

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006118

APPLICANT REQUESTS: reconsideration of his previous request to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in block 28 (Narrative Reason for Separation) that he was separated due to service-incurred medical disability instead of "condition, not a disability."

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

- DD Form 149 (Application for Correction of Military Record)
- Disability Fact Sheet
- Department of Veterans Affairs (VA) Award Letter

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 AR202030004533 on 7 February 2024.

2. The applicant states his DD Form 214 states that his condition is not a disability. While in service, he was diagnosed with the mental disability of bipolar disorder and was told he could no longer serve. The doctor informed him he had two options for discharge which were to be separated under a chapter or to have a medical board. The fastest way out was to be separated under a chapter, so he made an impulsive decision and chose the fast way out, which is now affecting him as a civilian. He knows without a doubt that his discharge was due to his disability, which he is rated 100 percent permanently and totally disabled for by the VA. He is asking for his DD Form 214 correction so he can receive benefits like receiving a home loan. He also understands he had a pattern of misconduct, which was proven to be due to his impulsive behavior stemming from his bipolar condition.

3. The applicant provides a VA disability fact sheet, which includes his service-connected disabilities including unspecified bipolar disorder and related disorder, which is rated at 100 percent. He also provides a VA award letter, which shows he is unemployable, due to his service-connected disabilities. The effective date of when he became totally and permanently disabled is 30 June 2023.

4. The applicant's service record shows:

a. He enlisted in the Army National Guard on 1 November 2011. He was ordered to initial active duty training on 16 November 2011 with a report date of 23 November 2011 for a period of approximately 18 weeks.

b. During his active duty service, he was counseled on multiple occasions from 7 December 2011 through 3 March 2012. His 22 February 2012 counseling informed him he was being counseled for Chapter 5-17 discharge - unfit for duty. The applicant signed the counseling statement.

c. On 24 February 2012, he accepted nonjudicial punishment for misconduct from on or about 3 February 2012 through on or about 7 February 2012.

d. The applicant's entire separation packet is not available for the Board's review; however, on 26 March 2012, the appropriate approval authority approved his separation from the Army and issued him an under honorable conditions (general) discharge. On 3 April 2012 he was discharged accordingly. His DD Form 214 shows his narrative reason for separation was condition, not a disability, his character of service was honorable, his separation code was JFV, and his reentry code was RE-3. His characterization of service was upgraded by the Army Discharge Review Board (ADRB) in docket number AR20210002460 on 26 February 2023 from under honorable conditions (general) to honorable. He had two ADRB cases, which are available for the Boards' review.

e. The applicant's service record is void of medical documentation showing he was diagnosed with bipolar disorder.

5. On 7 February 2024, the Board denied the applicant's previous request for correction in ABCMR docket number AR20230004533.

6. Based on the applicant's bipolar disorder diagnosis, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting reconsideration of his previous request to correct his DD Form 214 to show in block 28 that he was separated due to service-incurred medical disability instead of "condition, not a disability." More specifically, the applicant stated that he was diagnosed with Bipolar Disorder while in the military. 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 Army National Guard (ARNG) on 01 November 2011 and

was ordered to initial active-duty training on 16 November 2011 with a report date of 23 November 2011, 2) during his active-duty service, he was counseled on multiple occasions from 7 December 2011 through 3 March 2012. His 22 February 2012 counseling informed him he was being counseled for Chapter 5-17 discharge - unfit for duty, 3) On 24 February 2012, he accepted nonjudicial punishment for misconduct from on or about 3 February 2012 through on or about 7 February 2012, 4) The applicant's entire separation packet is not available for the Board's review, 5) The applicant was discharged on 03 April 2012. His DD Form 214 shows his narrative reason for separation was condition, not a disability, his character of service was honorable, his separation code was JFV, and his reentry code was RE-3. His characterization of service was upgraded by the Army Discharge Review Board (ADRB) in docket number AR20210002460 on 26 February 2023 from under honorable conditions (general) to honorable, 6) On 7 February 2024, the Board denied the applicant's previous request for correction in ABCMR docket number AR20230004533.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records were available for review in JLV from 31 May 2008 through 16 April 2012. The applicant presented as a walk-in to BH on 08 February 2012 reporting increased depression and anger due to psychosocial stressors (e.g., family, home environment). He reported a long history of issues related to anger and depression, reporting that he had BH treatment prior to service for Bipolar Disorder and Attention Deficit/Hyperactivity Disorder (ADHD). The applicant reported he previously self-discontinued his medications for these conditions. Furthermore, the applicant reported a history of psychiatric inpatient hospitalization prior to service due to suicidal ideation (6-years old) and violent behavior (14-years old). The provider diagnosed the applicant with Adjustment Disorder with Disturbance of Emotions and Conduct.

