

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20230009923

APPLICANT REQUESTS: in effect,

- Upgrade of his uncharacterized discharge to honorable
- Medical retirement

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision and Letter from the VA

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, he is considered 100 percent service connected, total and permanently disabled. His condition was a disability caused by head trauma. He was discharged without medical retirement.
3. The applicant provides a VA rating decision, 23 February 2023, which shows he received 100 percent service connected disability for generalized anxiety disorder, schizophrenia, and attention deficit and hyperactivity disorder (ADHD). Additionally, he provides another letter from the VA, 24 February 2023, which shows the monthly entitlement amount.
4. The applicant's service records contain the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 17 November 2006.
 - b. DA Forms 4856 (Developmental Counseling Form) shows he was counseled on:

(1) 9 January 2007, regarding his documented recommendation for discharge under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) Chapter 5-17 for mental disorder. He agreed with the counseling and signed the form.

(2) 16 January 2007, regarding entry level separation for mental disorder. He agreed with the counseling and signed the form.

c. DA Form 3822 (Report of Mental Status Evaluation) 5 January 2007, shows he has the mental capacity to understand and participate in the proceedings and was mentally responsible. He was diagnosed with adjustment disorder with mixed anxiety and depressed mood. There is no psychiatric disorder which warrants disposition through medical channels. It was recommended he be separated from the military in accordance with Chapter 5-17, Army Regulation 635-200. His psychiatric condition does not amount to disability, but will significantly interfere with his assignment to or performance of duty. He should not have access to weapons or ammunition. It is unlikely that any efforts to rehabilitate or develop him into a satisfactory member of the military will be successful. His condition seriously impairs his ability to function in the Army and future incapacity due to inability to adjust is expected.

d. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), 8 January 2007 shows he accepted nonjudicial punishment for assaulting another Soldier on or about 3 December 2006. His punishment included forfeiture of \$333 per month for one month and restriction and extra duty for 14 days. He did not appeal his punishment.

e. DD Form 2808 (Report of Medical Examination), DD Form 2807-1 (Report of Medical History), 10 January 2007 and medical documents are available for the Board's review. These documents will be reviewed by the Army Review Boards Agency (ARBA) medical section who will provide a medical review.

f. DA Forms 268 (Report to Suspend Favorable Personnel Actions (Flag)), 11 January 2007 and 2 February 2007 show he was flagged for adverse action and elimination.

g. The applicant was notified by his immediate commander, 6 February 2007, of his initiation of action to separate him with an entry level uncharacterized discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to his diagnosis of adjustment disorder with mixed anxiety and depressed mood. He was advised of his right to consult with counsel and submit written statements in his own behalf.

h. On 6 February 2007, the applicant had been advised by consulting counsel on the basis for the contemplated action to separate him for Chapter 5-17, other medical condition under Army Regulation 635-200 and its effects, of the rights available to him,

and the effect of any action taken by him in waiving his rights. Statements in his own behalf were not submitted.

i. The applicant's chain of command recommended his entry-level separation with an uncharacterized characterization of discharge. On 20 February 2007, the appropriate approval authority directed the applicant's discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions with an entry level uncharacterized characterization of discharge.

j. On 28 February 2007, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged for condition, not a disability. His character of service was uncharacterized, his separation code was JFV, and his reentry code was 3. He was not awarded or authorized any awards. He completed 3 months and 14 days of net active service. He did not receive a military occupational specialty.

k. His records were void of documentation showing he had service-connected head trauma.

l. On 11 January 2017, the Army Discharge Review Board (ADRB), made a decision to the applicant's request for an upgrade in his discharge to honorable and to change the reason for separation in ADRB docket number AR20150016052. The ADRB states, after careful review of his application, military records, and all other available evidence, they determined he was properly and equitably discharged. Accordingly, his request for a discharge character and/or reason for his discharge was denied.

m. On 15 August 2023, the ADRB, made a decision to the applicant's second request for an upgrade in his discharge to honorable and to change the reason for separation in ADRB docket number AR20210001696. The ADRB states, after careful review of his application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged. Accordingly, his request for a discharge character and/or narrative reason of his discharge was denied.

5. A service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or performance of duty not amounting to disability under Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder).

