

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240009451

APPLICANT REQUESTS, in effect:

- a discharge due to disability
- reinstatement of his rank and pay grade to specialist (SPC/E-4) with back pay
- award of the Army Achievement Medal with Oak Leaf Cluster
- award of the Southwest Asia Service Medal
- correction of his primary military occupational specialty (MOS) to show 63E, M1 Abrams Tank Systems Mechanic
- a video/telephone appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Service Treatment Records
- Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Intake Screening
- Operation Desert Storm certificates
- 2-DA Forms 638-1, Recommendation for Award (For Other Than Valor) of Army Achievement Medal, Army Commendation Medal and Meritorious Service Medal
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Statement of Support-Mother – NOT PROVIDED
- Patient Treatment Record- post-traumatic stress disorder (PTSD), anxiety, and depression NOT PROVIDED

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. He states, in effect-

a. He developed acute debilitating asthma during his first year in Germany and the medical staff recommended that he be medically separated because of this condition. His deployment to Desert Storm compounded his condition due to the constant exposure to insecticides and dust.

b. In addition, his experiences in Desert Storm left him with chronic debilitating post-traumatic stress disorder (PTSD) symptoms that have never gone away. He lost his best friend in the war, and he was exposed to Sarine nerve agent in early March 1991. This exposure affected his short-term memory, caused him to have chronic joint pain, develop phantom skin sensations, and caused the premature deterioration of his C-spine.

c. His life started falling apart when the unit deployed back to Germany. His memory problems began to create trust issues at home resulting in him getting kicked out. He started to drink and ended up having a car accident. All of this was just too much to cope with and he ended up cutting his own wrist which led to a stay in the hospital. He was then demoted to E1 and discharged. He left the military feeling used and betrayed. This correction will allow him, as well as his children, to be proud of his service.

3. The applicant enlisted in the Regular Army on 20 June 1989. His DA Form 2-1, Personnel Qualification Record, shows the highest grade held was private first class (PFC)/E-3; effective 1 October 1990. However, the applicant provides an "Operation Desert Storm" certificate received with his rank annotated as Specialist.

4. The applicant's record contains several acts of misconduct which include:

- negative performance counseling for indebtedness and passing bad checks
- a negative performance counseling for failing his Army Physical Fitness Test
- accepting nonjudicial punishment (Article 15) for writing insufficient checks on six occasions

5. The applicant underwent a mental status evaluation on 7 January 1992 for unknown reasons. The evaluation psychiatrically cleared him for any administrative action deemed appropriate by his command.

6. The applicant underwent a separation physical on 30 January 1992. The applicant reported having asthma since arriving in Germany along with dizziness due to shortness of breath. The military physician noted that the applicant's asthma existed prior to service (EPTS). The applicant was found qualified for separation.

7. He underwent a mental status evaluation for the purpose of discharge for the good of the service on 30 January 1992. This report shows the applicant had an unremarkable evaluation.

a. The provider opined that the applicant had the mental capacity to understand and participate in the proceedings, and that he was mentally responsible.

b. The provider lined through the check box pertaining to whether the applicant met retention standards or needed further examination.

8. On 6 February 1992 –

a. The applicant's commander notified the applicant that he had initiated actions to separate him from service under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, paragraph 14-12b, commission of a serious offense for writing six dishonored checks between 21 August 1991 to November 1991, totaling \$3290.00. The commander recommended the characterization of the applicant's service be under honorable conditions, general.

b. The applicant was advised by his attorney of the basis for the contemplated actions to separate him and of the rights available to him. The applicant elected not submit a statement in his own behalf. He acknowledged that he could expect to encounter substantial prejudice in civilian life if he received a general discharge under honorable conditions. He further understood that if he received a discharge/character of service which was less than honorable he could make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized that an act of consideration by either board did not imply that his discharge would be upgraded.

c. The applicant's commander formally recommended the applicant's separation from service, under the provisions of AR 635-200, Chapter 14.

