

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230003710

APPLICANT REQUESTS: in effect, correction of his DD Form 214, Certificate of Release or Discharge from Active Duty, to show he was retired due to disability instead of a condition – not a disability.

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

- DD Form 293, Application for Review of Discharge
- Department of Veterans Affairs letter

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, the VA evaluated his medical and behavioral health conditions incurred during his military service and granted him a disability rating of 70%; therefore, he should have received a medical retirement upon separation.
3. A review of the applicant's record shows he enlisted in the Regular Army on 14 November 2006. The highest grade he held was private first class/E-3.
4. The applicant's record contains a DA Form 3822-R, Report of Mental Status Evaluation, 24 January 2008. The Chief, Community Mental Health, stated the applicant had multiple stressors and had shown a poor response. Specifically, his mother had a chronic medical condition and her caretaker, his grandmother had also fallen ill. Given the situation, the applicant felt unable to remain in Alaska on Active Duty. As such, he had developed thoughts of suicide as his only option. He was very unlikely to improve given the situation. As a result, it was recommended the applicant receive an expeditious chapter separation. If the applicant were to remain on active duty, he was likely to cause harm to himself or others. This form further shows:

a. The applicant was diagnosed with AXIS 1: adjustment disorder with depressed mood and AXIS II: personality disorder not otherwise specified (NOS).

b. The examiner found the applicant had the mental capacity to understand and participate in the proceedings, he was mentally responsible, and he met the retention requirements of Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness, Chapter 3.

c. The applicant was returned to duty with precautions and instructed to follow up with the Brigade Mental Health Clinic.

5. On 30 January 2008, the applicant's commander completed a Memorandum for Record (MFR) wherein he stated, in effect, the applicant was being separated from the Army under the provisions of AR 635-200, Active Duty Enlisted Administrative Separations, Chapter 5-17, other mental health condition. The applicant had been hospitalized for suicidal ideology and again hospitalized for an attempted suicide. It was the assessment of the command and the professional opinion of the mental health officials that the applicant should be eliminated from military service. While he demonstrated potential as a Soldier, his inability to mentally cope with moderate stress was detrimental to his personal wellbeing and the morale of the unit. The professional assessment by mental health officials was that the applicant did not demonstrate the potential to respond to counseling or rehabilitation.

6. On 11 February 2008, the applicant underwent a separation physical. The examiner found the applicant was qualified for service but noted a diagnoses of adjustment disorder in Item 77, Summary of Defects and Diagnoses, of the DD Form 2808, Report of Medical Examination.

7. As part of his separation processing, the applicant underwent a second mental status evaluation on 11 February 2008. The Chief, Mental Health Community, stated the applicant continued to have poor functioning in active duty service. Most recently he had been late to formation twice in one week and was disciplined. This created stress for him, and he developed thoughts of killing himself. It was highly recommended that his administrative separation occur expeditiously.

a. The applicant was diagnosed with AXIS 1: adjustment disorder with depressed mood and AXIS II: personality disorder not otherwise specified (NOS).

b. The examiner found the applicant had the mental capacity to understand and participate in the proceedings, he was mentally responsible, and met the retention requirements of AR 40-501, Chapter 3.

8. On 12 February 2008 –

a. The applicant's platoon sergeant informed him that he would be separated from the service under the provisions of AR 635-200, Chapter 5-17, Other Mental Condition, and the benefits and hardships associate with the various characterizations of service. The applicant acknowledged his understanding on the form.

b. The applicant waived his rights to be represented by Trial Defense Services.

9. On 13 February 2008 –

a. His immediate commander notified the applicant of his intent to initiate separation action under the provisions of AR 635-200, Chapter 5-17, by reason of other designated physical or mental conditions. The reason cited was the applicant's diagnoses of adjustment disorder with depressed mood, and personality disorder NOS. The commander recommended the applicant receive an honorable characterization of service.

b. The applicant acknowledged receipt.

c. His commander formally recommended the applicant be separated.

10. On 22 February 2008, consistent with the chain of command's recommendations, the separation authority approved his discharge under the provisions of AR 635-200, Chapter 5-17, by reason of other designated physical or mental conditions with an honorable characterization of service.

11. The applicant was discharged on 16 March 2008. His DD Form 214 show she was discharged under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability (Separation Code JFV, Reentry Code 3). His DD Form 214 shows he completed 1 year, 3 months, and 23 days of net active service.

