

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240008947

APPLICANT REQUESTS: correction of his records to show he was discharged due to service-incurred medical disabilities instead of "physical condition, not a disability."

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

- DD Form 149 (Application for Correction of Military Record) (two applications)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs Form 10-5345 (Request for Authorization to Release Health Information)

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 he is requesting a correction to his military discharge status based on the circumstances surrounding his service, including the impact of traumatic brain injury, post-traumatic stress disorder, and sexual assault. These events significantly affected his well-being and service record and he believes that a revision of his discharge characterization is warranted to accurately reflect the challenges he faced during his time in the military. He suffered discrimination, unfair treatment, he was denied his human rights.
3. The applicant enlisted in the Regular Army on 18 October 2000.
4. The applicant's separation proceedings are not available. His DD Form 214 shows he was discharged on 19 December 2001 under the provisions of Army Regulation 635- 200, paragraph 5-17, by reason of physical condition, not a disability. The DD Form 214 also shows he completed 2 years, 8 months, and 10 days of active service.

5. During the processing of this application, the staff of the Army Review Boards Agency submitted a request for records pertaining to the applicant to the U.S. Army Crime Records Center, part of the U.S. Army Criminal Investigation Command. On 21 February 2025, the U.S. Army Crime Records Center responded by letter stating a search of Army criminal file indexes revealed no records for the applicant. This request for records was submitted based on the applicant's statement that he experienced sexual trauma during his military service.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his record to show he was discharged due to service-incurred medical disabilities instead of "physical 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 18 October 2000.
- Applicant's separation proceedings are not available. His DD Form 214 shows he was discharged on 19 December 2001 under the provisions of Army Regulation 635- 200, paragraph 5-17, by reason of physical condition, not a disability. The DD Form 214 also shows he was credited with 2 years, 8 months, and 10 days of active service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he is requesting a correction to his military discharge status based on the circumstances surrounding his service, including the impact of traumatic brain injury, post-traumatic stress disorder, and sexual assault. These events significantly affected his well-being and service record, and he believes that a revision of his discharge characterization is warranted to accurately reflect the challenges he faced during his time in the military. He suffered discrimination, unfair treatment, he was denied his human rights.

d. The active-duty electronic medical records available for review show a phone consultation, dated 30 November 2001, stating the applicant was medically admitted to a German hospital due to concerns about possible liver toxicity related to an apparent suicide attempt via ingesting Tylenol. A later note on the same date indicates, "the tests to follow-up on his reported acetaminophen OD were negative". The note further indicates, the commander stated this was the applicant's reported third suicide attempt and the plan was to chapter him out of the military. A separate note shows the applicant was assessed and diagnosed with Adjustment Disorder; Depression, NOS; and Cluster B – Histrionic. During that evaluation, he reported a history of one psychiatric

hospitalization, prior to military service, due to a suicide attempt via overdosing related to confusion about his sexual identity. At the time of his initial suicide attempt, he was reportedly prescribed antidepressant medication which he took for only a month and discontinued. In addition, the applicant reported a brief admission in October 2001 due to suicidal ideation with a plan. He was once again prescribed antidepressant medication which he reportedly was taking up until his alleged attempt on 30 November 2001.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for Major Depressive Disorder. The applicant participated in a C and P examination on 30 August 2002 and was diagnosed with Sexual Disorder, NOS, and Major Depressive Disorder, Chronic. During this evaluation he reported his mother had him psychiatrically hospitalized prior to military service. He reported he was depressed and suicidal at the time. He was treated by a psychiatrist in private practice, but in less than a month discontinued the medication or any ongoing treatment. The applicant further reported experiencing harassment while in military service due to his sexual orientation. The evaluator opined the applicant was anxious and desperately struggling with the psychological aspects of his sexual orientation. He considers himself disgusting and a freak and wishes that he could be "normal". "Full of negative thoughts about himself as a gay male and recognizing the hopelessness of trying to change his orientation, he naturally lives in a state of constant depression. Unable to like himself because he perceives others' hatred of gays, he has frequent thoughts of suicide as the only means available to escape. While he has made no serious suicide attempts up until now, if he does not find a way to feel more acceptable and to believe that he can belong in this world, his depression and suicidal ideation are likely to get worse." Multiple C and P examinations in the electronic record indicate the applicant has been diagnosed with Major Depressive Disorder. The record further shows evidence of three psychiatric hospitalizations in January 2013, May 2015, and September 2015 which diagnosed him with Major Depressive Disorder with psychotic features, PTSD due to childhood trauma and harassment while in the military, and Cluster B traits.

f. 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. The applicant had a pre-existing psychiatric hospitalization, due to a suicide attempt, that would have disqualified him from military service had he disclosed this history. The applicant has reported experiencing bullying and harassment, while in military service due to his sexual orientation and has been 100% service connected for Major Depressive Disorder. However, 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 Major Depressive Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Major Depressive 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.

g. 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:

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.

a. The Board noted that while the applicant has provided post-service documentation of mental health diagnoses, including a 100% VA service-connected rating for Major Depressive Disorder, the evidence does not support that these conditions met the criteria for medical separation under Army Regulation 40-501 at the time of discharge. The applicant's DD Form 214 confirms separation under AR 635-200, paragraph 5-17, for a physical condition not constituting a disability, and no separation proceedings or in-service documentation indicate that his condition failed retention standards.

b. The Board reviewed and concurred with the medical advisor's review finding that although the applicant has a significant post-service mental health history, including multiple psychiatric hospitalizations and VA diagnoses, there is insufficient evidence to support that his condition warranted referral to the Integrated Disability Evaluation System (IDES) during his period of service. Furthermore, the applicant had a pre-existing psychiatric history that would have disqualified him from enlistment had it been disclosed. VA ratings are based on different standards and do not establish that a condition was unfitting or ratable under Army criteria at the time of service.

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-17 of the regulation in effect at the time states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to chronic air or 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.

(1) When a commander determines that 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 mental status evaluation in accordance with Army Regulation 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2). 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.

3. Army Regulation 40-501 provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

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

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

//NOTHING FOLLOWS//