

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012330

APPLICANT REQUESTS:

- referral of his medical records to the Army Disability Evaluation System (DES)
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his periods of honorable service
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Oath of Reenlistment Certificate, dated 21 October 2009
- Army Good Conduct Medal (AGCM) Certificate for the period October 2006-October 2009
- AGCM orders (2nd Award), dated 1 October 2012
- Enlisted Record Brief
- DD Form 4 (Enlistment Reenlistment Document Armed Forces of the United States), dated 8 February 2018
- Oath of Reenlistment Certificate, dated 9 February 2018
- medical statement, dated 22 September 2022
- Department of Veterans Affairs (VA) certification of service-connected disability compensation

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 was diagnosed with mental disorders during military service which should have resulted in his referral to a Medical Evaluation Board (MEB). He also served honorably during his first and second reenlistment contracts, but his DD Form 214 does not reflect his periods of honorable service. The correction should be made

because he was not medically evaluated prior to his separation. He is not able to get a job with VA although he is currently rated 90% disabled by the VA.

3. The applicant enlisted in the Regular Army on 5 April 2007. His Enlisted Record Brief (ERB) shows he served in Afghanistan from 8 May 2010 to 8 May 2011. His ERB also shows he was promoted to staff sergeant/E-6 effective 1 May 2015.

4. The applicant's available records show: He reenlisted on 21 October 2009 for a period of 2 years and on 4 June 2015 for a period of 3 years. He extended his 4 June 2015 reenlistment for a period of 8 months on 17 September 2015. He also reenlisted on 9 February 2018 for a period of 6 years.

5. The applicant's complete separation proceedings are not available. His available records contain a memorandum issued by the Commanding General, Headquarters, U.S. Army Training Center, Fort Jackson, SC, dated 29 June 2020, approving his request for discharge under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial. The Commanding General also directed the applicant's reduction to the rank and grade of private (PVT)/E-1. The memorandum contains the following statement:

In accordance with AR 635-200, paragraph 1-32a and AR 40-501 [Standards of Medical Fitness], Table 8-2, [the applicant] will be discharged without separation physical or mental examination unless a written request for such is submitted. No written waiver is necessary. In the event that either a physical or mental examination is requested, separation will not be delayed for completion of the examination, and the examination(s) may be completed at VA facilities after discharge.

6. The applicant's DD Form 214 shows he was discharged on 20 July 2020, in the rank and grade of PVT/E-1, under the provisions of AR 635-200, chapter 10, by reason of in lieu of trial by court-martial, with an under other than honorable conditions character of service (Separation Code KFS, and Reentry Code NA). He completed 13 years, 3 months, and 13 days of active service). His DD Form 214 does not show in block 18 (Remarks) his immediate reenlistment periods, his continuous period of honorable service, or whether he completed first full term of service.

7. The applicant provided:

a. A medical statement issued by a general practice physician stating the following:

I have thoroughly reviewed all of [the applicant's] available and pertinent medical records (to include all military and civilian treatment records) including his history of military service with service receiving a Parachute Badge and completed Airborne

School. His entrance exam is silent for orthopedic conditions. Currently, he has a diagnosis of lumbosacral strain, cervical strain and left and right knee strain. He is service connected for PTSD [post-traumatic stress disorder] with alcohol use disorder, pes planus, plantar fasciitis and tinnitus.

b. A VA certification of service-connected disability compensation showing he is receiving service-connected disability compensation for undisclosed conditions with a combined disability rating of 90%.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting referral to the Disability Evaluation System (DES). On his DD 149, he had indicated that PTSD and other mental health conditions are issues related to his request. He states:

“Diagnosed with Mental disorders during military service which should have resulted in a medical evaluation board. Also served honorably during first and second contracts but active-duty discharge says unknown. I have reenlistment paperwork as proof. Correction should be made because I was not evaluated prior to being separated. I am also not able to get a VA job although I am currently 90% disabled veteran.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the regular Army on 5 April 2007 and received an under other than honorable conditions discharge on 20 July 2020 under the separation authority provided in chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Discharge in Lieu of Trial by Court-Martial. It shows Service in Afghanistan from 8 May 2010 thru 8 May 2011.

