

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 December 2024

DOCKET NUMBER: AR20240003524

APPLICANT REQUESTS:

- medical discharge retroactive to November 2007 with back pay
- 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 2648 (Pre-separation Counseling Checklist for Active Component Service Members)
- separation orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- medical records (55 pages)

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 summary:

a. He should have received a medical discharge with benefits. Growing up he played sports and was extremely outgoing. By the time he was 18 he been on a mission trip to South Africa, served in the position of camp counsel/big brother at church camp twice a year, and he was in a Christian rock band. I was incredibly involved with the community and with doing charitable things for the elderly or people in need.

b. Basic training was pretty easy. He was a squad leader, and his drill sergeants told him he held his position longer than anyone in the last 3 basics training groups. He

taught half of his platoon how to shoot during the white phase because he did just as well as the drill sergeant who was sniper qualified.

c. The day he showed up to pre-airborne school, the previous class was doing their final physical fitness test. They were told to jump in, so they could see where they were. He passed the physical fitness test. He was told he had two options, leave the next day for airborne school or he could stay with his class and help them pass. So, he stayed to make sure everyone in his class would leave together. Two weeks later, they were all in airborne school passing all the physical fitness tests with flying colors. During one of his jumps while at airborne school, he landed, and something did not feel right after. He shook it off and ran back to the bus to go back to that hangar. The next day, they did a two-mile run. At the end of the run, they were doing stretches and when he got up his leg collapsed/gave out. He could barely put pressure on it. He told the jump master's, and they gave him 800mg ibuprofen. Three days later and nothing was getting better, so they sent him to the doctor.

d. Initially, they told him he had a tumor in his leg. He was then taken off jump status and sent him to a medical unit. He told the doctor that he wanted to be fixed and sent back to finish what he started. He also told the doctor that if he could not be healed, to send him home because he did not sign up for a desk job. But he did not want to go home. During the first day at the airborne medical unit, he handed over his medical records and told them what was wrong, while on crutches. They called him a liar and said that he was faking and was not going to stay in the unit long. One of the civilian office workers was an ex-marine and showed him his tumor and said it did not bother him, and his was huge and you could not even see his, so he had to be a liar. From then on, they told him he could not see the doctor anymore. He was still doing physical training and they had him doing odd jobs around the base.

e. He had to sneak to the main hospital on base to receive medical care because his sergeants would not allow him to schedule any appointments to see a doctor. He was looking for a second opinion. He wanted someone to tell him what was actually wrong and how to fix it. He was in a lot of pain as well. The hospital did a bone density test, and he was diagnosed with shin splints and stress fractures in both legs that were so bad his legs might snap if he kept jumping. They also did CT scans on his legs, as well other tests. The tests did not find a tumor; they did not know what was causing the problem and wanted to do more tests. They ended up putting him on a dead man waiver because his leg was getting worse. He was told he was taken off the ibuprofen because it breaks down bone density. His sergeant harassed him even more every day after finding out he was seeing the doctor. His first sergeant talked trash to him in his office until he cried. They kept trying to force him to pick a different military occupational specialty (MOS) but even when he would start to give in and ask for a running waiver, they would tell him no. Any explanation of why he needed it was not their problem. They started giving him extra duty and still made him do physical training even with the dead

man waiver. He went to the Office of the Staff Judge Advocate (JAG) to file complaints more than once, but things just got worse for him.

f. They had a guy in there that was like their bulldog. He cannot prove it, except for one day he asked a few of them to go hang out at the river. The Bulldog grabbed one of the other guys and choked him out. The guy he choked out wanted out of the Army. They sent this Bulldog to the Bradley center prior to this on fake accusations of him trying to commit suicide. He was there for two weeks. The Bulldog told the applicant he was going to choak him out next. They went back and forth with one another until the Bulldog hit him in the temple while he was not looking; it gave him a concussion. He went to hospital, but he was scared to say anything, so he lied about what happened. Once he told some of the other guys in the barracks, they said they had similar incidents with him. So, they planned to get him in trouble. The sergeant found out and he got early leave and was being sent to another base.

