

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230005926

APPLICANT REQUESTS: his DD Form 214 (Certificate of Release or Discharge from Active Duty), effective 19 April 2001, be corrected as follows:

- block 12.f. (Foreign Service) to show his deployment time to Honduras
- block 25 (Separation Authority) to reflect an authority for a medical discharge
- block 28 (Narrative Reason for Separation) to show his physical condition is a disability
- a personal appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, effective 4 November 1997
- DD Form 214, effective 19 April 2001
- one page medical record, dated 10 February 2023
- one page medication list, dated 10 February 2023

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 deployed to Honduras in 1998 or 1999 during the summer. He further states he received a diagnosis and treatment for a serious mental disorder before his discharge. He has been living with major depression and anxiety since he was in the Army. He attempted to commit suicide while serving on active duty and after his discharge. He self-medicated for years until he recently sought help; the Department of Veterans Affairs diagnosed him.
3. The applicant enlisted in the ██████████ Army National Guard (██████ ARNG) on 20 March 1996. He completed initial active duty for training from 30 September 1997 to

4 November 1997. On 21 December 1999, he requested to be discharged from the National Guard for enlistment in the Regular Army.

4. His DA Form 2-1 (Personnel Qualification Record) does not include documentation for foreign service in Honduras or elsewhere in blocks 5 (Oversea Service) and 35 (Record of Assignments). Additionally, a review of his military record failed to reveal any documentation showing the applicant served in Honduras.

5. On 23 December 1999, the applicant underwent a medical examination for enlistment purposes. He was found qualified for service and assigned a physical profile 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.

6. The applicant was honorably discharged from the ■■■ ARNG on 4 January 2000 and enlisted in the Regular Army on 5 January 2000.

7. The applicant's separation package and details surrounding his separation are not resident in his official military personnel record (OMPF).

8. The applicant was honorably discharged on 19 April 2001. His DD Form 214 contains the shows following information/entries:

- block 12.f. - "0000 00 00"
- block 18 (Remarks) - does not note service in Honduras
- block 25 - Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-18
- block 26 (Separation Code) - "JFV"
- block 27 (Reentry Code) - "3"
- block 28 - physical condition, not a disability

9. Regulatory guidance provides for the separation of Soldiers on the basis of other physical or mental conditions not amounting to disability when the conditions is sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

## 10. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Honorable discharge be modified regarding a change to the narrative reason for separation indicating “disability,” due to “major depression, anxiety” and suicide attempts while on active duty. He is also requesting that the block 25 reflect medical discharge, and that his service time in Honduras with the [REDACTED] Army National Guard be added to his DD-214.

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 [REDACTED] Army National Guard on 20 Mar 1996 and was honorably discharged on 04 Jan 2000. He subsequently enlisted in the Regular Army on 05 Jan 2000. His occupational specialty was CPTR and Masonry. His awards included the Army Good Conduct Medal and the Army Service Ribbon.
- “The applicant’s separation package and details surrounding his separation are not resident in his official military personnel record (OMPF).”
- The applicant’s separation packet is unavailable for review. However, the applicant’s service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that he received an Honorable discharge with a narrative reason for separation, “Physical 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 149, his ABCMR Record of Proceedings (ROP), his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that “major depression, anxiety and suicide attempts were mitigating factors in his discharge. His service record and supporting documents did not provide any service treatment records. Based on this documentation in its entirety, there is no evidence the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

e. Per the applicant’s VA EHR, he is not service connected for any behavioral health conditions, and with only a 10% disability rating for a medical condition [REDACTED]. There were 32 behavioral health entries in VA outpatient encounters that ranged from 03 May 2021 - 12 Jan 2024. A Social Work Comprehensive Assessment (26 May 2023) indicated, “Pt. reported an h/o mental health treatment for [REDACTED]. Pt. reported that his mental health symptoms onset while he was active

