

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240007572

APPLICANT REQUESTS: In effect, a medical separation.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- email from Human Resources Command (HRC)
- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) letter with VA rating decision
- Department of Rehabilitation letter (Psychological Report)
- Psychiatric Report

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 his discharge was due to developmental disability of autism spectrum disorder (ASD), with unspecified anxiety and depression, not due to a "condition." His ASD symptoms were exacerbated during his military service and has continued to impair his functioning post-discharge. It is possible that a lack of research, at the time of his discharge, contributed to this mislabeling. Although his discharge was due to his mental health "condition," the symptoms he is experiencing are at a disabling level of severity. The inaccurate labeling of his disability is insensitive, inaccurate and is causing him further anxiety & depression. He is approved for VA disability due to this mental health disability and would like for this to be reflected here. This correction will accurately represent the reasoning for his discharge, and his reality in civilian life.

3. The applicant enlisted in the Regular Army on 20 April 2004. He held military occupational specialty 45K (R4 Armament Repairer).

4. On 20 June 2006, he underwent a medical examination that diagnosed him with Aspergers Syndrome, chronic low back pain/neck pain, chronic left knee pain and intermittent left hip pain. He was recommended for separation for Aspergers Syndrome.

5. On 26 July 2006, he underwent a mental status evaluation which found he had the mental capacity to understand and participate in the proceedings and was mentally responsible. He was deemed unsuitable for continued military service because of having been diagnosed with Asperger's Disorder. It was recommended that he be processed from routine separation in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 5-17.

6. On 16 August 2006, his immediate commander notified the applicant of his intent to separate him under the provisions of AR 635-200, paragraph 5-17, because of other designated physical or mental condition. The reason for his proposed action is that a medical professional diagnosed him with a mental condition that potentially could interfere with assignment to or the performance of his military duties. The applicant acknowledged the same day.

7. The applicant having had the opportunity to consult with counsel of the basis for the contemplated action to separate him because of other designated physical or mental condition under AR 635-200, Chapter 5, and its effects; of the rights available to him; and of the effect of any action taken by him in waiving his rights. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him.

8. His chain of command recommended he be separated from the Army prior to the expiration of his current term of service and that he received an honorable character of service.

9. On 5 September 2006, the separation authority approved discharge under the provisions of AR 635-200, paragraph 5-17, for other designated physical or mental condition. He directed that he be furnished an Honorable Discharge Certificate.

10. Accordingly, on 22 September 2006, he was honorably discharged under the provisions of AR 635-200, paragraph 5-17. His DD Form 214 shows he completed 2 years, 5 months, and 3 days net active service this period. It also shows:

- Item 26 (Separation Code): JFV
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Condition, not a disability

11. The applicant provides:

- a. An email from HRC directing the applicant to the ABCMR.
- b. VA letter with VA rating decision showing service connection for ASD with unspecified anxiety and depression claimed as mental health condition was granted at 70 percent effective 24 May 2023.
- c. Department of Rehabilitation letter (Psychological Report) which shows he was referred by his rehabilitation counselor because he had difficulty maintaining employment. He has a history of attention deficit hyperactivity disorder in childhood and has been diagnosed with Asperger's and Generalized anxiety Disorder.
- d. Psychiatric Report which shows his diagnosis as autism spectrum disorder, unspecified depressive disorder and generalized anxiety disorder.

12. 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.

13. Title 38, U.S. Code, 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.

14. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The DVA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the DVA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

15. MEDICAL REVIEW:

- a. Background: The applicant is requesting medical disability separation in lieu of honorable administrative separation due to a condition, not a disability.
- 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:
 - Applicant enlisted in the Regular Army on 20 April 2004.

- On 20 June 2006, he underwent a medical examination that diagnosed him with Asperger's Syndrome, chronic low back pain/neck pain, chronic left knee pain and intermittent left hip pain. He was recommended for separation due to his diagnosis of Asperger's Syndrome.
- On 26 July 2006, he underwent a mental status evaluation which found he had the mental capacity to understand and participate in the proceedings and was mentally responsible. He was deemed unsuitable for continued military service due to his diagnosis of Asperger's Disorder. It was recommended he be processed from routine separation in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 5-17.
- He was honorably discharged on 22 September 2006, under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental condition. His DD Form 214 shows his narrative reason for separation "condition, not a disability," with corresponding separation code JFV, and RE code 3.

