

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230011557

APPLICANT REQUESTS:

- correction of his records to show he was discharged due to a service-incurred medical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision

FACTS:

1. The applicant states:

a. He was involuntarily separated from the Army in May 2022 under honorable conditions. His DD Form 214 shows in block 28 (Narrative Reason for Separation) "condition, not a disability." He disagrees with this statement because there is vast evidence that his panic disorder condition, diagnosed in the Army, has negatively affected his daily life. He submitted multiple pieces of evidence that granted him total disability based on individual unemployability status due to the severity of his disability. He believes that the statement in block 28 is a mistake due to the short amount of time it took to separate him from the military, and it should indeed be stated as a disability.

b. He served his country for almost four years with honor and dignity up to the point he could not any longer, due to his condition that worsened over time. In the end, he was thrown out in less than three months, like damaged goods, with no time to prepare for anything. He submitted a post-traumatic stress disorder (PTSD) claim with written evidence of diagnosed PTSD. He also firmly believes he should have received a medical discharge. He strongly believes that all the evidence submitted over the last year will prove his claim.

2. The applicant enlisted in the Regular Army on 3 July 2018 for a period of four years. He reenlisted on 24 September 2021 for a period of four years and assignment to Hawaii.

3. On 3 March 2022, the applicant underwent a mental status evaluation. The Report of Mental Status Evaluation shows the reason for the evaluation was separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-14 (Other designated physical or mental conditions). The report further shows:

- a. The applicant was diagnosed with adjustment disorder with anxiety.
- b. The evaluating behavioral health (BH) professional indicated the applicant met medical retention standards.
- c. The applicant's condition is of sufficient severity to interfere with his ability to function in the military. He was not amenable to BH treatment, and he was unlikely to respond to command efforts at rehabilitation.

4. The Report of Mental Status Evaluation contains the following statement:

[The applicant] is recommended for administrative separation IAW [in accordance with] AR 635-200, Chapter 5-14. The diagnosis and problems presented by this SM [service member] are deemed to be appropriate for administrative separation according to criteria set forth in AR 635-200, Chapter 5-14 for physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. SM's commander and all treating providers (outpatient and inpatient) have agreed that administrative separation from military service is the most appropriate disposition for this Soldier.

5. The applicant's record shows he was counseled as follows:

- a. On 7 April 2022, by his immediate commander based on previous incidents the applicant had in the unit since early January. The commander stated the following:

Previous conversations with [Sergeant First Class ■] [Captain ■] and [Command Sergeant Major ■] I am considering recommending you for separation under [paragraph] 5-14 based on a combined assessment. [Dr. ■] has completed a Mental Evaluation which has stated that you have been diagnosed with adjustment disorder with anxiety. I am giving you 21 days to show improvement, or I will initiate separation from the military. My main concern is your mental and physical health during your duration in the military.

b. On 7 April 2022, by his immediate commander and was ordered to pause his permanent change of station process due to possible separation under the provisions of AR 635-200, paragraph 5-14.

c. On 21 April 2022, by his superior noncommissioned officer for failure to report to 100% recall formation.

d. On 22 April 2022, by his immediate commander. The commander stated the following:

[Applicant], effective immediately your assessment is terminated. You have not shown any improvement in your performance. [Dr. ■■■ has completed a Mental Evaluation which has stated that you have been diagnosed with adjustment disorder with anxiety. I am now recommending separation from the military under [AR 635-200, paragraph 5-14]. I feel this is best for yourself and the military.

6. On an unspecified dated, the applicant was informed by his commander that he was initiating action to separated him under the provisions of AR 635-200, paragraph 5-14, for other designated physical or mental condition with an honorable discharge. The commander stated the reasons for the proposed separation action were the applicant's diagnosis of adjustment disorder with anxiety and that after receiving BH counseling and receiving notice that a failure to overcome his disorder could result in his separation, he continued to exhibit an inability to cope with the stressors associated with his disorder. The applicant was also advised of his right to consult with legal counsel and to submit statements in his own behalf.

7. On 26 April 2022, the applicant acknowledged receipt of the notice for the contemplated separation. He also acknowledged he was advised of the rights available to him.

8. On 2 May 2022, the applicant provided an election of rights memorandum and indicated he declined the opportunity to consult with appointed counsel. He provided a 3-page statement in his own behalf in which he expressed his disagreement with the proposed separation action based on his selfless and honorable service. He also expressed his desire to continue his military service. *The complete 3-page statement was provided to the Board for their review and consideration.*

9. On 10 May 2022, the separation approval authority approved the recommendation for separation under the provisions of AR 635-200, paragraph 5-14 with an honorable characterization of service.

