

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230002993

APPLICANT REQUESTS: in effect, to change of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 20 March 2001 to show in:

- Item 23 (Type of Separation), from discharge to disability or a designation comparable to his current disability status
- Item 24 (Character of Service), from uncharacterized to honorable
- Item 26 (Separation Code), from JFV to a more favorable designation
- Item 28 (Narrative Reason for Separation) from physical condition, not a disability to medical separation or something more favorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statement
- Enlistment Documents (29 pages):
 - DD Form 1966 (Record of Military Processing – Armed Forces of the United States), 18 August 2000
 - DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 21 August 2000
 - DA Form 3540-R (Certificate and Acknowledgment of U.S. Army Reserve Service Requirements and Methods of Fulfillment, 21 August 2000
 - USAREC Form 1122-R-E (Statement of Understanding – Army Policy), 21 August 2000
 - DA Form 5261-R (Selected Reserve Incentive Program – Enlistment Bonus Addendum, 21 August 2000
 - Supplement to DA Form 3286-67 (Statement for Enlistment (or Appointment) Army Policy), 21 August 2000
 - Statement for Enlistment or Appointment – Concealment of Information, 21 August 2000
 - Report of Medical Examination, 21 August 2000

- USMEPCOM PCN 714ADP, 21 August 2000
- Orders Number 161-18, 22 August 2000
- Orders Number 312-333, 7 November 2000
- DA Form 2-1 (Personnel Qualification Record)
- Orders Number 030-268, 30 January 2001
- Medical Treatment Records (11 pages), 6 February 2001
- DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), 27 February 2001
- Letter of Understanding, 28 February 2001
- Command Directed Mental Health Evaluation, 7 March 2001
- Notification of Separation, 7 March 2001
- Acknowledgment and Election of Rights, 7 March 2001
- Waiver of Right to Legal Counsel, 7 March 2001
- Immediate Commander Recommendation, 7 March 2001
- Separation Authority Approval Memorandum, 7 March 2001
- Enlisted Record Brief, 7 March 2001
- Immediate Commander Memorandum, 14 March 2001
- DA Form 268, 15 March 2001
- SGLV 8286 (Servicemember Group Life Insurance Election and Certificate), 19 March 2001
- DD Form 93 (Record of Emergency Data), 19 March 2001
- Student Personnel Enlisted In/Out Processing Checklist, 19 March 2001
- Orders Number 079-0108, 20 March 2001
- DD Form 214WS (DD Form 214 Worksheet), 20 March 2001
- National Personnel Records Center (NPRC) Letter, 6 June 2018
- Patient Authorization for the Use or Disclosure of Protected Health Information, 19 August 2019
- Department of Veterans Affairs (VA) Disability Certification Letter, 27 January 2021

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, in effect:
 - a. He had an encounter with a drill instructor while stationed at Fort Sam Houston, TX that changed the trajectory of his life. The applicant was in the shower when the drill

instructor confronted him about not going to morning chow with everyone else. The drill instructor, while in the shower with him, placed his hands on the applicant's naked body. The applicant told him he was uncomfortable with him being there in his space and the drill instructor shouted at him and told him that he needed to "get my bearing" as he came closer to him and then placed his hands on his chest and then grazed the applicant's penis with his knee or leg. The drill instructor violated him and up until this point, he had been afraid to mention this to anyone. He does not remember the drill instructor's name, but if someone said it to him, he would remember it and his face, for sure. He believes that his mind allowed him to forget the drill instructor's name to protect himself, creating a mental block so he would not have to relive that moment.

b. He went to sick call on multiple occasions and was admitted to the hospital. He passed out multiple times while in San Antonio, TX. This is where he had his first experience with "IBS." Which at the time, he did not know he had. He feels that if the Army had given him a medical board prior to his discharge, he could have been diagnosed. He has both medical and mental, verified conditions, that are directly connected to this incident and stem from his time in the Army. These issues have not been reconciled by the VA or even taken seriously.

c. He developed these issues while he was in the Army, and these issues have never been properly addressed. After he was discharged from the mental hospital, there was no follow up or check up by Army medical personnel or a medical board. They just gave him an uncharacterized discharge and wiped their hands of the situation. He felt abandoned, betrayed, and ashamed. He was ashamed to tell his wife or even admit to himself that he was violated that day.

