

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000595

APPLICANT REQUESTS: disability discharge or retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Three Certificates of Achievement
- Army Good Conduct Medal Certificate
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Four Certificates of Completion from a Correctional Facility
- Divorce Decree
- Office of the Secretary of Defense (OSD) Letter
- Department of Veterans Affairs (VA) Rating Decisions and Benefit Letters

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 indicates his request is related to his participation in the Persian Gulf War. He states:

a. He was suffering from post-traumatic stress disorder (PTSD) and other adjustment issues after returning from the Gulf war. He contends that he began suffering from depression, irritability, unprovoked periods of anger, outburst, and he was a danger to himself and others. His PTSD symptoms increased to chronic sleep impairment, impaired judgement, inability to establish and keep relationships (abuse of family members), suspiciousness, unprovoked periods of violence, impaired impulse control, and finally suicidal ideations to the point he could not think of anything else but killing himself. He attempted suicide by taking pills and by cutting his wrist with a knife and stabbing himself in the chest. His last attempt led him to seek help and he checked himself into a hospital. He spent approximately 25 days in an Air Force Hospital

assigned to the Mental Health Ward. He was discharged with a recommendation, unbeknownst to him, for a medical discharge.

b. His commander asked him if he wanted a "chapter or a regular discharge?" However, he was not of sound mind and he did not know the difference. He should have been referred for disability evaluation processing by a Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB). He was not capable of making a decision of this magnitude. He has suffered greatly by not getting the help that he would have received had he been medically discharged. He speculates that he may have even avoided a prison sentence.

3. A review of his record shows that the applicant enlisted in the Regular Army on 8 March 1988 for a four-year term of service. He completed foreign service in –

- Germany, 15 July 1988 to 14 July 1990
- Saudi Arabia, 7 October 1990 to 6 April 1991

4. He appeared before a Summary Court-Martial on 31 July 1989 at Baumholder, Germany for the offense of larceny, greater than \$100.00 wherein he was found guilty of the lesser offense of wrongful appropriation.

5. His record contains several medical treatment records which show:

a. He was admitted to a civilian hospital in Oklahoma on 23 December 1991 after stating he wanted to be able to control his anger and depression. He was discharged on 26 December 1991. The Discharge Summary shows the applicant was diagnosed with major depression and PTSD.

b. He was admitted to a U.S. Air Force Hospital on 26 December 1991 and diagnosed with adjustment disorder with depressed mood, alcohol abuse, and personality disorder not otherwise specified (narcissistic, antisocial features). The medical notes show the applicant was upset about fighting with his spouse and her moving out. He reported two attempts at suicide which included turning the gas on at his house and trying to stab himself.

c. A Narrative Summary (Clinical Resume) was completed on 18 January 1992. This document states that the applicant was hospitalized on 26 December 1991 based on a referral for admission. He underwent mental health and physical examinations and was discharged on 15 January 1992 with a diagnosis of adjustment disorder with depressed mood, and personality disorder not otherwise specified, with narcissistic and antisocial features. The military psychiatrist recommended the applicant be "strongly urged to seek outpatient mental health follow-up after discharge. The physician further noted that at the time of discharge the applicant had an appointment at the mental

health clinic at Fort Sill, Ok for 16 January 1992 at 0915 hours." There was also a recommendation that the applicant receive a formal evaluation of his alcohol use.

6. On 20 March 1992, the applicant was honorably released from active duty in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) Chapter 4, by reason of expiration term of service. He completed 3 years, 11 months, and 29 days of active service.

7. The applicant provides:

a. His Army Good Conduct Medal Certificate, and several certificates of achievements presented to him while on active duty. He also provided post-service certificates of completion for Thinking for a Change, Anger Management, Seeking Safety, and Cognitive Processing, which he received while a prison at a correctional facility.

b. An OSD letter encouraging him to seek medical assistance from the programs established for Gulf War veterans if he had specific health concerns about his low-level exposure of chemical agent resulting from the demolition of munitions at Khamisiyah, Iraq.

c. VA Rating Decisions and Benefit Letters for the period 31 May 2019 through 18 August 2023 which show the VA has determined that the applicant has numerous service-connected illness and injuries to include PTSD. He currently has a combined disability rating of 100 percent.

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, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). On his DD 149, he had indicated that PTSD and other mental health conditions are related to his request. He states:

"A medical chapter was recommended but I was given an honorable discharge when I was clearly suffering from PTSD and other readjustment issues upon return from

the Gulf War. I should have seen a medical discharge review board or PEB [physical evaluation board] given to me.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the regular Army on 22 March 1988 and was honorably discharged on 20 March 1992 after having completed his required active service under provisions provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (26 May 1989).

d. His period of Service under consideration predates the EMR.

e. The applicant was found guilty of wrongful appropriation of more than \$100 at a 31 July 1989 Summary Court Martial.

f. The applicant was admitted to a civilian hospital 23-26 December 1991 for treatment of major depression with suicidal ideation and “post-traumatic stress syndrome.” No military stressors were in his discharge summary with the only stressor noted in his discharge summary being childhood sexual abuse:

Some paranoia, said he didn't trust people. He had some nightmares especially about physical and sexual abuse when a child by a friend of the family.

g. His discharge diagnosis with adjustment disorder with depressed mood and he was transferred to the inpatient ward of the hospital on Sheppard Air Force Base. This narrative summary discussed the sometimes violent nature, on both sides, of his marriage; that after having sex with a civilian woman he was charged with rape and though the charges were dropped, this resulted in a bar to reenlistment; and “this admission arose in a setting of escalating marital tension and suicidal ideation.” It notes the applicant abused alcohol prior to his deployment “drinking close to a fifth of hard liquor daily.” His anger issues and mood improved during his hospitalization but continued to deny an alcohol abuse problem. He was not started on any medication during this admission.

h. The applicant was discharged to duty on 15 January 1992 with the diagnoses of “Adjustment disorder with depressed mood, Alcohol abuse, and Personality disorder, not otherwise specified, with narcissistic and antisocial features.” The providers discharge recommendations:

“The patient was strongly urged to seek outpatient mental health follow-up after discharge, and at the time of discharge had an appointment at the mental health clinic

at Ft Sill for 16 January 92 at 0915 hours. It was also strongly recommended that the patient receive a formal evaluation of his alcohol use.”

- i. If these encounters took place, the documents are not available for review.
- j. The applicant states he took classes for PTSD while in prison, 20 years after his discharge.
- k. Review of his records in JLV shows he has been awarded numerous VA service-connected disability ratings, including PTSD, migraine headaches, and prostate gland condition all awarded in August 2010, the earliest date for him receiving a VA service-connected disability rating.
- l. There are no duty limiting physical profiles or other sufficient probative evidence the applicant’s mental health condition failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to discharge. Thus, there was no cause for referral to the Disability Evaluation System.
- m. 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 and consequently prematurely ends their career. 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.
- n. It is the opinion of the ARBA Medical Advisor that a referral to his case 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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not 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.

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) 635-40, Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, sets forth policies, responsibilities, and procedures in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

a. The mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability.

b. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers who's service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service. Further, when a member is being separated by reason other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

3. Title 38, U.S. Code section 1110, General - Basic Entitlement: 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.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 24 February 2016, the Acting Principal Deputy Under Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to waive the imposition of the statute of limitation for service members requesting discharge upgrades related to PTSD or TBI. Additionally, cases previously considered by either the DRBs, BCMRS, or BCNR without the benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

7. 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 DRBs and BCM/NRs 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; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions,

official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

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. AR 15-185, Army Board for Correction of Military Records, 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 ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//