

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230014151

APPLICANT REQUESTS: correction of his records to show he was discharged due to a service-incurred medical disability instead of for a condition that existed prior to service (EPTS).

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

DD Form 149 (Application for Correction of Military Record)

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 the correction to his records should be made because although he received a 100% disability across the board, he has been put on hold for a Department of Veterans Affairs (VA) home loan because his separation papers do not specifically state service-connected disability.
3. The applicant enlisted in the Regular Army on 5 September 1974.
4. A DA Form 8-118 (Medical Board Proceedings) shows that on 20 September 1974, a medical board found he applicant medically unfit for further military service due to a diagnosis of paranoid schizophrenia manifested by hallucinations, withdrawal, flat affect, paranoia, and poor judgment. The medical board determined the condition was not caused incident to service, EPTS, and was not aggravated by active duty. The board recommended the applicant's separation under the provisions of Army Regulation 635-40 (Personnel Separations - Physical Evaluation for Retention, Retirement, or Separation), chapter 9 (Expeditious Discharge for Disabilities Existing Prior to Service). The DA Form 8-118 also shows the applicant indicated he did not desire to continue on active duty.

5. On 3 October 1974, the applicant submitted an Application for Expeditious Discharge. The application contains the following statements:

I request discharge for physical disability. I have been informed that, based upon the findings and recommendations of a medical board, I am considered to be unfit for retention in the military service by reason of physical disability which has been found to have existed prior to my enlistment (induction) and which is neither incident to nor aggravated by my military service.

I have been fully informed and understand that I am entitled to the same consideration and processing as any other member of the Army who is separated for physical disability. I understand that this includes consideration of my case by the adjudicative system established by the Secretary of the Army for processing disability separations. However, I elect not to exercise this right to a full and fair hearing. I will be expeditiously separated from the Army. I understand that entitlement to VA benefits will be determined by the Veterans Administration.

If this application is approved, I understand that I will be separated by reason of physical disability-EPTS- and will receive a discharge of the type commensurate with the character of my service, as determined by the officer designated to effect my separation.

6. The Application for Expeditious Discharge was signed by the applicant and by the Physical Evaluation Board Liaison Officer (PEBLO).

7. The applicant's Application for Expeditious Discharge was approved on 8 October 1974 under the provisions of Army Regulation 635-40, chapter 9.

8. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was honorably discharged on 17 October 1974 under the provisions of Army Regulation 635-40, chapter 9, by reason of physical disability, EPTS, medical board. The DD Form 214 also shows he was credited with 1 month and 13 days of active service.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting records to show he was discharged due to a service-incurred medical disability instead of for a condition that existed prior to service (EPTS). 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 5 September 1974; 2) The applicant was honorably discharged on 17 October, Chapter 9, by reason of physical disability, EPTS, medical board. The DD Form 214 also shows he was credited with 1 month and 13 days of active service.

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. Very shortly after his enlistment, on 20 September 1973, the applicant was determined to be medical unfit for service due to paranoid schizophrenia as the result of a medical board. The applicant had a significant history of mental health concerns prior of his military service. The medical board determined the applicant's condition was not caused by his military service, existed prior to his service, and was not aggravated by active duty. He was recommended for Expeditious discharge for disabilities existing prior to service, the applicant agreed, and he was discharged prior to completing his basic training.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2014. He was diagnosed with service-connected psychosis in 2014 as a result of his compensation and pension evaluation. However, he has predominately been diagnosed by his treating providers with depressive disorder and involved in medication management appointments till present.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant had a significant preexisting mental health condition that was identified very early in his active service, was not exasperated by his active service, and resulted in the applicant not meeting medical retention or enlistment standards. Therefore, the applicant was properly evaluated and discharged in less than two months of enlistment in military service. There is insufficient evidence the applicant meets criteria for a change to his discharge status at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is sufficient evidence the applicant had a significant preexisting mental health condition that was identified very early in his active service, was not exasperated by his active service, and resulted in the applicant not meeting medical retention or enlistment standards. Therefore, the applicant was properly evaluated and discharged in less than two months of military service. There is insufficient evidence the applicant meets criteria for a change to his discharge status 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:

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 record and medical review, the Board concurred with the advising official finding that the applicant had a significant preexisting mental health condition that was identified very early in his active service, was not exasperated by his active service, and resulted in the applicant not meeting medical retention or enlistment standards. Furthermore, the opine noted, there is insufficient evidence the applicant meets criteria for a change to his discharge status at this time.

2. The Board determined, based on the advising opine there is insufficient evidence to support the applicant's contentions for correction of his records to show he was discharged due to a service-incurred medical disability instead of for a condition that existed prior to service (EPTS). Additionally, the Board found the applicant was properly evaluated and discharged in less than two months of military service. As such, the Board denied relief.

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.



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 635-40 (Personnel Separations - Physical Evaluation for Retention, Retirement, or Separation) establishes policies and prescribes procedures for the physical disability evaluation of members of the Army for retention, retirement, or separation.

a. Chapter 9 of the regulation in effect at time provided for the expeditious discharge of enlisted personnel who, in accordance with chapter 3, Army Regulation 40-501 (Standards of Medical Fitness), were unfit for retention on active duty by reason of physical disability which was neither incurred nor aggravated during any period in which the member was entitled to basic pay. Separation under this chapter did not apply to the following:

- members who were mentally incompetent
- members to whom disclosure of information regarding their condition would be deleterious to their physical or mental health
- members who would require continued hospitalization or institutional care subsequent to separation
- members who demanded a full and fair hearing

- members who were eligible for and requested continuance on active duty

b. When an enlisted member on active duty, not within one of the categories listed above, was believed to be incapable of performing his duties with reasonable effectiveness because of a disability which was believed not to have been incurred or aggravated during any period of active service, the commander concerned will initiate action to request a physical examination.

c. When a medical board recommended that a member be separated because of medical unfitness which existed prior to entry into military service or which was incurred when the member was not entitled to basic pay and which had not been aggravated by such service, the medical treatment facility commander would cause the member to be offered the opportunity for expeditious separation, if he was otherwise eligible. Upon receipt of medical board proceedings recommending separation of a member under circumstances described above, the medical treatment facility commander, upon approval of medical board proceedings, would refer the case to the member's PEBLO for explanation to the member, advice of his rights, and the offer of an opportunity for expeditious discharge, if the member agreed with the EPTS aspects of his disability.

d. The PEBLO would inform a member eligible for consideration under this chapter that:

(1) Section 1214, title 10, United States Code, provides that a member of the Army will not be discharged or retired for physical disability without a full and fair hearing if he demands it. Within the Army disability evaluation system, a full and fair hearing is provided by a PEB. Eligibility of a member to receive disability retirement or severance pay may be determined only after consideration of his case by a PEB.

(2) An evaluation of his case by a medical board found that the member was medically unfit for retention on active duty, and that his unfitness was considered to be the result of a disability which had no connection with the member's military service.

(3) If the member agreed with the findings of the medical board that his physical disqualifying condition EPTS and was not aggravated thereby, he could apply for expeditious discharge under provisions of this chapter.

3. 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.

//NOTHING FOLLOWS//