

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230009772

APPLICANT REQUESTS:

- referral of his medical records to the Army Disability Evaluation System (DES)
- personal appearance before the Board

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, in effect, he should have been evaluated by a medical board instead of discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions). He contends that his chain of command was trying to hurry up and kick him out.
3. Following service in the Regular Army and in the Army National Guard, the applicant enlisted in the Regular Army on 5 January 2006.
4. The applicant's records contain several counseling forms showing he was counseled on various occasions for acts of misconduct that include failure to obey orders or regulations, failing to be at his appointed place of duty, driving on a suspended license, and being disrespectful toward a commissioned officer.
5. On 27 October 2010, the applicant underwent a command-directed mental status evaluation. The evaluating psychiatrist stated the following:

a. Two staff psychiatrists have thoroughly evaluated the applicant. He has also undergone psychological testing to identify any yet to be appreciated mental illness or condition. Diagnostic interview, extensive record review, and psychological testing indicate the applicant has a chronic adjustment disorder which is not amenable to treatment, transfer, or any rehabilitative efforts. He has been afforded extensive counseling, group classes, individual counseling, and psychotropic medication to alleviate his chronic maladaptive coping behaviors. He has had over 80 visits with allied mental health providers in the past two years. All of these efforts have been fruitless. He has never been diagnosed with a traumatic brain injury (TBI) or post-traumatic stress disorder (PTSD); has never suffered with these disorders and has no evidence that he ever had either of these problems. His problems revolve around problematic romantic/marital relationships and poor motivation for productive service.

b. Dr. ■ evaluated the servicemember in July 2010 and noted that he met medical retention standards, meaning that the problems presented by the servicemember do not require a medical board per Army Regulation (AR) 40-501 (Standards of Medical Fitness). Per paragraph 3-36 (of AR 40-501), "Situational maladjustments due to acute or chronic situational 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. Dr. ■ and I both agree that the servicemember should be recommended for administrative separation. He is psychiatrically cleared for any administrative action deemed appropriate by command, including chapter separation.

6. On 2 December 2010, the applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty.

7. On 26 January 2011, the applicant was informed by his commander that he was initiating action to separate him under the provisions of AR 635-200, paragraph 5-17, for other designated physical or mental condition with an honorable discharge. The commander stated the reason for the proposed separation action was the applicant's diagnosis of chronic adjustment disorder which was not amenable to treatment, transfer, or any rehabilitative efforts. The applicant was also advised of his entitlement to a hearing before an administrative board if he had six or more years of active service and of his rights to consult with legal counsel and to submit statements in his own behalf.

8. On 31 January 2011, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated action to separate him under the provisions of AR 635-200, paragraph 5-17, of his rights available to him, and of the effect of any action taken by him in waiving his rights. He requested consideration of his case by an administrative separation board.

9. On 17 March 2011, the applicant again consulted with legal counsel and waived consideration of his case by an administrative separation board contingent upon him receiving a characterization of service of no less favorable than honorable.

10. On an unspecified date, the separation approval authority approved the recommendation for separation under the provisions of AR 635-200, paragraph 5-17.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 8 April 2011 under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability, with a character of service of honorable. The DD Form 214 also shows he completed 5 years, 3 months, and 4 days of active service this period and that he had 11 months and 17 days of prior active service.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a referral of his medical records to IDES.

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) Following service in the Regular Army and in the Army National Guard, the applicant reenlisted in the Regular Army on 5 January 2006; 2) The applicant was discharged on 08 April 2011 under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability, with a character of service of honorable.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined.

d. The applicant has an extensive history of mental health concerns, interpersonal problems, occupational problems, and behavioral health treatment throughout his military service both while in the serving in the National Guard and in the Regular Army. He had threatened to assault his command while they were stationed in Kuwait and was evacuated in 2010. He was provided various forms of therapy and psychiatric treatment. He continued to have occupational, interpersonal, and marital problems along with reported mental health concerns. He was consistently diagnosed with an adjustment disorder, a personality disorder, occupational problems, and marital problems. He was never found to not meet retention standards from a psychiatric perspective. He was seen for a Command Directed Evaluation on 21 October 2010 and was evaluated by two psychiatrists. The applicant was reported to have a long history of maladaptive

behavior consistent with a personality disorder along with difficulty adjusting to the military. He was properly evaluated and provided psychological testing. The applicant was found to not have evidence of a major psychiatric illness and met retention standards from a psychiatric perspective. He was recommended for a 5-17 administrative separation for an adjustment disorder, and he was cleared for command action from a psychiatric perspective.

e. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD. There was also evidence he has also been diagnosed and treated for borderline personality disorder, depression, and marital problems.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence available to support a referral to IDES at this time. The applicant was evaluated by licensed behavioral health providers while on active service, and he was repeatedly found to meet medical retention standards from a psychiatric perspective. He was provided sufficient behavioral health support, and he was never recommended for a MEB. However, he was recommended for an administrative separation due to his inability to adapt to the military and long-standing maladaptive pattern of behavior.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge status? No, there is insufficient evidence available to support a referral to IDES at this time. The applicant was evaluated by licensed behavioral health providers while on active service, and he was repeatedly found to meet medical retention standards from a psychiatric perspective. He was provided sufficient behavioral health support, and he was never recommended for a MEB. However, he was recommended for an administrative separation due to his inability to adapt to the military and long-standing maladaptive pattern of behavior.

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

(3) Does the condition 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. Upon review of the applicant's petition, available military records and

medical review, the Board concurred with the advising official finding insufficient evidence available to support a referral to IDES. The opine noted the applicant was evaluated by licensed behavioral health providers while on active service, and he was repeatedly found to meet medical retention standards from a psychiatric perspective.

2. The Board noted the applicant was provided sufficient behavioral health support, and he was never recommended for a MEB. However, he was recommended for an administrative separation due to his inability to adapt to the military and long-standing maladaptive pattern of behavior. The Board found referral of his medical records to the Army Disability Evaluation System (DES) is without merit and 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:

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.

5/14/2024

X

CHAIRPERSON

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 635-200 sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time of the applicant's separation states in paragraph 5-17:

a. Commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per AR 635-40 (Disability Evaluation for Retention, Retirement or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to chronic air or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

b. Soldiers with 24 months or more of active duty service may be separated under this paragraph based on a diagnosis of personality disorder. Medical review of the

personality disorder diagnosis will consider whether PTSD, TBI, and/or other comorbid mental illness may be significant contributing factors to the diagnosis. If PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph but will be evaluated under the physical disability system in accordance with AR 635-40.

c. When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with AR 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

d. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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 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.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and 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. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of 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 member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

c. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

6. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//