

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20230008791

APPLICANT REQUESTS: reconsideration of the below-listed previous requests to amend his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 7 November 1994:

- Change the regulatory separation authority in item 25 (Separation Authority) to show a medical retirement
- Revise Item 27 (Reentry (RE) Code) from RE-3 to RE-1

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190007043, on 6 October 2022.

2. The applicant states his DD Form 214, as corrected by the Board, does not adequately represent the substantial evidence he provided to the Board. The revised narrative reason for separation states, "Condition, Not a Disability." However, the evidence he submitted clearly shows his medical conditions are disabilities and warrant his medical retirement. Furthermore, the Board's decision failed to respond to the issues he raised. In support of his request, he provides an updated letter from VA, which verifies he is being paid at the 100 percent rate and is "totally and permanently disabled due to (his) service-connected disabilities," effective 14 February 2017.

3. A review of the applicant's service record shows the following:

a. On 9 November 1993, after completing over 9 years of inactive service in the Reserve Component and more than 1 year of prior active duty service, the applicant enlisted into the Regular Army for 6 years. Following the award of military occupational

specialty (MOS) 68F (Aircraft Electrician), orders assigned him to an aviation unit in Germany, and he arrived at his new duty station, on 7 May 1994.

b. On 30 September 1994, the applicant's company commander requested a psychiatric evaluation for the applicant.

(1) The commander reported that, on 14 September 1994, the unit had sent the applicant to Heidelberg for a psychological evaluation; upon his return 6 days later, the applicant displayed a lack of interest in his work and complained of back pain. On 28 September 1994, the applicant disclosed he might hurt himself.

(2) The commander stated the applicant had not been performing well and continually sought excuses to go home; additionally, the applicant was constantly complaining and looking for an easy way out of work. The commander noted the applicant was under stress and attributed it to an investigation being conducted into allegations the applicant had violated the Uniform Code of Military Justice (UCMJ).

(3) Under "Commander's Estimate of Soldier's Potential for Retention in the Service," the commander wrote, "[Applicant] has absolutely no potential for retention in the service. After the completion of numerous interviews with the Soldier and his wife, I have reached the conclusion that he only joined the active Army to pursue a disability claim against the government. This claim is ongoing at the time." Although the applicant was scheduled for an MMRB (MOS/Medical Retention Board), the commander maintained the applicant had no reason to go because the applicant's problems "all stem from his imagination and the fact that he has no desire to perform any work of any nature."

c. On 3 October 1994, Colonel W__B. G__, Psychiatrist, rendered a report of mental status evaluation pertaining to the applicant. COL G__provided the following assessment:

(1) "Diagnosis: Personality Disorder, NOS (not otherwise specified)." "The diagnosis...represents a personality disorder within the meaning of ICD-9 (International Classification of Diseases – Ninth Revision), AR (Army Regulation) 40-501 (Standards of Medical Fitness), and DSM III-R (Diagnostic and Statistical Manual of Mental Disorders, Third Edition – Revised)."

(2) "This Soldier's present maladjustment to military services reflects a life-long pattern of recurrent and immature behavior, as well as an inability to relate effectively to others, and is so deeply ingrained and severe as to significantly impair his capacity to adapt to and function in the military environment."

(3) "Future suicidal threats, gestures, and self-harming behavior are possible. Moreover, a genuine suicide attempt, although far less likely, cannot be ruled out as a future possibility. Any future gesture or attempt would be attributed to this individual's character and behavior disorder rather than to any medical diagnosable psychiatric disease. Aside from lifesaving medical attention, a suicide gesture or attempt would be most appropriately dealt with through administrative rather than medical channels."

d. On 14 October 1994, the applicant signed a "Statement of Understanding," in which he acknowledged that his permanent physical profile changed from level "3" (meaning the presence one or more medical conditions that required assignment restrictions) to level "2" (Soldier had some medical condition(s) that might impose some classification and assignment limitations). The applicant additionally affirmed the Army would be releasing him without sending him to an MMRB.

e. On or about 26 October 1994, the applicant's company commander advised him, in writing, that he was initiating separation action against the applicant, under the provisions of paragraph 5-13 (Separation Because of Personality Disorder), AR 635-200 (Personnel Separations – Enlisted Personnel).

