

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240003581

APPLICANT REQUESTS: a medical retirement.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- numerous hand-written notes
- 12 DA Forms 4856 (Developmental Counseling Form)
- Medical Command (MEDCOM) Form 4038 (Report of Behavioral Health Evaluation) and 27 pages of medical records
- Army administrative separation proceedings
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) summary of benefits letter
- several certificates of military training and awards and civilian education
- excerpt of Department of Defense Instruction 1332.14 (Enlisted Administrative Separations)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. Upon reviewing his separation documents, he concluded that the military wanted to throw him away just because he was working through some issues. He was admitted into the hospital for depression. There were no rehabilitation efforts made by the Army. He noticed he was not right and sought help. He currently receives service-connected disability compensation rated at 70% from the VA for major depression. He thinks that with help from his unit he could have been medically discharged. His separation under

the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions) does not accurately reflect his ailment.

b. Instead of helping him get the help he needed, his command did not listen to his cry for help. That led him to seek help on his own, which made his unit chain of command upset. He went to speak to a chaplain at behavioral health that same day he was admitted into the hospital. He spent a total of five days in the hospital. He was issued medication, but he refused to take it. He answered all of the doctor's questions honestly and he was able to be discharged. Upon his return to his unit, he was not offered an opportunity to rehabilitate by way of available counseling and or unit change (if adjustment disorder was the case). Instead, he was immediately attached to the rear detachment. He was basically told he was being separated out of the military. He was not in a position to challenge the decision, so he accepted what was happening.

c. He now sees how everything that transpired still negatively impact him to this day. His DD Form 214 shows he did not complete his first full term of service, the narrative reason for separation states it is not a disability, and the separation authority is not equal to what his mental condition was. He is still suffering from the mental condition that prompted his separation from the Army. The VA rated him 70% for depressive disorder utilizing the evidence from his time at the hospital. Before he reaches his statement point, he would like to point out that he was never in trouble during his time in the service. In fact, in his 2.8 years of active service, he achieved quite a lot.

d. Ironically, he received his first negative evaluation in March, the same month he experienced his mental health issue. In April, following his discharge from the hospital, he was attached to the rear detachment for out processing pending his separation orders. He has great suspicion that he was discharged because the unit was set to start training for a summer deployment to Afghanistan and they did not want him to be a part of the training event though he was previously an important member. He believes that his time in service was cut short. He does not believe that all he accomplished in his 2.8 years in the Army should have been thrown out the way it was.

e. In a memorandum, he saw false statements such as "in my opinion the Soldier has not demonstrated sufficient desire to overcome his shortcomings and be a quality member of the unit." He has a documented mental health ailment, he sought help, and still he was released in a week. If that does not show desire, he simply does what can. Another falsification on the same memorandum was reductions and dates. This was to paint him in a negative light to validate expediting his separation orders. He was never demoted. He enlisted in the rank of private first class (PFC) and he was promoted at the earliest time available of two year and he separated in the rank of specialist (SPC). Another false statement is "all rehabilitation attempts have been exhausted and I believe that [the applicant] has no potential for useful service under conditions of full

mobilization." While contradicting statements prove there had been no rehabilitation efforts aside from him going to behavioral health, that statement is offensive.

f. In his closing statement, he is identifying that he was forced out of the military without due process. The military has been forcing out its members using both, adjustment disorder and Army Regulation 635-200, paragraph 5-17. Through his research, he found that if he was afforded opportunities to rehabilitate since his admission to the hospital, at the very least he should have gone before a medical board and medically retired. His VA rating is 70% for major depression and so his DD Form 214 should be corrected to show he was medically retired. All statements suggest that he is not of use or fit for military service.

3. The applicant enlisted in the Regular Army on 8 November 2007 in the rank grade of PFC/E-3. He was promoted to the rank and grade of SPC/E-4 on 8 November 2009.

4. DA Forms 4856 with dates ranging from 28 September 2009 to 10 February 2010 show the applicant's duty performance was meeting or exceeding expectations.

5. A DA Form 4856, dated 12 March 2010, shows the applicant was counseled based on his performance, which appeared to be negatively affected by his personal issues. He was advised that he could consult with mental health personnel or with the chaplain.

