A DA Form 3647-1 (Inpatient Treatment Record Cover Sheet), dated 22 June 1981, shows the following:

a. Medical Board Proceedings dated 22 May 1981, reflect failure to meet medical retention standards.

b. Permanent change of station move from Fort Jackson, SC to VAMC on 18 June 1981, for separation from the service under the provisions of Army Regulation 635-40, chapter 5.

c. Diagnosis: schizophreniform disorder, moderate, acute, manifested by autistic thinking, inappropriate affect, and marked ambivalence. External precipitating stress: minimal stress of routine duty. Severe premorbid personality and predisposition as manifested by a past history of psychiatric hospitalization. Marked impairment for further military duty. Definite impairment for social and industrial adaptability. EPTS.

10. The applicant's DD Form 214 shows he was honorably discharged on 22 June 1981, under the provisions of Army Regulation 635-40, chapter 5, due to physical

disability – EPTS- Medical Board and was credited with 4 months and 22 days of net active service this period.

#### 11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting in effect, a physical disability separation or retirement in lieu of existed prior to service (EPTS) physical disability separation.

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: 1) The applicant enlisted in the Regular Army on 27 January 1981; 2) A Narrative Summary (NARSUM), dated 19 May 1981, shows the applicant was admitted to an Army hospital for psychotic and suicidal behavior; 3) A MEB convened on 22 May 1981, where the applicant was found medically unfit for schizophreniform disorder, moderate, acute, manifested by autistic thinking, inappropriate affect, and marked ambivalence. He was found to have marked impairment for further military duty. On the same day, the applicant requested discharge for physical disability based on the findings and recommendations of the MEB. Also, the MEB found his condition existed prior to his entry to active service (EPTS); 4) The applicant was honorably discharged on 22 June 1981, under the provisions of Army Regulation 635-40, chapter 5, due to physical disability – EPTS- Medical Board.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. The applicant requests disability for his active service. Shortly after enlisting in the Army, the applicant was evaluated for psychotic and suicidal behavior while attending initial training. He reported a lengthy history of polysubstance abuse and inpatient hospitalization for psychotic symptoms. The applicant was placed in psychiatric care while on active service, and he was prescribed psychiatric medication and treatment. He demonstrated symptom improvement, and he was found capable of participating in a Medical Evaluation Board (MEB). The applicant was found to have severe psychiatric problems prior to his enlistment, which was consistent with his current presentation. He was found not fit for retention under the Standards of Medical Fitness (AR 40-501). He was found mentally competent to understand the proceedings and participate in them on his own behalf and is competent for pay purposes. The applicant also signed the results of the MEB and that his psychiatric condition was EPTS. A review of JLV was void of medical documentation, and the applicant does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there was sufficient evidence the applicant was experiencing a severe mental health disorder prior to his military service of similar severity as the applicant demonstrated shortly after enlisting in active service. The applicant was appropriately evaluated and discharged. Therefore, there is insufficient evidence at this time that the applicant warrants an additional referral to IDES from a behavioral health perspective.

#### Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with a severe mental health disorder which was found to not fit for retention standards under the provisions of Army Regulation 40-501 (Standards of Medical Fitness)

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed while on active service with a severe mental health disorder which was found to not fit for retention standards under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

(3) Does the condition experience actually excuse or mitigate the discharge? No, there was sufficient evidence the applicant was experiencing a severe mental health disorder prior to his military service of similar severity as the applicant demonstrated shortly after enlisting in active service. The applicant was appropriately evaluated and discharged. Therefore, there is insufficient evidence at this time that the applicant warrants an additional referral to IDES from a behavioral health perspective.

#### BOARD DISCUSSION:

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 contentions, the military record, and regulatory guidance. The Board noted that shortly after enlisting, the applicant was evaluated for psychotic and suicidal behavior while attending initial training. During the evaluation, the applicant reported a history of both substance abuse and inpatient hospitalization for psychotic symptoms. Documentation shows he was afforded psychiatric care while on active service and prescribed psychiatric medication and treatment. Upon improvement, he was afforded participation in a Medical Evaluation Board. The MEB determined that he had severe psychiatric problems prior to his enlistment as evidenced by his current presentation. As a result, he was found not fit for retention standards; however, the Board noted he was found mentally competent to understand the proceedings and participate in them on his own behalf and competent for pay purposes. Further, he signed the MEB results and that his condition existed prior to service. The Joint Legacy Viewer did not reveal medical documentation or evidence of any service-connected

disability. Based on the documentation available for review, the Board concluded the evidence presented insufficient to warrant an additional referral to IDES from a behavioral health perspective and relief is not warranted.

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 Board determined 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.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).



a. 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (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 or not 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. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. 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.

3. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

d. Chapter 5 provides guidance on non-service aggravated existed prior to service (EPTS) conditions when a Soldier requests waiver of referral to a PEB. The criteria for discharge per this chapter are as follows:

- the Soldier is eligible for referral into the disability system
- the Soldier does not meet medical retention standards as determined by the MEB
- the disqualifying defect or condition existed prior to entry on current period of duty and has not been aggravated by such duty
- the Soldier is mentally competent
- knowledge of information about his/her medical condition would not be harmful to the Soldier's well-being
- further hospitalization or institutional care is not required
- after being advised of the right to a full and fair hearing, the Soldier still desires to waive PEB action

- the Soldier has been advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

5. Title 10, U.S. Code, section 1556 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.

6. 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.

7. 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of 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. 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//