f. On 28 October 1994, the applicant acknowledged that counsel had advised him of the basis for the separation action and informed him of his rights and the effect of waiving those rights. The applicant elected to waive consideration by and a personal appearance with counsel before an administrative separation board. Additionally, the applicant opted not to submit statements in his own behalf.

g. On or about 31 October 1994, the separation authority approved the company commander's separation recommendation and directed the applicant's honorable discharge; on 7 November 1994, orders discharged the applicant accordingly.

h. The applicant's DD Form 214, as amended, shows he completed 11 months and 29 days of his 6-year enlistment contract, with 1 year, 10 months, and 4 days of prior active service and 9 years, 2 months, and 23 days of prior inactive service. His DD Form 214 additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- National Defense Service Medal
- Armed Forces Reserve Medal
- Noncommissioned Officer Professional Development Ribbon w/Numeral "2"
- Army Service Ribbon
- Aircraft Crewman Badge
- Drill Sergeant Identification Badge

(2) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 5-13
- Item 26 (Separation Code) – "JFV" (based on current AR 635-5-1 (Separation Program Designator (SPD) Codes)
- Item 27 (RE Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Condition, Not a Disability"

i. On 15 April 2019, the applicant petitioned the ABCMR, requesting a medical retirement and the revision of his RE code. In support of his request, the applicant supplied VA medical documents, a VA disability rating decision, and letters of support.

(1) The applicant argued, in a prior enlistment, which was subsequently declared defective, the applicant sustained several injuries that the Army later decided to waive.

(a) While undergoing training to become an aircraft electrician, he had several "medical occurrences requiring care." After being assigned to a unit in Germany, he sustained a new injury when he was struck by an electrical shock as he worked on a helicopter; the electrical charge threw him off the aircraft and onto the tarmac. An orthopedic surgeon in Germany opined the Army should never have granted the applicant a medical waiver; the surgeon issued the applicant a P-3 physical profile and ordered a medical review.

(b) During this same period, the applicant was having mental health issues, to include suicidal ideations, attempts, and a withdrawal from social activities. Based on the applicant's attempted suicides, medical authority admitted him into the hospital, but rather than allowing the applicant's continued care, the commander directed the applicant's discharge for personality disorder and issued the applicant a reentry code of RE-3 (waiver required for reentry). The applicant emphasized, "the military refused to recognize the severity of my medical and mental health conditions. I should have been 'medically retired' from military service with (an) RE-1 code."

(2) On 6 October 2022, the Board voted to deny relief. The Board stated:

(a) "After reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the facts and events leading to the applicant's separation and the applicant already receiving an honorable discharge at the time of separation, the Board found that any mitigation found by the medical advisor would have no impact on the separation authority or reentry (RE) code. Therefore, based upon the reasons for separation, the Board concluded there was insufficient evidence to change the separation authority and/or RE code reflected on the applicant's DD Form 214."

(b) "Based upon the potential prejudice that one may receive having a narrative reason for separation of Personality Disorder, however, the Board recommended changing the applicant's narrative reason for separation to reflect 'Condition, Not a Disability.'"

4. The VA and the Army (under the Department of Defense) operate under separate provisions of Federal law (respectively Title 38 (Veterans' Benefits) and Title 10 (Armed Forces). As such, each makes independent determinations, based upon the requirements set forth within their respective parts of the law and their own internal regulations. Decisions made by the VA are not binding on the Army and do not indicate that the Army's determinations were wrong.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration his previous request to amend his DD Form 214 (ending 7 November 1994) to show his regulatory separation authority as a medical retirement and his RE Code as RE-1. 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) On 9 November 1993, after completing over 9 years of inactive service in the Reserve Component and more than 1 year of prior active duty service, the applicant enlisted into the Regular Army for 6 years; 2) On 26 October 1994, the applicant's company commander initiated separation action against the applicant, under the provisions of paragraph 5-13; 3) The applicant was honorably discharged on 07 November 1994, Chapter 5-13- Personality Disorder; 4) On 6 October 2022, the ABCMR denied the applicant's request for a medical retirement and the revision of his RE code. However, the Board did change the applicant's narrative reason for separation to reflect "Condition, Not a Disability."

