

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240000412

APPLICANT REQUESTS: in effect, honorable physical disability discharge in lieu of uncharacterized administrative discharge due to failed medical procurement standards

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

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Patient Appointments printout, April – May 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 5 June 2009
- Department of Veterans Affairs (VA) Health Summary, 27 August 2020
- VA letter, 27 August 2020
- VA letter, 26 April 2021
- medication summary sheet

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:

a. He was discharged due to his anxiety and depression. He was unable to function as he wanted to due to his mental health. He recently started receiving a 30 percent disability rating from the VA due to his anxiety and depression and it was later increased to 100 percent.

b. He would like his discharge to be changed to honorable so he can continue his education through the GI Bill and better himself for his family. He was told he could get his GI Bill back if his discharge characterization were changed to honorable.

c. He would also like the reason for his discharge to be changed to show his discharge was due to his anxiety and depression. That is why he is receiving a service-connected disability. He would also like his service-connected rating to be retroactive to the date he was discharged.

3. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

3. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination on 1 December 2008, for the purpose of Regular Army enlistment and was found qualified for enlistment with a PULHES of 1-1-1-1-1-1.

4. The applicant enlisted in the Regular Army on 20 January 2009.

5. The applicant provided a Patient Appointments printout, which shows he was scheduled for the following appointments at Brooke Army Medical Center (BAMC):

- Community Mental Health Troop Medical Clinic (TMC), 16 April 2009
- Family Medicine Service (FMS), 20 April 2009
- Community Mental Health TMC, 20 April 2009
- Community Mental Health TMC, 23 April 2009
- Urology Clinic, 24 April 2009
- Urology Clinic, 27 April 2009
- Community Mental Health TMC, 29 April 2009
- Community Mental Health TMC, 1 May 2009
- Urology Clinic, 26 May 2009

6. The complete facts and circumstances surrounding the applicant's discharge are unknown as his discharge packet, to include a DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) and a DA Form 3349 (Physical Profile), are not in his available records for review and have not been provided by the applicant.

7. The applicant's DD Form 214 shows he was given an uncharacterized discharge on 5 June 2009, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, due to failed medical/physical

procurement standards with corresponding separation code JFW. He was not awarded a Military Occupational Specialty (MOS) and was credited with 4 months and 16 days of net active service.

8. A VA letter, 27 August 2020, shows the applicant was awarded a combined service-connected disability evaluation of 30 percent effective 1 June 2020.

9. A multi-page VA Health Summary, 27 August 2020, lists the applicant's patient and contact information, healthcare providers, allergies, encounters, medications, problems, results, plan of care, treatment, and consultation notes, and has been provided in full to the Board for review.

10. A second VA letter, 26 April 2021, shows the applicant has one or more service-connected disabilities with a combined evaluation of 100 percent effective 1 March 2021, and he is considered to be totally and permanently disabled solely due to his service-connected disabilities effective 10 February 2021.

11. The applicant provided a medication summary sheet summarizing information about the medication Zoloft, which was prescribed to him,. The sheet includes information regarding warnings, uses, how to use, side effects, precautions, and drug interactions.

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. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting, in effect, honorable physical disability discharge in lieu of an uncharacterized administrative discharge due to failed medical procurement standards. On his DD Form 293, he indicated Other Mental Health Issues are related to his request and contends he was discharged due to anxiety and depression. 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 underwent a medical examination for the purposes of enlistment on 01 December 2008 which shows a PULHES of 111111, 2) he enlisted in the Regular Army (RA) on 20 January 2009, 3) the complete facts and circumstances surrounding his

discharge are unknown as his discharge packet, to include the Entrance Physical Standards Board (EPSBD) Proceedings and DA Form 3349 (physical profile), were not in his records available for review and were not provided by the applicant, 4) the applicant's DD Form 214 shows he was discharged on 05 June 2009 under the provisions of Army Regulation 635-200, paragraph 5-11, due to failed medical/physical procurement standards with a corresponding separation code of JFW. He was not awarded a military occupational specialty (MOS) and was credited with 4 months and 16 days of net active service, 5) a VA letter dated 26 April 2021 shows the applicant has one or more service-connected disabilities with a combined evaluation of 100 percent effective and that he is considered to be totally and permanently disabled solely due to his service-connected disabilities effective 10 February 2021.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The electronic Physical Evaluation Board (ePEB) and the VA's Joint Legacy Viewer (JLV) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 22 January 2009 through 27 May 2009. A Report of Medical Examination dated 01 December 2008 for the purposes of enlistment shows item number 40, psychiatric, as 'normal' on clinical evaluation. He presented to BH as a walk-in on 16 April 2009 due to "symptoms of depression and unhappiness with being in the Army." He reported crying every night, losing 20 pounds over the past 10 weeks, decreased appetite, trouble falling asleep, losing his train of thought, felt disengaged from his environment, and was experiencing dreams that were disturbing him. It was further documented that he did not feel he was able to adjust to Army life and that his wife was pregnant and felt sad that he was separated from her. The provider noted the applicant denied experiencing any anxiety at the time of the visit though reported he previously saw a counselor for 4 sessions prior to joining the military due to anxiety as a result of financial stress. It was noted that the applicant desired to get out of the military since entering basic training. He was diagnosed with Adjustment Disorder with Depressed Mood and Occupational Problem and was returned to duty without limitations. He walked-in to BH on 20 April 2009 at the request of the TMC physician due to being anxious about a possible diagnosis of testicular cancer. It was noted that after being told his condition might lead to cancer, he wanted out of the Army so he could spend time with his wife who was 5 months pregnant. The provider documented he was prescribed Zoloft (antidepressant) the previous week. His diagnosis of Adjustment Disorder with Depressed Mood was continued. On 28 April 2009, his BH provider added Major Depressive Disorder, Recurrent (MDD) to his list of diagnoses. A medical note from the same day noted he discontinued Zoloft due to it making him anxious and was started on Fluoxetine (antidepressant). He completed a psychiatry intake on 29 April 2009. It was documented that he reported he was prescribed psychotropic medications (e.g.,