9. On 19 February 1992, the separation authority approved the recommended discharge and directed the applicant's service be characterized as under honorable conditions, general.

10. The applicant was reduced to private/E-1 effective 10 March 1992.

11. On 16 March 1992, he was discharged. His DD Form 214 confirms he was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct – commission of a serious offense. He completed 2 years, 8 months, and 27 days of net active service. His service was characterized as under honorable conditions (general).

12. The applicant provides:

a. Service Treatment Records pertaining to his treatment for chronic asthma between 9 November 1990 and 9 October 1991. Included in these records is a recommendation of evaluation of his chronic asthma and a recommendation for medical discharge based on his asthma.

b. ADAPCP Client Intake/Screening Record which shows the applicant was enrolled in Track OO on 16 August 1991. This form contains a label which states "16AUG 1991-ALCOHOL COUNSELING ABUSE STARTED-PTSD." This label appears to have been placed on the document by the applicant to show treatment for PTSD; however, the document does not address PTSD, anxiety or depression.

13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR medically requesting a referral to the Disability Evaluation System (DES). He states:

"I developed acute debilitating asthma during my first year with 2/2 ACR in Bamberg Germany. Medical staff commented more than once in the attached STRS [service treatment records] that they recommended that I be medically separated for chronic asthma.

... we were exposed to sarin nerve agent in early March 1991. This exposure affected my short-term memory, caused chronic joint pain, phantom skin sensations, and premature deterioration of c spine"

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the regular Army on 20 June 1989 and was discharged under honorable conditions (general) on 16 March 1992 under the separation authority

provided by paragraph 14-12c of AR 635-200, Personnel Separations – Enlisted Personnel (26 May 1989): Commission of a serious offense.

d. The behavioral health aspects of this case will be addressed by an ARBA behavioral health advisor in a separate advisory.

e. Documentation shows the applicant was seen for reactive airway disease on 9 November 1990 and was diagnosed with asthma later that month and treated with medication and an inhaler.

f. He received multiple counselings and an Article 15 for writing bad checks.

g. He underwent a pre-separation physical examination on 30 January 1992. The only item noted on his history of asthma which had existed prior to service (EPTS). The provider noted no duty limitations

h. Paragraph 3-27 of AR 40-501, Standards of Medical Fitness 915 May 1989, states that asthma only fails retention standards when “of sufficient severity to interfere with satisfactory performance of duty, or with frequent attacks not controlled by oral bronchodilators or inhaled medication.”

i. There is insufficient probative medical evidence the applicant’s asthma or any other medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

j. It may also be noted that his pending separation under paragraph 14-12c of AR 635-200 precluded his entrance into the Physical Disability Evaluation System. Paragraph 4-1a of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

Uniform Code of Military Justice (UCMJ) action. The case of a soldier charged with an offense under the UCMJ or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for, or continue, disability processing unless

(1) The investigation ends without charges.

(2) The officer exercising proper court-martial jurisdiction dismisses the charges:

(3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such sentence.

