

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230008259

APPLICANT REQUESTS:

- An upgrade of his uncharacterized service to honorable service
- A change of the narrative reason for separation
- A medical retirement
- Personal appearance before the Board by telephone or video

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Statement
- Six Character References
- Two emails
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- St. Mary Cowin Hospital Medical Records, 7 pages
- Two Training Certificates
- Two eBenefits Statements
- Department of Veterans Affairs (VA) Rating Decision
- Congressional Consent for Release of information
- Three Diplomas/Certificates
- International Honor Society Certificate
- Five College Transcripts
- VA Personnel Information Report - VA Health Account Summary (40 of 60 pages)

FACTS:

1. Standard of Review. When arriving at its findings and making its determinations, the Board shall review the petition for requested relief independent from any previous petitions submitted to the Army Discharge Review Board or the Army Board for Correction of Military Records (ABCMR).

2. The applicant states he should have been medically retired from the military based on his medical conditions/disabilities. His medical conditions have worsened and are causing other conditions which are affecting his daily living.

3. The applicant provided:

a. A personal statement indicating he believes he should have been medically retired for the following reasons, he:

- was injured in a training accident
- was awarded a 30 percent (%) disability rating on 1 August 2012, after he was discharged, which was later increased to 60%
- had no nonjudicial punishment/disciplinary actions taken against him
- was a platoon guide and the highest-ranking Soldier/[trainee] in his unit, trusted with managing others

b. Six character references:

- Mr. RN states he attended training at Fort Benning, GA with the applicant and they were both injured during training; he has acquired a medical discharge
- Five-character references are from individuals who have worked with the applicant in the field of academia; these individuals state the applicant was a dedicated teacher, volunteer, and he has helped improve his community and the community's quality of life

c. Email Requesting a Medical Retirement. A second email stating, he was never in a motorcycle accident. He was in a car accident in 2017, he was given muscle relaxers and was sent home without major issues.

d. Medical records from Mary Corwin Hospital, dated 6 June 2017 referring the car accident the applicant was involved in.

e. Two eBenefits Statements showing on 1 August 2012, he was awarded a 30% disability rating and currently he has a 60% disability rating.

f. A VA Rating Decision confirming as of 6 July 2023, he was awarded a 60% evaluation.

g. Congressional Consent for release of information, dated 11 July 2023.

h. Personal Information Report-VA Health Account Summary detailing his medical history.

i. Three Diplomas/Certificates and transcripts showing the applicant earned an Associate of Arts, Bachelor of Arts, and a Master of Business Administration and Health Administration.

4. On 5 June 2012, the applicant enlisted in the Regular Army for a period of 6 years, in the rank of specialist four/E-4. He was attending basic training at Fort Benning, GA when his separation was initiated. He did not complete initial entry training and was not awarded a military occupational specialty.

5. The applicant's record contains parts of his separation packet as follows:

a. On 13 July 2012, the applicant was counseled concerning separation under the provisions of Chapter 11, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) by reason of entry level performance and conduct. Due to his inability to adapt to Army life, values, and a medical condition. [He missed training and he had an ulcer].

b. On 19 July 2012, the applicant's commander notified the applicant separation action was being initiated against him under the provisions of Chapter 11, AR 635-200, by reason of entry level performance and conduct for not being able to complete training due to his medical inability and failure of counseling to adapt to the military way of life.

c. On 19 July 2012, the applicant's commander recommended the applicant's separation. He was advised of his rights.

6. On 27 July 2012, Headquarters, United States Army Maneuver Center of Excellence, Fort Benning, GA, published Orders Number 209-2213, discharging the applicant from the Army effective 31 July 2012.

7. The available evidence contain a DD Form 214 (Certificate of Release or Discharge from Active Duty), which was authenticated by the applicant. The DD Form 214 shows the applicant was discharged on 31 July 2012 under the provisions of Chapter 11, AR 635-200. His DD Form 214 shows he completed 1 month and 26 days of active service. His DD Form 214 also shows:

- Character of Service – “Uncharacterized”
- Separation Authority – AR 635-200, Chapter 11
- Separation Code – “JGA”
- Reentry Code – “3”
- Narrative Reason for Separation – “Entry Level Performance and Conduct”

8. The available evidence shows initially, the VA assigned the applicant a 10% evaluation for esophagitis (claimed as stomach ulcer) based on pyrosis, reflux, and

vomiting and on 1 August 2012, he was evaluated at 30%. However, the applicant provided VA documents confirming, as of 6 July 2023, he had a 60% evaluation. The applicant's submissions were provided to the Board in their entirety.

9. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides that SPD code of "JGA" is identified as the appropriate code to assigned enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct.

10. AR 15-185, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

11. AR 635-200, chapter 11 in effect at the time provided for the separation of personnel due to unsatisfactory performance or conduct, or both, while in an entry-level status. This provision applied to individuals who had demonstrated they were not qualified for retention because they:

- could not adapt socially or emotionally to military life
- lacked the aptitude, ability, motivation, or self-discipline for military service
- demonstrated characteristics not compatible with satisfactory continued service

12. The separation policy applied to Soldiers who could not meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline. Separation under this chapter applied to Soldiers who were in an entry-level status (i.e., had completed no more than 180 days of continuous active duty before the date of the initiation of separation action). An uncharacterized description of service was required for separation under this chapter.