d. This incident robbed him of his ambition to move forward in the process and affected his mental health. It is one of the main reasons he went to the mental facility. He wanted mental help and wanted to get away from the unit. It has affected his relationship with his wife, who he has been with since that time. It affects his sexual performance, self-esteem, it attributes to his "IBS" flareups, and prevents him from sleeping restfully. He did not have these issues when he was cleared at the Military Entrance Processing Station (MEPS) to join the Army.

e. After being seen by medical professionals during his compensation and pension examination, he was rated 50 percent disabled by VA, which holds weight for his request.

3. The applicant provides the following:

a. 29 pages of enlistment documents which shows his record of military processing and his enlistment in the U.S. Army Reserve on 21 August 2000.

b. Orders Number 161-18, issued by Baltimore MEPS, Elkridge, MD, dated 22 August 2000 shows he was ordered to initial active duty for training, with a report date of 19 September 2000 at Fort Jackson, SC, for basic training and advanced individual training (AIT) at Fort Sam Houston, TX.

c. Orders Number 312-333, issued by Headquarters, U.S. Army Training Center and Fort Jackson, dated 7 November 2000, shows the applicant was attached to Company A, 232nd Medical Battalion, Fort Sam Houston, TX, effective 1 December 2000, for training in military occupational specialty (MOS) 91B (Medical Specialist).

d. DA Form 2-1 shows:

- Item 17 (Civilian Education and Military Schools): 91B, 10 weeks, 2001
- Item 35 (Record of Assignments) shows he was assigned to:
 - Company E, 232nd Medical Battalion, Fort Sam Houston, TX from 1 December 2000 to 25 January 2001, for AIT
 - Company B, 232nd Medical Battalion, Fort Sam Houston, TX from 26 January 2001, recycled

e. Orders Number 030-268, issued by Headquarters, U.S. Army Medical Department Center and School and Fort Sam Houston, dated 30 January 2001, shows the applicant was awarded primary MOS 91B, effective 27 February 2001.

f. 11 pages of medical treatment records which shows the applicant was admitted to the hospital on 6 February 2001 and discharged on 12 February 2002.

1) The applicant was admitted to inpatient psychiatric programming at the facility per concern for a worsening in depression and self-harm potential. He reported having felt increasingly depressed over the preceding several weeks with loss of energy, inability to concentrate, loss of interest in activities previously enjoyed, and suicidal thoughts. He demonstrated a difficult adjustment to the military and felt increasingly unable to cope with his situation. He was taking emergency management training courses and struggling academically. After his sergeant yelled at him, he began to think of suicide. Also, significant was a history of a previous suicidal gesture as a freshman in high school that had followed a breakup with a girlfriend.

2) The applicant was admitted to unit programming and initially placed on close monitorization to assess any destructive potential. He was also placed on a medication regimen of Zoloft, Ativan, and Restoril. He continued to appear depressed and reported feeling exhausted. He identified plans to seek separation from the military but had not begun the process and was reluctant to talk to his commander. Interventions focused on

bolstering self-esteem and redirecting focus to achievable goals. He was switched to a trial of Celexa per complaint of adverse response to Zoloft.

3) He was discharged to initially return to his military unit and scheduled to follow up as an outpatient. He was not discharged on any psychotropic medications per resistance. Long range plans called for the applicant to seek disengagement from the military.

g. DA Form 268 shows he was flagged on 27 February 2001 for elimination.

h. A letter of understanding dated 28 February 2001, shows the applicant understood that he had 60 days to complete a physical.

i. A memorandum which shows the applicant was command directed to undergo a mental health evaluation on 7 March 2001. The psychologist diagnosed the applicant with adjustment disorder with depressed mood and occupational problem.

1) It was the opinion of the psychologist that the applicant had no potential for continued useful service in the military, and that discharge from the Army in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-17 (Other designated physical or mental conditions), would be in the best interest of the U.S. Army and the Soldier. The psychologist stated that the applicant would likely continue to become more depressed if he was forced to remain in the military.

