ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240009935

APPLICANT REQUESTS: in effect, reconsideration of his previous request to change his general, under honorable conditions discharge to a medical/disability discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Three DA Forms 4856 (General Counseling Form)
- Three DA Forms 4856-E (Developmental Counseling Form)
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- Report of Medical Examination
- Medical History
- Medical Assessment
- Physical Exams-Eye, Ear, Nose, and Throat (EENT) and Audiology Working Document
- DD Form 2216E (Hearing Conservation Data)
- Patient Laboratory Inquiry
- Report of Mental Status Evaluation
- Separation Packet
- Orders 340-0113, U.S. Army Field Artillery School, Fort Sill, OK
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20120020432 on 30 May 2013.

2. The applicant states after he was separated from the military the Department of Veterans Affairs (VA) found the severe pain in his knee was being caused by a cyst between the bones. The Army used an x-ray, but the VA used magnetic resonance imaging (MRI) [to look at his knee]. The Army Hospital would not take him seriously, they dismissed him as faking [pain]. He annotated his application to show he was providing VA medical records which were not provided with his application.

3. The applicant enlisted in the Regular Army on 10 June 1997. He held military occupational specialty (MOS) 13B (Cannon Crewmember).

4. His disciplinary history includes adverse counseling statements for the following offenses during the period 15 December 1998 to 3 November 1999:

- failure to report to his appointed place of duty at the time prescribed on at least two occasions
- failure to pass the diagnostic Army Physical Fitness Test (APFT)
- rehabilitative failure

5. On 24 March 1999, he accepted non-judicial punishment (NJP) under Article 15, UCMJ for failure to go to his appointed place of duty on 15 March 1999.

6. The available evidence contains:

a. An Standard Form (SF) 88 (Report of Medical Examination) which shows in:

- item 38 (Clinical Evaluation) – all normal
- item 74 (Summary) – chronic low back pain, chronic bilateral knee pain and allergic rhinitis
- item 76 (Physical Profile) – PULHES of "112111"
- item 77 (Examinee) – is qualified for separation

b. His record contains an SF 93 (Report of Medical History) which shows in:

(1) item 7a (Present Health) – Poor, Medication Yes

(2) item 7b Current Medication – Tylenol

(3) item 10 (Past/Current Medical History), he checked Yes for –

- lack of vision in either eye – blurred vision without glasses
- swollen or painful joints – pain in both knees
- frequent or severe headaches – severe headaches-front of head
- eye trouble – wear glasses
- hay fever or allergic rhinitis – hay fever
- recurrent back pain or any back injury – pain in lower back
- foot trouble – feet hurt
- frequent trouble sleeping – because of back pain
- sensitivity to chemicals, dust. sunlight. – sensitive to dust and sunlight
- have you been advised to have. any operation – vasectomy

- have you been treated within last 5 years – vasectomy, family practice "14 Sep 99"

c. A Report of Medical Assessment, dated 20 September 1999, showing he claimed:

- he was suffering from knee, back, and foot pain that had gotten worse
- the only medicine that he was taking was Tylenol #3
- knee pain, anchell [ankle], and foot pain limited his ability to run and work in his MOS
- he intended to seek VA disability for knee, foot, and back pain

d. Physical Exams EENT and Audiology Working Document showing on 20 September 1999, a visual acuity test determined that both of his eyes were corrected to 20/20 with glasses.

7. On 1 December 1999, the applicant's unit commander notified him that he was initiating action to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 13, paragraph 13-2, for unsatisfactory performance. The commander cited the applicant's failure of three consecutive record APFTs as the bases for the recommendation. The commander informed the applicant that he could receive a General Discharge Certificate.

8. The applicant acknowledged receipt of the commander's notification waived consideration of his case by a board of officers, waived a personal appearance before a board of officers, and elected not to submit a statement in his own behalf. He also acknowledged he understood he might expect to encounter substantial prejudice in civilian life in the event a general discharge was issued to him. He acknowledged he was advised of his rights.