13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the applicant's previous ABCMR denial, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 16 December 2016 uncharacterized discharge and, in essence, a referral to the Disability

Evaluation System. He has indicated on his DD 149 that traumatic brain injury (TBI) and other mental health conditions are issues related to his request. He states:

“Due to disability caused me to have to be discharged from service. I should have been medical retired based on my medical conditions. My medical conditions have got worse and are now leading to other conditions. this is affecting my daily living.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of Service under consideration shows he entered the Regular Army on 5 June 2012 and received an uncharacterized discharge on 31 July 2012 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 December 2009), for falling below entry level performance and conduct standards.

d. The request was denied by the ADRB on 30 July 2014 (AR20130016955). Rather than repeat their findings here, the board is referred to the case report for that case.

e. The EMR shows during this period of service he was treated for a contusion on his back (one visit), a right ankle sprain (two visits), hemorrhoids (two visits), and heartburn (1 visit). An 8 Jun 2012 EMR encounter shows he injured his back and right ankle when he fell down a flight of stairs:

“Soldier states he fell down a flight of stairs last night and presented to the ER. Soldier presents with complaints of right ankle, right foot, and lower back pain. Reliability of source of patient information was good.”

f. The applicant was examined, diagnosed with a back contusion and right ankle sprain for which he was treated conservatively. There was no complaint of a head injury at that time and no head injury(s) documented by the provider. There were no mental health or TBI related encounters in the EMR.

g. The applicant underwent an abbreviated -pre-separation examination on 13 July 2012 and after which he was cleared for a separation for failure to adapt to military life.

h. On 19 July 2012, the applicant’s commander informed him of the initiation of action to separated him under provisions in chapter 11 of AR 635-200:

“The reasons for my proposed action are: You have not been able to complete training due to your medical inability. You have had numerous counseling and have failed to adapt to the military way of life. You have demonstrated character and behavior characteristics not compatible with satisfactory continued service and have failed to respond to counseling.”

i. Stated in a 15 September 2022 VA encounter:

“Presenting Concern:

The veteran said that it was recommended he come to therapy but he doesn't know why. He had a TBI happen in basic training. He has migraines and cluster headaches as well. He has impulse control issues, i.e. fighting other soldiers and got a "general" discharge, not honorable, not dishonorable.

He is not fighting people now. He said that the drill sergeant was yelling at soldiers and he was trampled by soldiers down a flight of stairs because they freaked out.

The veteran also had a car accident after that and got t-boned. He got his head rung. He doesn't see a major issue with anything but his wife said that he is more "flat, uncaring, raging episodes" when he did not before the Army.”

j. Letters of support submitted by the applicant show he is doing well and is without evidence that a TBI or mental health condition is affecting his abilities. Excerpts from three letter of support:

“It is my great pleasure to write this letter of recommendation for Mr. [Applicant]. For the past four years, ██████ has been an adjunct professor for the Adams State University - Health Care Administration program at Pueblo Community College (ASU HCA@PCC). During this time, ██████ has received quality student feedback for his approaches to teaching and his engagement in the classroom.”

“I am most pleased to be able to write this letter of recommendation for [Applicant] as he completes his Doctorate in Business Administration. ██████ is a consummate professional, creative executive, and strong community advocate.”

“It is my pleasure to recommend [Applicant] for any position In academia In regard to business or healthcare administration, as well as In leadership or administration. ██████ was our Registrar and Human Resources Director simultaneously. In this role he helped manage our student relations and record keeping, sorting out Interoffice complaints, benefit Inquires for employees, as well as background U.A.'s and hiring for the entire campus.”

k. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

l. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence 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.”

m. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings. There are no ratings for a TBI or TBI related sequelae and the only mental health condition is cyclothymic disorder (30%) which was originally effective 15 November 2022. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the Agency Medical Advisor that a referral of his case to the DES is unwarranted IAW with the Under Secretary for Personnel and Readiness' 4 April 2024 memorandum SUBJECT: Clarifying Guidance to Boards for Correction of Military/Naval Records Considering Cases Involving Both Liberal Consideration Discharge Relief Requests and Fitness Determinations.

o. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

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

(3) Does the condition or 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The governing regulation provides that a separation will be described as an entry-level separation, with

service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant’s petition, available military records and the medical review, the Board concurred with the advising official finding that a referral of his case to the DES is unwarranted IAW with the Under Secretary for Personnel and Readiness’. The opined noted no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards.

2. The Board noted Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. Evidence shows the applicant completed 1 month and 26 days of active service and was discharged by reason of entry level performance and conduct for not being able to complete training due to his medical inability and failure of counseling to adapt to the military way of life. As such, the applicant’s DD Form 214 properly shows the appropriate characterization of service as uncharacterized, there is no basis for granting the applicant's request. Therefore, the Board denied relief.

3.. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.



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 15-185 (Army Board for Correction of Military Records), paragraph 2-11, states applicants do not have a right to a formal hearing [telephone/video] before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.
3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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. 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. Chapter 11, provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for ELS under the provisions of this chapter. This policy applies to Soldiers in the Regular Army, ARNG, and USAR who have completed no more than 180 days of continuous active duty or IADT or no more than 90 days of Phase II under a split or alternate training option.

d. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

4. AR 635-40 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 or her office, grade, rank, or rating. The regulation 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.

5. AR 635-40 provides 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. 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:

a. 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.

b. 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.

6. 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.

7. Title 38, United States Code, Sections 1110 and 1131, permit the 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.

8. Title 38, Code of Federal Regulations, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his/her duties. 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.

//NOTHING FOLLOWS//