2) The condition and problems presented by the applicant were not amendable to further short-term treatment, psychiatric hospitalization, rehabilitative transfer, further training, or reclassification to another type of specialty within the military. Efforts to rehabilitate, develop, or coerce him into a satisfactory member of the military would likely be unsuccessful.

3) There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant immediate disposition through military medical channels. The applicant possessed sufficient mental capacity to participate intelligently in any proceedings.

j. A notification of separation dated 7 March 2001, which states the applicant's immediate commander notified him of his intent to initiate separation in accordance with AR 635-200, chapter 5-17, for other designated physical or mental conditions. The commander listed the following reason for the proposed action: the applicant demonstrated an inability to adapt to the rigors of Army training. It was in the best interest of the Army and the Soldier that he be administratively released. He

recommended that the applicant receive an entry level separation and informed the applicant of his rights.

k. A memorandum dated 7 March 2001, shows the applicant acknowledged the notification of the proposed separation under the provisions of AR 635-200, chapter 5-17, and its effects, of the rights available to him.

1) He acknowledged that he was provided the opportunity to consult with legal counsel.

2) He understood he would be receiving an uncharacterized discharge.

3) He waived consulting counsel and elected not to submit a statement in his own behalf.

4) He further understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

l. A memorandum dated 7 March 2001, which shows the applicant's immediate commander formally recommended the applicant's separation from the Army prior to expiration of his term of service under the provisions of AR 635-200, chapter 5-17. The commander noted in the memorandum that the applicant had not been awarded an MOS.

m. A memorandum dated 7 March 2001, which shows the separation authority approved the recommendation for separation under the provisions of AR 635-200, chapter 5-17 and directed he is not transferred to the Individual Ready Reserve. He stated it was an entry-level separation and noted further rehabilitation and training would not be in the best interest of the U.S. Army.

n. A memorandum from the applicant's immediate commander, dated 14 March 2001, states the applicant originally arrived as a member of class 05-01 (graduated on 27 February 2001). Soon after he returned from EXODUS he failed out of the course and was eventually hospitalized. The hospitalization occurred immediately after he was reprimanded for an unauthorized absence (UA). He eventually had UAs on three occasions and was disrespectful to the company commander and the operations noncommissioned officer. He stated that the applicant displayed an attitude that was unmotivated and uncaring about himself and his appearance. When he was around his peers, he did not appear disturbed or depressed; however, when on duty or asked to accomplish any military oriented task he immediately resorted to displaying a lack of motivation. He noted that the applicant was no longer a discipline problem, and it was in his opinion that bringing him to accept the regimental and disciplined life of a Soldier

would be too draining on the company and supporting organizations cadre. He strenuously recommended an expeditious discharge.

o. A DA Form 268 which shows the applicant's flag was removed on 14 March 2001, for other final action.

p. A copy of the applicant's SGLV 8286 and DD Form 93, signed and dated on 19 March 2001.

q. A copy of his student personnel enlisted in/out processing checklist, dated 19 March 2001.

r. Orders Number 079-0108, issued by Headquarters, U.S. Army Medical Department Center and School and Fort Sam Houston, dated 20 March 2001, which shows he was reassigned to the U.S. Army transition point, Fort Sam Houston, TX.

s. DD Form 214WS shows the applicant was discharged on 20 March 2001. The DD Form 214WS shows he was discharged under the provisions of AR 635-200, paragraph 5-17, and his service was uncharacterized. He completed 6 months and 2 days of net active service during the covered period. Additionally, his DD Form 214WS shows in:

- Item 11 (Primary Specialty): None
- Item 13 (Decorations, Medals, Badges, Citations and Campaigns): None
- Item 14 (Military Education): None
- Item 26 (Separation Code): JFV
- Item 28 (Narrative Reason for Separation): Physical Condition, not a Disability

t. A letter from the NPRC dated 6 June 2018, which states the applicant's personnel records and medical records were provided to him.

u. A Patient Authorization for the Use or Disclosure of Protected Health Information dated 19 August 2019.

v. A letter from VA dated 27 January 2021, certifying that the applicant is receiving service-connected disability compensation for a combined evaluation of 50 percent.

