

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004514

APPLICANT REQUESTS: correction of his records to show he was discharged due to service-incurred medical disabilities instead of discharged for misconduct.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- third-party statement
- 21 pages of medical records

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. Due to the ambiguous terms and conditions leading to his separation from the U.S. Army, he is requesting a refurbishment of his DD Form 214. The military had an extreme budget cut during his separation (2011-2012). The Pentagon's 2013 budget would eliminate nearly 100,000 ground troops from the U.S. military as part of cuts to reduce spending by \$487 billion over the next decade. Republicans criticized the plan. With these circumstances, his separation was hasty and unethical. During 2010-2011, his unit received one of the last 12-15-month deployments in which his unit lost half a dozen or so Soldiers, supporting his claim for an inequitable separation, including the fact that he did not have any representation nor a tail during his separation process.

b. During said time frame, he found himself in horrifying situations, especially for a young 19-year old who was only a few months out of basic training. Upon arrival to Kandahar, Afghanistan, his commander, who volunteered their company for the

deployment, abandoned them out of fear and left them in the hands of their first sergeant. As the new person in his unit, he was on every undesirable mission and duty, creating a high-stress environment. Even so, he mustered through and completed every task until he found out that he had lost his grandfather, who fought in the Vietnam War, and had inspired him to go into the military. He was denied the opportunity to go home and gladly continued his duties and obligations. During the blistering winters, he received and Article 15 for wearing a military-issued black beanie while on gate duty. He did not know he was expected to obtain a new one while working 12 hours shift 6 days a week when he was not running gun truck missions.

c. Without saying, he accepted the extra duties, which led to him working 18-20 hours a day for three months which required him to fill 100 sandbags a night after his shift. Inadvertently, this led to him being sleep deprived, causing him to slip into depression after losing a close battle buddy due to an improvised explosive device/pressure plate explosion followed by a gunfight and rocket attacks on the base. After speaking with a chaplain, he was allowed to go home for rest and recuperation. Amid this time, he heavily contemplated not returning to the war zone at such a tender age. Nevertheless, after mopping around for a few days, he was motivated by his grandfather's memorabilia. Unfortunately, he interacted with some old acquaintances, which led to him indulging in not-so-effective coping mechanisms.

d. After returning to theatre, he faced his problems head-on, seeking counseling for his unknown at the time post-traumatic stress disorder (PTSD), working diligently and amicably with his constituents, and getting again promoted, and even being awarded for brave acts of service. Amid his upward trajectory, a lousy decision catapulted him back into depression after losing another Soldier and his leadership's trust. Despite his circumstances, he sought counseling and therapy and substance abuse assistance. It was not known to him at the time that he should have been allowed to complete therapy and counseling before being discharged. He left untreated for his substance abuse, which was self-medicated for his PTSD that was not treated. Stemming from the loss of a Soldier, the death of a lover, and exposure to a hostile environment. He was not educated regarding his veteran benefits, depriving him of resources and the ability to support myself, or treat the issue he had to bury within.

e. This led him to have to navigate the civilian sector unprepared. Despite the circumstances, he mustered up the integrity to obtain employment less than a week out of the service using his military training mixed with ingenuity to work his way to a lead position and having from 10 to 20 employees under him as a lead operator in a chemical company, which led to his promotion to Labtech. This was great until he was isolated and found himself breaking down memories and reliving egregious and horrific moments from his deployment which triggered him to resent his survival and stern in him was the desire to go back to Afghanistan to complete his mission wholeheartedly, believing he would find himself in theatre through some form of serendipity, which led to

him having an unhealthy work-life balance and created poor relationships with his family.

f. Before he spiraled into a conundrum, he got help from the Department of Veterans Affairs, which he should have had during his service and before his separation. He is currently in therapy and rehabbing injuries he sustained during deployment. Unfortunately, acquired wounds from services that may never heal, concluding the delineation of his inequitable separation process.

3. The applicant enlisted in the Regular Army on 9 March 2010. His record shows he served in Afghanistan from 10 November 2010 to 10 November 2011.

4. The applicant's complete separation proceedings are not available. His available records contain a memorandum signed on 3 April 2012 by the commander of the 13th Expeditionary Sustainment Command (Rear) (Provisional), Fort Cavazos, TX, directing his discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense—abuse of illegal drugs, with an under honorable conditions (General) characterization of service.

5. The applicant's DD Form 214 shows he was discharged on 24 April 2012 in the rank and grade of private/E-1 under the provisions of Army Regulation 635-200, paragraph 14-12c(2) by reason of misconduct (drug abuse) with an under honorable conditions (General) characterization of service. He completed 2 years, 1 month, and 16 days of active service. The DD Form 214 also shows he was assigned a separation code of JKK and a reentry (RE) code of 4 (ineligible for reentry).

6. On 8 March 2023, the Army Discharge Review Board (ADRB) determined the applicant's discharge was inequitable based on his PTSD condition, which mitigated his misconduct (drug use). Therefore, the ADRB voted to grant relief in the form of an upgrade of the characterization of service to honorable, change to the separation authority to Army Regulation 635-200, paragraph 14-12a, and the narrative reason for separation to misconduct (minor infractions) with a corresponding separation code of JKN. The ADRB voted not to change the RE code, as the mitigating condition is also service-limiting.

