

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240004834

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General)
- amendment of his separation date to show 23 December 2019 vice 12 December 2019

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3822 (Report of Mental Status Evaluation), 7 April 2018
- NGB Form 22 (National Guard Report of Separation and Record of Service), 12 December 2019
- Department of Veterans Affairs (VA) Rating Decision, 30 May 2023
- Primary Care Psychology Notes, 9 February 2024

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 due to his medical condition and being granted VA disability, his discharge should be changed to honorable, and his separation date should be changed to 23 December 2019. He feels that he was purposely separated 11 days short of 6 years, so he would be ineligible to receive benefits.
3. The applicant provides the following:
  - a. VA rating decision dated 30 May 2023, which shows he was service connected for bipolar disorder and granted an evaluation of 70 percent, effective 9 September 2022. His service connection for bipolar disorder was established as directly related to military service. The VA examiner opined that his bipolar disorder was at least likely as

not (Greater than 50 percent probability) incurred in or caused by an in-service injury, event, or illness. The VA assigned a 70 percent evaluation based on:

- Anxiety
- Chronic sleep impairment
- Depressed mood
- Difficulty in adapting to stressful circumstances.
- Difficulty in establishing and maintaining effective work and social relationships.
- Disturbances of motivation and mood
- Intermittent inability to perform maintenance of minimal personal hygiene.
- Near-continuous panic affecting the ability to function independently, appropriately, and effectively.
- Occupational and social impairment with reduced reliability and productivity
- Suicidal ideation
- Suspiciousness

b. Primary Care Psychology Notes dated 9 February 2024, which shows the applicant presented with a depressive episode and indicated that he was interested in psychotherapy and medication for bipolar disorder. He reported a history of hypomanic episodes and indicated that he had been in a low for about 4-5 months. He also reported being sent to handle riots from 2014-2017 around St. Louis/Ferguson, which he described as “chaos and somewhat traumatic.” He reported occasional night terrors related to the riots and did not report any other trauma-related symptoms. He was referred to mental health service.

4. A review of the applicant’s service record shows:

a. He enlisted in the Missouri Army National Guard (MOARNG) and as a Reserve of the United States Army on 23 December 2013, for a period of 6 years.

b. A chronological record of medical care, which shows he was seen or contacted on:

- 5 March 2018 – for anxiety disorder, unspecified
- 7 March 2018 – scheduled for a behavioral health evaluation.
- 12 April 2018 – was seen by the behavioral health officer on 7 April 2018 and diagnosed with bipolar disorder. He was required to initiate with psychology and/or psychiatry to submit documentation.
- 31 May 2018 – service member [applicant] was called to request treatment records.
- 5 July 2018 – per the service member [applicant] he was scheduled for a psychiatry appointment on 21 June 2018, and no documentation received to

date. File to be reviewed at August drill and failure to comply (FTC) procedure would be considered at that time if no documentation submitted.

- 23 July 2018 – Applicant stated that he would get his treatment notes sent by the end of the week.
- 1 October 2018 – He stated he missed his last appointment and would not be going back. He would try to find a new provider but did not know when. He was offered PCH contact information, but he denied.

c. The applicant was counseled on 7 April 2018 to inform him of his referral to the MOARNG medical case management process. The counseling shows, he possessed a medical condition(s) which warranted a behavioral health examination and/or medical review with the Health Services Office. He was informed that a fitness for duty physical examination may be required to determine whether further medical processing was needed. The counseling outlined what would be expected of him during the medical case management process, and he would be required to take further action upon request to facilitate the medical case management process. He was informed that he was required to obtain and forward his civilian medical documentation to the Health Services Office, through his unit administrator, no later than 7 July 2018.

d. On 7 April 2018, he underwent a mental status evaluation. It was determined that a behavioral health disorder was present, resulting in duty limitations that may impact deployability. He was diagnosed with Bi-polar, by report. The behavioral health officer recommended follow up, to re-engage in counseling, and continue psychiatric care. The behavioral health officer stated that the applicant was nondeployable, and he was not to have access to weapons.

e. On 17 September 2018, he was issued a profile which shows he was nondeployable due to decreased mission capability from a behavioral health condition. He was unable to physically and/or mentally carry and fire his individual assigned weapon and he was unable to live and function, without restrictions in any geographic or climatic area without worsening condition. The profile states that the initial profile was entered on 6 March 2018 with modifications on 1 June 2018 to include, no drilling/no uniform status, per the behavioral health officer's recommendation.

f. An FTC worksheet dated 5 January 2019, which shows the applicant was counseled on 7 April 2018. He was diagnosed with a behavioral health condition which required a profile. He was ordered to treatment and failed to comply with this order. The failure to comply led to impairment in his readiness.

g. A memorandum from the Director of Manpower and Personnel, MOARNG, dated 16 January 2019, which states the applicant was directed to attend/complete a medical appointment/fit for duty physical examination in accordance with Army Regulation (AR) 40-501 (Standards of Medical Fitness). The applicant failed to comply with the directive.