4. On 11 February 2012, the applicant presented to the Emergency Department (ED) due to increased stressors and suicidal ideation with plan. The applicant reported he overdosed on pain pills and alcohol approximately two weeks prior to presenting to the ED. He reported experiencing continued psychosocial stressors (e.g., familial concerns), nightmares, and difficulty sleeping. He reported a history of treatment with Seroquel which he reported helped with anger, irritability, and sleep problems. It was also documented that he reported a history of 8 prior psychiatric hospitalizations. He was admitted to the hospital due to suicidal ideation and his diagnoses at the time of admission were documented as Major Depression, Substance Abuse, and Borderline Personality Disorder with a Rule Out (R/O) of Anxiety Disorder Not Otherwise Specified (NOS). The applicant was discharged on 22 February 2022 and the discharge summary

noted that he had initially presented to the hospital in a hypomanic state as evidenced by irritability, decreased need for sleep, pressured speech and poor concentration. At the time of his discharge his diagnoses were documented as Bipolar Disorder, Substance Abuse, and Borderline Personality Disorder. He was prescribed Depakote (mood stabilizer) and Quetiapine (antipsychotic). The applicant was seen for a check-in on 23 February 2012 following his discharge from inpatient and it was documented that administrative separation had been recommended by the inpatient providers due to psychological reasons [*Advisors Note*: the specific diagnosis associated with the recommendation for administrative separation was not documented]. The provider documented his diagnosis as Bipolar Disorder. On 01 March 2012, the applicant presented for a BH intake, and it was documented that he reported experiencing BH concerns since ages 5/6-years old. He reported he was diagnosed with Bipolar Disorder at 8 years old and was prescribed Depakote at that time. It was also noted that he had previous service as an 11B approximately two years prior but had been separated due to misconduct issues. The evaluating provider diagnosed the applicant with Bipolar Disorder.

5. The applicant was referred to the Army Substance Abuse Program (ASAP) by his inpatient treatment team and completed an evaluation on 14 February 2012. He was diagnosed with Cannabis Dependence, In Remission, Hallucinogen Dependence, In Remission, and Alcohol Abuse. On 06 March 2012, an ASAP note documented that he had been found to be drinking alcohol on a regular basis and had a history of heavy cannabis abuse and hallucinogens. Furthermore, the provider noted that it appeared that the applicant had been drinking "in the face of BH issues" and though reported his alcohol use did not cause him any problems. The evaluating provider diagnosed him with Alcoholism, Bipolar Disorder, Hallucinogen Dependence, and Cannabis Dependence, In Remission.

6. A review of JLV shows the applicant is 100% service-connected through the VA, 100% for Bipolar Disorder, in addition to two other medical conditions. The applicant underwent an initial Compensation and Pension (C&P) examination on 01 February 2022 and was diagnosed with Unspecified Bipolar and Related Disorder. It was documented that he was diagnosed with Bipolar Disorder while in-service on 15 February 2012. He underwent another C&P examination on 11 May 2023 and his diagnosis was updated to Unspecified Bipolar Disorder, consistent with DSM-5 nomenclature. A subsequent C&P examination dated 14 August 2023 reaffirmed his diagnosis of Unspecified Bipolar Disorder.

