

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230014406

APPLICANT REQUESTS: correction of his records to show he was discharged due to service-incurred medical disabilities instead of discharged for misconduct.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) certification of service-connected disability compensation, dated 17 July 2023
- flash drive with medical records

FACTS:

1. The applicant provided a flash drive containing his medical records. However, due to Department of Defense policy regarding personally owned/non-organizational removable media, the medical records provided could not be accessed.
2. The applicant states the following service connected conditions (out of 24) were direct contributors for the behavior that lead to his separation from the U.S. Army: migraines, sleep apnea, cervical strain with generative arthritis, degenerative disc disease, and spinal stenosis (claimed as neck pain, traumatic brain injury (TBI), and post-traumatic stress disorder (PTSD)). Because of his mental status, it bothers him that he was not granted a medical discharge. He is taking medication to try to function as a normal individual.
3. The applicant enlisted in the Regular Army on 25 May 2007. He reenlisted on 9 March 2009, 2 October 2013, 9 August 2016, 30 August 2017, and on 24 June 2019.
4. His Enlisted Record Brief shows he completed the following deployments
 - Afghanistan - 15 September 2008 to 12 April 2009 (6 months and 28 days)
 - Iraq - 5 February 2011 to 21 December 2011 (10 months and 17 days)

- Afghanistan - 17 July 2013 to 17 November 2013 (4 months and 1 day)

5. The applicant's complete separation proceedings are not available. His available records contain a memorandum dated 27 January 2022, subject: Consideration of Separation Under the Provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of Serious Offense, signed by the Commanding General, Headquarters, 4th Infantry Division and Fort Carson, CO, stating the following:

a. An Administrative Separation Board was held on 17 December 2021. The Administrative Separation Board recommended (the applicant) be separated from the Army with a characterization of general, under honorable conditions. After considering the findings and recommendations of the Administrative Separation Board, the separation action pertaining to (the applicant) under AR 635-200, Chapter 14-12c, Commission of a Serious Offense, is approved. (The applicant's) service will be characterized as general, under honorable conditions.

b. (The applicant) does not allege suffering from PTSD or TBI as a result of a deployment overseas in support of a contingency operation within the preceding 24 months.

c. (The applicant) does not allege suffering from PTSD or TBI as a result of having been sexually assaulted within the preceding 24 months.

d. I have reviewed the medical examination and mental status evaluation and have determined the Soldier's medical condition does constitute matters in extenuation that relate to the basis for administrative separation or the overall characterization of service of the member as general, under honorable conditions.

6. The applicant's DD Form 214 shows he was discharged on 18 February 2022 under the authority of AR 635-200 by reason of misconduct (serious offense) with an under honorable conditions (general) character of service. The DD Form 214 also shows he was credited with 14 years, 8 months, and 24 days of active service, with a separation code of "JKQ" and a reentry code of "3.". The DD Form 214 does not indicate the applicant's prior periods of continuous honorable service in block 18 (Remarks), but it does include remarks for his foreign service and deployments.

7. The applicant provided a VA certification of service-connected disability compensation, dated 17 July 2023, showing he is receiving service-connected disability compensation, with a combined evaluation of 100%, for undisclosed conditions.

MEDICAL REVIEW:

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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 requesting an upgrade of his 18 February 2022 discharge characterized as under honorable conditions (general) and, in essence, referral to the Disability Evaluation System. On his DD form 293, he has indicated that TBI (traumatic brain injury) is related to his request. He states: "The following service-connected conditions (out of 24) were direct contributors for the behavior that lead to my separation from the US Army: migraines, sleep apnea, cervical strain with generative arthritis, degenerative disc disease and spinal stenosis (claimed as neck pain,) traumatic brain injury (TBI), posttraumatic stress disorder (PTSD). Because of my mental status, it bothers me that I was not granted a medical discharge as opposed to the one I was granted."

a. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 25 May 2007 and was discharged on 18 February 2022 under the separation authority provided by paragraph 14-12c of AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Commission of a serious offense.

