

IN THE CASE OF: ██████████

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230008750

APPLICANT REQUESTS: Correction of his record to show the narrative reason for his separation and corresponding Separation Program Number (SPN) was due to medical discharge, disability.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2496 (Disposition Form), dated 2 September 1970

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he was honorably discharged due to a medical condition. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) and DD Form 256A (Honorable Discharge Certificate) attribute his separation to Section III, Chapter 5, of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) and SPN 375 PETS [sic] (Existed Prior to Service (EPTS)) are derogatory and incorrect. According to Army records it was supposed to be Army Regulation 635-40 (Physical Evaluation for Retention, Retirements, or Separations) Medical, as stated on DA Form 2496, dated 2 September 1970. This error has prevented him from obtaining a job better than performing menial, low paying work. It has also prevented him from obtaining a pension and living close to his children because he cannot afford living in the area they live in. He has been living in a homeless shelter for several months.

3. On 23 April 1969, the applicant enlisted into the U.S. Army Reserve (USAR) for a period of 6 years.

4. On 12 September 1969, the applicant's immediate commander sent him a Letter of Instruction (LOI) wherein he reminded the applicant of his service obligation and noted

the applicant had accrued two unexcused absences. He was advised that continued unexcused absences could result in him being involuntarily ordered to active duty.

5. On 17 October 1969, the applicant requested a leave of absence so he could study medicine [REDACTED]. He informed his commander that he had already requested admission to the University [REDACTED], and provided his temporary address in Spain.

6. On 20 November 1969, the applicant requested to be transferred to USAR Control Group (Annual Training) (Europe) within the geographical area of jurisdiction of the Commander in Chief U.S. Army Europe (USAREUR)/Seventh Army. His intent was, while being a member of that unit, to continue his preparatory studies at the University [REDACTED] ([REDACTED]) toward the final degree of Doctor in Medicine. He was supposed to attend Basic Combat Training (BCT) during the summer of 1969, which would have made him available to start his studies at [REDACTED] in September 1969. Due to reasons beyond his control, he was never called to attend BCT nor was he provided a date to start such training. This delay eliminated his opportunity to start pre-medical studies at [REDACTED]. He explained his various options for completing his education on his desired timeline and why he decided to go [REDACTED] to start his medical studies and had already enrolled as a student beginning in October 1969. His immediate commander recommended approval of his request based on the reasoning that the applicant would better serve the Army as a doctor than a private, because there was a critical need for doctors in the Armed Services.

7. On 31 December 1969, the applicant's request for transfer to USAREUR was disapproved because requests of this nature only applied to enlisted members who had completed their initial active duty for training.

8. On 25 January 1970, the applicant's immediate commander sent him an LOI and remind him of his service obligation, noting the applicant had accrued four unexcused absences. He was also reminded that continued unexcused absences could result in him being involuntarily ordered to active duty.

9. On 7 February 1970, the applicant's immediate commander sent him an LOI reminding him of his service obligation and noted the applicant had accrued six unexcused absences.

10. On 4 March 1970, the applicant's commander initiated action to have him ordered to active duty for a period of 23 months and 15 days as a result of his unauthorized absences. He noted the applicant was repeatedly counseled, but continually failed to participate satisfactorily in accordance with regulatory requirements. The commander notified the applicant of this action on the same date.

11. On 26 March 1970, the applicant's higher headquarters notified him that he was recommended for involuntary order to active duty for unsatisfactory unit participation and that he would be furnished active duty assignment instructions in about 30 days. He was advised that failure to comply with assignment instructions when furnished would result in apprehension action.

12. On 10 April 1970, the applicant voluntarily requested to be discharged so he could receive psychiatric treatment. In support of his request, he offered a letter from a psychiatrist who treated him in June 1966 and recommended "a complete psychiatric evaluation to reach a definite diagnosis and prognosis and therapeutic recommendations. The applicant also cited Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements), paragraph 8g(e), "Members temporarily disqualified because of prolonged illness or medical defects which are non-remediable within 1 year will be processed for discharge."

13. Letter Orders Number A-04-322, issued by Headquarters, Third U.S. Army, Fort McPherson, GA on 15 April 1970, show the applicant was ordered to active duty for a period of 24 months, effective 18 May 1970.

14. On 21 April 1970, the Third U.S. Army Surgeon requested the applicant undergo a psychiatric consultation from an Armed Forces Medical Facility. In the event the examining physician determined the applicant was medically qualified for active duty, the applicant would be so advised and instructed to comply with the active duty orders issued to him.

15. On 14 May 1970, the Commanding General (CG), Third U.S. Army was informed the applicant was notified that he was found physically qualified for active duty and that he must comply with his active duty orders.

16. On 17 May 1970, the applicant was hospitalized after taking a drug overdose.

17. On 20 May 1970, the applicant requested to be discharged from the USAR under the provision of Army Regulation 135-91, paragraph 8-9g, in order to receive prolonged and intensive treatment recommended by a psychiatrist who evaluated him on 18 May and 19 May 1970. A copy of the handwritten letter from the examining doctor is available for the Board's consideration.

18. Letter Orders Number A-04-322 issued by Headquarters, Third U.S. Army, Fort McPherson, GA on 20 May 1970, revoked the applicant's orders to active duty.

19. On 5 June 1970, the applicant was informed that his psychiatric and hospital reports received on 19 May 1970, had been carefully reviewed by the Surgeon, Third U.S. Army and it was determined that he was medically qualified for active duty.

Consequently, his request for voluntary discharge had not been favorably considered. However, the final decision regarding his request would be made at Headquarters, Department of the Army (HQDA). The request was forwarded to HQDA the same date.

