

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230003853

APPLICANT REQUESTS: in effect, correction of his records to show he was discharge due to "Disability" vice "Entry Level Performance and Conduct."

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)
- Emotional Support Animal Memorandum
- Department of Veterans Affairs Summary of Benefits
- Hospital Discharge Note and Medication Refill Form

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 was discharged with service-connected disability not shown on his DD Form 214. He received a 90% service-connected disability. He as admitted to [REDACTED] Hospital on 2019-09-30 and discharged from the hospital on 2019-10-0, following a diagnosis of Major Depression Disorder. He is currently taking Wellbutrin. He requests that a Disability Discharge be added to his DD Form 214. 214. During his Army service, he experienced a medical condition that significantly impacted his ability to perform his duties. He has been diagnosed with Major Depressive Disorder. Despite receiving medical treatment, his condition has not improved and continues to affect him to this day. As a result of his medical condition, he is no longer able to fulfill the requirements of his military duties. He would like to request a disability discharge to reflect the circumstances of his separation from service. Due to not having service-connected disability showing on his DD Form 214, he is ineligible for some VA benefits.
3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 16 July 2019 for 4 years and 41 weeks. He was assigned to Goodfellow Air Force Base for training in military occupational specialty (MOS) 35N, Signal Intelligence Analyst.

b. The complete facts and circumstances surround his discharge are not available for review. However, his DD Form 214 show he was discharged on 30 October 2019, under the provisions of chapter 11 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separation) due to "Entry Level Performance and Conduct."

- He completed 3 months and 15 days of active service
- He was not awarded an MOSD and di not complete his term of service
- He was assigned Separation Code JGA and Reentry Code 3

4. He provides:

a. Statement, 14 February 2023, from a VA physician who states the applicant meets the criteria of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973. To enhance his ability to live independently, he (the physician) recommends the companionship of an emotional support animal that will help him with the functional limitations related to his disability.

b. VA Summary of Benefits, 21 March 2023, reflective of his service-connected disability at the rate of 90%.

c. [REDACTED] Hospital Discharge Note, reflective of Major Depressive Disorder.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his records to show he was discharge due to "Disability" versus "Entry Level Performance and Conduct".

b. 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 enlisted in the RA on 16 July 2019.
- The complete facts and circumstances surrounding his discharge from the Army are not available for review.
- Applicant's DD Form 214 show he was discharged on 30 October 2019, under the provisions of chapter 11 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separation) due to "Entry Level Performance and Conduct."

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, VA summary of benefits, Emotional Support Animal Memorandum, Hospital Discharge Note and Medication Refill Form, and documents from his service record and separation packet. 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.

d. The applicant states he was discharged due to a service-connected disability which is not reflected on his DD Form 214. He states he received a 90% service-connected disability rating. He reports being admitted to ██████████ Hospital on 30 September 2019 and was discharged from the hospital on 03 October 2019 with a diagnosis of Major Depression Disorder. He is currently taking Wellbutrin. He requests his disability discharge be added to his DD Form 214. During his Army service, he experienced a medical condition that significantly impacted his ability to perform his duties. He has been diagnosed with Major Depressive Disorder. Despite receiving medical treatment, his condition has not improved and continues to affect him to this day. As a result of his medical condition, he is no longer able to fulfill the requirements of his military duties. He would like to request a disability discharge to reflect the circumstances of his separation from service since not having service-connected disability shown on his DD Form 214 makes him ineligible for some VA benefits.

e. Active-duty electronic medical records available for review indicate the applicant self-referred for behavioral health services on 30 September 2019 due to marital issues, suicidal ideation with recent attempt, and family health issues. After reporting he had attempted to commit suicide by hanging himself with a noose, on 28 September 2019, he was admitted to ██████████ Hospital. The applicant shared being away from his wife, marital problems, and his father's cancer diagnosis led to his suicidal ideation and attempt. The applicant reported feeling depressed since the third week of basic training, where he also attempted to commit suicide by hanging. He sought help because he was unsure of wanting to continue with basic training while under his current mental state. Upon further exploration, the applicant stated his attempts were a cry for help since he wanted to show his wife how distressed he was. On 03 October 2019, the applicant was seen for a post-hospitalization assessment. He reported the hospitalization was helpful and he had a different viewpoint on everything, including a different perspective on the situation with his wife. He denied any suicidal ideation, intent, or plan and, per his hospital discharge paperwork, he was recommended for a partial hospital program (PHP) or an intensive outpatient program (IOP). The applicant was provided with these treatment options but declined stating he was doing much better and did not feel it

