

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230004533

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in block 28 (Narrative Reason for Separation) that he was separated due to a service-incurred medical disability instead of "condition, not a disability."

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision and Summary of Benefits 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, he is not stating his discharge was in error or an injustice, but he was recently granted an upgrade of his discharge from general under honorable conditions to honorable due to his bipolar disorder, with which he was diagnosed while in the service. He is requesting that block 28 of his DD Form 214 be corrected to show his condition was a service-connected disability. He is currently receiving service-connected disability compensation for his disability and the VA informed him there are certain benefits he does not qualify for simply because of the reason for his separation. He is asking the Board to consider correcting the narrative reason for his separation so that he is eligible for these benefits for his family. He believes that if not for his mental disability, his actions while in the service would have been different.
3. The applicant enlisted in the Army National Guard (ARNG) on 21 March 2008. He was discharged from the ARNG on 28 April 2009 by reason of defective enlistment.

4. The applicant again enlisted in the ARNG on 1 November 2011 and entered initial active duty for training for advanced individual training on 23 November 2011.
5. The applicant received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on:
 - a. 25 January 2012, for being absent without leave from 4 January to on or about 7 January 2012; two specifications of failing to go at the time prescribed to his appointed place of duty; and four specifications of failure to obey lawful orders.
 - b. On 22 February 2012, for four specifications of failing to go at the time prescribed to his appointed place of duty and two specifications of failure to obey lawful orders.
6. A DD Form 2808 (Report of Medical Examination), dated 17 February 2012, shows the applicant was diagnosed with bipolar disorder and chronic right knee pain. The examining physician found him qualified for service.
7. On 7 March 2012, the applicant was informed by his commander that he was initiating action to separated him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, for other designated physical or mental conditions with a general under honorable conditions characterization of service discharge. The commander stated the reasons for the proposed separation action was the applicant's diagnosis of bipolar disorder and his record of misconduct. The applicant was also advised of his right to consult with legal counsel.
8. On 8 March 2012, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated action to discharge him for other designated physical or mental conditions under the provisions of Army Regulation 635-200, paragraph 5-17, its effects, of the rights available to him, and of the effect of any action taken by him in waiving his rights. He elected not to submit statements in his own behalf.
9. On 26 March 2012, the separation authority approved the separation action and directed the issuance of a general under honorable conditions characterization of service.
10. The applicant's DD Form 214 shows he was released from active-duty training and transferred to his ARNG unit on 3 April 2012 under the provisions of Army Regulation 635-200, paragraph 5-17. The DD Form 214 further shows in:
 - block 12 (Record of Service), he was credited with 3 months and 27 days of active service this period and that he had 2 months and 4 days of prior active service

- block 24 (Character of Service), under honorable conditions (general)
- block 26 (Separation Code), JFV
- block 27 (Reentry Code (RE)), 3
- block 28, "condition, not a disability"

11. The applicant was discharged from the ARNG on 4 April 2012.

12. The applicant provided VA documents showing he was granted service-connected disability compensation for unspecified bipolar disorder, right knee strain, and back strain.

13. On 27 October 2022, the Army Discharge Review Board (ADRB) conducted a review of the applicant's records and determined that the characterization of his service was inequitable based on his bipolar disorder outweighing the disciplinary portion of the basis for his separation. Accordingly, the ADRB voted to grant relief in the form of an upgrade to the characterization of service to honorable. The ADRB also determined the narrative reason and separation code were proper and equitable and voted not to change them. His RE code was not changed because the ADRB determined that his behavioral health condition though mitigating, is service limiting.

14. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

15. MEDICAL REVIEW:

a. Background: The applicant's characterization of service was previously upgraded to honorable. He is now requesting correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in block 28 (Narrative Reason for Separation) that he was separated due to a service-incurred medical disability instead of "condition, not a disability."

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 Army National Guard (ARNG) on 21 March 2008. He was discharged from the ARNG on 28 April 2009 by reason of defective enlistment.
- The applicant enlisted again in the ARNG on 1 November 2011.
- Applicant received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on:

- 25 January 2012, for being absent without leave from 4 January to on or about 7 January 2012; two specifications of failing to go at the time prescribed to his appointed place of duty; and four specifications of failure to obey lawful orders.
- 22 February 2012, for four specifications of failing to go at the time prescribed to his appointed place of duty and two specifications of failure to obey lawful orders.
- A DD Form 2808 (Report of Medical Examination), dated 17 February 2012, shows the applicant was diagnosed with bipolar disorder and chronic right knee pain. The examining physician found him qualified for service.
- On 7 March 2012, the applicant was informed by his commander that he was initiating action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, for other designated physical or mental conditions with a general under honorable conditions characterization of service discharge. The commander stated the reasons for the proposed separation action was the applicant's diagnosis of bipolar disorder and his record of misconduct.
- Applicant was released from active-duty training and transferred to his ARNG unit on 3 April 2012 under the provisions of Army Regulation 635-200, paragraph 5-17. His DD Form 214 shows his character of service as under honorable conditions (general), Separation Code "JFV", and RE 3.
- On 27 October 2022, the Army Discharge Review Board (ADRB) conducted a review of the applicant's records and determined that the characterization of his service was inequitable based on his bipolar disorder outweighing the disciplinary portion of the basis for his separation. Accordingly, the ADRB voted to grant relief in the form of an upgrade to the characterization of service to honorable. The ADRB also determined the narrative reason and separation code were proper and equitable and voted not to change them. His RE code was not changed because the ADRB determined that his behavioral health condition though mitigating, is service limiting.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), VA rating decision and summary of benefits letter, ADRB documents, 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 is not stating his discharge was in error or an injustice, but he was recently granted an upgrade of his discharge from general under honorable conditions to honorable due to his bipolar disorder, with which he was diagnosed while in the service. He is requesting that block 28 of his DD Form 214 be corrected to show his condition was a service-connected disability. He is currently receiving service-connected disability compensation for his disability and the VA informed him there are certain benefits he does not qualify for simply because of the reason for his separation.

