

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230012258

APPLICANT REQUESTS:

- change his uncharacterized discharge to a medical discharge
- amend his Narrative Reason for Separation from entry level performance and conduct to a more favorable reason
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two Patient Care Summaries, dated 3 February 2022 and 13 January 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 states he suffered from post-traumatic stress disorder (PTSD), bipolar disorder, depression, and anxiety. During his enlistment, his symptoms piqued and worsened to the point he informed his command and doctors he was having suicidal thoughts. In 2000, he was diagnosed with and continues to receive treatment to this day for these same diagnoses. The applicant annotates PTSD and other mental health as issues/conditions related to his request.
3. The applicant provides two patient care summaries:
 - 3 February 2022; which shows the applicant's annual exam summary
 - 13 January 2023, which shows a bipolar disorder was discussed at his appointment
4. The applicant's service record shows:

a. DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) shows he enlisted in the Regular Army on 10 January 1997.

b. b. He entered active duty for training on 10 January 1997. He was assigned to Fort McClellan, AL for training.

c. DA Form 4856 (Developmental Counseling Form) shows a consolidated record of the applicant's counseling statements as follows:

- 6 February 1997; for concerns on personal problems in which he stated he has always been a quitter
- 8 February 1997; for failing to meet height and weight requirements
- 15 February 1997; for his inability to complete a physical training (PT) run
- 21 February 1997; for being pulled from training

d. DA Form 3822-R (Report of Mental Status Evaluation), dated 24 February 1997, shows his command requested he undergo a mental status evaluation. He was experiencing mild adjustment problems secondary to entering the military. He complained of depressed mood and sleep disturbance. Although his symptoms did not appear to be acute, he clearly voiced suicidal thoughts, including a plan to leap from the bay window if not discharged. He was not expected to make an adequate adjustment to the military. He was diagnosed with adjustment disorder with depression. The provider recommend that the command initiate an administrative separation under the applicable provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), and that this action is processed to completion in an expeditious manner. Furthermore, the provider recommended the unit remove the Soldier from training and observe him closely at the unit level until separation from active duty, with no weapons training. This document shows the following in remarks:

- normal behavior
- fully alert
- fully oriented
- mood or affect was depressed
- thinking process was clear
- thought content was normal
- memory was good
- mental capacity to understand and participate in the proceedings
- mentally responsible

e. On 24 February 1997, his immediate commander initiated action to separate the applicant prior to his expiration term of service (ETS), under the provisions of Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct for character

and behavior characteristics which are not compatible with satisfactory continued service, specifically the suicidal comments. The applicant acknowledged the separation notice and after consulting with legal counsel, he further acknowledged:

- he was advised he could submit any statements he desired in his own behalf, and he elected not to do so
- he waived consulting with counsel and representation
- he will be ineligible to apply for enlistment in the United States Army for a period of two years after discharge
- that he may up until the date the separation authority orders, directs, or approves his separation, withdraw the waiver of any of the above rights

f. On 24 February 1997, his commander recommended that the applicant be separated from the Army under the provisions of Army Regulation 635-200, Chapter 11.

g. The separation authority directed the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 11. He further directed that the applicant be issued an "uncharacterized" characterization of service.

h. His DD Form 214 shows he was discharged on 6 March 1997 in accordance with Army Regulation 635-200, Chapter 11, Entry Level Performance and Conduct with an "uncharacterized" discharge. He was assigned Separation Code JGA and Reentry Code 3. He completed 1 month and 27 days of active service. He was not awarded a military occupational specialty and he did not complete first term of service.

5. On 2 April 2020, in Docket Number AR20190011684, the Board denied the applicant's request for a re-characterization of service of his uncharacterized character of service be changed to under honorable conditions (General). The Board noted that the applicant was in an entry level status and was separated with less than 180 days active duty warranting an entry level separation with a characterization of uncharacterized in accordance with the regulation. Based on a preponderance of evidence, the Board determined that there was no error or injustice in the applicant's uncharacterized discharge.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting to update his discharge to reflect medical reasons and an amendment to his narrative reason for separation to a more favorable reason. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues, specified as Bipolar Disorder, Depression and Anxiety, that mitigates his discharge. 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 enlisted in the Regular Army on 10 January 1997, 2)