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

c. There is evidence, on 30 September 1994, the applicant's company commander requested a psychiatric evaluation for the applicant. There is also available evidence the applicant was reporting depressive symptoms and suicidal ideation. The applicant was assessed appropriately by a military behavioral health provider and diagnosed with a Personality Disorder Not Otherwise Specified (NOS). At the time, the applicant was on a permeant profile for physical conditions unrelated to his mental health condition. He was recommended for an administrative separation rather than a medical separation by his assessing behavioral health provider.

d. A review of JLV provided evidence the applicant has engaged in numerous Compensation and Pension (C&P) evaluations at the VA. Initially the applicant was diagnosed with service-connected Generalized Anxiety Disorder. He was also diagnosed with a deferred Personality Disorder. The applicant reported a varied history of trauma both during his active service and after his discharge. His description of his military service to various VA providers and C&P evaluators was inconsistent with his military service record (ex. his wife and children dying prior to his active service in Germany and serving in combat in Iraq). While there was limited evidence of the applicant being diagnosed with PTSD by VA providers, he reported being diagnosed with PTSD while incarcerated, and he was experiencing anxiety and difficulty adjusting to being a registered sex offender. Eventually, the applicant was diagnosed with service-connected PTSD during one of C&P evaluations in 2015.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected Generalized Anxiety Disorder and eventually PTSD by the VA after his honorable discharge from active service. He has also been diagnosed with a Personality Disorder while on active service and by the VA. There is insufficient evidence the applicant consistently attended behavioral health treatment for a mental health condition beyond a Personality Disorder, was found to not meet medical retention standards from a psychiatric perspective beyond a Personality Disorder, or was ever placed on a permanent psychiatric profile. Therefore, from a behavioral health perspective, there is insufficient evidence to warrant a referral to IDES to assess his suitability for a medical retirement, at this time. In addition, there is insufficient evidence to adjust his RE code.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected Generalized Anxiety Disorder and eventually PTSD by the VA after his honorable discharge from active service. He has also been diagnosed with a Personality Disorder while on active service and by the VA. There is insufficient evidence the applicant consistently attended behavioral health treatment for a mental health condition beyond a Personality Disorder, was found to not meet medical retention standards from a psychiatric perspective beyond a Personality Disorder, or was ever placed on a permanent psychiatric profile. Therefore, from a behavioral health perspective, there is insufficient evidence to warrant a referral to IDES to assess his suitability for a medical retirement, at this time. In addition, there is insufficient evidence to adjust his RE code.

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

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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

a. Medical Retirement: Deny. The evidence shows the applicant was separated due to a condition, not a disability. The Board reviewed and agreed with the medical reviewer's determination that the applicant has been diagnosed with service-connected Generalized Anxiety Disorder and eventually PTSD by the VA after his honorable discharge from active service. He has also been diagnosed with a Personality Disorder while on active service and by the VA. However, there is insufficient evidence the applicant consistently attended behavioral health treatment for a mental health condition beyond a Personality Disorder, was found to not meet medical retention standards from a psychiatric perspective beyond a Personality Disorder or was ever placed on a permanent psychiatric profile. Therefore, from a behavioral health perspective, there is insufficient evidence to warrant a referral to the disability system to assess his suitability for a medical retirement, at this time.

b. RE Code: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of paragraph 5-13 of AR 624-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Condition, Not a Disability," the separation code is "JFV", and the reentry code is "RE 3". AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or corresponding codes. In view of the foregoing, the Board determined that the reason for discharge and associated codes, including the RE Code, were both proper and equitable and there is no reason to change them.

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 to amend the decision of the ABCMR set forth in Docket Number AR20190007043, on 6 October 2022

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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 1556 (Ex Parte Communications Prohibited) 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 (ABCMR) applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations. Paragraph 5-13 (Separation Because of Personality Disorder) set forth the policy and prescribed procedures for separating members with a personality disorder.

a. Paragraph 5-13 defined personality disorder as a deeply ingrained maladaptive pattern of behavior of long duration that interfered with the Soldier's ability to perform duty. A physician training in psychiatry and psychiatric diagnosis had to have established the personality disorder diagnosis, as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III).

b. The regulation authorized commanders to proceed with separation proceedings only if the physician's diagnosis concluded that the Soldier's personality disorder was so severe that it significantly impaired the Soldier's ability to function effectively in the military environment. In addition, commanders could not initiate separation action until they had formally counseled the Soldiers as to their deficiencies and given them ample time to improve. The regulation required separation authorities to characterize the Soldier's service as honorable.

