

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230012803

APPLICANT REQUESTS: reconsideration of his previous request for a medical discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record), 20 September 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC89-08675 on 28 March 1990.
2. The applicant states when he was discharged because of his suicide attempt and unstable mental health he was informed he would receive a medical discharge. Since his discharge, he has been treated for schizophrenia, anxiety, and depression, he was incarcerated in a psychiatric institute and was homeless. He is requesting a medical discharge due to his mental illness never being considered.
3. On his DD Form 149, the applicant notes other mental health issues are related to his request.
4. The applicant enlisted in the Regular Army on 24 April 1974.
5. On 15 October 1974, the applicant accepted nonjudicial punishment under the provision of Article 15 of the Uniform Code of Military Justice, for failing to go to his appointed place of duty, work call formation, on or about 8 October 1974.
6. The applicant's commander notified the applicant on 21 November 1974, that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5, separation for convenience of the government, paragraph 37, discharge for failure to demonstrate promotion potential. As the specific reason, the commander cited the applicant's established pattern of habitual tardiness and substandard appearance, an Article 15 for

failure to repair, counseling statement showing no noticeable improvement, and his demonstration of unwillingness or inability to cope with military authority.

7. The applicant voluntarily consented to discharge from the Army. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life, and waived his right to submit a statement in his behalf.

8. On 22 November 1974, the applicant underwent a mental status evaluation for unsuitability. The relevant DA Form 3822-R (Medical Report of Mental Status Evaluation) shows he was determined to have no psychiatric diagnoses or evidence of a mental disorder and was cleared for any action deemed appropriate by the command.

9. The applicant's commander formally recommended the applicant's discharge on 26 November 1974, and the applicant's intermediate commander recommended approval.

10. The separation authority approved the recommended action on 26 November 1974 and directed the issuance of an honorable discharge certificate.

11. The applicant was honorably discharged on 4 December 1974. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, paragraph 5-37, for failure to demonstrate promotion potential. He was assigned separation program designator KMN and reenlistment code of RE-3. He completed 7 months and 11 days of active service this period.

12. The ABCMR considered the applicant's petition for his discharge to be changed to medical on 28 March 1990. He was attempting to establish that he had a psychological disorder at the time of discharge. In support of his case, he referred to documentation which showed he was found guilty in a state court of "attempted voluntary manslaughter but mentally ill" in August 1984. On 28 March 1990 after careful consideration, the Board found the applicant did not present and the records did not contain sufficient justification to grant the relief requested or to excuse the failure to file within the time prescribed by law.

13. Regulatory guidance, in effect at the time, states personnel whose performance of duty, acceptability for the service, and potential for continued effective service fell below the standards required for enlisted personnel in the Army may be discharged in accordance with Army Regulation 635-200, paragraph 5-37.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to show he was medically discharged. He contends he warrants a medical discharge for a mental health condition, which he experienced during his active service. 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 24 April 1974; 2) On 21 November 1974, the applicant's commander notified him that he was initiating actions to separate him from service under the provisions, Chapter 5. As the specific reason, the commander cited the applicant's established pattern of habitual tardiness and substandard appearance, an Article 15 for failure to repair, counseling statement showing no noticeable improvement, and his demonstration of unwillingness or inability to cope with military authority; 3) The applicant was honorably discharged on 4 December 1974, Chapter 5-37, for failure to demonstrate promotion potential, in the grade of E-2. He was assigned separation program designator KMN and reenlistment code of RE-3. He completed 7 months and 11 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he incurred a psychiatric condition while on active service, and he was discharged because of his suicide attempt and unstable mental health condition. In addition, he was informed he would receive a medical discharge while he was on active service. On 22 November 1974, the applicant underwent a mental status evaluation for unsuitability. He was determined to have no psychiatric diagnoses or evidence of a mental disorder, and he was cleared for any action deemed appropriate by the command. There is insufficient evidence the applicant was ever diagnosed with mental health condition, while on active service. In addition, there was insufficient evidence the applicant required inpatient psychiatric hospitalization or was placed on a duty limiting profile related a mental health condition.

d. A review of JLV provided evidence the applicant has been provided assistance by the VA since 2002 for social services and medical/behavioral health care. The applicant had provided documentation of being diagnosed with severe mental health illness starting in 1984. He has been treated for various behavioral health conditions as well as substance abuse/dependence conditions. However, the applicant has not been awarded any service-connected disability at this time.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant experienced difficulty adapting to military service. Later, he was diagnosed with significant mental health conditions. However, there is insufficient evidence the applicant was ever placed on a psychiatric profile while on active, required inpatient

psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective for mental health condition. Therefore, at the time of his active service, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant experienced difficulty adapting to military service. Later, he was diagnosed with significant mental health conditions. However, there is insufficient evidence the applicant was ever placed on a psychiatric profile while on active, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective for mental health condition. Therefore, at the time of his active service, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical advisor's review, the Board concurred with the advising official finding the applicant experienced difficult adapting to military service and later was diagnosed with mental health issues; however, there is insufficient evidence the applicant experienced those conditions while on active duty. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) 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 amendment of the ABCMR decision rendered in Docket Number AC89-08675 on 28 March 1990.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 5 provided the conditions under which enlisted personnel may be discharged, released from active duty or active duty for training, or released from military control, for the convenience of the Government.

c. Paragraph 5-37 provided for the discharge of enlisted personnel whose performance of duty, acceptability for the service, and potential for continued effective service fell below the standards required for enlisted personnel in the US Army may be discharged.

3. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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.

//NOTHING FOLLOWS//