(1) Details:

- On 12 April 2018, he was notified by a Provider to provide medical documentation, and he did not provide the documentation.
- On 23 July 2018, he was notified by Ms. H\_, Care Coordinator, to provide medical documentation, and he did not provide the required documents.
- On 1 October 2018, he was notified by Ms. H\_, Care Coordinator, to provide medical documentation, and once again he failed to provide the required documents.

(2) National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 6-36u, provides that a Soldier who fails to obtain required physical (this includes providing required documentation) may be separated from the ARNG and placed into the Reserve of the Army (IRR).

(3) To ensure accurate data, the Director, requested that a response be provided that included either the Commander's course of action to bring the Soldier into compliance, or the Command's decision to process the Soldier for separation, within 30 days.

h. On 26 June 2019, the applicant's immediate commander recommended the applicant be separated from the MOARNG and as a Reserve of the Army under the provisions of AR 135-178 (Enlisted Administrative Separations), chapter 14, section 1k, and that his service be characterized as general, under honorable conditions. He stated that he notified the applicant of the proceedings and the characterization of service that was recommended. He listed the following reasons for the recommended action and characterization of service:

(1) AR 135-178, chapter 14, paragraph 14-1k, failure to comply with directive for fit for duty examination.

(2) The applicant failed to report for medical evaluations as directed. As such, his continued retention would have an adverse effect on military discipline, good order, and morale.

(3) Due to limitations imposed by the applicant's profile, he would not be an asset to a mobilized unit.

i. On 20 August 2019, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of AR 135-178, chapter 14 for being medically unfit for retention. The commander listed the following reason for the proposed action: failed to respond or comply with orders concerning medical appointments and documents. The commander informed the

applicant he was recommending he receive an under honorable conditions (general) characterization of service and explained his rights.

j. A certified mail document, dated 4 September 2019, shows the applicant was notified of the separation proceedings.

k. On 12 December 2019, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge.

l. NGB Form 22, shows the applicant was discharged from the MOARNG and as a Reserve of the Army on 12 December 2019, under the provisions of NGR 600-200, paragraph 6-36u, by reason of failure to obtain required physical per AR 40-501, in the rank/grade of private first class (PFC)/E-3, and his service was characterized as under honorable conditions (general). He completed 5 years, 11 months, and 20 days of net active service during the covered period. Additionally, his NGB Form 22 shows in:

- Block 15 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded this Period): National Defense Service Medal, Army Reserve Components Overseas Training Ribbon, Army Service Ribbon, Missouri National Guard Basic Training Ribbon, and the Missouri National Guard State Emergency Duty Service Ribbon
- Block 26 (Reenlistment Eligibility): RE-3

5. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under honorable conditions (general) and a change to his separation date. 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 in the Missouri Army National Guard (MOARNG) on 23 December 2013; 2) An FTC worksheet, dated 5 January 2019, shows the applicant was counseled on 7 April 2018. He was diagnosed with a behavioral health condition, which required a profile. He was ordered to treatment and failed to comply with this order. The failure to comply led to impairment in his readiness; 3) A memorandum from the Director of Manpower and Personnel, MOARNG, dated 16 January 2019, states the applicant was directed to attend/complete a medical appointment/fit for duty physical examination in accordance with Army Regulation (AR) 40-501. The applicant failed to comply with the directive; 4) On 26 June 2019, the applicant's immediate commander recommended the applicant be separated from the MOARNG under the provisions of

AR 135-178 (Enlisted Administrative Separations), chapter 14, section 1k, and that his service be characterized as general, under honorable conditions. He stated that he notified the applicant of the proceedings and the characterization of service that was recommended; 5) The applicant was discharged from the MOARNG on 12 December 2019, under the provision of NGR 600-200, paragraph 6-36u, by reason of failure to obtain required physical per AR 40-501, in the rank/grade of private first class (PFC)/E-3, and his service was characterized as under honorable conditions (general).