in the U.S. Army. Pt. reported that his symptoms were attributed to harassment from his sergeant in the service, along with medical problems with one of his children and problems with wife using crack cocaine." Applicant also reported in the same session, "an h/o ETOH abuse, Cocaine abuse, and Stimulant abuse. Pt. reported that he attempted suicide by overdosing on pills in February 2023. Pt. reported that he was hospitalized and treated at the VA Medical Center in [REDACTED]. Pt. reported that he began using excessively during his military service to help alleviate stress from problems with homelife and stress from the military." Primary themes addressed during this period of treatment at VA were substance abuse, homelessness, suicidal ideation and mood related issues. The VA problem list included "Unspecified mood (affective) disorder, Other recurrent depressive disorders, Alcohol abuse with unspecified alcohol-induced disorder, Cocaine abuse with unspecified cocaine induced disorder and Other stimulant abuse with unspecified stimulant induced disorder."

f. In summary, although he is not service connected for any behavioral health conditions, there is considerable documentation he has been treated for depression, anxiety, suicidal ideation and substance abuse by VA which to some degree he had more likely than not experienced during applicant's time in service. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is some evidence of behavioral health symptoms that contributed to his discharge with narrative reason, "physical condition, not a disability." Adequate documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had experienced these depressive and anxious symptoms to some extent during his time in service. However, a referral to the Disability Evaluation System (DES) is not warranted as there is no evidence in the available documentation indicating that the applicant had a mental health condition while on active duty which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge. Additionally, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he more likely than not experienced depressive and anxiety oriented symptoms contributing to his discharge with narrative reason, "physical condition, not a disability" while still on active duty that was subsequently identified by VA behavioral health providers (JLV notes)

(2) Did the condition exist or experience(s) occur during military service? Yes, there is some evidence (self-report) he encountered depressive, anxious and some suicidal

symptoms while on active duty as a result of stressors in his life, including possible harassment from an NCO (JLV).

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is a lack of sufficient behavioral health documents from his time in service, even with the inclusion of documents in JLV, to establish a behavioral health “disability” in his DD-214 “narrative reason for separation” block as a replacement for “physical condition, not a disability.”

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board found no evidence corroborating the applicant’s claim that he served in Honduras during his period of active duty service. The Board determined the available evidence does not support correction of his DD Form 214 to reflect foreign service.
3. The Board carefully considered a medical review and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board concurred with the conclusion of the ARBA BH Advisor that the evidence does not support a conclusion that the applicant should have been referred to the Disability Evaluation System to be considered for discharge or retirement due to a disabling mental health condition. Based on a preponderance of the evidence, the Board determined the reason and authority for separation recorded on his DD Form 214 are not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

4/24/2024

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. AR 635-200 (Personnel Separations – Enlisted Personnel) set forth the basic authority for the separation of enlisted personnel. Chapter 5, Paragraph 5-18 (Other designated physical or mental conditions) states:

a. Commanders who are general court-martial convening authorities and their superior commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40 (Physical 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 airsickness or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, and 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. 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 AR 40–501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

3. Title 10, USC, 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 AR 635-40.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, 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 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.

4. Title 38 USC, 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.

5. Title 38 USC, 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.

6. AR 635-40 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states 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. Paragraph 3-4 states 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.



7. AR 40-501 governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

8. Army Regulation 635-5 (Separation Documents) established a standardized policy for preparing and distributing the DD Form 214. This regulation provided the following guidance for the entries in blocks 12f and 18:

a. Block 12f - Foreign Service: From the ERB/ORB, enter the total amount of foreign service completed during the period covered in block 12c (Net Active Service This Period).

b. Block 18 (Remarks) - For a Reserve Soldier ordered to active duty and deployed to a foreign country, enter the following three statements in succession. (However, for an active duty Soldier deployed with his or her unit during their continuous period of active service, enter only the second statement.)

(1) "ORDERED TO ACTIVE DUTY IN SUPPORT OF (OPERATION NAME) PER 10 USC (applicable section)."

(2) "SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates for example, YYYYMMDD - YYYYMMDD)."

(3) "SOLDIER COMPLETED PERIOD FOR WHICH ORDERED TO ACTIVE DUTY FOR PURPOSE OF POSTSERVICE BENEFITS AND ENTITLEMENTS."

9. Section 1556 of Title 10, USC, 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//