the applicant was counseled four times in February 1997 for concerns on personal problems in which he stated he has always been a quitter, failing to meet height and weight standards, inability to complete a physical training run, and for being pulled from training, 3) the applicant underwent a Mental Status Evaluation on 24 February 1997 at his Command's request. The applicant was diagnosed with Adjustment Disorder with Depression and it was recommended the command initiate administrative separation, to be completed in an expeditious manner, 4) on 24 February 1997 the commander initiated action to separate the applicant under the provisions of Army Regulation (AR) 635-200, Chapter 11, Entry Level Performance and Conduct for character and behavior characteristics which are not compatible with satisfactory continued service, specifically the suicidal comments. 5) the applicant was discharged on 06 March 1997 with an uncharacterized characterization of service under the provisions of AR 635-200, Chapter 11, Entry Level Performance and Conduct. He completed 1 month and 27 days of active service, 6) on 02 April 2020 the Board denied the applicant's request for a re-characterization of service. The Board determined there was no error or injustice and the applicant's request was denied. The Board proceedings are summarized in Docket Number AR20190011684.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Mental Status Evaluation dated 24 February 1997 was reviewed. The applicant's mood was marked 'depressed.' All other aspects of the mental status examination were noted to be within normal limits. The provider checked that the applicant has the mental capacity to understand and participate in proceedings and that he met retention requirements of Chapter 3, AR 40-501. The provider further documented that the applicant was experiencing mild adjustment problems secondary to the military and was reporting depressed mood and sleep problems. It was noted that the symptoms did not appear to be acute but that the applicant endorsed suicidal ideation with plan if not discharged. The provider stated the applicant was not expected to make an adequate adjustment to the military. He was diagnosed with Adjustment Disorder with Depressed Mood. The provider recommended the applicant be separated under the provisions of AR 635-200 in an expeditious manner and that the applicant be removed from training with close supervision and no weapons training.

d. The applicant provided two civilian medical records from CompleteCare Family Medicine dated 03 February 2022 and 13 January 2023. The records show the applicant was being treated by an advanced practice registered nurse (APRN) for Bipolar Disorder and Generalized Anxiety Disorder. Regarding his diagnosis of Bipolar

Disorder, it was documented that the condition is 'controlled' without suicidal or homicidal ideation and recommended the applicant continue with both medication and counseling for the condition. It is documented the applicant requested a cannabis card for management of anxiety. The documentation shows the applicant was prescribed Alprazolam and Aripiprazole. There is no documentation specifying the onset of these conditions nor any association with his service.

e. A review of JLV was void of medical information.

f. The applicant is applying to the ABCMR requesting to update his discharge to reflect medical reasons and an amendment to his narrative reason for separation to a more favorable reason. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues, specified as Bipolar Disorder, Depression and Anxiety, that mitigates his discharge. The applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service which was attributed to difficulty adjusting to the military. Symptoms were documented as depressed mood, sleep disturbances, and suicidal ideation with plan if not discharged. The applicant was determined to meet medical retention standards IAW AR 40-501 and was recommended for expeditious separation by the BH provider. Post discharge, the applicant has been diagnosed with Bipolar Disorder and Generalized Anxiety Disorder as of 2022 through his civilian treating provider; however, there is no documentation available specifying the onset of these conditions nor associating them with his service.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service.

(3) Does the condition experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service due to difficulty adjusting to the military. It was documented that the applicant met retention standards IAW AR 40-501 and he was recommended for administrative separation under the provisions of AR 635-200. Per AR 40-501, Adjustment Disorders that are not chronic (i.e., less than 6 months) fall under the purview of administrative separations. As the applicant's service lasted less than two months and was documented as related to adjusting to the military, there is no indication that the applicant's condition was constituted as chronic at the time of discharge. Although available records show the applicant being treated for Bipolar Disorder and Generalized Anxiety Disorder by his civilian provider in 2022 and 2023, there is insufficient evidence that these conditions were present during the applicant's time in service as there is no

specification as to the onset of these conditions nor any association with his service. As such, the applicant's discharge appears to be fair and equitable and there is no evidence to support an upgrade of his characterization of service. Furthermore, as the applicant's in-service BH condition was determined to meet retention standards IAW AR 40-501, a referral to IDES is unwarranted.

f. Regarding the applicant's assertion of PTSD, while there is insufficient evidence to support this diagnosis in-service, the applicant's self-assertion alone merits consideration by the Board.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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. Narrative Reason for Separation: Deny. The evidence of record shows, while still in initial entry training, the applicant displayed character and behavior characteristics which are not compatible with satisfactory continued service. As a result, his chain of command initiated separation action against him. He completed 1 month and 27 days of active service, did not complete initial entry training, and was not awarded an MOS. He was appropriately assigned an uncharacterized discharge due to entry level performance and conduct. The Board did not find an error or injustice in his narrative reason for separation.

b. Medical Discharge: Deny. 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 concurred with the medical official's finding no indication that the applicant's adjustment disorder condition was constituted as chronic at the time of discharge. Although available records show him being treated for Bipolar Disorder and Generalized Anxiety Disorder by his civilian provider in 2022 and 2023, there is insufficient evidence that these conditions were present during the applicant's time in service as there is no specification as to the onset of these conditions nor any association with his service. Furthermore, as the applicant's in-service behavioral health condition was determined to meet retention standards in accordance with AR 40-501, a referral to disability evaluation system is unwarranted. Additionally, there is insufficient evidence to support a PTSD diagnosis in-service. Therefore, the Board determined a disability separation is not warranted.

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 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. The ABCMR may, in

its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 11 (Entry Level Separation), sets policy and provides guidance for the separations of personnel because of unsatisfactory performance or conduct (or both) while in entry level status. This policy applies to Soldiers who were voluntarily enlisted in the Regular Army, are in ELS and before the date of initiation of separation, have completed no more than 180 days of credible continuous AD or IADT or no more than 90 days of phase II under a split or alternative training option and, have demonstrated that they are not qualified for retention.

4. 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.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense

memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

7. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an

Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

8. 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//