

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230006649

APPLICANT REQUESTS:

- in effect, a change to his narrative reason for separation to reflect disability vice entry level performance and conduct
- an upgrade of his uncharacterized discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Benefit Verification Letter
- VA Discharge Information
- VA Medical Record
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 12 September 2019

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 would like an upgrade to match the honorable discharge given to him by the VA. The only discharge he qualifies for is a medical for his multiple disabilities or hardship. The leadership violated a plethora of laws including Article 93 of the Uniform Code of Military Justice (UCMJ) for being dereliction of duty, public endangerment class D felony, and medical negligence. Additionally, the applicant annotates "post-traumatic stress disorder (PTSD)" and "reprisal/whistleblower" as an issue/condition related to his request
3. The applicant provides:

a. A screenshot of his benefit verification letter from the VA, which shows he is receiving compensation for a service-connected disability from the VA, effective 1 December 2022.

b. A screenshot of his service verification letter from the VA, which shows he served in the Army from 2 July 2019 to 12 September 2019 and received a characterization of service as under honorable conditions (General).

c. A screenshot of his VA medical record, which shows he is rated 100% for PTSD.

4. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 2 July 2019. He was assigned to Fort Benning, GA as a trainee.

b. The applicant's record is void of the facts and circumstances surrounding his separation processing. On 12 September 2019, the applicant was discharged from active duty. His DD Form 214 shows he completed 2 months and 11 days of active service. It also shows in:

- item 11 (Primary Specialty): None
- item 18 (Remarks): Member has not completed first full term of service
- item 24 (Character of Service): uncharacterized
- item 25 (Separation Authority): Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11
- item 26 (Separation Code): JGA
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Entry Level Performance and Conduct

5. The applicant applied to the Army Discharge Review Board (ADRB) for a change in the characterization of service. On 22 November 2021, the ADRB determined the applicant was properly and equitably discharged and denied his request.

6. By regulation, 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
- minor disciplinary infractions

7. Title 38, U.S. Code, Sections 1110 and 1131, permit the Department of Veterans Affairs (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. 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.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his uncharacterized discharge to honorable and a change to his narrative reason for separation to reflect disability instead of 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 Regular Army on 2 July 2019.
- The applicant's record is void of the facts and circumstances surrounding his separation processing.
- Applicant was discharged from active duty on 12 September 2019 under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11. His DD Form 214 shows his character of service as uncharacterized, Narrative Reason for Separation: Entry Level Performance and Conduct, Separation Code "JGA", and RE 3.
- The applicant applied to the Army Discharge Review Board (ADRB) for a change in the characterization of service. On 22 November 2021, the ADRB determined the applicant was properly and equitably discharged and denied his request.

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 would like an upgrade to match the honorable discharge given to him by the VA. The only discharge he qualifies for is a medical one for his multiple disabilities or hardship. The leadership violated a plethora of laws including Article 93 of the Uniform Code of Military Justice (UCMJ) for being dereliction of duty, public endangerment class D felony, and medical negligence. Additionally, the applicant annotates “post-traumatic stress disorder (PTSD)” and “reprisal/whistleblower” as an issue/condition related to his request.

e. The applicant’s electronic active-duty medical record indicates on 12 August 2019, during a medical appointment, he reported repeated corrective actions and being given an Entry Level Separation due to hitting someone with a buckshot after being shoved. The applicant shared he was getting frustrated due to all the corrective action. In addition, he reported punching the squad leader from another platoon. On 13 August 2019, he was referred to behavioral health due to reports of aggression. However, he declined behavioral health services. On 23 Aug 2019, he was seen for a physical examination as part of the separation process. The results of that examination indicate he was released without limitations and a psychiatric screening revealed no impairment with the applicant denying issues with depression, anxiety, or his thought processes.

f. The VA electronic medical record indicates the applicant is 100% service connected for PTSD. The applicant initiated services with the VA via the Veteran’s Crisis Line on 1 June 2021, when he reached out due to experiencing stress related to legal issues. He had a pending court hearing through the VA courts due to emailing a VA representative in a threatening manner in reference to his medical concerns. The applicant was arrested two days after the submission of the email and charged with a felony. In an intake social work note, dated 25 June 2021, the applicant disclosed pre-existing diagnoses that he did not disclose when he enlisted in the Army, including PTSD, Bipolar Disorder, and Oppositional Defiance Disorder. In a C and P examination dated 29 June 2021, the examiner states that there was ample data the applicant had a mental disorder prior to military service. The applicant disclosed multiple residential placements during adolescence, including at a psychiatric facility. In addition, he reported a history of multiple diagnoses and several years of treatment with multiple psychotropic medications. The applicant shared a history of pulling out his hair and teeth, as well as significant aggression and two placements in juvenile detention facilities. The examiner states, “it should be noted that the two facilities he was in prior to discharge (from juvenile justice) are facilities for the most violent youth”. A VA note dated 4 November 2021 states, “the applicant continues to present with intimidating high-risk behaviors” and was monitored by the Disruptive Behavior Committee (DBC) who reviewed risk factors. The record further shows a C and P examination dated 20 October 2022, where the clinician opined the applicant’s Other Specified Trauma and Stressor Related Disorder with unspecified Personality Disorder clearly and unmistakably existed prior to military service. The report details his history of conduct problems during childhood and adolescence as well as his placements in foster care