3. AR 40-501 (Standards of Medical Fitness), in effect at the time, identified in chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement), the medical conditions that required referral to a medical evaluation board (MEB). The following paragraphs addressed behavioral health conditions:

a. Paragraph 3-32 (Affective Disorders (Mood Disorders)). Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, necessity for limitations of duty or duty in protected environment or resulting in interference with effective military performance.

b. Paragraph 3-33 (Anxiety, Somatoform, or Dissociative Disorder (Neurotic Disorders)). Persistence or recurrence of symptoms sufficient to require extended or

recurrent hospitalization, necessity for limitations of duty or duty in protected environment or resulting in interference with effective military performance.

c. Paragraph 3-34 (Organic Mental Disorders). Persistence of symptoms or associated personality change sufficient to interfere definitively with the performance of duty or social adjustment.

d. Paragraph 3-35 (Personality, Sexual, Factitious Disorders; Disorders of Impulse Control not Elsewhere Classified; Psychoactive Disorders). These conditions could render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty in association with these conditions will be dealt with through appropriate administrative channels.

e. Paragraph 3-36 (Adjustment Disorders). Transient, situational maladjustments due to acute or special stress do not render an individual unfit because of physical disability but may be the basis for administrative separation if recurrent and causing interference with military duty.

4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Physical Disability Evaluation System (PDES), and implemented chapter 61 (Retirement or Separation for Physical Disability), Title 10, U.S. Code. The regulation set forth policies, responsibilities, and procedures that governed the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. Chapter 3 (Policies) stated the mere presence of impairment did not alone justify a finding of unfitness because of physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the requirements of the Soldier's duties, as required by his or her office, rank, grade or rating.

b. Chapter 4 (Procedures). Commanders or medical authority could refer Soldiers into the DES when there was evidence a medical condition/disability was inhibiting a Soldier's ability to perform his/her duties.

(1) Medical authority convened an MEB to document the Soldier's medical status and determine whether the Soldier met medical retention standards, per AR 40-501. Those Soldiers who failed medical retention standards were referred to a PEB for a fitness determination.

(2) PEBs investigated the nature, cause, degree of severity, and probable permanency of the Soldier's disability, evaluated the Soldier's physical condition against the physical requirements of the Soldier's grade/rank and military occupational

specialty, and then submitted findings and recommendations as to the Soldier's disposition.

(3) If the Soldier was entitled to disability benefits, the PEB decided the rating for each compensable disability using the VASRD, as modified by the regulation's Appendix B (Army Application of the VASRD). The percentage ratings were to reflect the severity of the Soldiers' disabling condition(s) at the time of the rating. Concerning the VASRD, the PEB was advised that the first 31 paragraphs of the VASRD did not apply and were replaced by sections I and II in Appendix B.

(4) Final disposition could include the Soldier being returned to duty or separated under the following circumstances:

- Discharge with or without severance pay (depending on whether the disability was incurred in the line of duty) for those cases where the combined disability rating was 20 percent or less
- Permanent Disability Retirement when the combined disability rating was 30 percent or higher

5. Title 38 (Veterans' Benefits), USC, 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.

6. Title 38, Code of Federal Regulations (CFR), Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to Veterans for medical conditions it determines are service-connected conditions; these include conditions detected after discharge.

7. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (RE Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

8. AR 635-5-1, in effect at the time, stated Soldiers separated under the provisions of paragraph 5-13 received the SPD "JFX"; their DD Forms 214 were required to show "Personality Disorder" as the narrative reason for separation. In the latest revision of AR 635-5-1, the SPD has changed to "JFV" and the narrative reason for separation is now "Condition, Not a Disability."

9. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "JFX" had a corresponding RE code of "3."

10. AR 601-210 (Regular Army and Army Reserve Enlistment Program) provided a listing of RE codes; Table 3-6 (Armed Forces RE Codes, RA (Regular Army) RE Codes) showed the following:

- RE-1 – applied to Soldiers who were qualified for enlistment if all other criteria were met
- RE-3 – applied to Soldiers who were not qualified for reentry, but the disqualification could be waived

11. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

12. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

13. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

a. 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 on the basis of 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.

b. 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

//NOTHING FOLLOWS//