would be beneficial for him to participate in that level of care. He stated his preference for outpatient counseling, against medical advice. On 08 October 2019, a safety check was conducted with the applicant, it is unclear what prompted the safety check; however, he denied any safety concerns. The applicant was seen the next day, on 09 October 2019, he was encouraged once again to consider the recommended treatment options, but he declined IOP/PHP treatment options and instead opted for outpatient care in the MHC. A progress note dated 15 October 2019 indicates, the applicant's treatment focused on marital and family stressors and indicated the applicant did not need a profile. His military disposition was described as follows: "member is suitable/fit for continued military service. Member was not referred for administrative separation processing or to the DAWG for possible RILO submission". However, in a progress note on 23 October 2019, the applicant discussed his military status and stated that, due to his father's declining health, he did not think it was the right time for him to be in the Army. The provider agreed to support the applicant and, the note states, that due to his history of suicidal ideation and suicidal behaviors, including a suicide attempt as an adolescent prior to military service, and his adjustment disorder diagnosis, the patient is considered unfit for continued military service and his command will be contacted in order to convey this information. The clinician noted that the applicant's reported depression and anxious symptoms stemmed from relationship stress and his father's failing health. Due to identifiable stressors and symptomology, the applicant met criteria for a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood not Major Depressive Disorder.

f. VA electronic medical records available for review indicate the applicant is 100% service-connected for Major Depressive Disorder. A C and P evaluation dated 26 April 2020 diagnosed him with Major Depressive Disorder based on his history of mental health issues, self-harm behaviors, suicidal thoughts and at least one suicide attempt prior to military service. The evaluation indicated he continued to struggle with mental health problems during his three months of service and was ultimately discharged. The applicant participated in repeated C and P evaluations on 28 January 2021 and again on 26 May 2023 for the purpose of increasing his disability rating. He was also diagnosed with Major Depressive Disorder, moderate, during those evaluations.

g. While in service, the applicant was not on profile and there is evidence the applicant sought to leave military service due to familial stressors. In addition, it was the applicant's decision to decline the recommended level of care following his hospitalization. Based on all available information, 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. Although the applicant has been service connected for Major Depressive Disorder, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army

retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of Major Depressive Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Major Depressive Disorder, is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been service connected for Major Depressive Disorder, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. The Board determined there is no indication that an omission or error occurred that would warrant a referral to the IDES process. The Board found the applicant's separation process proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise. Based on this, the Board denied relief.

2. The Board noted, the law allows the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish an error or injustice in the Army's rating. Operating

under different laws and its own policies, the VA does not have the authority or the responsibility for determining medical unfitness for military service.

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.

2/18/2024

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel from the Army.

a. Chapter 11 of this regulation, in effect at the time, governed the entry level status discharge. Separation of a Soldier in entry-level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by: Inability, Lack of reasonable effort, Failure to adapt to the military environment, or Minor disciplinary infractions. Service will be described as uncharacterized under the provisions of this chapter. This policy applies to Regular Army enlisted Soldiers who are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT or no more than 90 days of Phase II under a split or alternate training option (see the glossary for precise definition of entry-level status), and have demonstrated that they are not qualified for retention; or have failed to respond to counseling. The following conditions are illustrations of conduct and/or performance that disqualify Soldiers for retention:

- Cannot or will not adapt socially or emotionally to military life.
- Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline.
- Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

b. Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

(1) Characterization under other than honorable conditions, is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) Army G-1, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment. Reserve Component Soldiers will receive a characterization of service as “honorable” upon successful completion of IET

3. 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.

4. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – 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 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.

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.

//NOTHING FOLLOWS//