10. The applicant's DD Form 214 shows he was honorably discharged on 19 May 2022 by reason of condition, not a disability, after competing 3 years, 10 months, and 17 days of active service.

11. The applicant provided his VA rating decision showing he was granted service-connected disability compensation based on various BH conditions with a with a 70% disability rating. The rating decision also show he was granted entitlement to individual unemployability.

12. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

13. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting correction of his records to show he was discharged due to a service-incurred medical 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 into the Regular Army on 3 July 2018 and reenlisted on 24 September 2021.
- The applicant underwent a Mental Status Evaluation on 3 March 2022, resulting in a diagnosis of Adjustment Disorder with Anxiety. He received counseling from his commander on 7 April 2022 related to “previous incidents that you have had in the unit since early January” and informing him of the potential for administrative separation. He was given 21 days to demonstrate improvement, and another counseling dated 21 April 2022 shows that the applicant failed to report to a recall formation.
- The applicant was discharged on 19 May 2022 under the provisions of AR 635-200, paragraph 5-14 with an honorable characterization of service. He was credited with competing 3 years, 10 months, and 17 days of active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant asserts he was involuntarily separated with the narrative reason “condition, not a disability,” and he contends that he was experiencing a disabling condition, Panic Disorder. A VA Rating Decision letter dated 28 February 2023 was reviewed and stated that the applicant is entitled to unemployability and considered to have permanent and total disability status. A separate VA disability document dated 1 March 2023 shows that the applicant has a service-connected disability rating of 70%

for Panic Disorder. A Report of Mental Status Evaluation dated 3 March 2022 indicated that the applicant met medical retention standards, had no deployment history, and was diagnosed with Adjustment Disorder with Anxiety, which was of severity sufficient to interfere with his ability to function in the military. Additionally, the document stated that “all treating providers (outpatient and inpatient) have agreed that administrative separation from military service is the most appropriate disposition.” There was insufficient evidence that the applicant was diagnosed with Panic Disorder while on active service.

d. The VA’s Joint Legacy Viewer (JLV) was also reviewed and the applicant initially engaged with DoD behavioral health (BH) via a command directed evaluation on 30 June 2020. Documentation discusses sleep difficulty, irritability, anxiety, and feelings of guilt related to the death of a fellow soldier, and he was diagnosed with Adjustment Disorder with mixed disturbance of emotions and conduct. He was next seen on 14 August 2020, presenting voluntarily for a phone visit, and he discussed anxiety and stress due to a recent Article 15 and “feeling unfairly targeted by those in his unit.” He was also started on a medication to help with sleep. Documentation also shows that he was contacted by phone by a separate BH provider for a command directed evaluation. The applicant continued to express difficulty with conflict at work and the provider noted problems with attention and concentration, which generated discussion of possible ADHD diagnosis. The applicant was contacted by phone four days later and reported feeling better because he was being transferred to another company. On 24 August 2020 a neuropsychological evaluation, including several objective measures, was conducted as well as a clinical interview, and a diagnosis of Attention Deficit/Hyperactivity Disorder was rendered. This report also discusses evidence of a developmental learning problem and likelihood of a sensory integration disorder as well as depression. He was next seen by BH for a physical for Security Forces accession screening on 10 February 2021. He was disqualified because of his ADHD history, and the applicant became angered by this after attempting to deny history of the diagnosis. The applicant was seen by a psychiatrist in August 2021 for ADHD and was started on a stimulant medication, and at follow up in September, a medication for sleep and anxiety (antidepressant) were added. His diagnoses were ADHD, Insomnia, and Adjustment Disorder. He was seen for dosage adjustments between September and 5 November 2021 when he was taken to the ER by his command due to having an “anxiety attack” because he was not allowed to leave the field early to attend his BH appointment. Documentation by his primary therapist on 8 November 2021 and 4 January 2022 indicate relational problems with his unit and with peers, and on both occasions the provider contacted command to recommend administrative separation. The applicant had three follow up visits with complaints of medication side effects and need for dose changes before the Mental Status Evaluation conducted on 3 March 2022 by his primary therapist, who recommended administrative separation. He had two follow up visits with his psychiatrist for refills of stimulant medication prior to his discharge.

e. A compensation and pension examination was conducted on 18 August 2022, and documentation indicates that the applicant reported treatment for panic disorder while in service. The documentation is somewhat vague in explicitly discussing the symptom presentation but concludes with a diagnosis of Panic Disorder.