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 civilian medical documentation provided the applicant were also examined.

c. There is sufficient evidence the applicant reported to the MOARNG that he was experiencing mental health symptoms beginning in March 2018, and he was evaluated by a military behavioral health officer in April 2018. The applicant was diagnosed with Bipolar Disorder, by report. This condition was determined to potentially result in duty limitations that may impact his deployability. The applicant was placed on a temporary psychiatry profile. He was required to initiate with psychology and/or psychiatry services and to submit the corresponding medical documentation. On 31 May 2018, the applicant was contacted to submit treatment records. In July 2018, the applicant reported he had an appointment with psychiatry but did not provide documentation at that time. He was counseled that if he did not provide medical documentation of his behavioral health documentation by August drill, he would be considered failure to comply. The applicant did not provide documentation.

d. A review of JLV provided evidence the applicant began to engage with the VA for care in the Summer of 2023. However, there is evidence he was diagnosed with service-connected Bipolar Disorder (70%SC), effective April 2021. The applicant has been treated for Bipolar Disorder till present. The applicant also provided VA documentation of treatment with a psychologist in 2024, and he was reporting more current depression.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has been diagnosed with service-connected Bipolar Disorder by the VA after his discharge. There was evidence the applicant was identified as experiencing mental health symptoms consistent with Bipolar Disorder while in active service with the MOARNG. This branch of service does not offer regular behavioral health services to service members, and the applicant was instructed to go and receive regular behavioral health services and provide the corresponding behavioral health documentation to his unit. There is insufficient evidence the applicant completed this order, despite repeated efforts to have him complete this task.

## f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected Bipolar Disorder by the VA after his discharge. There was evidence the applicant was identified as experiencing mental health symptoms consistent with Bipolar Disorder while in active service with the MOARNG. This branch of service does not offer regular behavioral health services to service members, and the applicant was instructed to go and receive regular behavioral health services and provide the corresponding behavioral health documentation to his unit. There is insufficient evidence the applicant completed this order, despite repeated efforts to have him complete this task.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for failing to respond or comply with orders concerning medical appointments and documents. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention of a mental health condition; however, reviewed and concurred with the medical advisor's review finding he was experiencing a mental health condition while in service, instructed to seek behavioral health assistance, and failed to comply. Therefore, the Board found insufficient evidence to support the applicant's condition mitigated his conduct for the purposes of a discharge upgrade. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. As it relates to the applicant's request for amendment of his separation date to show 23 December 2019 vice 12 December 2019, the Board found the evidence of record supports the date of 12 December 2019 as that is the date the Adjutant General officially signed his administrative separation packet and the effective date of his discharge. Therefore, the Board denied this portion of his request.

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.

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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. National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-36, provides the reasons for separation from the State Army National Guard not listed in paragraph 6-35 or Army Regulation (AR) 135-178. All involuntary administrative separations require commanders to notify Soldiers concerning intent to initiate separation procedures per paragraph 6-32. All Soldiers being involuntarily separated will be afforded a reasonable opportunity to provide a written response for consideration by the separation authority. Characterization of service will be per applicable State codes.

a. Paragraph 6-36u (failure to obtain required physical per AR 40-501 (Standards of Medical Fitness)), states, a Soldier will be notified in writing of the requirement to obtain a physical and given 90 days after the letter is mailed to comply with this requirement. Commander can authorize an extension of up to 60 days for extenuating circumstances: RE 3.

b. Paragraph 6-8 (Characterization of service), states:

(1) An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. An honorable characterization may only be awarded a Soldier upon completion of his or her service obligation, or where required under specific reasons for separation, unless an uncharacterized description is warranted. When a Soldier is discharged before expiration of the service obligation for a reason for which an honorable characterization is discretionary, the following considerations apply:

- Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).
- A Soldier will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by court-martial or actions under the UCMJ Article 15.
- Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable characterization of service.

- An honorable characterization may be awarded when disqualifying entries in the Soldier's military record are outweighed by subsequent honorable and faithful service over a greater period of time during the current term of service.
- It is a pattern of behavior and not an isolated instance that should be considered the governing factor in determining the character of service.
- Unless otherwise ineligible, a Soldier may receive an honorable characterization of service if he or she has, during his or her current enlistment, or any extension thereof, received a personal decoration.

(2) If a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

- When authorized, a characterization of under honorable conditions is awarded to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
- A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization. It will not be issued to Soldiers upon separation for expiration of their service obligation.

3. AR 135-178 (Enlisted Administrative Separations), states in chapter 14, paragraph 1k (Medically unfit for retention):

a. Discharge will be accomplished when it has been determined that a Soldier is no longer qualified for retention by reason of medical unfitness (AR 40-501, AR 40-3 (Medical, Dental, and Veterinary Care)) unless the Soldier requests and is:

- Granted a waiver under AR 40-501, as applicable.
- Determined fit for duty under a non-duty related Physical Evaluation Board determination (AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation)).
- Eligible for transfer to the Retired Reserve (AR 140-10 (Army Reserve – Assignments, Attachments, Details, and Transfers)).

b. Soldiers who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active-duty training, or inactive duty training (IDT) will be processed as specified in AR 635-40 if otherwise qualified.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

7. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//