k. It is the opinion of the Agency medical advisor that a referral of his case to the DES is not warranted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a discharge due to disability as well as several other corrections/changes to his records that are outside of this Advisor's scope of expertise. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 Regular Army on 20 June 1989.
- The applicant's commander notified the applicant that he had initiated actions to separate him from service under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, paragraph 14-12b, commission of a serious offense for writing six dishonored checks between 21 August 1991 to November 1991, totaling \$3290.00.
- The applicant was discharged on 16 March 1992 with an Under Honorable Conditions (general) characterization, and he completed 2 years, 8 months, and 27 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 experiences in Desert Storm left him with chronic debilitating PTSD, and when he returned home, he started drinking and ended up in a car accident. He indicated PTSD as an issue or condition related to his request. An ADAPCP Client Intake Screening dated 16 August 1991 showed the applicant was enrolled in "alcohol counselor eval enrolled" and there is reference to PTSD on this document, although there are no symptoms listed or explanation. A Report of Mental Status Evaluation dated 7 January 1992 showed no indication of any mental health symptoms and noted that the applicant met retention standards and was cleared for administrative action. A Report of Medical History dated 30 January 1992 showed no evidence of any psychiatric symptoms. Another Report of Mental Status Evaluation dated 30 January 1992 showed similar findings as the initial report. There was insufficient evidence that the applicant was diagnosed with PTSD or another 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 the applicant is 100% service connected for several conditions and is 50% service connected for PTSD since February 2024. The applicant initiated mental health services through the VA on 30 September 2024, and he reported panic attacks, sleep difficulty, feelings of guilt, and depressed mood primarily related to his physical health condition. He discussed a mental health treatment history that included several medication trials, and he reported a suicide attempt while in the service. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 12 June 2024 showed the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD. He reported a mental health history, including a psychiatric hospitalization in 1992 following a suicide attempt and current treatment for ADHD. He indicated his provider had also diagnosed him with PTSD. The primary stressor associated with his PTSD diagnosis was being involved in a tank battle and witnessing others injured or killed, including a friend, while in Desert Storm.

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 while on active service that would warrant a referral to the Disability Evaluation System (DES). Two Mental Status Evaluations from his time in service showed that he met retention standards and there was no indication of any mental health symptoms. The applicant completed a VA PTSD Compensation and Pension evaluation on 12 June 2024, which resulted in a diagnosis of PTSD. However, there is no evidence of any mental health treatment or duty-limiting profiles while on active service. Moreover, documentation does not support the applicant was psychiatrically unfit at the time of discharge for any condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). The DES compensates an individual only for service incurred medical condition(s) that have been determined to disqualify him or her from further military service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical retirement

(2) Did the condition exist or experience occur during military service? NA; request is for medical retirement

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical retirement

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Disability Discharge: DENY, based upon the findings and recommendations outlined in the medical reviews.
- Rank reinstatement: DENY, based upon the administrative actions in the applicant’s record showing misconduct resulted in his rank being reduced.
- Army Achievement Medal with Oak Leaf Cluster: GRANT, based upon the applicant’s military record reflecting previous approvals for two AAMs, and only one award appearing on the applicant’s DD Form 214.
- Southwest Asia Service Medal: GRANT, based upon one of the achievements on the applicant’s AAM recommendation reflecting the applicant deployed to SWA during a qualifying period for the SWASM.
- MOS to show 63E: GRANT, based upon the information reflected in box 17 of the applicant’s DA Form 2-1 showing he trained as a 63E and entries in box 35 corroborating he served as a 63E.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by

- (Item 11) removing "62E10 HV Const Equip Op" and replacing it with "63E, M1 Abrams Tank Systems Mechanic"
- (Item 13) removing Army Achievement Medal and replacing it with Army Achievement Medal with Oak Leaf Cluster, and adding the Southwest Asia Service Medal

2. The Board further determined 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 all other requested relief.

//SIGNED//

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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) 40-501, Medical Services-Standards of Medical Fitness, 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.

3. AR 600-8-22, Personnel-General-Military Awards, states the Southwest Asia Service Medal is awarded to members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace there over, on or after 2 August 1990 to 30 November 1995. A bronze service star is authorized for wear with this medal for participation in each credited campaign. Approved designated campaigns are:

- Defense of Saudi Arabia (2 August 1990 to 16 January 1991)
- Liberation and Defense of Kuwait (17 January to 11 April 1991)
- Cease-Fire Campaign (12 April 1991 to 30 November 1995)

4. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation establishes the Physical Disability Evaluation System (PDES) 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 their office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in AR 40-501. It further states -

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.

The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

4. AR 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c, Commission of a Serious Offense. applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

5. Title 38, U.S. Code section 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.

6. Title 38, U.S. Code, section 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

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, Boards 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.

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. AR 15-185 ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant

a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//