

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240001500

APPLICANT REQUESTS:

- in effect, a finding of fitness for her diagnosis of bipolar disorder or removal of the diagnosis
- amendment of her Reentry (RE) Code to from RE-4 to RE-3
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214WS (Certificate of Release or Discharge from Active Duty Worksheet), covering the period ending 26 September 2023
- Department of Veterans Affairs (VA) Rating Decision, dated 2 October 2023
- VA letter, dated 6 October 2023

FACTS:

1. The applicant states:

a. An updated record reflects her current skills, certifications, and any additional training she may have acquired since her last service, making her a more valuable and informed asset to the military. This process helps military recruiters assess her eligibility for specific roles and responsibilities, aligning her capabilities with the evolving needs of the armed forces. Moreover, accurate records enhance administrative efficiency, streamlining the enlistment process and expediting her return to active duty. By proactively updating her military records, she demonstrates a commitment to maintaining the highest standards of professionalism and readiness, reinforcing her readiness to contribute effectively to the mission at hand.

b. This is important because she believes she was misdiagnosed with bipolar disorder. She believes there wasn't enough testing done nor is she receiving compensation for this disorder. She would like to request her RE code be changed to a 3 instead of a 4.

c. She believes her military records are in error or unjust due to her bipolar disorder diagnosis. Individuals with bipolar disorder may experience challenges related to their mental health that could impact their military service. Errors in records may stem from a lack of understanding or documentation regarding the nature and management of the disorder. It is possible that instances of the disorder were not accurately represented, or accommodations and treatment received were not adequately recorded. In some cases, biases or misconceptions about mental health conditions could contribute to unjust evaluations or decisions. It is crucial for applicants to provide comprehensive medical documentation, assessments from mental health professionals, and any other relevant information that establishes a clear understanding of how bipolar disorder has been managed and does not impede their ability to perform military duties effectively.

d. There hasn't been enough testing done by a psychologist reflecting her unfit for bipolar disorder. She has never been hospitalized for her bipolar disorder. Her psychologist at the time just asked her what symptoms she was having. She told them what symptoms she was having and they agreed she had bipolar disorder. However, once she started to receive medication for bipolar disorder, it didn't seem to work. She is seeking assistance from legal advisors or advocacy groups familiar with military regulations related to mental health conditions, to benefit her in addressing any potential errors or injustices in her records.

2. The applicant enlisted in the Regular Army on 21 May 2019, and was awarded the Military Occupational Specialty (MOS) 92Y (Unit Supply Specialist).

3. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), Behavioral Health (BH) Addendum, VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in her available records for review and have not been provided by the applicant.

4. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows:

a. An Informal PEB convened on 3 August 2023, where the applicant was found physically unfit with a recommended rating of 50 percent and that her disposition be placement on the Temporary Disability Retired List (TDRL) with reexamination during May 2024.

b. The applicant's unfitting condition is bipolar disorder (MEB diagnosis (Dx) 1); 50 percent. She first sought BH treatment for this condition while stationed in Korea in May 2020. This condition is attributed to a personal traumatic event in addition to life and occupational stressors. Rated at 50 percent for occupational and social impairment with reduced reliability and productivity. The assigned impairment level is based on

consideration of the applicant's symptoms which include depressed mood, anxiety, suspiciousness, and panic attacks. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), she is unfit because her DA Form 3349 functional activity limitations associated with this condition make her unable to reasonably perform her required duties. This rating is for DES purposes, is not binding on the VA, and will not be used by the VA for purpose of calculating VA disability compensation.

c. Her medical conditions determined not to be unfitting are MEB Dx 2-19.

d. On 9 August 2023, the applicant signed the form indicating she had been advised of the findings and recommendations of the Informal PEB and concurred, waiving a formal hearing of her case. She also indicated she did not request reconsideration of her VA ratings.

5. Department of the Army Orders 0006707619.00, dated 1 December 2023, placed the applicant on the TDRL effective 27 September 2023, due to temporary disability.

6. The applicant's DD Form 214WS shows she was retired on 26 September 2023, due to temporary disability with separation code SEK [a presumed typographical error intended to show SFK, the corresponding separation code for temporary disability retirement] and RE Code 4. She was credited with 4 years, 4 months, and 6 days of net active service.

7. The applicant's DD Form 214 is not in her available service records for review.

8. The applicant's VA Rating Decision, dated 2 October 2023, shows she was granted a service-connected disability for the following conditions effective 27 September 2023:

- eczema bilateral arms and legs, hidradenitis suppurativa genitals, skin tag right arm pit, 30 percent
- tension headaches, 30 percent
- cervical strain, 20 percent
- left ankle Achilles tendinitis, 10 percent
- left hip trochanteric pain syndrome bursitis and iliopsoas tendonitis, 10 percent
- left knee patellofemoral pain syndrome, 10 percent
- lumbosacral strain, 10 percent
- right hip trochanteric pain syndrome bursitis and iliopsoas tendonitis, 10 percent
- right knee patellofemoral pain syndrome, 10 percent
- right wrist ganglion cyst, 0 percent
- irritable bowel syndrome, 0 percent
- right wrist scar, 0 percent

- of note, service connection for borderline personality disorder (PEB referred as bipolar disorder) also claimed as post-traumatic stress disorder (PTSD) from military sexual trauma (MST), depression, anxiety with panic attacks, paranoia disorder, attention deficit disorder, obsessive compulsive disorder, memory loss is denied.

