

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010203

APPLICANT REQUESTS: in effect –

- he be discharged or retired due to a disability
- the characterization of his service be corrected to honorable
- a video/telephone appearance before the Board

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

- DD Form 149, Application for Correction of Military Record, 29 June 2023
- DD Form 149, 25 October 2023
- DD Form 214, Certificate of Release or Discharge from Active Duty, 13 December 2001
- Department of Veterans Affairs (VA) Rating Decision, 26 June 2023
- VA Summary of Benefits, 25 October 2023

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 indicates his request is related to a mental health condition. He states, in effect, that the VA has awarded him disability compensation for his service-connected conditions, and he has a combined disability rating of 70%. He tried to serve his country after the 9/11 attacks but was unable to do so because of a service-related disability. He would like to be eligible for VA education and home loan benefits.
3. The complete facts and circumstances of the applicant's discharge are not available for review; however, the record shows that the applicant enlisted in the U.S. Army Reserve (USAR) on 3 October 2001, and he entered active duty on 13 November 2001.

4. He was discharged from the USAR on 13 December 2001 in accordance with Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, chapter 5-17, physical condition, not a disability. His DD Form 214 shows he completed 1 month, and 10 days of net active service and his service was uncharacterized.

5. The applicant provides his Rating Decision, 26 June 2023, which shows the VA determined that his condition of bipolar disorder II, most recent episode depressed to be service-connected and granted this condition a disability rating of 70%, effective 27 February 2023.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting his characterization of service be updated from uncharacterized to honorable and to be retired or discharged due to disability. The applicant contends that he was discharged from the military due to a Service-Connected (SC) disability.

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:

- The applicant enlisted in the U.S. Army Reserves (USAR) on 03 October 2001 and entered Active Duty on 13 November 2001.
- The applicant was discharged from the USAR on 13 December 2001 under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, chapter 5-17, physical condition, not a disability.
- The complete facts and circumstances of the applicant's discharge are not available for review.

c. Review of Available Records Including Medical

All supporting documents reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration. The VA electronic medical record (JLV), Veterans Benefits Management System (VBMS), MEDCHART, ROP and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. VA electronic records were available via JLV. Service treatment records (STR), VA Disability Exam Questionnaires (DBQ) and civilian BH records that were considered as part of his VA disability exam(s) were available via the VBMS. No other in-service military treatment records were available for review.

- VA treatment records were available for review from 25 January 2023 through 09 May 2024. The applicant is 70% SC for Bipolar II Disorder through the VA. Civilian BH records that were considered as part of his VA Disability Benefits Questionnaire (DBQ) were available for review from 13 July 2016 through 28

September 2020. The records document that the applicant was treated for Bipolar II Disorder during that time.

- Per review of JLV, the applicant self-reported to his VA provider(s) that his mood symptoms started while in bootcamp and that he was diagnosed with Bipolar Disorder while in-service. It was documented in the VA record that he has been treated for Bipolar Disorder since 2014 in the civilian sector prior to establishing care with the VA in 2023. Per JLV the applicant reported a history of two overdoses (OD), one in 2002 and one in 2008; however, the OD in 2002 is likely in error as it is indicated it occurred while the applicant was in bootcamp. The applicant was in bootcamp in 2001. At both instances it was documented that the applicant was found by someone else and transported for medical care.
- Three Disability Benefits Questionnaires (DBQ) conducted through the VA were available for review dated 26 April 2023, 01 June 2023, and 02 April 2024. The DBQs indicate the applicant meets criteria for Bipolar II disorder. It was documented in the DBQ that the applicant stated he attempted OD during basic training due to stress after overhearing a drill sergeant indicate they may not get to complete AIT prior to deploying. The DBQ documented that the applicant further stated he was subsequently prescribed Wellbutrin and was medically discharged. The DBQ also noted that he reported he was prescribed Wellbutrin by a psychiatrist at age 16. The VA disability outcome letter provided by the applicant cites in-service treatment records from November 13, 2001 to December 13, 2001 as part of the supporting evidence for his SC Bipolar Disorder. However, the STRs available for review did not document the applicant as being diagnosed with bipolar disorder.
- The applicant's military STR that was available via VBMS and considered during his VA disability exams was reviewed. The applicant presented for care at the Emergency Room (ER) at General Leonardwood Army Community Hospital on 30 November 2001 following ingestion of 20 Motrin which was documented as "suicidal gestures." Suicidal gestures is no longer consistent with the current nomenclature to describe suicidal behavior and would be consistent with suicide attempt or suicidal behavior based on the information available in the record. At the time of interview, the applicant denied any previous history of suicidal ideation or behaviors while he was on his medications; however, it was also noted that he drank gas at age 14 (intention not specified). During the assessment, the applicant self-reported a previous medical history of depression and was previously prescribed Celexa and Risperdal at age 16 by a psychiatrist which he discontinued on 13 November 2001. At the time of the assessment, the applicant was requesting to restart his medications. He was diagnosed with Anxiety State at the time of discharge from the ER. There were no symptoms or concerns documented consistent with Bipolar disorder at the time of this examination.

