

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230014075

APPLICANT REQUESTS: correction of his Ohio Army National Guard (OHARNG) records to show his discharge was service connected.

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

- DD Form 149 (Application for Correction of Military Record)
- June 2023 Department of Veterans Affairs (VA) Rating Decision
- Memorandum, 1 March 2022, Subject: Enlisted Medical Separation from the Ohio Army National Guard
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant states he was discharged due to "Loss Code: MG MED/PHYS/MENTAL CONDIT" (Medical/Physical/Mental Condition). He does not have an NGB Form 22 (Report of Separation and Record of Service) even though he was told (and with orders stating) he was discharged on 1 October 2023. The VA found his mental health to be service-connected and he was discharged for mental health. He wants to get his discharge from the OHARNG to be service connected since his mental health was connected to his service by the VA.

2. The applicant enlisted in the OHARNG on 2 February 2018. He entered active duty for training (ADT) on 1 July 2019 and completed training for award of military occupational specialty 13B, Cannon Crewmember.

3. He was honorably released from ADT to the control of his ARNG unit on 1 September 2014. His DD Form 214 for this period credited him with 2 months and 1 day of active service.

4. He again entered active duty on 2 April 2020 (in response to COVID) and he was honorably released from active duty on 30 September 2020. His DD Form 214 for this period credited him with 5 months and 29 days of active service.

5. On 8 November 2021, by memorandum, Subject: Notification of Intent to Separate for Failure to Meet Medical Retention Standards for Non-Duty Related (NDR) Medical Disqualifying Condition(s), OHARNG informed the applicant of the following:

a. References: Army Regulation (AR) 40-501, Chapter 3, Standards of Medical Fitness, 27 June 2019; AR 635-40, Chapter 4, Disability Evaluation for Retention, Retirement, or Separation, 19 January 2017; DA PAM 635-40, Chapter 3, Procedures for Disability Evaluation for Retention, Retirement, or Separation, 12 January 2017; and AR 135-178, Enlisted Administrative Separations, 7 November 2017.

b. The State Surgeon has reviewed his medical records, in accordance with Chapter 3, AR 40-501 and he has been identified as failing to meet the medical retention standards for continuation of military service. A copy of the permanent Physical Profile, DA Form 3349, 12 September 2021, referring him for administrative review and processing for a medically disqualifying condition(s) is provided for his information.

c. He is required to complete and take appropriate action on the enclosed Soldier's Acknowledgement of Medical Disqualification and Disposition Election for Medical Disqualification and submit to his Commander or their representative within the notification period ending forty-five (45) days from the date of this memorandum. Unless an extension is requested and granted by the Director of Personnel and Manpower, failure to respond will constitute a waiver of his rights and may result in separation from service without additional notification, in accordance with Para 3-5, AR 135-178.

d. If he concurs with the separation for medically disqualifying condition(s), his Commander will submit his Disposition Election for MedDQ and proceed with discharge from the National Guard and a Reserve of the Army, in accordance with Para 14-1k, of AR 135-178.

e. If he intends to non-concur with separation, he has the right to request his case be sent to the U.S. Army Physical Evaluation Board (PEB), Fort. Sam Houston, Texas, in accordance with chapter 4-34, AR 635-40. He is required to submit a letter requesting PEB in addition to the required documents as described in paragraph 3. Upon receipt and review of his request letter, an additional 45 days may be given for preparation and submission of his PEB packet to this office but will not exceed 90 days from the date of this memorandum. Unless an extension is requested and granted by the Director of Personnel and Manpower, failure to respond will constitute a waiver of his rights and may result in separation from service without additional notification, in accordance with Para 3-5, AR 135-178.

g. This is not intended to be a punitive action, but it is his responsibility to request and prepare his non-duty related (NDR) packet, in accordance with Para 3-16, DA PAM

635-40, within the required processing timelines for submission to the Army PEB for a final determination if he has reason to believe he should be found fit for duty.

6. On 18 March 2022, by memorandum, Subject: Enlisted Medical Separation from the Ohio Army National Guard, the Deputy Chief of Staff for Personnel, OHARNG informed the applicant that on 10 February 2022, he acknowledged that he would be discharged from the OHARNG. This was based on medical retention disqualification guidance in accordance with NGR 600-200 – Enlisted Personnel Management, paragraph 6-35l(8). He is therefore separated from the OHARNG.

7. The applicant was honorably discharged from the OHARNG on 1 October 2022. His NGB Form 22 shows he was discharged in accordance with NGR 600-200 (Enlisted Personnel Management), paragraph 6-35l(8) for being medically unfit for retention. His NGB Form 22 shows he completed 4 years and 8 months of ARNG service.

