

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230007704

APPLICANT REQUESTS: in effect, reconsideration of his previous request to change the reason for his separation from "Trainee Discharge Program" to a medical discharge.

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

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC80-02662 on 21 May 1980.
2. The applicant states in effect he wishes this Board would admit him for retirement and consider his intent (reasons for forced discharge) because no accommodation was offered. Doctors and drill sergeants made a contract with him to take convalescent leave and report back to duty, head out to Germany and then to complete his contract. His application indicates his request is related to post-traumatic stress disorder (PTSD), traumatic Brain Injury (TBI), and other mental health issues.
3. The applicant enlisted in the Regular Army on 2 January 1979.
4. Six Trainee Discharge Program (TDP) Counseling, show between January and June 1979, he was counseled on/for:
 - 23 January 1979, for being asleep on fireguard
 - 7 February 1979, illiterate behavior, forgetfulness, and not able to adjust to the training; childlike behavior; refusal to follow orders given to the full extent
 - 22 May 1979, the counseling indicates the applicant received "T/B" counseling from the various training groups he appears to have been moved between; this counseling recommended that he be removed from the 72E course and assigned to the infantry because he was not interested in the 72E course
 - 29 May 1979, sleeping on duty (battalion arms room guard)
 - 4 June 1979, sleeping on arms room guard
 - 12 June 1979, getting into a fight; failure to report

5. Disposition Form, dated 29 May 1979, subject: retrainee reassignments, shows the applicant was to be relieved from the 72E training due to academic failure. The assignment restrictions show he had a 3T profile for right inguinal hernia, which would expire on 29 March 1979. He was notified on 29 March 1979, that he was being selected for new training.
6. On 12 June 1979, his commander initiated action to separate him from the U.S. Army under the provision (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations) paragraph 5-33. The specific reason for the proposed action was the applicant's inability to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline. The applicant acknowledged receipt of notification and did not desire to make a statement on his behalf. He did desire to have a separation medical examination. His available service records do not contain the medical examination.
7. The commander's formal proposal for the applicant's discharge under the provisions of the TDP notes the applicant had been counseled by his company commander, the first sergeant, the senior drill sergeant, and three other drill sergeants for sleeping on duty, lack of self-motivation, and poor attitude. The commander did not feel the applicant would make a productive Soldier. The failed the 72E course; his academic progress was not satisfactory, rehabilitation had not been successful, and reclassification was not recommended. The separation was not based on strength, stamina or endurance related problems. The applicant's chain of command recommended approval of his discharge.
8. On 22 June 1979, the discharge authority approved separation UP of AR 635-200, paragraph 5-33a. He directed an honorable character of service.
9. Accordingly, he was honorably discharged on 26 June 1979. His DD Form 214 (Report of Separation from Active Duty) shows he completed 5 months and 25 days net active service this period. His DD Form 214 also shows: Item 9c (Authority and Reason): Paragraph 5-33a, AR 635-200 SPD (separation program designator): JET.
10. There is no evidence in the applicant's available records indicating he was unable to perform his military duties due to a medical disability.
11. ABCMR Docket Number AC80-02662, dated 21 May 1980, shows the Board determined insufficient evidence was presented to indicate a probable material error or injustice, and the application was denied.
12. 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.

13. MEDICAL REVIEW:

a. Request: The applicant is requesting a medical discharged versus his entry level separation. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 2 January 1979.
- Six Trainee Discharge Program (TDP) Counseling's, show between January and June 1979, he was counseled on/for:
 - 23 January 1979, for being asleep on fireguard
 - 7 February 1979, illiterate behavior, forgetfulness, and not able to adjust to the training; childlike behavior; refusal to follow orders given to the full extent
 - 22 May 1979, the counseling indicates the applicant received "T/B" counseling from the various training groups he appears to have been moved between; this counseling recommended that he be removed from the 72E course and assigned to the infantry because he was not interested in the 72E course
 - 29 May 1979, sleeping on duty (battalion arms room guard)
 - 4 June 1979, sleeping on arms room guard
 - 12 June 1979, getting into a fight; failure to report
- On 12 June 1979, his commander initiated action to separate him from the U.S. Army under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations) paragraph 5-33. The specific reason for the proposed action was the applicant's inability to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline.
- The commander's formal proposal for the applicant's discharge under the provisions of the TDP notes the applicant had been counseled by his company commander, the first sergeant, the senior drill sergeant, and three other drill sergeants for sleeping on duty, lack of self-motivation, and poor attitude. The commander did not feel the applicant would make a productive Soldier. He failed the 72E course; his academic progress was not satisfactory, rehabilitation had not been successful, and reclassification was not recommended. The separation was not based on strength, stamina or endurance related problems.
- Applicant was honorably discharged on 26 June 1979. His DD Form 214 (Report of Separation from Active Duty) shows he completed 5 months and 25 days net active service. His DD Form 214 also shows: Item 9c (Authority and Reason): Paragraph 5-33a, AR 635-200 SPD (separation program designator): JET.

b. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Forms 214, and documents from his service record and separation packet. The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant states he wishes this board would admit him for retirement and consider his intent (reasons for forced discharge) because no accommodation was offered. Doctors and drill sergeants made a contract with him to take convalescent leave and report back to duty, head out to Germany and then complete his contract. His application indicates he selected post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), other mental health issues, and reprisal as related to his request. However, he provided no further explanation for his selections.

d. During his time in service, a disposition form, dated 29 May 1979, shows the applicant's PULHES rated as "111111" and indicates he was to be relieved from training due to academic failure. The assignment restrictions show he had a 3T profile for right inguinal hernia, which expired on 29 March 1979. There is no evidence in the applicant's available records indicating he was unable to perform his military duties due to a medical disability. Overall, the applicant's available service record does not show any evidence that he was issued a permanent physical profile rating, was treated for any behavioral health condition, was diagnosed with a condition that failed retention standards and/or rendered him unfit for military service.

e. The VA electronic record available for review indicates the applicant is currently 10% service connected for superficial scars. He has not participated in behavioral health treatment and there is no evidence of any psychotropic medications or psychiatric hospitalizations. However, an internal medicine note, dated 9 March 2010, states the applicant self-reported a diagnosis of schizophrenia, "I don't believe I have it. I am very spiritual, so I hear things and see things but it's not like that". This has remained in his VA record. A psychological evaluation, on 25 May 2011, was completed via interview of the applicant. The evaluation was requested by the applicant due to multiple medical concerns not based in medical evidence. The psychologist notes the applicant's VA record "commenced in 1998. Interestingly, in this patient with diagnosed schizophrenia there was little in the way of reported history of mental health issues". The psychologist notes the lack of mental health treatment, despite extensive medical appointments and ongoing social work related assistance with housing and financial issues. During this evaluation, the applicant continued to report preoccupation with medical problems which appeared to have little basis in known history. It was recommended the applicant complete objective psychological testing to better define the nature and severity of his mental health condition. Objective psychological testing

was never completed. An internal medicine note, dated 20 September 2016, indicates a diagnosis of hypochondriasis, excessive worry about medical concerns despite normal test results, and this appears to be the VA's current working diagnosis for this applicant.

f. 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 10% service connected for superficial scars, 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. 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? 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 evidence shows the applicant was discharged under the Trainee Discharge Program due to what his chain of command described as inability to meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline. He was honorably discharged after completing 5 months and 25 days of active service. The Board determined his separation process was proper, equitable and free of error. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support a referral to the integrated disability evaluation system (IDES) process at this time. Based on the documentation available for review, the Board agreed that there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

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 to amend the decision of the ABCMR set forth in Docket Number AC80-02662 on 21 May 1980.



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. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel from the Army. Paragraph 5-33 of the regulation in effect at the time governed the Trainee Discharge Program (TDP). It provided for the expeditious separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or who failed to respond to formal counseling.

- a. Service members must have:
 - voluntarily enlisted

- been in basic, advanced individual, on-the-job, or service school training prior to award of a military occupational specialty
- not have completed more than 179 days of active duty on their current enlistment by the date of separation

b. Soldiers could be separated when they demonstrated that they:

- were not qualified for retention due to failure to adapt socially or emotionally to military life
- could not meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline
- demonstrated character and behavior characteristics not compatible with satisfactory continued service

2. AR 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Title 10, USC, Section 1201 provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30% or greater.

4. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.

5. 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.

6. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//