

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240005847

APPLICANT REQUESTS: reconsideration of his prior request for correction of his records to reflect physical disability discharge in lieu of honorable administrative discharge due to a condition, not a disability.

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

- DD Form 149 (Application for Correction of Military Record)
- Ten Broeck Hospital Consultation/Physical Evaluation, 12 July 2005
- Ten Broeck Healthcare Comprehensive Psychiatric Evaluation, 12 July 2005
- Ten Broeck Dupont Hospital Psychological Evaluation, 19 July 2005
- Ten Broeck Dupont Hospital Physician's Progress Notes, 14 July 2005 – 5 August 2005
- Ten Broeck Dupont Hospital Discharge Summary, 8 August 2005
- Ten Broeck Hospital Consultation/Physical Evaluation, 16 August 2005
- Ten Broeck Dupont Hospital Discharge Summary, 6 September 2005
- Ten Broeck Hospital Discharge Plan and Transfer Summary, 6/7 September 2005
- Department of Veterans Affairs (VA) Rating Decision, 27 February 2024
- partial VA letter, 5 March 2024
- 284 pages of additional medical documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200007029 on 8 October 2021.

2. The applicant states:

a. His narrative reason for discharge should be changed to disability instead of condition. After his discharge, he had to quit his job due to his mental health condition and is currently considered disabled by the VA and Social Security Administration.

b. His VA representative and attorney discovered the discrepancy and told him to submit this application to the Board under the law.

3. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

4. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 17 February 2005, for the purpose of U.S. Army Reserve (USAR) enlistment. He was found qualified for service with a PULHES of 111111.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the USAR on 17 February 2005.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he entered active duty at Fort Knox, KY, on 23 May 2005.

7. The applicant provided numerous medical records from Ten Broeck Hospital, to include psychiatric evaluations, progress notes, discharge summaries, and transfer plans, all of which have been provided in full to the Board for review and in pertinent part show:

a. The applicant underwent appendectomy on or about early July 2005, for which he was hospitalized. He indicated he became depressed while in the hospital and acknowledged having suicidal and homicidal ideations at that time. He was subsequently referred for a psychiatric evaluation and admitted to Ten Broeck Dupont Hospital, Adult Psychiatric Unit in Louisville, KY, on 11 July 2005, as a result of an increase in depressive symptomatology following an evaluation at Ireland Army Hospital.

b. He underwent psychological testing on two separate occasions, on 4 July 2005 and on 13 July 2005. An analysis indicated significant elevation on the depression scale, psychopathic deviancy scale and schizophrenic scale. On the Suicide Probability Scale, his score fell within the severe risk range. He presents with significant depressive symptomatology, is somewhat impulsive, has a low frustrating tolerance, is anxious and depressed, his thinking is confused, and he is likely to be irritable and resentful much of

the time. The diagnostic impressions show major depression, severe, recurrent; rule out bipolar disorder.

c. He was discharged from Ten Broeck Dupont Hospital back to Fort Knox on 8 August 2005, with final psychiatric diagnoses of bipolar disorder, mixed type, moderate, with psychotic features; depressive disorder, not otherwise specified (NOS), and alcohol abuse, in remission. It was recommended he continue some form of outpatient therapy. His discharge medications were Prozac, Zyprexa, Seroquel, and Zantac. His prognosis for handling the stress of being in the military was not good, considering the evidence of his bipolar symptoms.

d. The applicant was again admitted to Ten Broeck Dupont Hospital, Adult Psychiatric Unit, from Fort Knox on 9 August 2005, after he had just been discharged back to Fort Knox. He was sent back to this facility after he reportedly threatened to kill his drill sergeant. He was apparently manic and paranoid, agitated and out of control. He was angry and upset about being yelled at by his drill sergeant and stated he does not have the resistance to handle anyone yelling at him. He was seen on the behavioral unit at the Ireland Army Hospital from where he was sent back to this facility for further evaluation and treatment.

e. The applicant was discharged a second time from Ten Broeck Dupont Hospital to Fort Knox on 6 September 2005, with final psychiatric diagnose of bipolar disorder, recurrent, mixed, with psychotic features; alcohol dependence, in remission. It was recommended he follow through with the hospital's Intensive Outpatient Program in addition to follow up at the behavioral health clinic at Fort Knox. He was recommended to attend alcoholic anonymous meetings. The recommendation includes the possibility that he will remain unstable and may have difficulty in pursuing the rest of his military career. His discharge medications were Prozac, Zyprexa, Seroquel, Prevacid, and Zantac.

8. The applicant's complete discharge packet is not in his available records for review.

9. A DA Form 4856 (Developmental Counseling Form) shows:

a. The applicant was counseled by the Reserve Component liaison officer on 8 September 2005, to inform him that he was pending separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, for the convenience of the Government because of personality disorder.

b. The medical authority directed his separation due to his personality disorder. He was not able to meet training requirements due to his personality disorder and as a

result, would be transferred to the holding detachment until his separation from the Army.

10. On 13 October 2005, the separation authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental condition.

11. Headquarters, U.S. Army Armor Center and Fort Knox Orders 290-0168, 17 October 2005, discharged the applicant from the USAR under the provisions of Army Regulation 635-200, effective 18 October 2005.

12. The applicant's DD Form 214 shows he was honorably discharge on 18 October 2005, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability, with corresponding separation code. He was credited with 4 months and 26 days of net active service.

13. The applicant previously applied to the Army Discharge Review Board (ADRB) in 2009, requesting a change to his narrative reason for separation. On 28 October 2009, the ADRB denied his request, determining his discharge was both proper and equitable.

