

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005206

APPLICANT REQUESTS: in effect, correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show, in items 25 (Separation Authority) and 28 (Narrative Reason for Separation), that he separated because of a disability.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Army Discharge Review Board)
- DD Form 214
- Department of Veterans Affairs (VA) letter
- Extract from applicant's service treatment records and VA medical records

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 DD Form 214 inaccurately states he separated because of a "Physical Condition, Not a Disability." He points out that VA has since awarded him a 30 percent disability rating for service-connected mental health issues, but he believes those issues are actually post-traumatic stress disorder (PTSD).

a. The applicant's leadership at Fort Carson, CO told him they were going to "do everything they could including putting 'not a disability' in space # 28 (presumably referring to DD Form 214 item 28 (Narrative Reason for Separation)) and using 'physical' instead of PTSD or mental health."

b. The applicant continues, VA gave him a combined disability rating of 40 percent (30 percent for mental health and 10 percent for hearing/tinnitus). They based the

mental health rating on the below-listed symptoms, but the applicant maintains those symptoms support a PTSD diagnosis:

- Sleep disorders
- Night terrors and sweats
- Panic attacks three times a week
- Brain fog
- Anxiety
- Depression
- Excessive weight loss
- Loss of appetite

c. In support of his claim, the applicant provides an extract from his service treatment/VA records; he states, "I am submitting four documents, that I hope will show that my noise trauma occurred while at Ft. Carson down range sleeping by (an) M1A1 tank. That incident caused my severe nightmares, sleep disturbances, tinnitus, panic attacks, and insomnia." Those documents reflect the following:

(1) Standard Form (SF) 600 (Health Record – Chronological Record of Medical Care); entry dated 16 January 2002: Intake Evaluation Mental Health Services:

(a) "HX of Complaint: CI was seen for an intake interview today. CI reported that he has been dx with tinnitus (sic) within the last month. CI reported that he had went to the field in October and was too close to one of the weapons being fired. Since then, he has had a constant ringing in his ears. CI reported that he is getting no support from his unit and this is very stressful for him to deal with. CI reported that he was so angry with his Plt Sgt and felt that he harm him that the CI checked himself into Pikes Peak (behavioral health facility)."

(b) "CI reported that he was there for two days and then released. CI reported no changes in eating habits, but he is having nightmares in which he screams and hollers in his sleep. He stated, 'this started about 3 wks ago...sometimes they are so bad my wife can't even sleep with me....' CI reported that he has started having bad headaches, which also started about 3 months ago and can last for several hours for several days."

(2) SF 600, with entries dated 24 January 2002 and 18 March 2002:

- 24 January 2002 – Chief, Psychiatric Services states applicant sought help with getting an administrative discharge; in his opinion, the applicant cannot adjust to military life; he sent a DA Form 3822-R (Report of Mental Status Evaluation) to the applicant's command recommending separation

- 18 March 2002 – Chief, Psychiatric Services describes applicant's symptoms; applicant attributed his symptoms to continuing stress and felt the unit was unnecessarily delaying his administrative separation; Chief, Psychiatric Services sent a second DA Form 3822-R to applicant's command

(3) DD Form 2697 (Report of Medical Assessment) dated 28 February 2002 and completed by the applicant.

- Item 11 (Since Your Last Medical Assessment/Physical Examination, Have You Had Any Illnesses or Injuries that Caused You to Miss Duty For Longer than 3 days?) – applicant indicates he has tinnitus and has received treatment for a sleep disorder
- Item 15 (Do You Have Any Conditions Which Currently Limit Your Ability to Work in Your Primary Military Specialty or Require Geographic or Assignment Limitations) – applicant reports "tinnitus & panic attacks, range restrictions"

(4) DA Form 3822-R (Report of Mental Status Evaluation), completed by the Chief, Psychiatric Services, on 18 March 2002.

