

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240003273

APPLICANT REQUESTS: correction to his DD Form 214, Certificate of Release or Discharge from Active Duty, to show he was discharged due to a disability.

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

- DD Form 149, Application for Correction of Military Record
- DD Form 214
- Department of Veterans Affairs (VA) Letter

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, the VA has determined his mental health is service-connected and awarded him a 100% disability rating (permanent and total). He contends he suffered from a mental health condition while serving on active duty and he should have received a medical discharge. He needs the narrative reason changed in order to be eligible for education benefits.
3. On 4 June 2019, the applicant enlisted in the Regular Army.
4. The complete facts and circumstances of his discharge are not available for review; however, the record shows the applicant underwent a physical examination on 30 April 2021 for the purpose of separating from the military. He reported being "not mentally well," trying to commit suicide, suffering from depression, being sad, and having suicidal thoughts. He also indicated he was hospitalized for five days after attempting suicide. The examining physician found no defects and made no diagnosis. The applicant was found qualified for continued service.

5. On 27 April 2021, he underwent a mental status evaluation as part of his administrative separation in accordance with Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 5-17, other designated physical or mental conditions.

a. The Behavioral Health provider diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood, acute. The provider stated the applicant met the retention requirements of AR 40-501, Medical Services-Standards of Medical Fitness, chapter 3 and did not warrant disposition through medical channels. The applicant was psychiatrically cleared to receive an expeditious discharge from the U.S. Army under the provisions of AR 635-200, chapter 5-17, or any other chapter the command deemed appropriate.

b. The applicant was responsible for his behavior, could distinguish between right and wrong, and possessed sufficient mental capacity to understand and participate in any administrative or judicial proceedings.

c. The applicant had displayed a pattern of difficulty adjusting to identifiable stressors. The disorder was of sufficient severity to interfere with his ability to function in the military. The applicant was not amenable to Behavioral Health treatment, nor would he respond to Command efforts at rehabilitation. His medical record did not contain evidence of a documented boardable condition within the past 90-days.

6. On 3 June 2021, his immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of paragraph 5-17 of AR 635-200, by reason of a mental health condition which prevented the applicant from performing his duties as a Soldier, with a recommendation that his service be characterized as honorable. On the same day, the applicant acknowledged receipt of his notification of pending separation action.

7. On 8 June 2021, he was advised of the basis for the contemplated action to separate him for other designated physical or mental conditions under the provisions of AR 635-200, chapter 5-17. He waived the opportunity to consult with counsel and elected not to submit a statement.

8. On 10 June 2021, his commander formally recommended the applicant be separated from the Army prior to the expiration of current term of service under the provisions of AR 635-200, chapter 5-17.

9. On 23 June 2021, the separation authority approved the applicant's separation under the provisions of paragraph 5-17, AR 635-200, due to other designated physical or mental conditions, and directed that the applicant received an honorable characterization of service.

10. His DD Form 214 shows, on 9 July 2021, he was honorably discharged under the provisions of paragraph 5-17, AR 635-200, due to other designated physical or mental conditions accordingly. He completed 2 years, 1 month, and 6 days of net active service.

11. The applicant provides his VA summary of benefits, 14 January 2024, which shows he is a combined service-connected disability evaluation of 100%.

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

13. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.

14. Title 38, U.S. Code, permits the Department of Veterans Affairs (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 error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies them from further military service.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical discharge in lieu of his honorable administrative separation for a physical or mental 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 04 June 2019; 2) The complete facts and circumstances of his discharge are not available for review. However, on 27 April 2021, he underwent a mental status evaluation. The applicant was diagnosed with adjustment disorder with mixed anxiety and depressed mood, acute. The provider stated the applicant met the retention requirements IAW AR 40-501 and did not warrant disposition through medical channels. The applicant was recommended and psychiatrically cleared for a Chapter 5-17 administrative separation, or any other chapter the command deemed appropriate; 3) The applicant was honorably discharged on 9 July 2021, by Chapter 5-17, due to other designated physical or mental conditions. He completed 2 years, 1 month, and 6 days of net active service.