d. In a 22 September 2022 “To Whom It May Concern Memorandum,” a physician who states he had reviewed the applicant's records states:

“Currently, he has a diagnosis of lumbosacral strain, cervical strain and left and right knee strain. He is service connected for PTSD with alcohol use disorder, pes planus, plantar fasciitis, and tinnitus.”

e. The only document from the applicant’s separation packet is the Commanding General of the United States Army Training Center and Ft. Jackson’s 29 June 2020 approval the applicant’s request for a separation under chapter 10 of AR 635-200. The General directed he receive an under other than honorable conditions characterization of Service and be reduced to the lowest grade possible IAW AR 600-8-19, Enlisted Promotions and Reductions, paragraph 10-1d.

f. JLV shows the applicant has been awarded several VA service-connected disability ratings, including one for PTSD effective 27 July 2020.

g. Without the applicant’s separation packet, the misconduct and/or UCMJ violation(s) with which he was charged and resulted in his subsequent request for discharge in lieu of trial by court-martial are unknown. Thus, a recommendation for mitigation under liberal consideration policies cannot be made.

h. The applicant’s misconduct made him ineligible for referral to the DES without the approval of the General who had approved his chapter 10 request. From paragraph 4-3f (2) of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

“Approval and suspension of an AR 635–200 separation action is not authorized when the Soldier is pending both an AR 635–200 and AR 635–40 action. The GCMCA must decide which action to pursue (as described in AR 635–200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.”

i. Paragraph 4-9a of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states “Disenrollment from DES, or termination of the case for any other reason, will occur no earlier than prescribed below:

“Enlisted Soldiers with an initiated or approved administrative separation for misconduct or fraudulent enlistment will be disenrolled when the MEB is completed, the Soldier’s GCMCA has reviewed the MEB, and the GCMCA has directed in writing to proceed with the administrative separation. If the separation

action was initiated after the Soldier's MEB was forwarded to the PEB, the last level of approved PEB findings prior to initiation of separation will be provided to the GCMCA for consideration in their decision."

j. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: The PTSD has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? No, not at this time: Without knowledge of the misconduct and/or UCMJ violation(s) with which he was charged and resulted in his subsequent request for discharge in lieu of trial by court-martial is unknown, a recommendation for mitigation under liberal consideration policies cannot be made.

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 partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The complete facts and circumstances of the applicant's discharge processing are not available for review. However, his record contains a DD Form 214 that shows he was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial with an under other than honorable conditions characterization of service. The ABCMR will decide cases on the evidence of record. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Board found no error or injustice in his available separation processing. The Board found no error or injustice in his available separation processing.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer’s finding that without knowing the specific misconduct/court-martial charges and resulted in his subsequent request for discharge in lieu of trial by court-martial, a recommendation for mitigation under liberal consideration policies cannot be made. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were not in error or unjust.

c. The Board noted that the applicant’s service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 20 July 2020 to show:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- IMMEDIATE REENLISTMENTS THIS PERIOD: 20070405-20091020, 20091021-20150603, 20150604-20180209
- CONTINUOUS HONORABLE ACTIVE SERVICE: 20070405-20180208

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

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

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

a. Paragraph 1-32 of the regulation in effect at the time states commanders will ensure that Soldiers initiated for separation under this regulation who are required to obtain a physical examination obtain such. Physical examinations and mental health evaluations will comply with Army Regulation 40-501 and other policy guidance issued by the Surgeon General and U.S. Army Medical Command. A mental status evaluation is required when a Soldier being processed for discharge under chapter 10 requests a medical examination.

b. Chapter 10 provides that a member who has committed an offense for which the authorized punishment includes a punitive discharge, may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of VA benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge.

3. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Paragraph 4-3f states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and Physical Evaluation Board phases of the DES. If the Soldier is in the DES process, their DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

3. 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."

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.

c. For Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

4. AR 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are

therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCM applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//