7. The applicant provided a third-party statement from a former member of his unit attesting to the negative experiences the applicant endured during military service with his immediate leadership. The complete statement was provided to the Board for their review and consideration.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System for PTSD. He states his PTSD was untreated, writing:

“It was not known to me at the time that I should have been allowing completing my therapy and counseling before being discharged. I left untreated for my substance abuse, which was self-medication for unrealized PTSD that was not treated. Stemming from the loss of a soldier, the death of a lover, and exposure to a hostile environment. Nor was I educated regarding my Veteran benefits, riding me of resources and the ability to support myself, nor treat the issue I had to bury within!”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 published 4 April 2023 following an ARBA grant of an upgrade to honorable shows the applicant entered active duty on 9 March 2010 and was honorably discharged on 24 April 2012 under the separation authority provided paragraph 14-12a of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Minor disciplinary infractions. It shows Service in Afghanistan from 10 November 2010 thru 10 November 2011.

d. The EMR shows the applicant was first seen by behavioral health on 4 October 2011 for issues with his unit:

“SM [service member] describes persistent problems with his unit and complains that he feels like an outcast. He admits that he has recent disciplinary issues including an Article-15 and a positive UA [urinalysis] for THC [tetrahydrocannabinol]. He also reports family-of-origin problems.”

e. The applicant was diagnosed with “adjustment disorder with anxiety and depressed mood” and entered into counseling and classes.

f. On 13 October 2011, he was diagnosed with cannabis dependence in remission after discussing his history of cannabis use with the behavioral health provider:

"SM describes continued anxiety over his current situation as he is facing a possible administrative separation for THC use. He acknowledges that he does not want this to happen and recognizes that the use of THC contradicts Army regulations/values. Session was spent processing this issue and SM feels strongly that his use was influenced by the situation and his proximity to the substance. He states that he grew up around drug dealers and admits to almost daily use of THC from age 12-18. He quit primarily to pursue Army service. Since then, he states that he only used on this one occasion. Session was spent exploring problems associated with his use.

g. Though applicant screened positive for PTSD on 13 March 2012, his diagnosis remained adjustment disorder with anxiety and depressed mood. He continued treatment and continued to be released without limitations. He was diagnosed with alcohol abuse on 14 March 2012.

h. From his penultimate encounter on 16 April 2012:

"Biofeedback for stress and sleep associated with adjustment disorder and insomnia. Patient is being seen today for an initial assessment to evaluate for biofeedback training. We discussed the premise behind biofeedback, how the equipment is used as a behavioral therapy tool and what to expect from training.

Patient's questions regarding the training process were answered. We reviewed the patients current appointments with other behavioral health providers to assure that optimum care is being provided.

We discussed the patients current stressors, anxiety level, sleep and sleep hygiene concerns. We evaluated briefly for headaches and stressors that contribute to headaches. Patient verbalized understanding of training and has agreed to a trial of biofeedback.

Pt reports that he is facing an Chapter 14 discharge and is likely going to be discharged by the end of May 2012."

i. The applicant's final encounter was on 24 April 2012 and the purpose was to complete the record IAW AR 40-66, Medical Record Administration and Health Care Documentation (22 May 2006).

j. The EMR shows the applicant was conservatively treated for low back pain during his time in service. The 23 March 2012 encounter shows he was being treated conservatively, had been referred to physical therapy, and released without limitations.

k. The applicant initiated care with the VA in June 2015. He was evaluated for disability due to PTSD on 14 August 2015 after which the provider noted "Veteran's symptoms do not meet the diagnostic criteria for PTSD under DSM-5 criteria." He was diagnosed with "Cannabis Use Disorder, Mild."

l. There is insufficient probative evidence the applicant had a mental health condition or other 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 no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

m. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

"The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating."

n. JLV shows he has been awarded multiple VA service-connected disability ratings, including a rating for PTSD originally effective 1 September 2017, and ratings for Intervertebral disc syndrome and several mild radiculopathies originally effected 12 June 2017. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

o. It is the opinion of the ARBA Medical Advisor a referral of the case to the DES is unwarranted.

**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 insufficient evidence the applicant had a mental health condition or other duty incurred medical condition which would have failed the medical retention standards prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. There is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

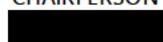
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
			DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/8/2025

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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense (including abuse of illegal drugs), and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
3. Army Regulation 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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 their office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. The regulation in effect at time states in:
  - a. Paragraph 3-1, a 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.
  - b. Paragraph 3-2, 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.

c. Paragraph 3-2, when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, etc.), his or her continued performance of duty until he or she is referred to the DES for evaluation for separation for reasons indicated above creates a presumption that the member is fit for duty.

d. Paragraph 4-3, 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 unless the commander exercising general court-martial jurisdiction over the member determines that:

(1) The disability is the cause, or substantial contributing cause, for the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of other administrative disposition.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//