

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20230015280

APPLICANT REQUESTS: in effect, correction of his DD Form 214, Report of Separation from Active Duty, to show he was retired due to a disability vice completion of his required active service.

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, in effect, he should qualify for a medical retirement. The Department of Veterans Affairs (VA) has determined his service-connected disabilities are total and permanent, and awarded him disability compensation at the combined disability rate of 100 percent. He has had this disability rating for 18 years. He further contends that he was denied a loan because of this error.
3. The applicant enlisted in the Regular Army on 13 September 1976 for a period of three years.
4. His DA Form 2-1, shows he was absent without leave (AWOL) on two occasions and he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for each period:
 - 11 April 1978 to 12 April 1978 (2 days), UCMJ-23 May 77
 - 16 April 1979 to 18 April 1979 (3 days), UCMJ-19 April 1978
5. A Clinical Record-Narrative Summary completed on 1 August 1979, is filed in the applicant's record. This form shows he was hospitalized at an Army Hospital at Fort Riley, Kansas for 16 days for "agitated behavior." The military physician stated, in effect:

a. This was the applicant's second admission, having previously been admitted for psychiatric problems on 10 April 1979. During his first admission he received a preliminary diagnosis of paranoid personality and possible paranoid schizophrenia.

b. During his second hospitalization the applicant was diagnosed with paranoid personality manifested by confusion, agitation, and distrust of others. There was a tendency to litigate. Stress was unknown. He had a prior psychiatric hospitalization at the same facility. Impairment for military duty appeared to be considerable due to his problems.

c. A discharge from service due to unsuitability was the most proper course of action and recommended the applicant's commander expedite processing of administrative discharge under Army Regulation (AR) 635-200, Personnel Separations-Enlisted Separations, chapter 13, for unsuitability.

d. The applicant did not express any interest in continuing outpatient treatment on a regular basis. He was able, however, to accept a recommendation that if his problems should become manageable again, he would have an opportunity to talk to any of the counselors in the Outpatient Mental Health Clinic. No medication was prescribed.

6. On 17 September 1979, he was honorably released from active duty in accordance with AR 635-200, chapter 2, for completion of required active service with a separation code of "LBK" and transferred to the U.S. Army Control Group (Reinforcement). His DD Form 214 shows he completed three years of net active service with five days of time lost due to being AWOL.

7. His record is void of documents related his involuntary separation processing for unsuitability.

8. On 13 February 1981, the VA rendered a service-connected disability rating decision regarding the applicant's schizophrenia. The VA examined the applicant's service medical records and found that because he served only during peacetime he was not entitled to a pension. Further, his paranoid personality was not a disability under the law.

9. On 12 September 1982, the applicant enlisted in the U.S. Army Reserve. He later enlisted in the Washington Army National Guard (WAARNG) on 20 June 1986 and served until he was discharged on 3 May 1987.

10. The applicant previously provided his VA Rating Decision, 19 July 2007, which shows he was granted service-connection for his chronic paranoid schizophrenia, competent and granted a 100 percent disability rating, effective 13 May 2005. His claim for paranoid personality remained denied. His claim of service connection for anxiety

disorder, post-traumatic stress disorder, bipolar disorder, major depressive disorder remained denied.

11. The applicant was denied Combat-Related Special Compensation on 28 April 2009. The reason cited was that the applicant had no record of being processed for retirement or applying for retirement.

12. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

13. By regulation, the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case considered, it is necessary to correlate the nature and degree of physical disability which is present with the requirements of the duties which the member reasonably may be expected to perform by virtue of his office, grade, rank, or rating.

14. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement due to service-connected physical disability, specifically schizophrenia. 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 Regular Army on 13 September 1976; 2) On 17 September 1979, he was honorably released from active duty, Chapter 2, for completion of required active service with a separation code of "LBK" and transferred to the U.S. Army Control Group (Reinforcement), St. Louis, Missouri. His DD Form 214 shows he completed three years of net active service with five days of time lost due to being AWOL; 3) On 12 September 1982, the applicant enlisted in the U.S. Army Reserve. He later enlisted in the Washington Army National Guard (WAARNG) on 20 June 1986 and served until he was discharged on 3 May 1987; 4) The applicant was denied Combat-Related Special Compensation on 28 April 2009. The reason cited was that the applicant had no record of being processed for retirement or applying for retirement.