g. He was starting to break to the point he could not take it anymore. His best friends suggested he requests leave, see them, and get a break from everything at their base in Tennessee. He purchased a car, his leave was approved, and he went to see his friends. Two days before he was supposed to be back his car broke down. He used the rest of the money he had to get his car towed to a shop. He was told he needed a new motor. The day before he needed to be back, he called his staff sergeant and explained what had happened and asked for a bus ticket back to base. His staff sergeant said, "don't come back! And if you do you know what will happen. You are an AWAL P.O.S.," and then hung up on the applicant.

h. He did not know what to do. He ended up sleeping in a cornfield because he was out of money, so he called his parents. They offered him a bus back to base or one back home to figure everything out. He chose to go home because he did not want to go back without someone to help him. He was so scared. So, he called his state senator's office. They emailed back and forth. He was told to go to the nearest military base, tell them his story, and have them send him back to Fort Moore, GA (formerly Fort Benning). They were going to send someone from the Pentagon to investigate. That is what he wanted.

i. He went to Fort Sill OK, spoke to a captain, and told him everything. He was told he could either attend advanced individual training there, go to the brig for two years, or just take a discharge; but the captain was not going to send him back. So, he asked to talk to a JAG officer and explained everything to him and asked if they could fight this. He would not ensure him that they could win, only restating the two years in jail if lost or just take the discharge. So, he took the discharge. He was then told he could stay two more weeks and get evaluated for his leg to get his rating or just leave that weekend and go to the nearest Department of Veterans Affairs (VA) and get the same thing done.

But he found out that was a lie once he got to the VA in 2007. They told him that is not how it works. He has been fighting to make things right ever since.

3. The applicant enlisted in the Regular Army on 1 February 2007 for training in MOS 92R (Parachute Rigger) in the rank/grade of private (PV1)/E-1.

4. A DA Form 4187 (Personnel Action), dated 25 June 2007, shows the applicant's status was changed from present for duty to AWOL effective 24 June 2007 at 2200 hours. The DA Form 4187 shows his unit of assignment was 1st Battalion, 507th Parachute Infantry Regiment, Fort Moore, GA.

5. A DD Form 616 (Report of Return of Absentee) shows he surrendered to military authorities at Fort Sill, OK on 6 August 2007.

6. Based on the applicant's AWOL offense, court-martial charges were preferred against him.

7. The applicant's complete separation proceedings are not available.

8. His DD Form 214 shows he was discharged on 26 November 2007 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, in lieu of trial by court-martial, with an uncharacterized characterization of service. He completed 8 months and 13 days of net active service, and he accrued lost time from 24 June 2007 to 6 August 2007.

9. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 requesting an upgrade of his 26 November 2007 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES).

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 1 February 2007 and received an uncharacterized discharge on 26 November 2007 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Discharge in Lieu of Trial by Court-Martial. The DD 214 shows one period of lost time under 10 USC § 972; from 24 June 2007 thru 6 August 2007 (44 days). It shows he did not complete advanced individual training as he was not awarded a military occupational specialty (MOS).

d. A Personnel Actions (DA Form 4187) show he was declared absent without leave (AWOL) on 24 June 2007. A Report of Return of Absentee (DD Form 616) shows the applicant surrendered to military authorities at Ft. Sill, OK on 6 August 2007.

e. In his self-authored letter, the applicant discusses poor / negligent treatment from leadership after he injured his left leg, other issues in his unit, and that on the penultimate day of his leave he was told by his staff sergeant not to return to Fort Benning.

f. Medical documentation submitted with the application shows he was treated for headaches in mid-May and they resolved. He was evaluated in the local emergency room O/A 19 May 2007 for a loss of consciousness sustained in an altercation in which he received "several blows to the left temple." He had subsequently complained of an occasional blind spot. He was seen by ophthalmology who then documented a normal ophthalmological examination.

