

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240011467

APPLICANT REQUESTS: in effect, honorable physical disability discharge in lieu of general administrative discharge under honorable conditions due to misconduct (drug abuse)

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)

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 was injured while he was enlisted on active duty and was originally supposed to be medically discharged.

b. He enlisted on active duty during war time to serve his country and received a service-related injury. He was told he had the option to have surgery or be discharged. This really crushed him because he wanted to serve in a combat Military Occupational Specialty (MOS) since he was a kid.

c. In the process of waiting for the medical discharge, he had a problem arise at home after convalescent leave and made a poor decision. He made a big mistake while he was in the process of getting all the medical paperwork submitted for discharge and he regrets this every day.

d. He joined the Army at the age of 17 years old and wanted to make the military a career or die in the process. His dream was snatched away from him and he has had mental issues since then and he really needs help.

3. The applicant enlisted in the Regular Army on 21 February 2006.
4. 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.
5. A DA Form 3349 (Physical Profile) shows the applicant was given a permanent physical profile with a PULHES of 113111 due to a left hip fracture. HE could not participate in multiple functional activities and multiple Army Physical Fitness Test (APFT) events and required a Medical Evaluation Board (MEB).
6. A DD Form 2807-1 (Report of Medical History) shows the applicant provided his medical history on 16 June 2006, in conjunction with a medical examination for the purpose of a medical board. He indicated he had swollen or painful joints, broken bones and was in good health. The form additionally shows he suffered from a hip fracture and a non-displaced left femoral neck stress fracture.
7. A DD Form 2808 (Report of Medical Examination) shows:
  - a. The applicant underwent medical examination on 16 June 2006 for the purpose of a medical board.
  - b. Abnormalities shows a well-healing, non-displaced left femoral neck stress fracture. The summary of defects and diagnoses also lists this injury as having been treated by Orthopedics and the reason for his discharge and otherwise there was no significant interval medical history.
  - c. He was deemed not qualified for service with a PULHES of 113111.
8. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:
  - from present for duty (PDY) to absent without leave (AWOL) on 26 June 2006
  - from AWOL to PDY on 22 July 2006
9. Multiple DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on the following occasions for the following reasons:

- on 22 July 2006, for having be AWOL for 26 days, from 26 June 2006 – 22 July 2006
- on 25 July 2006, for lack of motivation and refusal to train; he was AWOL after returning from 30 days of convalescent leave and stated he no longer wanted to be in the Army and that he returned from AWOL in order to out-process from the Army

10. A U.S. Army Maneuver Support Center and Fort Leonard Wood memorandum, 1 August 2006, shows:

a. The applicant tested positive in a urinalysis for DAMP and DMETH. Note to the Board: a positive urinalysis for DAMP and DMETH indicates the presence of amphetamine metabolites in the urine. These substances are commonly referred to as methamphetamines.

b. The unit commander was to offer the applicant an opportunity to furnish medical evidence in the form of a medical prescription or physician's statement documenting the drug prescribed and the medical reason for use.

11. A DA Form 4856 shows the applicant was counseled on 3 August 2006 to notify him of testing positive on a recent drug urinalysis.

12. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) shows on 10 August 2006, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ for being AWOL from 26 June 2006 through 22 July 2006

13. A memorandum signed by the applicant's battalion commander, 16 August 2006, shows he recommended approval of the applicant's entry level separation while in Initial Entry Training (IET), under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 11-2a.

14. A second U.S. Army Maneuver Support Center and Fort Leonard Wood memorandum, 17 August 2006, shows the applicant's commander must refer the applicant to screening by the Army Substance Abuse Program (ASAP) Community Counseling Center (CCC) based on his positive urinalysis.

15. An undated Standard Form 513 (Consultation Sheet) shows:

a. ASAP requested medical evaluation for possible prescription after the applicant tested positive for DAMP and DMETH on a urinalysis conducted on 24 July 2006.

b. The Consultation Report portion of the form, signed by the Chief, Preventive Medicine, shows the applicant's records were reviewed and no legitimate use was identified.

16. A memorandum from the Alcohol and Drug Control Officer, 22 August 2006, informed the applicant's commander that he completed 13 hours of Alcohol and Drug Abuse Prevention Training (ADAPT) on 10 and 11 August 2006.

17. A DA Form 8003 (ASAP Enrollment), 22 August 2006, shows the applicant was command referred to ASAP, his performance was unsatisfactory, and he was pending entry level separation for an AWOL infraction.

18. Two additional DA Forms 4856 show the applicant was counseled by his immediate commander and his first sergeant on 22 August 2006, regarding his inability to adapt to Army life and his recommendation for entry level separation under the provisions of Army Regulation 635-200, paragraph 14-12c for commission of a serious offense, use of illegal drugs.

19. An Office of the Staff Judge Advocate memorandum, 29 August 2006, shows a legal review of the applicant's separation under the provisions of Army Regulation 635-200, paragraph 14-12c was completed and the separation was found legally sufficient.

20. A Report of Mental Status Evaluation shows:

a. The applicant underwent mental status evaluation on 12 September 2006, for the purpose of a misconduct discharge under the provisions of Army Regulation 635-200, chapter 14.

b. The evaluation revealed no mental health conditions that would explain his difficulties in performing to standard. He was determined to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and he met the retention requirements of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3.

21. On 12 September 2006, the applicant was notified by his immediate commander of his initiation of action to separate him with a general discharge under honorable conditions under the provisions of Army Regulation 635-200, paragraph 14-12c for misconduct, drug abuse. He was advised of his right to consult with counsel and submit comments in his own behalf.