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.

c. The applicant asserts he incurred a psychiatric disability, specifically schizophrenia, while he was on active service, which warrants a referral to IDES and medical retirement. There is evidence the applicant was hospitalized at a military hospital in the Summer of 1979 for "agitated behavior." The military physician reported this was the applicant's second admission after previously being admitted for psychiatric problems in April 1979. During his first admission, he had been diagnosed with a preliminary diagnosis of paranoid personality and possible paranoid schizophrenia. However, it is likely he was released and then returned to duty after his first admission. During his second admission, he was again diagnosed with paranoid personality, and he was recommended for an administrative discharge for unsuitability. The applicant did not express interest in continuing outpatient treatment, and he was not prescribed psychiatric medication. The applicant's military record demonstrated the applicant completed his military initial enlistment and went on to meet the recruitment standards from a psychiatric perspective in the U.S. Army Reserve and then the WAARNG.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2005 for psychiatric symptoms, and he was later diagnosed with service-connected paranoid schizophrenia (100%SC) in May 2005. He has continued in treatment till present.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has been diagnosed with service-connected paranoid schizophrenia by the VA in 2005. There is evidence the applicant may have been demonstrating the initial symptoms of his current mental health condition during his active service in the Regular Army. However, he was able to continue to serve and complete his first enlistment. He also went on to meet recruitment standards for two additional enlistments in the U.S. Army Reserve and the WAARNG, and he completed his term of service. Thus, there is sufficient evidence the applicant was performing sufficiently while on active service, and there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical retirement 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 has been diagnosed with service-connected paranoid schizophrenia by the VA in 2005. There is evidence the applicant may have been demonstrating the initial symptoms of his current mental health condition during his active service in the Regular Army. However, he was able to continue to serve and complete his first enlistment. He also went on to meet recruitment standards for two additional enlistments in the U.S. Army Reserve and the WAARNG, and he completed his term of service. Thus, there is sufficient evidence the applicant was performing

sufficiently while on active service, and there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical retirement 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was separated from active duty due to completion of his required active service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding the applicant has been diagnosed with service-connected paranoid schizophrenia by the VA in 2005 and that there is also evidence he may have been demonstrating the initial symptoms of his current mental health condition during his active service in the Regular Army. However, he was able to continue to serve and complete his first enlistment. He also went on to meet recruitment standards for two additional enlistments in the USAR and the WAARNG, and he completed his term of service. Thus, the Board was persuaded by the medical reviewer's finding that there is sufficient evidence the applicant was performing sufficiently while on active service, and there is insufficient evidence his case warrants a referral to the disability evaluation system.

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. 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 Army Board for Correction of Military Records (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 (AR) 635-200, Personnel Separations- Enlisted Separations, in effect at the time, prescribed in chapter 2, Soldiers would be the discharge or release from Active Army upon termination of enlistment, period of induction, and other periods of active duty or active duty for training.

a. The Army combined AR 635-208 (Personnel Separations – Discharge – Unfitness) and AR 635-209 into AR 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) in 1966 but did not change the provisions addressing personality disorders.

b. In November 1972, AR 635-200 (Personnel Separations – Enlisted Personnel) superseded AR 635-212, and this revision moved character/behavior disorder separations to paragraph 13-5b (2) (Unsuitability – Character and Behavior Disorders); again, the policies pertaining to personality disorders were unchanged.

c. AR 635-200 was revised due to a civil suit settlement in December 1976. This change required Soldiers being separated for unsuitability, as a result of a personality disorder, to have been evaluated and diagnosed by a physician trained in psychiatry. Later guidance mandated the retroactive application of the foregoing changes and further expanded the policy, such that the presence of a personality disorder diagnosis would justify an upgrade to fully honorable, except in cases where there were "clear and demonstrable reasons" why a fully honorable discharge should not be given; conviction by a general court-martial or by more than one special court-martial were determined to be "clear and demonstrable reasons" that would justify a less than fully honorable discharge.

d. A Department of the Army Memorandum dated 14 January 1977, better known as the Brotzman Memorandum, was promulgated. It required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

e. A second memorandum, dated 8 February 1978, known as the Nelson Memorandum, expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable except in cases where there are "clear and demonstrable reasons" why a fully honorable discharge should not be given. Conviction by general court-martial or by more than one special court-martial (SPCM) was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

f. Army Regulation 635-200, currently in effect, paragraph 5-13, provides when separation is because of a personality disorder, the service of a Soldier separated per this paragraph will be characterized as honorable unless an entry level separation is required under chapter 3, section III. A characterization of service of under honorable conditions may only be awarded to a Soldier separating under these provisions if they had been convicted of an offense by general court-martial or convicted by more than one SPCM during the current enlistment.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, establishes the Army Physical Disability Evaluation System and set forth policies and responsibilities for retention, retirement, or separation of a member who was determined to be unfit to perform the duties of his office, grade, rank or rating because of physical disability.

a. A determination of unfitness is a factual finding that a member is unfit to perform the duties of his office, grade, rank, or rating. When such a finding is made, it would usually be inconsistent to expect the member to continue to perform satisfactorily in his office, grade, rank, or rating.

b. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case considered, it is necessary to correlate the nature and degree of physical disability which is present with the requirements of the duties which the member reasonably may be expected to perform by virtue of his office, grade, rank, or rating.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his continued performance of duty (until he is referred to the physical disability system for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty.

4. 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.

5. 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.

6. 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.

7. 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.

8. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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//