g. It also shows he was evaluated on 10 May 2007 for a 2-week history of leg pain related to a parachute landing fall (PLF) 2 weeks earlier. Other than a slight limp, the examination was normal, and he was treated conservatively, to include physical therapy and limited duty. He remained symptomatic and was reevaluated for left leg pain in June 2007. A bone scan revealed bilateral shin splints and a small area of increased activity in the distal leg. This was found on plain radiographs to be a benign 1.7 x 0.5-centimeter non-ossifying fibroma in his distal tibia. A follow-up radiograph in 6 months was recommended to document interval stability of the lesion. His leg pain continued to be treated conservatively.

h. Finally, the documentation shows he was diagnosed with adjustment disorder with anxiety and depressed mood on 14 May 2007.

i. There is insufficient evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501,

Standards of Medical Fitness, prior to his discharge. Thus, there was and remains no cause for referral to the Disability Evaluation System.

j. JLV shows he has been awarded a VA service-connected disability rating for PTSD.

k. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

I. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: His PTSD has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As PTSD is associated with avoidant behaviors, the condition fully mitigates his period of absence without leave.

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. One potential outcome was to grant relief based on the advising official noted that PTSD is associated with avoidant behaviors, the condition fully mitigates his period of absence without leave and that the applicant surrendered to authorities. However, upon review of the applicant's request, available military records and medical review, the Board concurred with the advising opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: His PTSD has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As PTSD is associated with avoidant behaviors, the condition fully mitigates his period of absence without leave.

3. The Board, based on the advising opine, found no evidence of a duty-incurred condition that failed to meet the medical retention standards of AR 40-501 prior to discharge. The applicant's service record shows he was AWOL shortly after beginning initial entry training (IET), did not complete advanced individual training, and was discharged under Chapter 10, in lieu of trial by court-martial. The Board agreed, the applicant's discharge was appropriately characterized as uncharacterized due to his failure to complete the minimum time in service required for characterization. The Board recognizes the applicant's post-service diagnosis of PTSD and VA rating; however, these factors do not override the circumstances of his discharge or justify a change in characterization. As, the Board denied the applicant's request for medical discharge retroactive to November 2007 with back pay

4.. 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:**

Mbr 1    Mbr 2    Mbr 3

:        XXX        :        GRANT FULL RELIEF

:        :        :        GRANT PARTIAL RELIEF

:        :        :        GRANT FORMAL HEARING

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.

//SIGNED//

X

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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 of the regulation in effect at the time, dated 6 June 2005, states a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The discharge request may be submitted after court-martial charges are preferred against the Soldier or, where required, after referral, until final action by the court-martial convening authority.
  - b. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the Soldier concerning:

- elements of the offense(s) charged
- burden of proof
- possible defenses
- possible punishments
- provisions of this chapter
- requirements of volunteerism
- type of discharge normally given under the provisions of this chapter
- rights regarding the withdrawal of the Soldier's request
- loss of veterans' benefits.
- prejudice in civilian life based upon the characterization of discharge

c. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request certifying that they:

- has been counseled
- understands their rights
- may receive a discharge under other than honorable conditions
- understands the adverse nature of such a discharge and the possible consequences

d. The Soldier's written request will also include an acknowledgment that they understand the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

e. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be uncharacterized.

3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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 their office, grade, rank, or rating. The regulation in effect at the time, dated 8 February 2006, states in:

a. Paragraph 4-1 (Soldiers charged with an offense) the case of a Soldier charged with an offense under the UCMJ, or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for disability processing unless:

- (1) The investigation ends without charges.
- (2) The officer exercising proper court-martial jurisdiction dismisses the charge.
- (3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

b. Paragraph 4-3 (Enlisted Soldiers subject to administrative separation, except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the general court-martial convening authority (GCMCA), must be forwarded with the disability case file to the Physical Evaluation Board. A case file may be referred in this way if the GCMCA finds the following:

- (1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.
- (2) Other circumstances warrant disability processing instead of alternate administrative separation.

4. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

5. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//