

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240006487

APPLICANT REQUESTS: in effect, honorable physical disability discharge in lieu of general administrative discharge due to misconduct, drug abuse.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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. He just wants to be able to use the GI Bill. At the time of his service, he was depressed, hurting, and used weed to cope. It was not right, but he has changed and grown a lot since his service days.
 - b. He has marked the boxes indicating the category of his request is disability and the conditions of post-traumatic stress disorder (PTSD) and other mental health are related to his request.
3. The applicant enlisted in the Regular Army on 26 April 2017.
4. A DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled on 17 April 2018, for failure to report to the morning formation on the date of the counseling.
5. U.S. Army Installation Management Command memorandum, 20 April 2018, informed the applicant's commander that the applicant's urinalysis results from the specimen collected on 27 February 2018, tested positive for tetrahydrocannabinol (THC) the main psychoactive ingredient in marijuana.

6. A second DA Form 4856 shows the applicant was again counseled on 25 April 2018, for failure to report to the morning formation on the date of the counseling.

7. A DD Form 2807-1 (Report of Medical History) shows on 10 May 2018, the applicant provided his medical history for the purpose of separation and marked "no" to all listed conditions.

8. 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.

9. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 8 May 2018, and was found qualified for service/separation with a PULHES of 111111. The summary of defects and diagnoses shows findings consistent with a treated infection and that he had no complications, other health complaints, or disqualifying conditions.

10. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) shows the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on 16 May 2018 for wrongfully using THC between on or about 27 January 2018 and 27 February 2018.

11. A DA Form 2823 (Sworn Statement) shows on 21 June 2018, the applicant made a statement indicating on 26 March 2018, he met a girl at a party who had THC on her and asked if he wanted to try it, to which he replied yes. One week later the unit had a 100 percent urinalysis and he tested positive for THC.

12. A DA Form 3822 (Report of Mental Status Evaluation) shows:

a. The applicant underwent a mental status evaluation on 21 June 2018, for the purpose of misconduct administrative separation evaluation.

b. He was screened for PTSD, depression, traumatic brain injury (TBI), substance misuse and sexual trauma. Cannabis use tested positive; all other screenings were negative.

c. He was found to have no duty limitations due to behavioral reasons and met medical retention standards of Army Regulation 40-501 (Standards of Medical Fitness). He was psychiatrically cleared for any administrative action deemed appropriate by the separation authority.

13. On 26 June 2018, the applicant was notified by his immediate commander of his initiation of action to separate him with a general discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, for misconduct - abuse of illegal drugs. The reason for the proposed action was testing positive for THC in a unit urinalysis conducted on 27 February 2018. He was advised of his right to consult with counsel and to submit written statements in his own behalf.

14. On 26 June 2018, the applicant acknowledged receiving notification from his commander of his initiation of action to separate him with a general discharge under the provisions of Army Regulation 635-200, chapter 14, for misconduct - abuse of illegal drugs and the rights available to him.

15. On 26 June 2018, the applicant acknowledged he is not entitled to a separation board, he declined the opportunity to speak with an attorney, and he did not submit statements in his own behalf.

16. On 28 June 2018, the applicant's battalion commander recommended approval of the applicant's general discharge under the provisions of Army Regulation 635-200, chapter 14, for misconduct - abuse of illegal drugs.

17. On 12 July 2018, the approval authority directed the applicant's general discharge under the provisions of Army Regulation 635-200, chapter 14, for misconduct - abuse of illegal drugs.

18. The applicant's DD Form 214 shows he was given a general discharge on 10 August 2018, under the provisions of Army Regulation 635-200, chapter 14, for misconduct (drug abuse).

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to an honorable medical discharge. He contends he experienced post-traumatic stress disorder (PTSD) and other mental health conditions during his time in service that mitigate his misconduct and warrant a medical discharge. 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 Regular Army on 26 April 2017; 2) On 17 April 2018 and 25 April 2018 he was counseled for failure to report to morning formation; 3) The

applicant's 27 February 2018 unit urinalysis was positive for marijuana and additionally made a sworn statement regarding further drug use that occurred on 26 March 2018; 4) The applicant was discharged on 10 August 2018, Chapter 14- for misconduct (drug abuse). His character of service was under honorable conditions (general). He completed 1 years, 3 months, and 15 days net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions including depression and PTSD while on active service that mitigate his misconduct and warrant a medical discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service. On 21 June 2018, the applicant underwent a mental status examination by a behavioral health clinic provider which cleared him for administrative separation from a behavioral health perspective and explicitly ruled out the presence of any unfitting behavioral health conditions. On 28 June 2018, he was evaluated by a SUDCC provider following his positive urinalysis for THC. The applicant noted regular marijuana use prior to his military service and reported his present use of marijuana was due to being "bored." The applicant was also specifically evaluated during this appointment for additional mental health conditions including depression and PTSD, which were subsequently ruled out. This appointment resulted solely in the diagnosis of cannabis use disorder, mild. The applicant was not compliant with offered behavioral health treatment following this encounter as documented in subsequent notes on 19 July 2018 and 30 July 2018. His SUDCC file was closed due to the applicant's separation on 08 August 2018.

d. A review of JLV revealed that the applicant began engaging with VA care primarily for housing and then medical assistance beginning on 02 April 2019. On 15 December 2022, he began engaging with VA psychiatry which resulted in his initial diagnosis of major depressive disorder, single episode, unspecified. Since that time, he has been inconsistently engaged in psychiatry, couples therapy and individual therapy for anxiety disorders and problems in his relationship. There is insufficient evidence that the applicant was diagnosed with PTSD at the VA. The applicant has not been diagnosed with a service-connected mental health condition at this time. However, the veteran is 70% service-connected for various physical conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct. In addition, the applicant did not consistently participate in or was compliant with behavioral health or substance abuse

treatment throughout his time in service. He did not attend more than six months of treatment for a behavioral health condition without improvement nor did he require hospitalization in inpatient psychiatric treatment on two or more occasions. There is also insufficient evidence that the applicant was ever placed on a psychiatric permanent profile while on active service. Therefore, there is also insufficient evidence that the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD and depression during his time in service that mitigate his misconduct. Following his time in service, he has received VA psychiatric and psychological treatment for intimate partner relationship problems and resulting anxiety and depressive disorders. The applicant's VA providers did not connect these disorders to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including depression and PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was experiencing a mental health condition including PTSD while on active service. The applicant did engage in some avoidant or erratic misconduct such as not following orders and substance use, which can be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant did not consistently participate in or was compliant with behavioral health or substance abuse treatment throughout his time in service. He did not attend more than six months of treatment for a behavioral health condition without improvement nor did he require hospitalization in inpatient psychiatric treatment on two or more occasions. There is also insufficient evidence that the applicant was ever placed on a psychiatric permanent profile while on active service. Therefore, there is also insufficient evidence that the applicant's case warrants a referral to DES from a behavioral health perspective, at this time. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 advisor's review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct. In addition, the applicant did not consistently participate in or was compliant with behavioral health or substance abuse treatment throughout his time in service. He did not attend more than six months of treatment for a behavioral health condition without improvement nor did he require hospitalization in inpatient psychiatric treatment on two or more occasions. There is also insufficient evidence that the applicant was ever placed on a psychiatric permanent profile while on active service. Therefore, the Board concluded relief was not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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.

X //SIGNED//

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. 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.
3. 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 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 grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.
4. 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.

5. 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.

6. 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.

7. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) or (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) 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, use 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 considered appropriate for a Soldier discharged under this chapter.

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.

//NOTHING FOLLOWS//