9. On 1 December 1999, the applicant's unit commander recommended the applicant's separation from the Army under the provisions of AR 635-200, chapter 13 for unsatisfactory performance. The unit commander cited his failure of three consecutive for record APFTs as the bases for this action.

10. On 2 December 1999, the separation authority approved the applicant's discharge action and directed that the applicant be discharged under the provisions of AR 635-200, chapter 13, paragraph 13-2, with a general, under honorable conditions discharge.

11. On 8 December 1999, he was discharged accordingly. His DD Form 214 shows in:

- item 24 (Character of Service) Under Honorable Conditions (General)

- item 25 (Separation Authority) Army Regulation 635-200, chapter 13
- item 28 (Narrative Reason for Separation) “Unsatisfactory Performance”

12. The applicant contends he was experiencing severe pain in his knee that the Army was not able to find because an x-ray was used to evaluate his knee. The VA found the severe pain in his knee was being caused by a cyst between the bones by using an MRI. However, those medical records were not provided for consideration with his case.

13. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests medical disability. He contends essentially that his knee pain was not adequately addressed while in service.

2. The ABCMR ROP summarized the applicant’s record and circumstances surrounding the case. The applicant reported service in the National Guard beginning in 1994. He enlisted in the Regular Army 10Jun1997. The DD 214 indicated that he had almost 4 months prior active service. His MOS was 13B Cannon Crewmember. His service record did not show foreign service. He was discharged 08Dec1999 under provisions of AR 635-200 chapter 13 for unsatisfactory performance. The factual reason cited was three consecutive APFT failures on 31Mar1999, 14Jul1999 and on 03Nov1999. His service was characterized as Under Honorable Conditions (General).

3. Medical records related to the knee condition during service

a. 20Sep1999 Report of Medical History. The applicant stated that his health was poor indicating that he was taking Tylenol #3 (narcotic) and endorsed the following pertinent symptoms: Swollen or painful joints; recurrent back pain/back injury; and foot trouble. The accompanying chapter physical (SF 88) showed no physical abnormalities including the spine, feet and lower extremity exams. Summary of defects included the following: Chronic Low Back Pain; Chronic Bilateral Knee Pain- RPPS (Retro Patellofemoral Pain Syndrome) with normal exam and normal x-rays; and Allergic Rhinitis. His physical profile was PULHES 112111. He was deemed qualified for separation.

b. 20Sep1999 Report of Medical Assessment (DD Form 2697). The applicant reported that knee pain and foot pain limited his ability to work in his primary MOS, or the conditions required geographic or assignment limitations. He planned to seek VA Disability for knee, foot and back pain.

4. Pertinent records related to the knee condition after service

a. JLV search today showed the following VA ratings for the knees: Limited Flexion of Knee at 10%; Limited Flexion of Knee at 10%; Limited Extension of Knee at 0%; and Limited Extension of Knee at 0%. The search also revealed plain films of the knee completed the month following separation from service which showed minimal narrowing of the medial compartment of the right knee (a sign of osteoarthritis) and possible chondrocalcinosis in the inferior portion of the patella. A right knee MRI completed 29Mar2000 revealed small cysts in the medial meniscus, however there was no evidence of tear of either medial or lateral meniscus. There were small joint effusions. He was not getting relief of his pain with ibuprofen (31Jan2001 Primary Care Resident Note, VAMC), so he was prescribed Etodolac (a nonsteroidal anti-inflammatory). During the follow up 09Aug2001 Primary Care Physician Note visit, he reported intermittent right knee pain.

b. 27Apr2012 Knee and Lower Leg Conditions DBQ. The VA examiner indicated that their review of the applicant's service treatment records showed instances of bilateral anterior knee pain for 1 year as well as some posterior knee pain.

c. 28Sep2012 Surgery History & Physical Note. The applicant was seen for longstanding bilateral knee pain. He reported that the left knee pain started when he was at the artillery unit at Fort Sill, and he stepped in a hole.

d. 28Sep2012 Operative Report. He underwent left knee arthroscopy with debridement and limited left knee medial femoral chondroplasty.