14. The applicant then applied to the ABCMR in April 2020, requesting to change his narrative reason for separation to physical disability or personality disorder, stating that while he was in the service, he was diagnosed with major depression disorder and bipolar disorder, for which he was hospitalized.

15. In the processing of that application, the Army Review Boards Agency (ARBA) medical advisor opined that the applicant had a psychiatric diagnosis and was on medication prior to military service and did not meet retention standards. A more accurate narrative reason for discharge would have been existed prior to service (EPTS) and he should not be referred to a medical board for review.

16. On 8 October 2021, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

17. A VA Rating Decision, 27 February 2024, shows the applicant was granted a 70 percent service-connected disability rating for bipolar disorder effective 6 August 2014. Entitlement to individual unemployability was granted effective 6 August 2014 and entitlement to special monthly compensation based on housebound criteria being met was granted effective 15 May 2015.

18. 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.

19. Title 38, USC, 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.

20. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of his records to reflect physical disability discharge in lieu of honorable administrative discharge due to a condition, not a disability. He contends he experienced a diagnosed mental health condition that warrants a referral to the Integrated Disability Evaluation System (IDES).

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:

- The applicant enlisted into the USAR on 17 February 2005 and entered active duty on 23 May 2005.
- The applicant's complete discharge packet is not in his available records for review.
- The applicant's DD Form 214 shows he was honorably discharge on 18 October 2005, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability, with corresponding separation code. He was credited with 4 months and 26 days of net active service.

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 asserts his narrative reason for discharge should be changed to disability instead of condition on the basis of his disability determinations by VA and Social Security Administration. Records from Ten Broeck Dupont Hospital 19 July 2005 showed a psychological evaluation, including testing conducted on 4 and 13 July 2005, and a diagnosis of Major Depression, severe, recurrent. Documentation noted the depressive episode occurring secondary to hospitalization for an appendectomy and discussed a prior service history of forensic evaluation with recommendation for treatment. A Physician's Progress Note dated 14 July 2005 stated, "the patient does report a history of a good response to Prozac" and discussed medical records faxed to Fort Knox by the applicant's wife, which angered him. After several medication changes and improvement in symptoms, a Discharge Summary dated 8 August 2005 showed diagnoses of Bipolar Disorder, Depressive Disorder, and Alcohol Abuse and discharge

with two antipsychotic medications and an antidepressant. Notably, the psychiatrist documented the applicant's report of a history of treatment with antidepressant medications, an antipsychotic, and a sleep medication dating back to age 19. A second hospitalization occurred the following day after the applicant made threats to kill his drill sergeant, and after medication adjustments, he was discharged on 6 September 2005. A VA Rating Decision letter dated 27 February 2024 showed the applicant is considered 70% service connected for Bipolar Disorder, considered unemployable, and is a recipient of a special monthly compensation for being housebound. A Report of Medical Examination (Enlistment) dated 17 February 2005 showed no indication of a history of psychiatric problems or treatment. A Medical Advisor summary in ABCMR case number AR20200007029 showed a review of similar records and concluded that the applicant's psychiatric diagnosis existed prior to service, and he did not meet retention standards. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a Disability Benefits Questionnaire (DBQ) from a Compensation and Pension (C&P) evaluation on 23 September 2014. The applicant reported a first Major Depressive episode in 1995 that included a hospitalization for one week and subsequent "day treatment" as a result of a "girlfriend break up." The evaluator opined, "the condition claimed was less likely than not (less than 50% probability) incurred in or caused by the claimed in-service injury, event, or illness" but also stated the applicant was diagnosed with Bipolar Disorder while on active service and that his condition was "most likely caused by or a result of active military service." The applicant initiated VA mental health services on 12 May 2015 and reported a long standing history of psychiatric treatment due to changes in mood, behavior, and sleep, and he requested to engage VA services due to a lack of health insurance. A cursory review of VA documentation showed the applicant has routinely utilized VA for mental health care since then, and his most recent encounter was on 8 January 2025.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition warranting a referral to IDES. The applicant was hospitalized twice and diagnosed with Bipolar Disorder, Depressive Disorder, and Alcohol Abuse while in basic training at Fort Knox. However, documentation from these hospitalizations show that his condition existed prior to service, and VA documentation from his C&P exam showed that he reported a history of hospitalization and treatment dating back to 1995. Additionally, enlistment medical records from 2005 do not indicate any psychiatric history, and there is no evidence a waiver for any mental health related condition. Therefore, a referral to IDES is not supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A; request is for medical disability

(2) Did the condition exist or experience occur during military service? N/A; request is for medical disability

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A; request is for medical disability

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.

2. The Board carefully considered the applicant’s contentions, his record and length of service, the evidence of hospitalizations in the record and the reason for his separation with an honorable discharge. The Board considered the review and conclusions of the Agency medical advisor, the applicant’s VA service-connected disability record, and evidence that reflects a condition that existed prior to service. The Board found that there was insufficient evidence to support that the applicant had a mental health condition warranting a referral to the disability evaluation system during his time in service. Based on a preponderance of evidence, the Board determined that the applicant’s reason for separation was not in error or unjust.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :            | :            | :            | 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.

[REDACTED]

[REDACTED]

[REDACTED]

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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
  - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an

Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 establishes the Army Disability Evaluation System 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 his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

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

a. Paragraph 5-17 states a service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or performance of duty. not amounting to disability under Army Regulation 635-40 and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) Such conditions may include, but are not limited to, the following:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking

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

b. When a commander determines 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 a mental status evaluation in accordance with Army Regulation 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. 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. A Soldier being separated under this section will be awarded a character of service of honorable, under honorable conditions, or uncharacterized if in an entry-level separation. An under honorable conditions characterization of service which is terminated under this paragraph is normally inappropriate.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be

paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//