and the juvenile justice system. The examiner surmised, "it appears that soon after enlistment, the veteran had difficulty adapting to the stressors associated with military life evidenced by exacerbation of emotional instability, oppositional behaviors and aggressiveness associated with personality-related traits which he had prior to military service". The applicant has continued to receive intermittent behavioral health services via the VA, with his most recent encounter on 18 January 2024. He receives monthly individual therapy over the phone and his diagnosis is Borderline Personality Disorder, Anxiety Disorder, and Trauma Stress Related.

g. 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 PTSD, 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 PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD 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? Yes. The applicant contends a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The record indicates the applicant reported during a medical appointment he was given an Entry Level Separation due to hitting someone with a buckshot and punching the squad leader from another platoon. Per his record and consistent with the opine of a prior evaluation, the clinical presentation that emerged was of a soldier who soon after enlistment, had difficulty adapting to the stressors associated with military life and engaged in aggressiveness associated with his personality-related traits which he had prior to military service. And although the applicant is service connected for PTSD, assault is not a natural sequela of this BH condition and would not mitigate the reason for his discharge.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant was discharged from active duty due to entry level performance and conduct (he reported hitting someone with a buckshot after being shoved; punching the squad leader from another platoon). He did not complete training and was not awarded an MOS. His DD Form 214 shows he completed 2 months and 11 days net active service this period. The Board agreed that given the applicant's separation authority, it is implicit that his entry level performance and conduct warranted his separation while he was in initial entry training. As required by the governing regulation, he received an uncharacterized discharge. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board determined that the character of service he received is not in error or unjust.

b. Additionally, the Board reviewed and agreed with the medical reviewer's finding that the applicant had difficulty adapting to the stressors associated with military life and engaged in aggressiveness associated with his personality-related traits which he had prior to military service. And although the applicant is service connected for PTSD, the assault he committed during initial entry training is not a natural sequela of this behavioral health condition and would not mitigate the reason for his discharge.

c. The Board determined that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

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.

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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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of

the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9a (Entry-Level Status Separation) states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

d. Chapter 11 (Entry level Performance and Conduct) states 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
- minor disciplinary infractions

3. AR 40-501 (Standards of Medical Fitness) provides medical retention standards for retention and separation, including retirement. Paragraph 3-3 (Disposition) states Soldiers with conditions listed in this chapter who do not meet the required medical standards will be evaluated by a medical evaluation board (MEB) and will be referred to a physical evaluation board (PEB).

4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Physical Disability Evaluation System and sets forth procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

a. Paragraph 3-1 (Standards of Unfitness Because of Physical Disability) states the mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. Chapter 4, Section I (Eligibility for Disability Evaluation) addresses procedures for the PEB process and includes guidance on referring Soldiers for evaluation by an MEB, when a question arose as to the Soldier's ability to perform the duties of his or her office due to a physical disability.



5. Department of Defense (DOD) Manual 1332.18 (Integrated Disability Evaluation System (IDES)), Volume 2, prescribes policies and procedures for the processing of Soldiers with duty-related disabling medical conditions.

a. IDES is a joint DOD and VA process by which it is determined if Soldiers who have been wounded, ill, or injured are fit for continued military service. A military medical provider can refer a Soldier with disabling medical conditions to IDES, the VA then provides the medical (compensation and pension (C&P)) examinations, and, based on the VA's C&P examinations, an MEB makes an assessment to identify those medical conditions that fail Army medical retention standards. All failing conditions are referred to a PEB for a fitness determination.

b. Conditions found by the PEB to be unfitting are sent to VA for a disability rating. After the VA assigns disability rating(s), the results are finalized. Disposition can include the Soldier being returned to duty or separated (either with severance pay, when the total disability rating is 20 percent or less, or retired, for those cases where the disability rating is 30 percent or higher).

6. Title 38 (Veterans' Benefits), U.S. Code, sections 1110 (Wartime Disability Compensation – Basic Entitlement) and 1131 (Peacetime Disability Compensation – Basic Entitlement) permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service; as noted above, the Army's disability system operates under Title 10, U.S. Code for its disability determinations.

a. The Army rates only conditions determined to be physically unfitting and which disqualify the Soldier from further military service. The Army disability rating is intended to compensate the individual for the loss of a military career.

b. 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.

c. 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.

7. 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//