(a) In the "Evaluation" section, the evaluator notes the applicant is depressed; under "Remarks," the report states:

- "Axis I – Adjustment Disorder with Mixed Emotional Features, and Panic Disorder."
- "Axis II – Deferred"
- "Axis III – Tinnitus"

(b) On the back of the form, in the "Remarks" section, the evaluation writes: "This is the second recommendation for administrative separation for this Soldier, IAW (in accordance with) Chapter (sic) 17 (Instruction In Benefits of an Honorable Discharge), AR (Army Regulation) 635-200 (Personnel Separations – Enlisted Personnel). Although he continues to be in psychotherapy to help him cope with the combined stress of his audiological problems and his military job, he is doing psychologically worse. He has now developed Panic Disorder-and is being put on medication. While his psychiatric problems do not warrant MEB (medical evaluation board)/PEB (physical evaluation board) consideration, his hearing problem with (sic) continue to cause stress that will make it impossible for him to adjust to being in the military. Unless he is administratively separated from the Army soon, his psychological condition is likely to deteriorate further."

3. A review of the applicant's service record reveals the following:

a. On 24 January 2001, the applicant enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 19D (Cavalry Scout), orders assigned him to a cavalry troop at Fort Carson; he arrived, on or about 5 June 2001.

b. The applicant's separation packet is unavailable for review; however, the applicant's available service record includes his DD Form 214, which shows, on 6 May 2002, the Army honorably released the applicant from active duty after he had completed 1 year, 3 months, and 13 days of net active duty service; the form additionally reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Army Service Ribbon, Physical Fitness Badge, two marksmanship qualification badges
- Item 25 (Separation Authority) – AR 635-200, paragraph 5-18 (Other Designated Physical or Mental Conditions). (Paragraph 5-18 came from the previous version of AR 635-200; effective 1 January 2001, the revised AR 635-200 moved this paragraph to 5-17)
- Item 28 (Narrative Reason for Separation) – "Physical Condition, Not a Disability"

4. The applicant requests the Board change the authority and reason for his separation to show it was due to a disability.

a. The absence of the applicant's separation packet means we are unable to determine the complete circumstances that led to his discharge; however, given the availability of the applicant's record copy DD Form 214, which lists the applicant's regulatory separation authority, the Board presumes the applicant's leadership completed his separation properly.

(1) AR 15-185 (ABCMR) states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning there is a greater than 50 percent chance that what an applicant's claims is accurate.

(2) This presumption notwithstanding, the version of the military personnel records regulation in effect at the time, AR 600-8-104 (Military Personnel Information Management/Records), required case files for approved separation actions to be maintained in the separating Soldier's official military personnel file.

b. During the applicant's era of service, commanders could initiate separation action, under the provisions of paragraph 5-17, AR 635-200, when they determined a Soldier had physical or mental conditions that potentially interfered with the performance of duties and following the completion of a command-directed mental status evaluation, performed by a psychiatrist or appropriately credentialed behavioral health professional, which supported separation.

(1) Separation processing could not be initiated until the command had formally counseled the Soldier as to his/her deficiencies and afforded the Soldier ample time to overcome those deficiencies.

(2) Commanders were to use the notification procedure, outlined in chapter 2 (Procedures for Separation), section I (Notification Procedure), and separation authorities could issue either an honorable or under honorable conditions character of service. The Notification Procedure required commanders to give Soldiers written notice of a contemplated separation action. In the notification, commanders were to identify the specific basis for the separation action, the character of service they intended to recommend, and a list of the Soldiers' rights during the separation process.

5. The applicant provides evidence the VA has rated him as 40 percent disabled. The VA and the Army operate under separate provisions of Federal law (Title 38 (Veterans' Benefits) and Title 10, respectively). As such, each makes independent determinations by applying the policies and mandates set forth within their respective parts of the law. Decisions made by the VA regarding a Soldier's service-connected disabilities are not binding on the Army, and do not reflect that the Army's determinations were wrong.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction to his DD Form 214 to show that he separated because of a disability.

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 in the Regular Army on 24 January 2001; 2) The applicant's separation packet is unavailable for review. However, on 6 May 2002, the applicant's DD Form 214 shows the Army honorably released the applicant from active duty, Chapter 5-18 (Other Designated Physical or Mental Conditions).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV), and hardcopy military and VA behavioral health records were also examined.

d. The applicant states his DD Form 214 inaccurately states he separated because of a "Physical Condition, not a Disability." The applicant reported experiencing tinnitus as the result of being close to a military tank firing and also experienced secondary mental health symptoms. The applicant was seen for an initial military behavioral health evaluation on 16 January 2002. He reported spending two days in inpatient psychiatric treatment at a civilian center after a self-referral. On 24 January 2002, the applicant was seen again at a military behavioral health clinic. He was requesting an administrative separation, and he was diagnosed with a Personality Disorder with Narcissistic Traits. It was noted the applicant was experiencing difficulty adjusting to the Army due to his personality disorder. However, he was recommended for an administrative separation for an Adjustment Disorder and the corresponding Mental Status Exam was provided to Command.

