

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20230012519

APPLICANT REQUESTS:

- physical disability discharge in lieu of general discharge from the Army National Guard (ARNG) due to continuous and willful absence
- personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states:

- a. He is requesting a medical discharge instead of a general discharge.
- b. He has marked the box "other mental health" issues are related to his request and he states he has been medically diagnosed by a doctor.
- c. He also indicates his supporting documents were given to the Department of Veterans Affairs (VA) at Ellington Field.

2. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the ARNG on 7 September 2017.

3. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- the applicant entered active-duty training (ADT) on 17 October 2017
- he was honorably released from ADT on 23 March 2018, due to completion of required active service with corresponding Separation Code MBK and was transferred back to his ARNG unit
- he was credited with 5 months and 7 days of net active service this period

4. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U"

(Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

5. The applicant's Enlisted Record Brief (ERB), 26 March 2018, shows his PULHES was 111111.

6. The complete facts and circumstances surrounding the applicant's ARNG discharge are unknown as his discharge packet is not in his available service records for review.

7. Texas ARNG Orders 301-026, 28 October 2019, discharged the applicant from the ARNG effective 1 October 2019, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35j with Assignment/Loss Code CW (Continuous and Willful Absence). His service was characterized as general, under honorable conditions.

8. Title 38, USC, 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.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a medical discharge instead of a under honorable conditions (general) discharge. He contends he experienced a mental health condition that warrants this change.

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 Army National Guard on 17 October 2017 and was honorably released from active duty after completing initial training on 23 March 2018. He was credited with 5 months and 7 days of net active service.
- The complete facts and circumstances surrounding the applicant's ARNG discharge are unknown as his discharge packet is not in his available service records for review.
- Texas ARNG Orders 301-026, 28 October 2019, discharged the applicant from the ARNG effective 1 October 2019, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35j with

Assignment/Loss Code CW (Continuous and Willful Absence). His service was characterized as general, under honorable conditions.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was "medically diagnosed by a doctor," and he indicated "other mental health" as an issue or condition related to his request. The application did not include any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant presented to the emergency department at the VA on 3 April 2023 and reported distressing side effects to a medication he was recently started on by a non-VA healthcare system following an inpatient stay. He was seen for a brief outpatient medication management visit on 4 May 2023 and again on 4 October 2023 when it was noted he had discontinued the medication due to side effects. In April 2024 he contacted the VA again to request a medication refill, and he was referred to an outreach program for individuals experiencing psychosis. However, he did not respond to the call. Notably, records show he is service connected at 70% for Bipolar Disorder.

e. MedChart and HRR were reviewed and case management (CM) notes showed that a temporary behavioral health profile was initiated on 22 February 2019 due to Bipolar Disorder. Documentation indicated the applicant had been hospitalized from 29 January to 6 February 2019 and was diagnosed Bipolar Disorder, and he was started on mood stabilizing and antipsychotic medications. CM notes indicate the applicant met with behavioral health officers (BHO) along with his parents because he was not allowed to drive, and a permanent, non-duty related, profile was entered on 1 April 2019. CM had contact with him in May 2019, and he reported some improvement in symptoms and continued treatment through Texas Behavioral Health. Documentation from July through December 2019 showed monthly efforts made by CM to obtain required documents from the unit and the applicant in order to complete a PEB packet, but documentation on 27 December 2019 showed the case was closed because they received discharge orders effective 1 October 2019. HRR showed a letter from the applicant's psychiatrist at Texas Behavioral Health, which stated a diagnosis of Bipolar Disorder and Anxiety Disorder and that the applicant was under treatment with three medications (two of which are duty-limiting). A permanent psychiatric behavioral health profile, with a PULHES "3" for psychiatric, dated 13 April 2019 was also found.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition that would warrant sending him through the medical discharge process. Based on the reviewed documentation in National Guard medical records, the applicant's

condition, Bipolar Disorder, is non-duty related, and the process to evaluate his condition by a PEB was initiated by case management. However, his case was closed prior to a packet being submitted because he was discharged. In the absence of the complete facts and circumstances surrounding his discharge, no opinion related to mitigation can be provided.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for medical discharge

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the medical opinion finding insufficient evidence to support that the applicant had a condition that would warrant sending him through the medical discharge process.

2. The Board noted the applicant's statement; however, the available record shows his Enlisted Record Brief reflected a PULHES of 111111 in March 2018, indicating no medical limitations at that time. Additionally, the official discharge orders issued by the Texas Army National Guard in October 2019 clearly state the applicant was separated under National Guard Regulation 600-200, paragraph 6-35j, for continuous and willful absence, with a characterization of service as general, under honorable conditions. In the absence of medical evidence establishing that his mental health conditions rendered him unfit for duty under Army regulations, the Board determined that his discharge was both proper and equitable. Therefore, the Board found no error or injustice that would warrant changing his general discharge to a physical disability discharge.

3. The Board considered the following Kurta Questions under liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for medical discharge

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical discharge

4. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

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.

REFERENCES:

1. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. 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.
2. 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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.

3. 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 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 (Disability 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; 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.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

6. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers.

a. Chapter 6 (Enlisted Separations) sets policies, standards and procedures to separated enlisted Soldiers from the ARNG/ARNGUS. Paragraph 6-35 provides for the separation of Soldiers for unsatisfactory participation amounting to 9 or more unexcused absences within a 1-year period.

b. An honorable characterization may only be awarded a Soldier upon completion of their service obligation, or where required under specific reasons for separation, unless an uncharacterized description is warranted. If a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general, under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

(1) When authorized, a characterization of under honorable conditions is awarded to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(2) A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization. It will not be issued to Soldiers upon separation for expiration of their service obligation

8. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states 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.

9. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states 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.

10. 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.

11. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. Paragraph 2-11 states 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.

b. 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.

//NOTHING FOLLOWS//