12. The applicant provided a VA letter, 9 March 2023, which shows he is receiving service-connected disability compensation based on a combined evaluation of 60 percent, effective 1 December 2022. The applicant did not provide a list of his service-connected disabilities.

13. AR 635-40, Disability Evaluation for Retention, Retirement, or Separation, in effect at the time, sets forth policies, responsibilities, and procedures in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It states that the mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability.

14. MEDICAL REVIEW:

a. The applicant requests, in effect, a change to his narrative reason for separation to reflect retired due to disability. He contends his separation was related to Dysthymic Disorder.

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 into the Regular Army on 14 November 2006; 2) A Report of Mental Status Examination dated 24 January 2008 shows the provider determined, in part, the applicant had multiple stressors and had shown a poor response. Specifically, his mother had a chronic medical condition and her caretaker, his grandmother had also fallen ill. As such, he had developed thoughts of suicide as his only option. He was very unlikely to improve given the situation. As a result, it was recommended the applicant receive an expeditious chapter separation; 3) On 13 February 2008, his immediate commander notified the applicant of his intent to initiate separation action under the provisions of AR 635-200, Chapter 5-17, by reason of other designated physical or mental conditions; 4) The applicant was discharged on 16 March 2008 under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability.

c. The military electronic database (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant's initial BH-related engagement occurred on 15 January 2008 whereby he was escorted to the ED by his CoC, after they were contacted by his mother, who reported the applicant had contacted her and reported he was having SI secondary to partner relational issues. He was diagnosed with Suicide Risk and Depression, and escorted to the unit BH Clinic by guard, the same day. He was evaluated at the clinic and reported that he and his spouse of 7-months were in the process of divorce due to the spouse's infidelity and her request for divorce. He reported that she also filed a restraining order against him after an argument during which he was verbally assaultive, and as a result moved into the barrack. He reported that prior to calling his mother, he was sitting on the bed with his knife in hand with thoughts of cutting himself. During the session he reported a history of SI characterized by wishing he were dead, or that he would fall asleep and not wake up. He reported a history of depressive symptoms during his 11th grade year of high school but noted the symptoms were not as bad as they were currently. He endorsed additional stressors of having a severely ill mother and grandmother and a desire to be closer to them so that he could care for them. He was diagnosed with Partner Relational Problems, was able to contract for safety, and scheduled for follow-up.

d. On 17 January 2008 the applicant was escorted to the ED for suicide intent after being found in the barracks parking lot with a hose extending from his exhaust pipe to car window. He was reported that he was driving around listening to the radio and his SI was triggered by songs that reminded him of his soon to be ex-wife. His diagnosis was amended to include Adjustment Disorder with Depressed Mood and psychiatrically

hospitalized with safety concerns. On 24 January 2008 the applicant underwent a Report of Mental Status Evaluation and the provider determined, in part, that the applicant had multiple stressors and had shown a poor response. Specifically, the applicant's mother had a chronic medical condition and her caretaker, his grandmother had also fallen ill. As such, he had developed thoughts of suicide as his only option. He was very unlikely to improve given the situation. As a result, it was recommended the applicant receive an expeditious chapter separation. On 25 January 2008 the applicant was seen for continued outpatient evaluation and treatment. On 28 January 2008 the applicant was seen in the psychiatric clinic for outpatient follow-up and reported doing so-so. He also shared that he was having intrusive thoughts of a gun, that was reportedly concerning for him, and he wondered if he could be re-hospitalized a few days more. He additionally reported persistent chest pain, which he described as feeling like a ton of bricks on his chest. He reported some improvement of symptoms with medication and after further discussion of hospitalization, it was determined the applicant was suitable for continued outpatient care.

e. On 31 January 2008 the applicant presented for follow-up and reported a more positive outlook on life and that he was compliant with treatment. On 6 February 2008 the applicant presented to the ED and reported he attempted to cut his wrist with a Gerber knife while at work and had no desire to be alive. He reported feeling like a poor Soldier, that his divorce was recently finalized, and that his mother and grandmother remained ill. He further reported that there was a 75 percent chance he would attempt suicide again if not psychiatrically hospitalized. It was noted the applicant was pending a Chapter 5-17. The applicant was psychiatrically admitted with a diagnosis of Adjustment Disorder with Depressed Mood. On 11 February 2008 the applicant underwent a second Report of Mental Status Evaluation and was diagnosed with Adjustment Disorder with Depressed Mood and Personality Disorder NOS. He was found to have the mental capacity to understand and participate in administrative proceedings, was mentally responsible for his actions, and met medical retention standards of AR 40-501, Chapter 3. The applicant's final BH encounter, in AHLTA, dated 7 March 2008 reflected that the applicant underwent a Psychological Assessment and was diagnosed with Borderline Personality Disorder and Partner Relational Problems.