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

a. DD Form 4 shows he enlisted in the U.S. Army Reserve on 21 August 2000 for a period of 8 years.

b. His report of medical examination, dated 21 August 2000, shows he had a normal clinical evaluation for mental health. Listed on the form as psychiatric. No disqualifying defects were noted.

5. NPC correspondence dated 14 March 2023 states the applicant's service records were removed for Source Material Tracking System (SMTS)/VA scanning project.

6. The applicant's service record does not contain a copy of his signed and official DD Form 214. A copy of the DD Form 214WS was provided by the applicant.

7. By regulation (AR 635-200), commanders may approve separation under paragraph 5-17, on the basis of other physical or mental conditions not amounting to disability that interfere with assignment to or performance of duty.

a. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

b. For U.S. Army Reserve Soldiers, entry-level status begins upon enlistment in the U.S. Army Reserve. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training.

8. By regulation (AR 635-5-1, Personnel Separations – Separation Program Designator (SPD) Codes), a separation under the provisions of paragraph 5-17 of AR 635-200, provides the reason of separation to be "condition, not a disability" and the SPD code of "JFV."

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade and, in essence, referral to the Disability Evaluation System (DES). He stated in part:

“The truth is that the Drill Instructor while in that shower with me, after confronting me about not going to morning chow with everyone else, placed his hands on my naked body. I told him I was uncomfortable with him being there in my space before he even got close, and this emboldened him to shout at me that I need to ‘get my bearing’ as he came closer to me and then placed his hands on my chest and then grazed my penis with his knee or leg. He was way too close! He violated me, and I was, up until this point afraid to mention this to anyone ...

This incident robbed me of my ambition to move forward in the process and has been a mental drain effecting my mental health from that time until now. It is one of the chief reasons I went to the mental facility Laurel Ridge, and that I wanted mental help, and to get away from the unit.

Another issue I wanted to be crystal clear on was my multiple sick calls, and also my admission to BAMC [Brook Army Medical Center] Medical Hospital, where I passed out multiple times while in San Antonio, Texas. This is where I had my first experience with my IBS [irritable bowel syndrome]. Which at the time, I didn't know I had. Maybe I could have been diagnosed if the Army would have had a proper medical board prior to my discharge.

I have medical and mental verified conditions, that are directly connected to this incident, and stem from my time in the Army, which have never been reconciled by the VA or even taken seriously.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 Worksheet for the period of service under consideration shows the former USAR Soldier entered the regular Army for training on 19 September 2000 and received an uncharacterized discharge on 20 March 2001 under the separation authority provided by paragraph 5-17 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Other designated physical or mental conditions. His separation code JFV denotes “Condition, Not A Disability.”

d. Paragraph 5-17a of AR 635-200:

“Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

(1) Chronic airsickness.

(2) Chronic seasickness.

(3) Enuresis.

(4) Sleepwalking.

(5) Dyslexia.

(6) Severe nightmares.

(7) Claustrophobia.

(8) Other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the soldier's ability to effectively perform military duties is significantly impaired."

e. The applicant was flagged for elimination effective 27 February 2001.

f. He underwent a command directed mental health evaluation on 7 March 2001 after which he was diagnosed with adjustment disorder with depressed mood and occupational problem. It noted the applicant had a history of depression, to include having attempted suicide at age 14, and wanted to separate from the Army after having failed advanced individual training. The provider summarized the applicant's behavioral health issues:

PVT [Applicant] was referred for evaluation following a counseling session with his Commander in which it was determined that he is unable to perform his duties as a soldier. PVT [Applicant] desires separation and is unwilling to reclassify or recycle.

PVT [Applicant] was a self-referral to CBHS [Community Behavioral Health Services] in February 2001. Presenting problems included depression and an inability to adapt to a military life. He had just failed out of the 91B Course. He reported vague suicidal ideation. PVT [Applicant] was followed on an individual basis at CBHS by Mr. P.B., Clinical Psychology Resident, for 12 sessions. Additionally, he was evaluated by LTC R.S., Chief of CBHS, for four sessions.

His depression intensified to the point that he required psychiatric hospitalization at Laurel Ridge Psychiatric Hospital for 6 days in February. Despite intense individual and group counseling, PVT [Applicant] appears unmotivated for continuing in the U.S. Army Reserve.