22. On 12 September 2006, the applicant acknowledged receiving the notification from his immediate commander informing him of his initiation of action to separate him under the provisions of Army Regulation 635-200, chapter 14 for misconduct, drug abuse.

23. On 12 September 2006, the applicant acknowledged having been advised by consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under the provisions of Army Regulation 635-200, paragraph 14-12c, and the rights available to him. He declined the opportunity to consult with counsel and did not submit statements in his own behalf.

24. On 12 September 2006, the applicant's battalion commander recommended approval of his general discharge under honorable conditions under the provisions of Army Regulation 635-200, paragraph 14-12c for testing positive for methamphetamines, cocaine, marijuana, amphetamines, and for receiving Field Grade NJP for being AWOL.

25. On 14 September 2006, the approval authority directed the applicant's general discharge under honorable conditions under the provisions of Army Regulation 635-200, paragraph 14-12c for testing positive for methamphetamines, cocaine, marijuana, amphetamines, and for receiving Field Grade NJP for being AWOL.

26. The applicant's DD Form 214 (Certificate of Release or Discharge) shows he was given a general discharge under honorable conditions on 20 September 2006, under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct (drug abuse), with corresponding Separation Code JKK. He was not awarded an MOS. He was credited with 6 months and 4 days of net active service, with lost time from 26 June 2006 through 21 July 2006.

27. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends his request is related to his experience of mental health conditions that impacted the circumstances of his 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 Regular Army on 21 February 2006; 2) The applicant accepted a counseling statement on 25 July 2006 for lack of motivation and refusing to train; 3) The applicant was counseled on 03 August 2006 due to a positive drug urinalysis; 4) On 10 August 2006, the applicant accepted NJP for going AWOL for 26 days (26 June 2006 to 22 July 2006); 5) The applicant was discharged on 20 September 2006, AR 635-200, paragraph 14-12c – for misconduct (drug abuse). His service was characterized as under honorable conditions (general). He completed 6 months and 4 days of net active service, with lost time from 26 June 2006 to 21 July 2006.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant attended his first mental health evaluation during his time in service on 12 June 2006 due to difficulties in adjusting to military life away from his home. During this encounter he mentioned an extended history of learning difficulties (ADD diagnosis), therapy (since age 10 or 11), and a history of self-harm up until his entry into the military. He also noted alcohol and substance abuse beginning at age 13 through his entry into the military. He was diagnosed with adjustment disorder with depressed mood and seen one additional time on 20 June 2006 for mental health treatment for this diagnosis. He was command referred to ASAP following a positive urinalysis for methamphetamines, cocaine, marijuana, and amphetamines on 01 August 2006. A memorandum on 22 August 2006, noted that the applicant completed 13 hours of Alcohol and Drug Abuse Prevention Training on 10 and 11 August 2006. The applicant underwent a mental status evaluation on 12 September 2006 for evaluation in service of a chapter 14 discharge. During this evaluation, the applicant received the diagnosis of unspecified psychoactive substance abuse and was subsequently cleared to participate in administrative separation procedures. There is insufficient evidence that the applicant requested, received, or required additional mental health treatment during his time in service.

d. The VA's Joint Legacy Viewer (JLV) was examined and showed that the applicant engaged with the VA through a substance use treatment intervention study beginning on 08 August 2024 until the present. The applicant carried the diagnoses and underwent treatment for other stimulant dependence and opioid dependence. The applicant maintains connection through the VA for continued substance use and medical treatment. The applicant is currently VA 10% service connected for a medical condition. There is insufficient evidence that the applicant's providers have connected any mental health conditions to his time in service and currently does not receive any VA service-connected compensation for any mental health conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant was experiencing difficulty adapting to military life, and he was experiencing mental health symptoms associated with an adjustment disorder as a result. Thus, there is sufficient evidence the applicant was experiencing a mental health condition or experience that partially mitigates his misconduct. However, the predominant condition that led to the applicant's discharge was a substance use disorder which would not wholly mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant was diagnosed with adjustment disorder with depressed mood while in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant diagnosed and briefly treated for adjustment disorder with depressed mood while serving in the military.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, the applicant was diagnosed with adjustment disorder with depressed mood while serving in the military due to his difficulty adapting the military training. The applicant did repeatedly go AWOL and not follow orders. These types of erratic and avoidant behavior can be a natural sequelae of certain mental health conditions and may be in part eligible for consideration for mitigation from a mental health perspective per the Liberal Consideration Policy. However, the predominant condition that led to the applicant's discharge was a substance use disorder which would not wholly mitigate his misconduct.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings 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. 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.



a. 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.

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.

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 his/her 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 his or her 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 case of a Soldier charged with an offense under the Uniform Code of Military Justice (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:

- the investigation ends without charges
- the officer exercising proper court-martial jurisdiction dismisses the charges
- the officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence

d. An enlisted Soldier may not be referred for, or continue, physical disability processing action when action has been started under any regulatory provision which authorizes a character of service of under other than honorable conditions. If the case comes within these limitations, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A case file may be so referred if the general court-martial convening authority finds the following:

- the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions
- other circumstances warrant disability processing instead of alternate administrative separation

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) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Chapter 3 (Character of Service and Description of Separation) provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(2) 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.

(3) A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for

misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army or when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- use of force or violence to produce serious bodily injury or death
- abuse of a special position of trust
- disregard by a superior of customary superior-subordinate relationships
- acts or omissions that endanger the security of the United States or the health and welfare of other Servicemembers
- deliberate acts or omissions that seriously endanger the health and safety of other persons

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//