5. Records related to the behavioral health (BH) condition

a. 20Sep1999 Report of Medical History (SF 93) for chapter separation. He endorsed having 'poor health'. He also endorsed frequent trouble sleeping. He denied depression or excessive worry, nervous trouble, memory issues and use of illegal substances.

b. 29Sep1999 Report of Mental Status Evaluation (DA Form 3822). His mood was unremarkable, thinking process was clear, his thought content was normal, and memory was good. He could understand and participate in administrative proceedings, and he was mentally responsible. There was no psychiatric disease or defect which warranted disposition through medical channels. He was psychiatrically cleared.

c. In June 2007, the applicant was referred for mental health consultation for a mood disorder. The applicant stated that symptoms started after the death of his brother in May when he accidentally drove into the lake and drowned when they were on a fishing

trip together. He endorsed mood swings, weight loss, irritability, sleep issues, suicide ideation and guilt. The applicant denied prior BH diagnosis/treatment. He reported a positive family history: His mother and maternal grandmother had been hospitalized for a mental illness. He reported drinking to intoxication from age 14-19 and regular use of THC from age 16-20. He reported that his grades were substandard, and he was suspended several times for fighting or being insubordinate. He denied having ever been the victim or perpetrator of physical, emotional, or sexual abuse.

d. JLV record showed Major Depressive Disorder rated at 100% by the VA.

6. Summary/Opinion

a. The applicant failed the APFT run event on 14Jul1999 and 03Nov1999. He failed physical fitness rehabilitative attempts which included attending Special Fitness Physical Training for a period of 4 days a week since his failure on 14Jul1999. Given the chronic findings in the x-ray immediately following service and in the MRI, shortly thereafter; the complaints of knee pain during the chapter separation physical and immediately after service that were documented in the VA record; and the history of seeking treatment for knee pain while in service that was documented in the 2012 Knee and Lower Leg Conditions DBQ, more likely than not, the knee condition would have had some impact on the applicant's ability to pass the running event of his APFTs. That notwithstanding, evidence was insufficient to support that the knee condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. The service treatment records were not available for direct review. The 2012 Knee and Lower Leg Conditions DBQ did not mention specialty consultation with orthopedics, physical therapy or pain management. Referral for IDES processing is not recommended.

b. The guidance on Liberal Consideration was considered in regard to possible upgrade to Honorable discharge or change in narrative reason for separation. However, there was more substantive evidence for these changes as a result of the findings concerning his physical condition (bilateral knee pain) rather than a mental health condition. The applicant reported sleep issues during his chapter separation physical. The applicant was not diagnosed with a mental health condition while in service and he did not report BH treatment while in service. He did not deploy and did not report a traumatic experience while in service.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. Although the applicant was diagnosed with Major Depressive Disorder, a potentially mitigating condition, onset was over 7 years after service due to a nonservice related event.

(2) Did the condition exist, or did the experience occur during military service? No. The undersigned did not find documentation of a mental health condition or traumatic experience while in service. In July 2007, the applicant reported having had to extract his drowned brother from his submerged vehicle. This was over 7 years after service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, for reasons previously stated.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the circumstances leading to the applicant's separation and the findings and recommendations outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

BOARD VOTE:

| Mbr 1 | Mbr 2 | Mbr 3 | |
|---|---|---|---|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| :XXX | :XXX | :XXX | 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.

//SIGNED//

X

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. AR 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

3. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) sets forth policies, responsibilities, and procedures in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating.

a. Paragraph 3-1 (Standards of unfitness because of physical disability) provides that 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. Paragraph 3-2 (Presumptions), subparagraph b, provides that when a Soldier is being separated or retired for reasons other than physical disability, continued performance of assigned duty commensurate with his rank or grade until the Soldier is scheduled for separation, creates a presumption that the Soldier is fit. The presumption of fitness can be overcome if the evidence establishes that he/she was unable to perform his/her duties, or that acute grave illness or injury or other deterioration of physical condition, occurring immediately prior to or coincident with separation, rendered the member unfit.

//NOTHING FOLLOWS//