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) and hardcopy VA medical documentation provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's contact with BH-related treatment, while on active duty began with his inpatient psychiatric hospitalization for suicidal ideation on 31 March 2021. He attributed his suicidal ideation primarily due to loneliness and dissatisfaction with his life in the military. Concurrently, the applicant noted marital problems and the recent loss of a family member as contributory stressors to his suicidal ideation. On 16 April 2021, the applicant was medically referred for substance abuse treatment due to his excessive alcohol use prior to his psychiatric inpatient admission (31 March to 05 April 2021). He was inconsistent in his attendance of SUDCC appointments for evaluation and treatment of substance use disorders, reportedly due to his disinterest in continued mental health care and his pursuit of administrative separation. During his first SUDCC appointment on 19 May 2021, he described that his wife filing for divorce triggered his suicidal ideation (as documented by his SUDCC intake paperwork and documented in his VA encounters). On 27 April 2021, the applicant was command referred to behavioral health to assess his suitability for continued military service. Specifically, the command noted the applicant was experiencing occupational problems and had been diagnosed earlier with an adjustment disorder. The applicant was thoroughly evaluated by an active-duty mental health provider per appropriate regulations IAW AR 635-200 & MEDCOM Policy 19-001. The applicant was diagnosed again with adjustment disorder with mixed anxiety and depressed mood, acute. The active-duty provider determined that the applicant did not warrant disposition through medical channels and psychiatrically cleared the applicant to receive an expeditious discharge from the US Army by Chapter 5-17, AR 635-200.

d. Following his discharge, on 7 Sept 2021, veteran was evaluated through a VA C&P evaluation for reported "depression" and "sleep paralysis" that resulted in a diagnosis of Unspecified Psychotic Disorder primarily based on applicant's reported history without clear contextual details. During his initial evaluation for his only psychiatric hospitalization on 31 March 2021, his triaging medical provider noted that the applicant may have acute transient psychosis along with his primary concern of suicidal ideation. This was due to the applicant's report of visual hallucinations upon waking (later attributed to sleep paralysis). There was no reported reoccurrence of symptoms following the initial report. The applicant's initial psychology encounter with the VA, on 18 May 2022, mentioned the applicant's diagnosis of "disorganized schizophrenia," by history. However, the provider noted the applicant's presentation at

the time of evaluation was not congruent with this diagnosis. There were no additional documented psychiatric inpatient hospitalizations following his discharge from active service or symptoms of psychosis noted in JLV. There is insufficient evidence the applicant has demonstrated psychosis or symptoms consistent with disorganized schizophrenia prior or during his connection for treatment at the VA.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was diagnosed or demonstrated mental health symptoms consistent with a behavioral health condition warranting a referral to a DES at this time. Multiple mental health providers evaluated the applicant while in active-duty service and did not report or demonstrate symptoms consistent with a psychotic disorder. He did not attend more than six months of treatment without improvement, required to be hospitalized in inpatient psychiatric treatment on two or more occasions, or was ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

f. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? N/A. The applicant is requesting medical discharge.

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

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 and standard 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 opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was diagnosed or demonstrated mental health symptoms consistent with a behavioral health condition warranting a referral to a DES at this time. Multiple mental health providers evaluated the applicant while in active-duty service and did not report or demonstrate symptoms consistent with a psychotic disorder. He did not attend more than six months of

treatment without improvement, required to be hospitalized in inpatient psychiatric treatment on two or more occasions, or was ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

2. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? N/A. The applicant is requesting medical discharge.

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

3. The Board found the applicant was honorably discharged on 9 July 2021 under the provisions of, paragraph 5-17, for other designated physical or mental conditions. Although the applicant reported significant mental health concerns during his separation physical including suicidal ideation and a prior hospitalization the examining physician found no defects and determined he was qualified for continued service. It was determined by the Behavioral Health provider that the applicant met retention standards under AR 40-501 and did not warrant disposition through medical channels. The Board noted, the applicant was psychiatrically cleared for administrative separation and found mentally competent to participate in proceedings. The separation authority approved his discharge under AR 635-200, chapter 5-17, and his DD Form 214 accurately reflected.

4. Furthermore, the Board acknowledged the applicant's VA Summary of Benefits showing a 100% service-connected disability rating. However, under Army policy, the presence of a medical condition or a VA rating does not, in itself, establish physical unfitness for military service. Army disability ratings are intended to compensate for the loss of a military career due to conditions that disqualify a Soldier from continued service. The Board noted, that, given the absence of a boardable medical condition at the time of separation and the proper execution of administrative separation procedures, there was no evidence of error or injustice in the characterization of the applicant's discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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. Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 5 prescribed policy for separation for convenience of the Government. (1) Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status. (2) No Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraphs 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

b. Paragraph 5-17 states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards) or 5-13 (Separation Because of Personality Disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

c. When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation per AR 40-501, Medical Services-Standards of Medical Fitness. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

d. Separation processing may not be initiated under this paragraph 5-17 until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Physical Disability Evaluation System (DES) and sets forth

the policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of their office, grade, rank, or rating. It states that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the Physical Evaluation Board (PEB) must decide the percentage rating for each unfitting disability. The Veterans Affairs Schedule for Rating Disabilities (VASRD), as modified in the regulation, is used to establish this rating. This regulation states:

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 service.

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

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. 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.

e. 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.

4. Title 38, U.S. Code, permits the Department of Veterans Affairs (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 error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies them from further military service.

5. 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.

6. 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.

7. 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.

8. 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.

9. AR 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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//