7. The applicant's service records were reviewed. A counseling statement dated 03 March 2012 documented that the applicant was evaluated by an Army psychiatrist who diagnosed him with Bipolar Disorder, which affected his ability to function effectively in the military environment and recommended by the doctor for release from the military. A

commander's memorandum dated 10 March 2022 for proposed separation under AR 635-200, Chapter 5-17 documented the specific reasons for the recommendation for separation. It was noted that the had been diagnosed with Bipolar Disorder on 15 February 2012 by a qualified mental health professional. It was documented that this condition severely affects his ability to effectively perform his duties in a military environment. Additionally, the commander noted several episodes of misconduct (i.e., failure to go to his appointed place of duty, leaving his appointed place of duty, absent without authorized leave, violation of lawful orders, using tobacco products, consuming alcohol products, leaving his wall locker unsecured, and wrongfully possessing food items in his room).

8. The applicant's previous petition to the ABCMR in Docket Number AR20230004533 dated 07 February 2024 was reviewed. The previous Medical Advisor noted agreement with the ARNG Medical Officer (noted as an opine at the time of the discharge) and the ADRB that his narrative reason for separation should remain a condition and not a service induced disability. The previous Advisor further noted that a referral to IDES was not warranted due to the condition being pre-existing, without evidence that it was permanently aggravated by military service. The previous ROP noted the applicant had previous service in the ARNG from 21 March 2008 to 28 April 2009 and was discharged by reason of defective enlistment.

9. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with a BH condition in-service that fell below medical retention standards in accordance with (IAW) AR 40-501 and requires referral to DES for further review and processing. Per AR 40-501, Chapter 3-33(b), Bipolar and Depressive Disorders fail to meet medical retention standards when 1) persistence or recurrence of symptoms require extended or recurrent hospitalization, 2) persistence or recurrence of symptoms interfere with duty performance and necessitate limitation of duty or duty in a protected environment, and/or 3) have any history of a manic episode, not secondary to intoxication, infections, toxic, or other identifiable medial causes. In-service records show that the applicant was diagnosed with Bipolar Disorder, was psychiatrically hospitalized due to suicidal ideation, and required stabilization of the condition with a mood stabilizer and antipsychotic medication. The applicant's service records also show multiple episodes of misconduct during this period of service, to which one of his evaluating in-service providers attributed his alcohol use to his BH condition. Although there is evidence in the record that the applicant's condition existed prior to service (EPTS), per AR 635-200, Chapter 5-10, Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty for ADT or IET may be separated; however, such conditions must be discovered during the first 6 months of active duty and will result in an entrance physical standards board, to which this

applicant had already been in service for over 180 days, counting his time in service from his previous enlistment. Furthermore, AR 635-200, Chapter 5-14 indicates that commanders may initiate separation under this chapter, excluding conditions appropriate for separation under paragraph 5-10, on the basis of other physical or mental conditions not amounting to disability (i.e., those identified in AR 40-501). Per AR 40-501 conditions that fall below medical retention standards are referred to the Disability Evaluation System (DES) for determination of the disposition. As such, it is recommended that this applicant's case be sent to DES for further review and processing.

10. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

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

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

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 was diagnosed with a behavioral health condition in service that fell below medical retention standards. Based on this, the Board majority granted relief of referral of his case to the Disability Evaluation System (DES) as recommended by the medical reviewer. The Board minority found insufficient evidence to support a recommendation to DES or amending the applicant's DD Form 214 to separation due to service-incurred medical disability instead of "condition, not a disability."

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
::	:	:	GRANT FULL RELIEF
XX	:	:XX	GRANT PARTIAL RELIEF
::	:	:	GRANT FORMAL HEARING
	:XX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. Directing the applicant be entered into the Disability Evaluation System (DES) and a medical evaluation board convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.

b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his type of discharge without evaluation under the DES.

[Redacted]

X //SIGNED//

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CHAIRPERSON

Signed by:

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

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member'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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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

d. 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.

e. 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.

2. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFV is used for discharge for condition, not a disability

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that 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 (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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. 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.

//NOTHING FOLLOWS//