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:

The applicant is applying to the ABCMR in essence requesting referral to the Disability Evaluation System for the mental health condition which led to his involuntary separation. He states: "The VA found my mental health to be service-connected and I was discharged for mental health. I want to get my discharge service-connected since my mental health was connected to my service by the VA."

b. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's Army National Retirement Points History Statement (NGB Form 23B) for the period of Service under consideration shows he entered the Army National Guard on 2 February 2018 and was separated from the Ohio Army National Guard (OHARNG) as of 1 October 2022 under the provisions of paragraph 6-35l(8) of NGR 600-200, Enlisted Personnel Management (25 March 2021): Medically unfit for retention per AR 40-501.

c. Paragraph 6-35l(8) of NGR 600-200: "Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36t below. Commanders who do not recommend retention

will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 [Line of Duty Policy, Procedures, and Investigations] will apply. Discharge will not be ordered while the case is pending final disposition."

d. A nurse case management record in MEDCHART shows the then drilling applicant self-admitted to a hospital for suicidal ideation on 13 October 2020 (a Tuesday) and was discharged on 19 October 2020 with a diagnosis of "Major Depressive Disorder, Severe, Recurrent." The nurse also stated the condition was not related to his military duty: "Date of incident 13 October 2020, Location: Columbus Springs Dublin, reported as not duty related, no deployments reported." The nurse wrote in a subsequent December 2020 note: "Reviewed discharge noted form Columbus Springs Dublin ... SM [service member] diagnosis of Major Depressive Disorder, Recurrent, Severe and Unspecified Anxiety Disorder. Discharge medications Lexapro 10mg and Trazadone 50mg at night as needed. SM reported as presenting with worsening depression and endorsed suicidal ideation upon admission. SM reported increased issue to function in past two months due to a break-up with his girlfriend."

e. From another note in August 2021: "SM reports as having previous emotional issues and caught cutting in June 2014. SM reported as seeing a counselor two times but did not go back."

f. The applicant was placed on a duty limiting permanent physical profile for "Major Depressive Disorder" effective 12 September 2021.

g. An 18 March 2022 memorandum from the OHARNG to the applicant shows he had been informed of his disqualifying condition and had elected to be separated: "On 10 February 2022, you acknowledged that you will be discharged from the Ohio Army National Guard. This was based on medical retention disqualification guidance in accordance with NGR 600-200 – Enlisted Personnel Management, paragraph 6-35l(8). You are therefore separated from the Ohio Army National Guard, effective 1 October 2022."

h. The evidence shows his condition had existed prior to service (EPTS) and had not been originally incurred during or permanently aggravated by his military service. Paragraph 4-8e(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 April 2004) states:

"(1) The term "EPTS" [existed prior to service] is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period

that clearly precludes a determination that it started during short tours of authorized training or duty.”

i. The AR 600-8-4 glossary definition of existed prior to service:

“Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training, or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)”

j. There is no probative evidence the applicant’s depression was due to his military service and so he was not eligible for referral to the duty-related DES.

k. It is the opinion of the ARBA Medical Advisor that a referral to the DES is not warranted.

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 applicant’s contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was found medically unfit for retention in the ARNG. He was informed of his disqualifying condition (major depressive disorder), and he decline a non-duty related PEB and elected to be honorably separated. The Board found no error or injustice in his separation processing. 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 determination finding that his condition had existed prior to service (EPTS) and had not been originally incurred during or permanently aggravated by his military service. Since there is probative evidence the applicant’s depression was due to his military service, he was not eligible for referral to the duty-related disability evaluation system (DES). Therefore, the Board determined that a referral to the DES remains 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. National Guard Regulation 600-200, Personnel – General 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; separation; extension/reenlistment, and appoint to and from Command Sergeant Major, Army National Guard (ARNG) enlisted Soldiers. Chapter 6 provides for enlisted separations.

a. Paragraph 6-35. Separation/Discharge from State ARNG and/or Reserve of the Army, states the following are reasons, applicability, and codes for administrative separation or discharge from the Reserve of the Army, the State ARNG only, or both. These reasons may be used for separation from the State ARNG only. See AR 135-178

chapter 1, Section V to determine whether to assign a Soldier to the IRR. All Soldiers will be notified of a commander's recommendation for their involuntary discharge. Each separation reason outlined in (Para 6-35 and 6-36) below reflect the Assignment/Loss Reason Codes that will be annotated on the separation order by the order issuing authority.

b. Paragraph 6-35(L)(8): Medically unfit for retention per AR 40-501, chapter 3. Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36t below. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or are ineligible to reclassify into a new MOS or ineligible for a non-regular retirement. RE 3. Loss Code: MG, if Soldier is not eligible for non-regular retirement. Loss Code: XM if eligible for 15, but fewer than 20 non-regular retirement or Loss Code: CC if eligible for 20 years non-regular retirement.

2. Title 38, U.S. Code 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.

3. Title 38 U.S. Code 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.

//NOTHING FOLLOWS//