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 states his discharge was due to a developmental disability of autism spectrum disorder (ASD), with unspecified anxiety and depression, not due to a "condition." His ASD symptoms were exacerbated during his military service and has continued to impair his functioning post-discharge. It is possible that a lack of research, at the time of his discharge, contributed to this mislabeling. Although his discharge was due to his mental health "condition," the symptoms he is experiencing are at a disabling level of severity. The inaccurate labeling of his disability is insensitive, inaccurate, and is causing him further anxiety and depression. He is approved for VA disability due to this mental health disability and would like for this to be reflected here. This correction will accurately represent the reasoning for his discharge, and his reality in civilian life.

d. The active-duty electronic medical records available for review show on 1 February 2006 the applicant participated in a neuropsychological evaluation to obtain guidance regarding his fitness for military service. He was referred for this evaluation since he had been seen several times for routine medical visits and exhibited signs and symptoms of the developmental disorder of high functioning Autism; at the time referred to as Asperger's Syndrome. He was a mechanic and presented as extremely isolated from his peers, had difficulty with prioritizing tasks, and performed poorly with certain skills such as weapons qualifications. The applicant had a very flat affect, and his communication skills were unusual. He evidenced no social restraints and would engage in socially unusual behaviors in group settings such as belching and nose picking. He also displayed stereotypical movements of his hands and had difficulty with eye contact. During the evaluation, he reported being socially isolated since age five, due to "different interests from others and social skills deficits". He further reported being treated with Ritalin as a child and diagnosed with ADHD, which he believed was a

misdiagnosis. The evaluation diagnosed him with Asperger's Disorder, Depression, and Anxiety Disorder. The evaluation indicated this disorder impacted his ability to perform his duties due to "an inability to see an environment from the perspective of others" and severely limit his ability to engage in coordinated actions with others. "Although very bright, and somewhat skilled in fine-detail work, any work requiring cooperation or coordination with others will overwhelm and confuse him". The evaluation recommended, "he be separated from military service, for his own good and for the good of the Army, by whatever means are possible. He should also be treated for depression and anxiety." The applicant participated in two supportive therapy sessions in May 2006 but then did not show for follow-up appointments and in June 2006 declined further behavioral health services. On 25 July 2006, the applicant participated in a command referred evaluation for the purpose of separation. He was diagnosed with Asperger's Syndrome but did not evidence symptoms of anxiety or depression at the time. He reported, "he has always known that something was wrong, but he didn't know what it was until earlier this year. He described long-standing difficulties with social interactions".

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for Anxiety Disorder. The applicant has participated in intermittent behavioral health services to support him with his symptoms of Autism Spectrum Disorder (ASD) and his depressive and/or anxious symptoms appear to be secondary to his ASD diagnosis.

f. The applicant participated in a C and P examination on 19 April 2007 that diagnosed him with Asperger's Syndrome. The evaluator opined the applicant had a "lifelong history of distant interpersonal relations, repetitive behaviors, excessive focus on minor details" and a "well documented developmental disorder which predated his military service and was not caused by or aggravated by military service". He participated in a second C and P examination on 24 October 2023, where he was diagnosed with Autism Spectrum Disorder (formerly known as Asperger's Syndrome), Unspecified Anxiety, and Unspecified Depression. The report states individual's with Autism Spectrum Disorder (ASD) may experience anxiety and depression secondary to their ASD.

g. The applicant was honorably separated from military service following an in-depth neuropsychological evaluation that diagnosed him with Asperger's Syndrome, now known as Autism Spectrum Disorder (ASD). This condition interfered with assignments and his ability to perform his military duties. Asperger's Syndrome was formerly used to describe a neurodevelopmental disorder that is now referred to as Autism Spectrum Disorder (ASD). ASD is usually diagnosed in childhood but can be diagnosed in adults, particularly for high-functioning individuals who may be inaccurately diagnosed since their symptoms are not as severe. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time,

to support a referral to the IDES process. While in service, the applicant presented with a well-documented developmental disorder which predated his military service and was not caused by or aggravated by military service. Although the applicant has been 70% service connected for Anxiety Disorder, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of Anxiety Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Anxiety Disorder is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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, the military record, his in-service medical diagnosis, the determination that he was deemed unsuitable for continued service and the reason for his separation. The Board considered that review and conclusions of the medical advising official, the applicant's service-connected condition and a well-documented developmental disorder which predated his military service and was not caused by or aggravated by military service. Based on a preponderance of evidence, the Board determined in consideration of the documentation available for review, there is no indication that an error or injustice occurred that would warrant a referral to the Disability Evaluation System process.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) paragraph 5-17, states commanders may approve separation under this paragraph based on other physical or mental conditions not amounting to disability (AR 635-40) and excluding conditions appropriate for separation processing under paragraph 5-11

or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include but are not limited to—

- Chronic airsickness
- Chronic seasickness
- Enuresis
- Sleepwalking
- Dyslexia
- Severe nightmares
- Claustrophobia
- Transsexualism/gender transformation in accordance with AR 40-501 paragraph 3-35
- 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

3. AR 635-5-1 (Separation Program Designator Codes Separation Code JFV applies to enlisted Soldiers who were separated due a condition, not a disability.

4. 38 USC 1110 (General - Basic Entitlement): 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.

5. 38 USC 1131 (Peacetime Disability Compensation - Basic Entitlement): 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.

6. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has

material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//