6. Medical records provided by the applicant show he was admitted (voluntarily) at a behavioral health hospital on 30 March 2010 and was discharged from the hospital on 6 April 2010. The medical records also show he was diagnosed with adjustment disorder with depressed mood.

7. A DA Form 4856, dated 7 April 2010, shows the applicant was counseled by his first sergeant regarding a recommendation for his separation from the Army under the provisions of AR 635-200, paragraph 5-17, based on his behavioral health diagnosis.

8. On 28 April 2010, the applicant underwent a command-directed behavioral health evaluation. He was diagnosed with adjustment disorder with depressed mood. The evaluating behavioral health provider indicated the applicant met the retention requirements of AR 40-501 (Standards of Medical Fitness) and that he was psychiatrically cleared for any administrative action deemed appropriate by command. The evaluating behavioral health provider also indicated the following:

Met with SM [service member] for chapter evaluation. Reviewed psychiatric and medical history, including AHLTA [Armed Forces Health Longitudinal Technology Application] notes. SM has not deployed. Based on clinical interview and review of records, SM has an adjustment disorder with depressed mood. An expeditious discharge from active duty is recommended. Specifically, this service

member does not have post-traumatic stress disorder. SM is psychiatrically cleared for administrative separation in accordance with AR 635-200, [paragraph] 5-17.

9. On 1 June 2010, the applicant was informed by his company commander that he was initiating action to separate him under the provisions of AR 635-200, paragraph 5-17, based on his adjustment disorder with depressed mood diagnosis. The applicant was also advised of his rights to consult with counsel and to submit statements in his own behalf.

10. On 3 June 2010, the applicant waived consulting counsel and elected not to submit statements in his own behalf.

11. On 15 June 2010, the separation authority approved the separation action under the provisions of AR 635-200, paragraph 5-17 with an honorable characterization of service.

12. The applicant's DD Form 214 shows he was honorably discharged on 17 July 2010 in the rank and grade of SPC/E-4 under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability. The DD Form 214 also shows he completed 2 years, 8 months, and 10 days of active service.

13. The applicant provided:

a. Numerous hand-written notes expressing his disagreement with his separation process. He also contends that he had no issues performing his military duties. *The notes were provided to the Board for their review and consideration.*

b. A VA summary of benefits letter showing he is receiving service-connected disability compensation for undisclosed conditions with a combined rating of 70%.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting disability medical retirement in lieu of honorable administrative discharge. He contends OMH as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 8 November 2007.
- He was promoted to the rank and grade of SPC/E-4 on 8 November 2009.
- DA Forms 4856 with dates ranging from 28 September 2009 to 10 February 2010 show the applicant's duty performance was meeting or exceeding expectations.
- A DA Form 4856, dated 12 March 2010, shows the applicant was counseled based on his performance, which appeared to be negatively affected by his personal issues. He was advised that he could consult with mental health personnel or with the chaplain.
- A DA Form 4856, dated 7 April 2010, shows the applicant was counseled by his first sergeant regarding a recommendation for his separation from the Army under the provisions of AR 635-200, paragraph 5-17, based on his behavioral health diagnosis.
- On 1 June 2010, the applicant was informed by his company commander that he was initiating action to separate him under the provisions of AR 635-200, paragraph 5- 17, based on his Adjustment Disorder with Depressed Mood Diagnosis. The applicant was also advised of his rights to consult with counsel and to submit statements on his own behalf.
- On 3 June 2010, the applicant waived consulting with counsel and elected not to submit statements on his own behalf.
- Applicant's DD Form 214 shows he was discharged on 17 July 2010 in the rank and grade of SPC/E-4 under the provisions of AR 635-200, paragraph 5-17, by reason of condition, not a disability. He was credited with 2 years, 8 months, and 10 days of active service and was assigned separation code JFV and RE code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, upon reviewing his separation documents, he concluded that the military wanted to throw him away just because he was working through some issues. He was admitted into the hospital for depression. There were no rehabilitation efforts made by the Army. He noticed he was not right and sought help. He currently receives service-connected disability compensation rated at 70% from the VA for major depression. He thinks that with help from his unit he could have been medically discharged. His separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions) does not accurately reflect his ailment. Instead of helping him get the help he needed, his command did not listen to his cry for help. That led him to seek help on his own, which made his unit chain of command upset. He went to speak to a chaplain at behavioral health that same day he was admitted into the hospital. He spent a total of five days in the hospital. He was issued medication, but he refused to take it. He answered all of the doctor's questions honestly and he was able to be discharged. Upon his return to his unit, he was not offered an opportunity to rehabilitate by way of available counseling and or unit change (if adjustment disorder

was the case). Instead, he was immediately attached to the rear detachment. He was basically told he was being separated out of the military. He was not in a position to challenge the decision, so he accepted what was happening.

