

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230004606

APPLICANT REQUESTS: in effect, a change to his narrative reason for separation from condition, not a disability to disability.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 his discharge reason was condition not a disability. After further review from the Department of Veterans Affairs, he has been rated service-connected for several disabilities.
3. The applicant enlisted in the Regular Army on 2 August 2011.
4. DA Form 3822 (Report of Mental Status Evaluation), dated 8 and 18 January 2012, shows the applicant was evaluated and from a behavioral health standpoint was found unfit for duty due to a personality disorder or other mental condition that does not amount to a medical disability. A diagnosis of adjustment disorder with mixed disturbance of emotions and conduct was given. The applicant met psychiatric criteria for expeditious administrative separation in accordance with (IAW) Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-17.
5. DD Form 2697 (Report of Medical Assessment) shows on 1 February 2012, the applicant identified, since his last medical assessment, he has had shoulder bicipital tendonitis, mental health, and emotional attacks.
6. DD Form 2808 (Report of Medical Examination) shows on 2 February 2012, the applicant was found qualified for service with a PULHES of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

7. On 22 February 2012, his commander initiated action to separate him for other designated physical or mental conditions IAW AR 635-200, Chapter 5-17. The reasons for his proposed action were the applicant had been diagnosed as having adjustment disorder with mixed disturbance of emotions and conduct which is of such severity so as to preclude adequate military service. The applicant acknowledged receipt of the foregoing notice.

8. The chain of command recommended the applicant be separated from the Army prior to the expiration of current term of service with an honorable characterization of service.

9. On 28 February 2012, the discharge authority approved the separation IAW AR 635-200, Chapter 5-17, for other designated physical or mental conditions with an honorable characterization of service.

10. Accordingly, the applicant was honorably discharged on 15 March 2012, IAW AR 635-200, Chapter 5-17. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 months and 14 days of active service this period. His DD Form 214 also shows:

- Item 26 (Separation Code): JFV
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Condition, Not a Disability

11. 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.

MEDICAL REVIEW:

a. Background: The applicant is requesting a change in his narrative reason for separation from condition, not a disability to something else.

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 Regular Army on 2 August 2011.
- DD Form 2808 (Report of Medical Examination) shows on 2 February 2012, the applicant was found qualified for service with a PULHES of 111111.
- On 22 February 2012, his commander-initiated action to separate him for other designated physical or mental conditions IAW AR 635-200, chapter 5-17. The reasons for his proposed action was the applicant had been diagnosed as having adjustment disorder with mixed disturbance of emotions and conduct which was of such severity so as to preclude adequate military service.
- Applicant was honorably discharged on 15 March 2012, IAW AR 635-200, chapter 5-17. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows separation code JFV, reentry code (RE) 3, and narrative reason for separation Condition, Not a Disability.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, his ABCMR Record of Proceedings (ROP), 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 his discharge narrative reason for separation was condition, not a disability. After further review from the Veterans Affairs, he has been rated service-connected for several disabilities.

e. The applicant's electronic active-duty medical record indicates he was command referred to behavioral health services on 15 December 2011 after he reported during sick call having a medication history of taking Lithium since age 16 until age 18 for his diagnosis of Bipolar Disorder. The applicant further shared he discontinued the medication 2 August 2011, in order to enlist in the Army. He further shared having been diagnosed with attention deficit disorder at age 5 and having been institutionalized repeatedly for "marijuana and inappropriate sexual behavior". During this appointment a diagnosis was deferred, and the applicant was scheduled for a follow-up appointment. During an intake appointment on 06 January 2012, the applicant reported problems at work and an incident where he had an angry outburst and verbalized a threat to an NCO. He further reported difficulty concentrating and anger towards his unit. Additional