6. Based on the applicant's generalized anxiety disorder, schizophrenia, and ADHD diagnosis, the ARBA Medical Section provided a medical review for the Board's consideration.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change of his uncharacterized discharge to honorable and a medical retirement. 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) The applicant initially enlisted in the Regular Army on 17 November 2006; 2) On 9 January 2007, the applicant was recommended for discharge under Army Regulation 635-200 Chapter 5-17 for a mental disorder; 3) The applicant was discharged on 28 February 2007, Chapter 5-17-due to other designated physical or mental conditions with an entry level uncharacterized characterization of discharge. He did not receive a military occupational specialty; 4) On 11 January 2017 and 15 August 2023, the ADRB reviewed and denied the applicant's request to change his discharge to honorable. 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 medical documentation provided by the applicant were also examined.

b. The applicant is requesting a change of his uncharacterized discharge to honorable and a medical retirement. There is evidence the applicant was initially seen in behavioral health services on 5 December 2006. The applicant was in a physical altercation with a fellow soldier prior to exodus. The applicant reported difficulty adjusting to the military and was experiencing anxiety, depression, and thoughts of going AWOL. He was diagnosed with an Adjustment Disorder with Emotional Features and recommended for continued behavioral health treatment. On 08 January 2007, the applicant was seen by behavioral health to assess his suitability for continued military service. The applicant continued to report problems with depression and anxiety since joining the military and difficulty adjusting. He wished to be discharged, and he denied any suicidal ideation or demonstrated any signs of psychosis. He was diagnosed with an Adjustment Disorder with Mixed Anxiety and Depressed Mood, and he was recommended for an administrative separation for a condition not a disability and continued treatment till discharge. The applicant continued in individual and group treatment till his discharge. There is insufficient evidence the applicant was diagnosed with a psychiatric disease which warranted disposition through medical channels, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permeant profile while on active service.

c. A review of JLV provided evidence the applicant began to engage with the VA in 2015 for treatment for mental health conditions. He has eventually been diagnosed with

service-connected psychosis-disorganized schizophrenia (100%SC). Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed after his discharge with service-connected psychosis-disorganized schizophrenia. During his active service, he was appropriately identified as having difficulty adjusting to the military and experiencing depressive and anxiety symptoms as a result. Therefore, he was administratively separated prior to completing his initial training. However, there is insufficient evidence the applicant was diagnosed with a psychiatric disease which warranted disposition through medical channels, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

d. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed after his discharge with service-connected psychosis-disorganized schizophrenia. During his active service, he was appropriately identified as having difficulty adjusting to the military and experiencing depressive and anxiety symptoms as a result. Therefore, he was administratively separated prior to completing his initial training. However, there is insufficient evidence the applicant was diagnosed with a psychiatric disease which warranted disposition through medical channels, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

(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. The evidence of record shows the applicant continued to report problems with depression and anxiety since joining the military and difficulty adjusting and indicated that he wished to be discharged. As a result, his command discharged him for condition, not a disability. He received an uncharacterized discharge after completing 3 months

and 14 days of active service. He did not complete initial entry training and was not awarded or authorized any awards. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board found no error or injustice in his separation processing.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding that based on available information/evidence, the applicant was diagnosed after his discharge with service-connected psychosis-disorganized schizophrenia. During his active service, he was appropriately identified as having difficulty adjusting to the military and experiencing depressive and anxiety symptoms as a result. Therefore, he was administratively separated. There is insufficient evidence the applicant was diagnosed with a psychiatric disease which warranted disposition through medical channels or was ever placed on a psychiatric permeant profile while on active service. Therefore, the Board determined there is insufficient evidence the applicant's case warrants a referral to the disability system from a behavioral health perspective, at this time.

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.

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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 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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. Entry level separation; a separation will be described as an entry level separation if processing is initiated while a member is in entry level status. The character of service will be uncharacterized.

c. A service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or performance of duty. not amounting to disability under Army Regulation 635-40 and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) Such conditions may include, but are not limited to, the following:

- chronic airsickness
- chronic 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

d. When a commander determines 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 a mental status evaluation in accordance with Army Regulation 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

e. 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. A Soldier being separated under this section will be awarded a character of service of honorable, under honorable conditions, or uncharacterized if in an entry-level separation. An under honorable conditions characterization of service which is terminated under this paragraph is normally inappropriate.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFV is used for discharge for condition, not a disability

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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.

6. 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

7. 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.

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.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states:

a. 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.

b. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

9. Title 38, USC, section 1110 (General - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. Title 38, USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

11. Title 10, U.S. Code, section 1556 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//