f. The applicant engaged the VA for mental health treatment in December 2023. He reported symptoms of anxiety, depression, and panic attacks. Documentation indicates he had a hospitalization (civilian) for suicidal ideation in September 2022, and at that time the stimulant medications were discontinued. He was diagnosed with Major Depressive Disorder, Generalized Anxiety Disorder, and Panic Disorder. He was referred for a medication evaluation and was started on an antidepressant. His most recent visit with VA was on 30 April 2024, and he reported some improvement in symptoms and opted to continue only with medication management.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that while the applicant is service connected for Panic Disorder, the in-service documentation does not support that he had Panic Disorder or any other medically disabling condition. The applicant was discharged under AR 635-200, Chapter 5-14 for Adjustment Disorder, which was one of his diagnoses during his time in service. Documentation of symptom presentation and behaviors exhibited by the applicant at the time supports this diagnosis. His other primary diagnosis, ADHD, is also a condition that falls under AR 635-200, Chapter 5-14. Based on the neuropsychological evaluation, there is sufficient evidence to support that he meets criteria for this diagnosis, and his emotional and behavioral problems were of the severity to interfere with his performance of duty and warrant administrative separation under this diagnosis. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Additionally, there was no history of any behavioral health profiles put in place by his psychiatrist, psychologist, or any other medical provider. There is insufficient evidence to support that the applicant had a medically disabling condition while on active service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the ARBA Behavioral Health advisor that the applicant did not have any conditions that would have been a basis for referring him to the Disability Evaluation System prior to his discharge. Based on a preponderance of the evidence, the Board determined his discharge by reason of "condition, not a disability" was not in error or unjust.

3. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

██████ ██████ ██████ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

12/9/2024

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.

ADMINISTRATIVE NOTE(S):

a. delete in block 18 of the applicant's DD Form 214 the entry "MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE."

b. add to block 18 of the DD Form 214 the entries:

(1) "IMMEDIATE REENLISTMENT THIS PERIOD 20180703-20210923."

(2) "MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE."

REFERENCES:

1. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-14 states that excluding conditions appropriate for separation under paragraph 5-10 (Separation of personnel who did not meet procurement medical fitness standards), commanders may initiate separation under this paragraph based on other physical or mental conditions not amounting to disability that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- airsickness, motion, and/or travel sickness
- phobic fear of air, sea, and submarine modes of transportation
- attention-deficit/hyperactivity disorder
- sleepwalking
- enuresis
- adjustment disorder (except chronic adjustment disorder)

b. Soldiers recommended for separation under this paragraph based upon a diagnosis of adjustment disorder must meet the following criteria: Soldier experiences one or more incidents of acute adjustment disorder and does not respond to behavioral health treatment (or refuses treatment) when one or more treatment modalities have been offered and/or attempted. The condition must continue to interfere with assignment to or performance of duty even with treatment.

c. Duration of adjustment disorder episode must be less than 6 months when separation procedures are initiated. The provider must clearly document in the medical record how the condition interferes with assignment to or performance of duty. When an episode of adjustment disorder has persisted for longer than 6 months and continues to interfere with assignment to or performance of duty, the Soldier must be referred to the Integrated Disability Evaluation System (IDES).

d. Personality disorder. A personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from cultural expectations, is pervasive and inflexible, is stable over time and leads to clinically significant distress or impairment in functioning. The onset of personality disorder typically occurs in adolescence or early adulthood and may manifest as an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks (though both may be present in some cases). Observed behavior of specific conditions should be documented in appropriate counseling or personnel records, and should establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Soldier was counseled and afforded an opportunity to overcome the mental condition.

e. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation. Mental status evaluations are only required for separation on the basis of mental disorders (not physical conditions), including personality disorders, not amounting to a disability. The evaluation will assess whether PTSD, traumatic brain injury (TBI), depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation.

f. Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral health conditions are significant contributing factors to the basis for separation but will instead be evaluated under IDES in accordance with Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

g. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally, in writing, concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. The Soldier will also be counseled, in writing, that the condition does not qualify as a disability.

2. AR 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.

3. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

4. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his/her duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. AR 635-8 (Separation Processing and Documents) explains separation document preparation, distribution, and correction. It states that in block 18 of the DD Form 214:

a. Mandatory entry: "SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This information assists the State in determining eligibility for unemployment compensation entitlement. To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT." Routinely, a Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract.

b. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify inclusive dates for each period of reenlistment.

6. Army Regulation 15-185 (Army Board for Correction of Military Records (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.

7. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//