symptoms of his preexisting Bipolar Disorder were also noted, including anxiety, depression, sleep disturbances, increased energy, irresponsibility with his finances, and interpersonal relationship problems. He further disclosed he was diagnosed with Bipolar Disorder, Depression and Reactive Attachment Disorder and stop taking his medications: Lithium, Abilify and Zyprexa in order to enlist in the Army. During that appointment he reported extreme anger towards his unit and his NCO's, as well as stress and anger caused by his service in the Army. He shared a history of impulsivity and aggression, when angered, including self-injury via banging his head. The applicant further endorsed psychiatric therapy since age 5 and an inpatient psychiatric hospitalization for 3 consecutive years between the ages of 14 to 17. Following that appointment and until his discharge, the applicant was provided with individual and group therapy. A Mental Status Evaluation dated 8 January 2012 and 18 January 2012, evaluated the applicant, and found him unfit for duty due to a personality disorder or other mental condition that does not amount to a medical disability. A diagnosis of adjustment disorder with mixed disturbance of emotions and conduct was noted. The applicant met psychiatric criteria for expeditious administrative separation in accordance with (IAW) Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 5-17. In a session on 11 January 2012, he reported concerns that the Army was not for him and shared that his unit was pursuing separation for fraudulent enlistment due to his omission and concealment of medical information. He further shared banging his head on the wall and punching things in order to release tension or stress as well as making verbal threats towards his peers. On 18 January 2012, the applicant was escorted to behavioral health at the commander's recommendation due to concern the applicant might build a bomb since he made a comment to the effect and had a history of building explosives using household chemicals. During this appointment, the applicant admitted to anger outbursts, use of violence towards objects to release tension, as well as making threats such as telling an NCO if they did not leave him alone, he would cut off their fingers.

f. The VA electronic medical record indicates the applicant is 90% service connected, including 70% for Bipolar Disorder. The applicant has participated in intermittent behavioral health services via the VA since his discharge, primarily in his home state of Pennsylvania. However, a note dated 12 July 2019 shows a Homeless Housing Screening note where the applicant was seeking assistance with housing. He reported an income from VA disability compensation and shared owning a home in Pennsylvania from 2012 to 2019 but moved to Texas to attend college and become a prophet. The applicant reported he gave most of his resources to the homeless and became homeless himself. He further reported attempting to minister at a church in Dallas and being escorted from the premises. He denied any prior homeless episodes, or mental health diagnosis but endorsed ongoing marijuana use. The applicant returned to Pennsylvania and a note dated 05 September 2019 indicates a clinical impression of intermediate risk, however he did not want to engage in mental health services or medications. He was receptive to receiving support via chaplain services. The record

indicates he has remained connected to VA services in Pennsylvania, primarily for ongoing medical care.

g. Based on the available information, this Behavioral Health Advisor opines the applicant's discharge was proper and equitable and 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. Overall, the applicant concealed medical information that was service disqualifying, including a history of mental health treatment since age 5 and psychotropic medications for mood stability. The applicant's extensive pre-military psychiatric history included being diagnosed with Bipolar Disorder, Depression and Reactive Attachment Disorder as well as being treated with psychotropic medications, including Lithium, Abilify and Zyprexa. In addition, he reported having had an inpatient psychiatric hospitalization for 3 consecutive years between the ages of 14 to 17.

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:

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 Board concurred with the medical advisor's review finding the applicant's discharge was proper and equitable and his narrative reason for separation should remain a condition and not a service induced disability. Additionally, his condition was pre-existing and not aggravated by military service; therefore, a referral to the IDES 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:

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

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

2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical

impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirements, 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. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

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

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

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

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

4. AR 635-5-1 (Personnel Separations - Separation Program Designators (SPD)), in effect at the time, provided that:

a. The SPD code of "JFV" is the correct SPD code for involuntary separations of enlisted personnel in accordance with Army Regulation 635-200, paragraph 5-17, for condition, not a disability.

b. The SPD code of "JFR" is the correct SPD code for involuntary separations of enlisted personnel for disability, other.

5. Title 38 U.S. Code 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.

6. Title 38 U.S. Code 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.

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

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 (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may

be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

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.

//NOTHING FOLLOWS//