e. On 18 March 2002, the applicant was seen for psychiatric medication, and he reported "self-limiting" anxiety and panic attacks. The applicant also felt his command was delaying his administrative separation. He was again provided a Mental Status Exam, which included a clinical interview and psychometric testing. The applicant was reported to be experiencing a depressed mood, and he was diagnosed with an Adjustment Disorder with Mixed Emotional Features and Panic Disorder. The applicant was returned to duty with no change to duty status, and he was found to meet the medical retention standards of AR 40-501. In addition, he was psychiatrically cleared for any action deemed appropriate by Command, but he was also recommended for an expeditious administrative separation in accordance with Chapter 17 AR 635-200 due to his inability to adjust to being in the military. He was clearly identified as not warranting a MEB/PEB consideration. Lastly, he was recommended for continued therapy. There was insufficient evidence the applicant was ever diagnosed with PTSD while on active service.

f. A review of JLV provided evidence the applicant has been diagnosed with service-connected Anxiety Disorder since 2020. There was insufficient evidence the applicant has ever been diagnosed with service-connected PTSD by the VA.

g. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence available to support a referral to IDES. The applicant was evaluated twice by a licensed behavioral health provider while on active service, and he was repeatedly found to meet medical retention standards from a psychiatric perspective. He was however recommended twice for an administrative separation due to his inability to adapt to the military.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge status? No, the applicant was evaluated twice by a licensed behavioral health

provider while on active service, and he was repeatedly found to meet medical retention standards from a psychiatric perspective. He was however recommended twice for an administrative separation due to his inability to adapt to the military due to his primary diagnosis of an Adjustment Disorder. Therefore, there is insufficient evidence the applicant was experiencing the severity of a mental health condition which would have met criteria for a referral to IDES at the time of his active service. Therefore, a referral IDES is not recommended at this time. After his discharge, the applicant was diagnosed with a service-connected Anxiety Disorder, but he has never been diagnosed with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

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 contentions, the military record, and applicable regulatory guidance. Evidence of record shows the applicant was afforded evaluation on two separate occasions by a licensed behavioral health advisor who found the applicant met medical retention standards. However, it was further determined due to his inability to adapt he should be administratively separated. After due consideration of the case, the Board determined that his DD2144 correctly reflects the reason for separation and a recommendation for relief is not warranted.

2. Prior to closing the case, the Board noted the applicant's reference to the ratings assigned to him by the Department of Veterans Affairs. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does/does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are sufficient/insufficient as a basis for correction of the records of the individual concerned.

█

█ █

█

█

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, USC:
 - a. 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.

b. Section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Chapter 2, section I required commanders to give Soldiers written notice of a contemplated separation action. In the notification, commanders were to identify the specific basis for the separation action, the character of service they intended to recommend, and a list of the Soldiers' rights during the separation process.

b. Paragraph 5-17 stated commanders could initiate separation action, under the provisions of paragraph 5-17, AR 635-200, when they determined a Soldier had physical or mental conditions that potentially interfered with the performance of duties and following the completion of a command-directed mental status evaluation, performed by a psychiatrist or appropriately credentialed behavioral health professional, which supported separation.

(1) Separation processing could not be initiated until the command had formally counseled the Soldier as to his/her deficiencies and afforded the Soldier ample time to overcome those deficiencies.

(2) Commanders were to use the notification procedure, outlined in chapter 2 (Procedures for Separation), section I (Notification Procedure), and separation authorities could issue either an honorable or under honorable conditions character of service.

3. AR 15-185 (ABCMR) states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning there is a greater than 50 percent chance that what an applicant's claims is accurate.

4. AR 635-5 (Separation Documents), in effect at the time, outlined policies and procedures for DD Form 214 preparation. Concerning entries in item 28 (Narrative Reason for Separation), the regulation referred DD Form 214 preparers to AR 635-5-1 (Separation Program Designator (SPD) Codes).

5. AR 635-5-1, in effect at the time, stated Soldiers separated per paragraph 5-18 (later changed to paragraph 5-17) were to show the following narrative reason for separation: "Physical Condition, Not a Disability."

//NOTHING FOLLOWS//