20. On 30 June 1970, the applicant rendered a letter wherein he stated, in part, he had been under psychiatric treatment before he entered the USAR and was still undergoing treatment from two doctors.

21. On 8 July 1970, the CG, Third U.S. Army was informed the medical records of the applicant had been carefully reviewed with the appropriate consultant to The Surgeon General. The opinion expressed that he had no mental illness which would render him medically unfit. He was medically fit for retention and extended active duty.

22. On 15 July 1970, the applicant was informed that his request for discharge from the USAR was denied. He was advised there were no provisions for reconsideration of his physical, and that he was required to comply with active duty orders when issued.

23. Letter Orders Number A-07-671 issued by Headquarters, Third U.S. Army, Fort McPherson, GA on 15 July 1970, show the applicant was ordered to active duty for a period of 24 months, effective 3 August 1970.

24. On 31 August 1970, the applicant requested discharge for disability. He stated he had been informed that, based upon the findings and recommendation of a medical board, he was considered to be unfit for retention in the military service by reason of physical disability which had been found to have existed prior to his enlistment and which was neither incident to nor aggravated by his military service. He acknowledged that if this application was approved, he would be separated by reason of physical disability, EPTS and would receive a discharge of the type commensurate with the character of his service, as determined by the officer designated to effect his separation.

25. A DA Form 2496, dated 2 September 1970, shows the applicant was to be discharged from active duty effective 8 September 1970 under the provisions of Army Regulation 635-40 with an honorable discharge by reason of a medical condition.

26. Orders and the applicant's DD Form 214 show he was discharged from the USAR on 9 September 1970 under the provisions of Section III, Chapter 5, Army Regulation 635-200, with SPN "375" PETS [sic] , and reenlistment code "3." He was credited with completion of 1 month and 7 days of net active service this period.

27. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

## 28. MEDICAL REVIEW:

a. Applicant is applying to the ABCMR requesting medical discharge. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149 and supporting documents, ABCMR Record of Proceedings (ROP), separation military documentation, and the VA medical records.

b. Due to the period of service, there are no active duty electronic medical records available for review. A letter from a civilian psychiatrist dated 19 May 1970 documents that the applicant was psychiatrically hospitalized on 18 May 1970 following a suicide attempt. The psychiatrist documented a diagnosis of Antisocial Personality Disorder.

c. Review of the VA medical record reveals that the applicant is 70% service connected for Major Depressive Disorder, and that the applicant has a history of homelessness.

d. After review of all available information, the applicant was discharged for a physical disability that was determined to have existed prior to military service. While the details regarding the physical disability that led to the applicant's separation are not contained in the file, it is clearly documented that the physical disability existed prior to service and did not meet procurement medical fitness standards. As such, the applicant was separated in accordance with the separation guidelines at the time. In addition, there is no evidence of any BH conditions that were unfitting at the time of separation. The applicant is service connected by the VA for Major Depressive Disorder, but the VA operates under a different set of laws and guidelines. A referral to the Disability Evaluation System is not recommended.

## 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. On 31 August 1970, when the applicant requested discharge, he stated, based upon the findings and recommendation of a medical board, he was considered to be unfit for retention in the military service by reason of physical disability which had been found to have existed prior to his enlistment, and which was neither incident to nor aggravated by his military service. Further, in his request for discharge, acknowledged understanding that if his application were approved, he would be separated by reason of physical disability, EPTS.

3. The board found insufficient evidence to justify amending his narrative reason for separation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            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.

6/6/2024

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CHAIRPERSON

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed SPN "375" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on discharge because of not meeting medical fitness standards at time of enlistment.
5. Army Regulation 635-40, in effect at the time, governed the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. This regulation applied to the active Army, the Army National Guard/Army National Guard of the United States, and the USAR, unless otherwise stated.
  - a. Chapter 5 provided for the separation of an enlisted Soldier for non-service aggravated EPTS conditions when Soldier requested waiver of Physical Evaluation Board evaluation.
  - b. This chapter was applicable to enlisted Soldiers on active duty for more than 30 days.

c. Separation under the authority of this chapter was not to be confused with separation under the provisions of Army Regulation 635–200, chapter 5. The latter provided for involuntary separation within the first 6 months of entry onto active duty for failure to meet procurement fitness standards.

6. Army Regulation 635-200, in effect at the time, set forth the policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 5, paragraph 5-9 prescribed the procedures for the discharge of personnel who did not meet procurement medical fitness standards.

a. Individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment would be discharged when a medical board, regardless of the date completed, established that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training under the Reserve Enlistment Program which:

(1) Would have permanently disqualified him/her for entry into the military service had it been detected at that time; and

(2) Did not disqualify him/her for retention in the military service under the provisions of chapter 3, Army Regulation 40-501 (Medical Services – Standards of Medical Fitness).

b. As an exception, an individual who was found to meet the requirements of a above, but who elected to complete the period of service for which inducted or enlisted, would not be discharged under this paragraph. Such members would be required to sign a statement electing to complete his/her period of service, notwithstanding his/her eligibility for discharge under this paragraph.

c. Commanders specified in paragraph 2-17a were authorized to order discharge under this paragraph. Separation would be accomplished within 72 hours following approval by the discharge authority. Authority for discharge (paragraph 5-9, Army Regulation 635-200) and SPN 375 would be included in directives or orders directing the individual to report to the appropriate transfer activity.

d. Members who did not meet the medical fitness standards for retention would be processed under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirements, or Separation).



e. This paragraph was not to be used as a substitute for unsuitability separations in cases of character or behavior disorders, which would continue to be processed under the provisions of chapter 13.

//NOTHING FOLLOWS//