

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230006678

APPLICANT REQUESTS: in effect, a change to his narrative reason for separation to reflect disability vice misconduct.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 needs his disability and needs his discharge changed. He also annotated "Post-Traumatic Stress Disorder (PTSD)", "Other Mental Health," and "Sexual Assault/Harassment" as issues/conditions related to his request. The applicant's DD Form 149 shows medical documents as evidence in support of his claim, however, the applicant did not provide medical documents for the Board to review.
3. The applicant enlisted in the Arkansas Army National Guard (ARARNG) on 29 January 2007.
4. He entered active duty for initial active duty training on 21 August 2007.
5. He accepted nonjudicial punishment on/for:
 - a. On 31 January 2008, for
 - disrespect in language toward a noncommissioned officer on two occasions
 - violating the training pass policy by consuming alcohol in the barracks
 - wrongfully possessing alcohol, and
 - wrongful overindulgence for the performance of his duties; his punishment included reduction to the grade of private (PVT)/E-1

b. On 20 March 2008, for being absent without leave (AWOL) from 3 March 2008 to 16 March 2008.

6. On 19 March 2008, in connection with the separation processing of the applicant, a mental status evaluation was conducted. The mental health examiner evaluated the applicant as having the mental capacity to understand and participate in the proceedings, being mentally responsible, meeting the retention requirements.

a. The examiner added comments to the remarks block as follows:

- AXIS I: Impulse Control Disorder Not Otherwise Specified (NOS)
- AXIS II: Deferred
- AXIS III: NONE

b. The examiner also marked the current potential for self-harm as NONE, harm to others as NONE, and AWOL as MODERATE.

7. On 20 March 2008, in connection with the separation processing of the applicant, a medical examination was conducted. The physician assistant marked "NE (Not Examined) for item 30 (Anus and Rectum) and item 32 (External Genitalia) and added in the notes "denied by PT (Patient)".

8. The applicant's immediate commander notified the applicant of his action to separate him for commission of a serious offense. The reason for his proposed action is that he was AWOL from 3 May [March] 2008 to 20 March 2008 and nonjudicial punishment on 20 March 2008. He recommended the applicant receive a general, under honorable conditions discharge. The applicant acknowledged receipt of the notification on 31 May 2008.

9. The applicant declined the opportunity to consult with counsel for consultation. He was advised of the basis for the contemplated action to separate him for commission of a serious offense resulting from AWOL from 3 March 2008 to 16 March 2008, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, its effects, the rights available to him, and the effect of any action taken by him in waiving his rights.

- he elected not to submit a statement on his own behalf
- he understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him
- he understood that if he receives a discharge/character of service that is less than honorable, he may make application to the Army Discharge Review Board (ADRB) or ABCMR for upgrading

10. The applicant's immediate commander initiated separation through the chain of command. On 9 April 2008, the intermediate commander recommended the applicant be separated prior to the expiration of his current term of service and his service be characterized as general, under honorable conditions.

11. On 10 April 2008, the separation authority approved the recommendation for separation under the provisions of AR 635-200, Chapter 14-12c for commission of a serious offense. He directed the applicant to be separated with a General Discharge Certificate and will not be transferred to the Individual Ready Reserve (IRR). Further counseling and rehabilitation are waived.

12. On 16 April 2008, the applicant was released from active duty training and discharged from the Reserve of the Army and returned to the ARNG. His DD Form 214 shows he completed 7 months and 11 days of active service. It also shows his service was characterized as under honorable conditions (General) under the provisions of AR 635-200, Chapter 14-12(1) for misconduct (AWOL). He was awarded or authorized the National Defense Service Medal.

13. On 18 November 2008, the applicant was discharged from the ARARNG with an uncharacterized discharge.

14. The Integrated Disability Evaluation System (IDES) determines if Soldiers who have been wounded, ill, or injured are fit for continued military service.

a. A military medical provider can refer a Soldier with disabling medical conditions to IDES. A medical evaluation board (MEB) makes an assessment to identify those medical conditions that fail Army medical retention standards.

b. All failing conditions are referred to a physical evaluation board (PEB) for a fitness determination.

c. 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).

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge and possibly a medical discharge for his mental health conditions. He contends he experienced military sexual trauma (MST) and mental health conditions including PTSD that mitigate his discharge.

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 Arkansas Army National Guard (ARARNG) on 29 January 2007; 2) He entered active duty for initial training on 21 August 2007; 3) On 31 January 2008, the applicant accepted nonjudicial punishment (NJP) for disrespectful language towards an NCO on two occasions, violating training pass policy by consuming alcohol in the barracks, possessing alcohol, and being drunk on duty; 3) On 20 March 2008, the applicant accepted NJP for being AWOL from 3-16 March 2008; 4) On 16 April 2008, the applicant was released from training and returned to the ARNG. His service was characterized as under honorable conditions (General) under the provisions of AR 635-200, Chapter 14-12(1) for misconduct (AWOL); 5) The applicant was discharged from the ARARNG on 18 November 2008 with an uncharacterized character of service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined. No additional medical documentation was provided by the applicant.

d. The applicant noted MST and mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant sought behavioral health treatment or reported MST while on active service. However, he was seen for a mental status exam on 19 March 2008 as part of his separation proceedings. He was diagnosed with Impulse Control Disorder NOS on the evaluation form. However, the provider in the electronic medical record diagnosed the applicant with an Adjustment Disorder with Disturbance of Conduct. The applicant was found to have the mental capacity to understand and participate in the proceedings, mentally responsible, and met the retention requirements from a psychiatric perspective. Lastly, he was cleared for any administrative action deemed appropriate by command.

e. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive service-

connected disability. In addition, there is insufficient evidence the applicant reported experiencing MST to a VA provider.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced MST and mental health conditions, including PTSD that contributed to his administrative separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports he experienced MST and mental health conditions, including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition which warrants a referral to IDES. In addition, there is insufficient evidence beyond self-report the applicant experienced MST. The applicant did have a pattern of misconduct and of going AWOL, which can be associated with some mental health conditions including PTSD and MST. However, the presence of misconduct is not sufficient evidence of a mitigating mental health condition or experience. However, per Liberal Consideration policy, his contention of MST and mental health conditions alone is sufficient for the board's consideration.

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 insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. The Board determined the narrative reason for separation received upon discharge was 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.

X

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), in effect at the time, prescribes the policy for the separation of enlisted personnel. Paragraph 14-12c (Conditions that Subject Soldiers to Discharge – Commission of a Serious Offense) states Soldiers are subject to action for the commission of a serious

military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial (MCM). A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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//