f. A review of JLV shows the applicant 50 percent SC for Dysthymic Disorder. C&P Examination dated 20 November 2020 shows the applicant reported a history of depressive symptoms with onset 2007, secondary to learning his wife was having an affair with a supervisor in his unit. He reported the supervisor would put him on extra duties, in order to facilitate the affair, and eventually made him move into the barracks. He reported 3 subsequent psychiatric hospitalizations, during service, related to suicidal behavior secondary to marital problems and stressors related to his severely ill mother and grandmother. He reported continued depressive symptoms, to date. The provider deemed the applicant met criteria for persistent depressive disorder (Dysthymic Disorder) with onset during military service.

g. Records shows the applicant with a BH treatment history with the VA that began in June 2010 with a diagnosis of Adjustment Disorder with Depressed Mood. The encounter documentation is void of additional detail. The applicant's next BH-related encounter occurred on 22 April 2019 whereby the applicant presented for an Initial PTSD DBQ and the provider noted the applicant did not meet diagnostic criteria for a BH condition and that intermittent symptoms reflecting emotional distress were not causing clinically significant impairment and that the applicant had not received treatment since 2009. The applicant next encounter occurred on 17 December 2020 whereby the applicant presented to establish care after being awarded SC disability. He reported a history of depression with onset during military service that persisted to date. He was diagnosed with Depression and scheduled for outpatient treatment. On 28 December 2020 the applicant diagnosis was amended to reflect Dysthymic Disorder. Records shows the applicant engaged in outpatient treatment for Dysthymic Disorder, intermittently, through 14 February 2022 with fair results.

h. The applicant is requesting a change in narrative reason for separation to reflect medical retirement due to disability. A review of the records shows the applicant was diagnosed with Adjustment Disorder with Depressed Mood, Partner Relational Problems, and Personality Disorder during service, and was diagnosed with Dysthymic Disorder (50 percent SC) and Depression, post-service. While the applicant has a SC diagnosis of Dysthymic Disorder, and has in-service diagnoses and treatment history, there is no evidence in the record that the applicant had a condition during service that failed medical retention standards of AR 40-501 Chapter 3, and therefore no condition that required referral to MEB. In absence of evidence the applicant had a condition that failed medical retention standards, there is insufficient evidence to support a change to narrative reason for separation.

i. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that would warrant a change to his narrative reason for separation. However, the applicant contends his SC diagnosis of Dysthymic Disorder warrants change in his narrative reason for separation, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 50 percent SC for Dysthymic Disorder

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records shows the applicant was diagnosed with Adjustment Disorder

with Depressed Mood, Partner Relational Problems, and Personality Disorder during service, and was diagnosed with Dysthymic Disorder (50 percent SC) and Depression, post-service. While the applicant has a SC diagnosis of Dysthymic Disorder, and has in-service diagnoses and treatment history, there is no evidence in the record that the applicant had a condition during service that failed medical retention standards of AR 40-501 Chapter 3, and therefore no condition that required referral to MEB. In absence of evidence the applicant had a condition that failed medical retention standards, there is insufficient evidence to support a change to narrative reason for separation.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was discharged due to a condition, not a disability. The Board found no error or injustice in his separation processing. The Board also reviewed and agreed with the medical reviewer's finding that there is insufficient evidence that the applicant had an experience or condition during his time in service that would warrant a change to his narrative reason for separation. Based on a preponderance of evidence, the Board determined that the narrative reason for separation the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 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. Army Regulation (AR) 635-200, Active Duty Enlisted Administrative Separations, paragraph 5-17, other designated physical or mental conditions, states that commanders who are special court-martial convening authorities may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which includes those members suffering from a disorder manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.
3. AR 635-40, Disability Evaluation for Retention, Retirement, or Separation, in effect at the time, sets forth policies, responsibilities, and procedures in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It states that the mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability.
4. Title 38, USC, section 1110 (General - Basic Entitlement): 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.
5. Title 38, USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement): 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 other than 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

7. AR 15-185, ABCMR, provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//