d. The active-duty electronic medical record available for review shows on 30 March 2010 the applicant was seen as a walk-in by behavioral health services due to his preoccupation with violent thoughts of hurting others, upon assessment he was escorted to the hospital for an evaluation and was admitted. The applicant was discharged on 6 April 2010 and diagnosed with Adjustment Disorder with Depressed Mood. On 7 April 2010, the applicant participated in a post-hospitalization assessment, he reported being relieved while in the hospital and away from his unit. He reported being prescribed medication but opting not to take it. He shared having one year left of service and not wanting to deploy, "I don't want to go, I don't believe in the War, I won't get terminal leave and I'm afraid of what would happen to me". He was diagnosed with Adjustment Disorder with Depressed Mood. Contrary to the applicant's statement of not being offered an opportunity to rehabilitate by way of available counseling, a treatment team meeting on 20 April 2010 that included his off-post mental health provider, indicates the applicant was placed in the Stabilization Program and initially participated appropriately in group and individual therapy. He reported serving 5 years in the US Navy and 3 years in Army and never liking the military. He reported being pressured by his family to join and remain in service. He reported he had been feeling angry and irritable for the last few months prior to his hospital admission. The applicant was aware of being chaptered out of the Army and felt that was the preferred outcome, no acute stress was noted. A follow-up session with the applicant on 21 April 2010 notes the applicant's positive mood, he reported being excited about leaving the military, "can definitely see the light at the end of the tunnel". He shared his Chapter process was going smoothly and he was looking forward to life as a civilian, no safety concerns were noted. On 27 April 2010, a treatment team meeting was once again held with his providers, and it was noted the applicant's depression was minimal and his anxiety as mild. The applicant was not taking any medication but continued meeting with his off-post mental health provider on a weekly basis and was assigned to the Stabilization Program for group therapy and case management. On 28 April 2010, the applicant underwent a command-directed behavioral health evaluation. He was diagnosed with Adjustment Disorder with Depressed Mood. The applicant met retention requirements of AR 40-501 (Standards of Medical Fitness) and he was psychiatrically cleared for any administrative action deemed appropriate by command. Following his Chapter evaluation, the medical record shows the applicant did not engage in behavioral health services and, despite repeated attempts to reach him via phone, he did not attend his scheduled sessions. The applicant participated in a mandatory assessment prior to discharge, he was receiving an honorable discharge and reported he "does not feel he has any anger issues due to leaving the base on Friday 25 June. He is happy to be getting out of the army." The applicant was considered stable with no noted risk factors.

Overall, the applicant's available service record does not contain a DA Form 3349 (Physical Profile), nor does it evidence:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for Major Depressive Disorder. A C and P evaluation dated 10 December 2018 diagnosed the applicant with Unspecified Depressive Disorder. However, the assessment notes the applicant loss his wife in March 2018 due to breast cancer which she battled for six years. Despite his depressive symptoms appearing to be related to grief regarding his wife's death, the evaluator opined his depression was at least as likely as not related to military service due to his psychiatric hospitalization while in service.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process. The applicant's sole in-service behavioral health diagnosis evident in the record is Adjustment Disorder with Depressed Mood. Although the applicant has been 70% service connected for Major Depressive Disorder, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of Major Depressive Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Major Depressive Disorder is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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 a 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.

5/12/2025

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. AR 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-17 of the regulation in effect at the time states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per AR 635-40 (Disability Evaluation for Retention, Retirement or Separation) 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 air or 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.

(1) 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 in accordance with AR 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2). Separation processing may not be initiated under this paragraph 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 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

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

5. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout their lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. 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//