Lexapro, Inderal, and Ativan) for 5-6 months and attended psychotherapy for three sessions to treat anxiety associated with financial stressors prior to joining the military. The provider noted that a Chapter 5-11 [*Advisor's Note*: under the current regulation this falls under Chapter 5-10] would be initiated and he was diagnosed with Anxiety Disorder, Not Otherwise Specified (NOS). On 04 May 2009, it was documented that he reported a 50% improvement in his mood with much less depression and was feeling better because he knew more about the chapter process and was getting support from BH. On 15 May 2009, he presented to BH to check-in on his status and it was noted that the MEB/PEB office stated his paperwork was at the doctor's office. Records show that the applicant followed-up with BH on approximately a weekly basis since his initial visit until 27 May 2009 focusing on coping strategies, supportive counseling, and receiving status updates regarding his Chapter process. His final diagnosis was noted as Adjustment Disorder with Depressed Mood. The available BH records do not indicate that the applicant was ever placed on a BH profile. There were no case files available for review in ePEB pertaining to this applicant.

d. A review of JLV shows the applicant is 100% service-connected for Major Depressive Disorder (MDD) through the VA. Three BH Compensation and Pension (C&P) evaluations were available for review through the Veterans Benefits Management System (VBMS). He completed an initial Posttraumatic Stress Disorder (PTSD) Disability Benefits Questionnaire (DBQ) on 07 July 2020 and the provider documented he did not meet criteria for PTSD though was diagnosed with Persistent Depressive Disorder (PDD) and Generalized Anxiety Disorder (GAD). The provider noted that he was diagnosed with Adjustment Disorder in service which had progressed to GAD. It was documented that he experienced anxiety since prior to service and reported anxiety in-service in April 2009. It was noted that he continued to experience worry, had problems with trust, depressed mood, feeling on edge or tension, and was sometimes tired. He also reported admitting himself into the hospital 2 years prior to the evaluation due to his 'insecurities and anger.' He completed a subsequent C&P examination on 03 September 2020 and was diagnosed with MDD, Recurrent, Moderate, Without Psychosis and Generalized Anxiety Disorder. It was noted that his previous diagnosis of PDD had progressed to MDD. His most recent C&P examination dated 30 March 2021 shows his previous diagnoses of GAD and MDD (though updated his specifier from moderate to severe) were reaffirmed and a diagnosis of Alcohol Use Disorder (AUD), Moderate was added.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed with two BH conditions in-service that fall under the purview of AR 40-501, MDD, Recurrent and Anxiety Disorder NOS. Adjustment Disorders that are acute (e.g., lasting less than 6 months) fall under the purview of administrative separations. There is no documentation available that the applicant's diagnosis of Adjustment Disorder with Depressed Mood in-service was diagnosed as chronic and therefore is not considered a potentially boardable condition. Post-

discharge, he has been 100% service-connected for MDD through the VA and diagnosed with GAD. His in-service diagnosis of Anxiety Disorder NOS is subsumed by his diagnosis of GAD. Although the records show the applicant was diagnosed with two BH conditions that fall under the purview of AR 40-501, there is no evidence available in the record that either of these conditions fell below medical retention standards as there is no evidence he required a BH profile or extended or recurrent hospitalizations in-service. In accordance with AR 635-200, Chapter 5-10, Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment, the condition is discovered within the first 6 months of active duty and does not disqualify the Soldier from retention in the military per AR 40-501, may result in an entrance physical standards board. Although his EPSBD files were not available for review, the available in-service medical records show he was evaluated by BH and referred for a Chapter 5-11 evaluation with the provider documenting that MEB/PEB office had been contacted and his records were at the doctor's office. Given the available documentation, regularity is presumed as to the processing of his separation packet. It is of note that VA examinations are based on different standards and parameters as they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of MDD and GAD through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even in-service diagnoses of MDD or GAD are not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. As such, from a BH perspective, the request for a medical discharge and/or retirement is unwarranted.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. The request is for medical retirement.

(2) Did the condition exist or experience occur during military service? N/A. The request is for medical retirement.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A. The request is for medical retirement.

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 request and executed a comprehensive and standard review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's request, available military records and the medical review, the Board concurred with the advising official finding the request for a medical discharge and/or retirement is unwarranted. The Board determined the applicant completed 4 months and 16 days of net active service and did not complete training and discharged from active duty due to failed medical/physical procurement standards.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for a honorable physical disability discharge in lieu of uncharacterized administrative discharge due to failed medical procurement standards. Therefore, 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.

[REDACTED]

[REDACTED]

[REDACTED]

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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD), traumatic brain injury (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, on those conditions or experiences.
3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board

(DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted

and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. 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.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

b. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) shows Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

c. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

(1) would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at the time

(2) does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection will be separated.

d. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to initial active duty training (IADT) for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

7. 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.

8. 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.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (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//