He is asking the Board to consider correcting the narrative reason for his separation so that he is eligible for these benefits for his family. He believes that if not for his mental disability, his actions while in the service would have been different.

e. The applicant's electronic active-duty medical record indicates he was psychiatrically hospitalized from 11 Feb 2012 and discharged on 22 February 2012, he was diagnosed with Bipolar Disorder and Substance Abuse. The hospital discharge summary notes the applicant had a history of psychiatric hospitalizations prior to joining the military. In addition, during a behavioral health encounter on 8 February 2012, the applicant reported a long history of anger and depression. He was psychiatrically treated for these issues prior to military service and was previously diagnosed with Bipolar Disorder and ADHD as a child. A letter from the [REDACTED] Army National Guard, dated 23 April 2012, indicates the applicant was discharged from the ARNG effective 04 April 2012 and his service was initially uncharacterized. However, an attached opine statement by the Board's Medical Officer, indicates that based on the information available for review the applicant was appropriately discharged with a Condition, not a Disability due to his pre-existing diagnosis of Bipolar Disorder. A review of electronic military medical records indicated diagnoses of an Adjustment Disorder with Disturbance of Emotions and Conduct, Alcohol Abuse, Cannabis Dependence, Hallucinogen Dependence, and Bipolar Disorder. The applicant was first seen by behavioral health in February 2012 due to having adjustment difficulties, anger/irritability, and depressive symptoms. He reported frustration about recent misconduct. He reported a history of anger and depression, had been diagnosed with Bipolar Disorder and ADHD at the age of 8, and had two hospitalizations for suicidal ideation and violent behavior. The applicant also reported an incident at age 14, in which he held a knife to his brother's throat. The applicant reported previously being on medications for Bipolar Disorder and ADHD but had taken himself off because he wanted to cope on his own. The applicant also reported a history of marijuana and hallucinogen use. Following that appointment, the applicant was psychiatrically hospitalized due to making threats to kill himself and others. The medical opine further indicates the applicant failed medical procurement standards due to Bipolar Disorder which he did not report at the time of enlistment; however, due to completing more than 180 days, the narrative reason of Condition, Not a Disability was recommended instead of an Uncharacterized discharge.

f. The VA electronic medical record indicates the applicant is 100% service connected for Bipolar Disorder. The applicant initially sought mental health services via the VA on 16 May 2023 and was treated with medication management and group therapy. A note dated 21 December 2023 diagnosed him with Bipolar Disorder in full remission, indicating the applicant is not evidencing any symptoms of the disorder.

g. Based on the available information, this Behavioral Health Advisor concurs with the ARNG medical officer, at the time of his discharge from the ARNG, and the ADRB

that his narrative reason for separation should remain a condition and not a service induced disability. In addition, a referral to the IDES process is not indicated due to the fact that his condition was pre-existing and there is no evidence it was permanently aggravated by military service.

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 and available military records, the Board concurred with the advising official finding the applicant's narrative reason for separation should remain a condition and not a service induced disability. In addition, a referral to the IDES process is not indicated due to the fact that his condition was pre-existing and there is no evidence it was permanently aggravated by military service. Additionally, the Board noted the opine that the applicant failed medical procurement standards due to Bipolar Disorder which he did not report at the time of enlistment; however, due to completing more than 180 days, the narrative reason of Condition, Not a Disability was recommended instead of an Uncharacterized discharge. Based on the preponderance of evidence and the advising official opine, the Board denied relief.

2. The Board determined DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and

authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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.

2/22/2024

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 Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time of the applicant's separation, dated 6 June 2005 and revised in September 2011, states in paragraph 5-17:

a. Commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) 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 chronic air or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, 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.

b. Soldiers with 24 months or more of active duty service may be separated under this paragraph based on a diagnosis of personality disorder. Medical review of the personality disorder diagnosis will consider whether PTSD, traumatic brain injury (TBI), and/or other comorbid mental illness may be significant contributing factors to the diagnosis. If PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph but will be evaluated under the physical disability system in accordance with Army Regulation 635-40.

c. 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 Army Regulation 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

d. 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. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

4. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA,

operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//