Mental status evaluation during the clinical interview revealed that PVT [Applicant] was alert and oriented to person, place, and time. He was dressed appropriately in BDUs [battle dress uniform]. He was cooperative throughout the interview. Eye contact, posture, and motor behavior was normal. Speech was .

somewhat slowed. He denied any current alcohol or drug use. Mood was mildly depressed and affect was appropriate. Immediate, recent, and remote memory were good, and he appeared to be of average intelligence. Attention and concentration were fair. Thought content and processes were normal. He denied any current or active suicidal or homicidal ideation. He did admit to past suicide attempt at age 14. Insight and judgement were judged to be poor.

g. The provider concluded the applicant had no potential for service in the Army, his condition was not amenable to further treatment, that the preexisting condition did not warrant processing thru military channels, and recommended the applicant be separated under paragraph 5-17 of AR 635-200. He also stated:

“PVT [Applicant] is mentally responsible for his behavior, can distinguish right from wrong, and possesses sufficient mental capacity to participate intelligently in any proceedings which may involve him.”

h. On 7 March 2001, his company commander informed the applicant of the initiation of separation action under paragraph 5-17 of AR 635-200:

“The reasons for my proposed action are: PVT [Applicant] has demonstrated an inability to adapt to the rigors of Army training. It is in the best interest of the Army and the Soldier that he be administratively released.”

i. When the applicant acknowledged receipt of his commander’s notification that same day, one of the items he acknowledged was his receiving an uncharacterized discharge with the 5-17 discharge. He also requested to waive his rights to legal counsel.

j. While the applicant was discharged under paragraph 5-17 of AR 635-200, he could probably also been separated for a depressive disorder under paragraph 5-11 of AR 635-200: Separation of personnel who did not meet procurement medical fitness standards. This most likely would have also resulted in an uncharacterized discharge

k. Paragraph 5-11a and 5-11b of AR 635-200:

“Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

- Would have permanently or temporarily disqualified the soldier for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.
- Does not disqualify the soldier for retention in the military service per AR 40–501, chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

l. No contemporaneous medical documentation addressing gastrointestinal related issues was submitted with the application and are no EMR encounters.

m. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

n. JLV shows he has been awarded several VA service-connected disability ratings, including a 50% VA service-connected disability rating for PTSD. Mental health encounters show the condition is related to military sexual trauma (MST).

o. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES is not warranted.

p. Given the history of MST, the medical advisor recommends the applicant's discharge be upgraded to Honorable with narrative reason change to Secretarial Authority.

BOARD DISCUSSION:

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

2. After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that a portion of relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct, the reason for separation, the circumstances leading to the applicant's discharge and published DoD guidance for consideration of discharge upgrade requests. After due consideration of the applicant's request, the Board determined the evidence presented sufficient to warrant a recommendation for partial relief and an upgrade to the character of service is warranted.

3. The Board further determine the evidence presented is insufficient to support the applicant's request for referral to the Disability Evaluation System. Documentation available for review does not reveal that the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Neither does it reveal evidence of any medical condition which prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. In the absence of supporting medical documentation available for review or that provided by the applicant, the Board found insufficient evidence to warrant a recommendation for relief and referral to the Disability Evaluation System is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a DD Form 214 for the period ending 20 March 2001 showing in:

- item 24 (Characterization of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-3
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Secretarial Authority

2. The Board further determined the evidence presented is insufficient to warrant a recommendation for that portion of the relief as it pertains to:

- Item 23 (Type of Separation)
- Item 26 (Separation Code)
- Item 28 (Narrative Reason for Separation)

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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. Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 than honorable characterization would be clearly inappropriate.

b. Paragraph 5-17 (Other Designated Physical or Mental Conditions) provided that commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635-40) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include but are not limited to other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(1) When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with AR 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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. Paragraph 3-2 states 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. Paragraph 3-4 states 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.

4. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

5. AR 635-5-1 (Personnel Separations - Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 5-17, with a narrative reason of "Condition, not a disability" would receive a separation code of JFV.

6. Title 38 U.S. Code, section 1110 (General - Basic Entitlement), states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in

this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. 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.

8. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

9. 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.

10. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

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

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

//NOTHING FOLLOWS//