b. The applicant's separation packet is not available for review. The only documentation addressing his involuntary administrative separation is the 27 January 2022 Commanding General's approval of an administrative separation board's recommendation the applicant be separated for commission of a serious offence with an Under Honorable Conditions (General) characterization of service. The nature of the applicant's misconduct is unknown. It was significant enough for him to be barred from the Fort Carson Military Reservation. The misconduct for which he was involuntarily separated would have made him ineligible for entrance into the Disability Evaluation System without written authorization from his general court martial convening authority (GCMCA), likely the General Officer who approved the findings and recommendation of the administrative review board. 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.”

c. 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.”

d. JLV shows he has received numerous service-connected disability ratings, including a PTSD (70%), sleep apnea syndromes (50%), migraine headaches (50%), and traumatic brain disease (10%). Review of his mental health encounters in the EMR found that while the applicant did have some combat related nightmares, the focus of the encounter was relationships. From a December 2020 encounter:

(1) ASSESSMENT: 51 yo SM with history of abandonment issues, childhood sexual trauma and multiple failed marriages here seeking help for his partner-relational problem. He states that he has been calmer since the SM was started on Celexa 40mg and hydroxyzine 50-100mg for his mood and sleep disturbance. Sleeping better with decreased latency and better maintenance. No reported SEs.

(2) Discussed regulation of his anger, self-calming techniques and the importance of mindful hobbies to engage his mind and promote self-growth. Amenable to the addition of propranolol to help curb anger and irritability. SM is also willing to engage w/ social work for therapy.

His final two NCO Evaluation Reports show he was a successful Soldier. He passed his Army Physical Fitness Tests and maintain height weight standards. He was marked as having “Met Standard” for all competencies and attributes.

e. There is insufficient probative evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

f. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. It is the opinion of the ARBA medical advisor that without knowledge of the serious misconduct which led to the applicant's separation, reversal of the GCMCA's decision is not warranted. In addition, referral to the DES is also not warranted

h. 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

(3) Does the condition or experience actually excuse or mitigate the discharge? Without knowledge of the serious misconduct which led to the applicant's separation, a recommendation to mitigate the misconduct cannot be made.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant committed an unknown serious offense. As a result, his chain of command, initiated separation action against him. Due to his length of service, his case was considered by an administrative separation board that recommended his separation with a general, under honorable conditions discharge, which was approved by the separation authority. 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 finding insufficient probative evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System (DES). Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office,

grade, rank, or rating prior to his discharge. Therefore, the Board determined referral to the DES is also not warranted.

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:

Except for the correction addressed in Administrative Note(s) below, 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.

ADMINISTRATIVE NOTE(S): add to block 18 of the applicant's DD Form 214 the entry: CONTINUOUS HONORABLE SERVICE FROM 20070525 UNTIL 20190623.

REFERENCES:

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

a. Paragraph 1-34d states Soldiers undergoing administrative separation under section IV of chapter 7 (fraudulent entry), chapter 14 (involuntary separation for misconduct) or under chapter 15 (secretarial plenary authority) are eligible for referral to and completion of the Medical Evaluation Board (MEB) phase of Disability Evaluation System (DES). The administrative separation proceedings will continue, but the separation authority will not take final action. If the MEB finds the Soldier does not meet medical retention standards and referral to a PEB is warranted, the Soldier's general court-martial convening authority(GCMCA) and unit commander will receive the approved MEB proceedings. The GCMCA must direct, in writing, whether to proceed with the DES process or administrative separation. The GCMCA's written directive must address whether the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation, and/or whether other circumstances of the individual case warrant disability processing instead of further processing for administrative separation.

b. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

2. AR 635-40 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(2) states Soldiers under processing for an administrative separation for fraudulent enlistment or misconduct remain eligible to be referred to the MEB. The Soldier's commander must notify the Soldier's PEB Liaison Officer in writing that administrative separation action has been initiated. The Soldier's completed MEB must be referred to the Soldier's GCMCA in accordance with AR 635-200 to determine whether the Soldier will be referred to the PEB. 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 U.S. Army Physical Disability Agency for the Secretary of the Army. 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.

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, 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).

4. 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 Service Discharge Review Boards and Service Boards for Correction of Military Records when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. Section 1556 of Title 10, U.S. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//