- Per a memorandum of medical examination option, the reason for separation was listed as ELS (entry level separation). The applicant waived his right to a medical examination at the time of discharge.
- On DD Form 2807-1, the applicant's pre-enlistment physical, it indicated that the applicant denied any previous history of mental health treatment and medications.

d. The applicant is requesting his characterization of service be updated from uncharacterized to honorable and to be retired or discharged due to disability. The applicant contends that he was administratively discharged from the military due to a Service-Connected (SC) disability. The military STRs available for review did not diagnose the applicant with Bipolar disorder and did not document any symptoms consistent with Bipolar disorder. Furthermore, the military STR reviewed indicates per the applicant's report that he was being treated for BH conditions prior to service and discontinued his medications upon the start of basic training. Of note, one of the FDA-approved uses of Risperdal is for the treatment of Bipolar Disorder, to which it is documented the applicant reported he was prescribed for 3 years prior to enlistment and discontinued on 13 November 2001. There is insufficient information available as to the circumstances that lead to his discharge. Separation under the provisions of AR 635-200, Chapter 5-17 may be due to several physical or mental health conditions and as the circumstances that led to discharge were not specified there is insufficient evidence to establish that his discharge was related to his SC BH condition. Moreover, Bipolar Disorder is not one of the diagnoses covered under Chapter 5-17. Per AR 40-501 Standards of Medical Fitness, Bipolar Disorder necessitates a referral to the Medical Examination Board (MEB). As such, had the applicant been diagnosed with Bipolar Disorder while in service, he would have been referred for an MEB.

e. Based on the available information it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a BH condition or experience that would otherwise require disposition through medical channels during his time in service that resulted in discharge from the military. However, he contends that he was discharged due to Bipolar disorder, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant is 70% SC for Bipolar Disorder through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is SC for Bipolar Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There was no military documentation available for review outlining the circumstances that lead to the applicant's discharge. Although the applicant's DD 214 specifies that the applicant was discharged under the provisions of AR 635-200, chapter 5-17, there are several physical and mental health conditions that fall under the purview of this administrative action and is therefore non-specific.

g. The candidate has a well-established diagnosis of Bipolar II disorder and is currently 70% SC through the VA. However, the military STRs available for review do not indicate the applicant was diagnosed with Bipolar Disorder or exhibited symptoms consistent with Bipolar Disorder at the time of discharge. There is no indication that the applicant met the Medical Retention Determination Point (MRDP) for a BH condition requiring disposition through medical channels at the time of discharge. Of note, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Furthermore, it was documented that the applicant self-reported a history of treatment for depression prior to military service and discontinued the medications the day he began bootcamp, one of which is FDA-approved for the treatment of Bipolar Disorder. As such, there is some evidence to suggest that the applicant's VA SC BH condition may have existed prior to service (EPTS) without sufficient evidence to suggest it was exacerbated by service or related to the reason for discharge.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition and available military records, the Board concurred with the advising official finding insufficient evidence that the applicant had a BH condition or experience that would otherwise require disposition through medical channels during his time in service that resulted in discharge from the military.

2. The Board noted Soldiers in the USAR and ARNG are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. The applicant completed 1 month, and 10 days of net active service, was discharged from the USAR in accordance with regulatory guidance under, chapter 5-17, physical condition, not a disability. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. The Board agreed the applicant’s DD Form 214 properly show the appropriate characterization of service as uncharacterized and determine corrections to show retired with disability is unwarranted. Therefore, the Board denied relief.

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

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200, Personnel Separations-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 and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. The service of Soldiers in entry-level status is normally described as uncharacterized. For Regular Army Soldiers, entry-level status is the first 180 days of

continuous AD or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

d. Chapter 5 prescribed policy for separation for convenience of the Government. (1) Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status. (2) No Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraph 5-17.

e. Paragraph 5-17 states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability 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 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

f. 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 per AR 40-501, Medical Services-Standards of Medical Fitness. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

g. 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. Title 38, U.S. Code, 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.

4. Title 38, U.S. Code, 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.

5. 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.

6. AR 15-185, Army Board for Correction of Military Records, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. Applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//