9. 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.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting alteration of her medical records to indicate she did not meet criteria for bipolar disorder, and consequently, resulting in a change in her being medically retired for this condition. 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 into the Regular Army on 21 May 2019; 2) An Informal PEB convened on 3 August 2023, where the applicant was found physically unfit with a recommended rating of 50 percent for bipolar disorder; 3) The applicant was honorably retired from the Army on 26 September 2023, Chapter 4.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation were also examined.

c. The applicant began to engage in behavioral health treatment in May 2020 due to the applicant making a suicidal statement. She denied significant suicidal ideation, but she did report significant stress, anxiety, and depression related to relationship stress as a result of reported domestic violence in her short-term "proxy marriage" to a fellow service-member. The applicant continued in short-term therapy at behavioral health and longer individual therapy at Family Advocacy while stationed in Korea. She was not diagnosed with a mental health condition at that time. Later after moving to new duty station, the applicant reengaged in behavioral health treatment in September 2021. She again was reporting anxiety, depressive, sleep problems, difficulty concentrating, suicidal ideation/ plan without intent, excessive drinking, and excessive spending at times. The applicant was initially diagnosed with other specified anxiety disorder. The applicant engaged in regular therapy, but she declined medication management beyond assistance for sleep. She did not report significant improvement in symptoms after engaging in therapy. Later, the applicant expressed concern that she met criteria for bipolar disorder and stated she had a family history of bipolar disorder. The provider felt

the applicant did not meet criteria for the condition at that time. The applicant was sent to an extended military exercise to a non-combat area, and she returned to the same provider eleven months later. She was seen in February 2023, and she again reported concern that she met criteria for bipolar disorder. The provider again reviewed with the applicant her symptoms for the last year, and it was determined the applicant met criteria for bipolar disorder. She was referred to a behavioral health prescribing provider, who also thoroughly reviewed the applicant's history of symptoms. Again, the applicant was found to meet criteria for bipolar disorder, and she was prescribed corresponding medication. The applicant was seen consistently by both providers and treated accordingly for bipolar disorder till her discharge. The applicant reported improvement on mood stabilizing medication. The applicant was also seen by an independent provider for her PEB in August 2023, and she was found unfitting for continued military service as a result of bipolar disorder. The applicant concurred with these findings.

d. A review of JLV provided evidence the applicant has been diagnosed with bipolar disorder by the VA, but she has not been diagnosed with a service-connected mental health condition. She is currently in treatment for bipolar disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor there is insufficient evidence to support a change a to the applicant's medical retirement for bipolar disorder at this time. She was independently diagnosed with this condition by multiple behavioral health providers in the military and the VA.

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 review based on law, policy, and regulation.

a. A finding of fitness for her diagnosis of bipolar disorder or removal of the diagnosis. Deny. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence to support a change to the applicant's medical retirement for bipolar disorder; she was independently diagnosed with the condition by multiple behavioral health providers in the military and the Department of Veterans Affairs.

b. Amendment of her RE-Code to RE-3. Deny. The Board determined the appropriate RE-Code was assigned to the applicant as associated with her medical retirement and therefore there is no error that requires amendment. The Board denied relief.

2. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

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. 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.
2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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. 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.
3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

d. The Temporary Disability Retired List (TDRL) is used in the nature of a "pending list." It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him/her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

e. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his/her office, grade, rank, or rating at the time of the evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service. In addition, the condition must be determined to be temporary or unstable.

f. Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next 5 years so as to result in a change in rating or a finding of fit. The Army Disability Evaluation System will re-evaluate each Soldier placed on the TDRL at least once every 18 months. Evaluation may be sooner. Once the PEB finds each condition is stable upon evaluation, the PEB will assign a final rating that includes the ratings for the disabilities determined to be permanent and stable when the Soldier was placed on the TDRL or during preceding TDRL adjudications.

g. A final determination of the case of each Soldier on the TDRL will be made at the latest upon the expiration of 5 years after the date when the Soldier was placed on the TDRL. If, at the time of that determination the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable. Placement on the TDRL confers no right to remain on the TDRL for the entire 5-year period.

h. If upon reexamination, Soldiers whose disabilities have stabilized and who are not determined fit for duty and meeting medical retention standards for the conditions for which they were placed on the TDRL will be removed from the TDRL and placed on the PDRL if the physical disability rating remains 30 percent or greater. If upon reexamination, the Soldier is found unfit for duty and not meeting medical retention standards but the stabilized physical disability percentage is rated at below 30 percent, the Soldier will be removed from the TDRL and separated with severance pay if the Soldier has less than 20 years of active Federal service.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, established standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty).

a. The general instructions state the purpose of the separation document was to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form is complete and accurate and reflects the conditions as they existed at the time of separation.

b. Further instructions state a DD Form 214 will not be prepared for Soldiers removed from the (TDRL).

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code SFK is to be used for RA Soldiers retired due to temporary disability under the provisions of Army Regulation 635-40, chapter 4. SPD Code SEK is not listed.

7. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code SFK has a corresponding RE Code of "4."

X. 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.

X. 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.

X. 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.

x. 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. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//