

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2023

DOCKET NUMBER: AR20230000206

APPLICANT REQUESTS:

- In effect, reconsideration of his previous request to show his U.S. Army Reserve (USAR) separation was due to a combat-related disability and that, effective 24 May 2006, the USAR placed him on the Permanent Disability Retired List (PDRL)
- Permission to appear personally before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit A – Army Review Boards Agency (ARBA) memorandum and Office of the Surgeon General (OTSG) memorandum
- Exhibit B – Department of Veterans Affairs (VA) Rating Decision, dated 15 February 2006
- Exhibit C – VA Rating Decision, dated 9 February 2010
- Exhibit D – VA Rating Decision, dated 15 September 2016
- Exhibit E – VA Rating Decision, dated 4 September 2019
- Exhibit F – DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Exhibit G – Regional Readiness Command Orders
- Exhibit H – Army Board for Correction of Military Records (ABCMR) memorandum and ABCMR Docket Number AR20190006359 Record of Proceedings
- Exhibit I – Fort Lee, VA Health Clinic memorandum
- Exhibit J – Theater Sustainment Command memorandum for record (MFR)
- Exhibit K – VA Review of Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire (DBQ)
- Exhibit L – MFR from Captain B__ C__
- Exhibit M – VA Compensation and Pension (C&P) Examination, dated 8 September 2005
- Exhibit N – DD Form 2796 (Post-Deployment Health Assessment)
- Exhibit O – VA Form 21-0781 (Statement in Support of Claim for Service-Connection for PTSD)

- Exhibit P – VA Progress Notes, dated 17 Apr 2019
- Exhibit Q – DA Form 4980-14 (Army Commendation Medal Certificate)
- Exhibit R – DA Form 2173 (Statement of Medical Examination and Duty Status), dated 18 December 2004
- Exhibit S – DA Form 2173, dated 27 December 2004
- Exhibit T – DD Form 2808 (Report of Medical Examination) and DD Form 2697 (Report of Medical Assessment)
- Exhibit U – VA C&P Examination, dated 5 December 2006
- Exhibit V – VA C&P Examination, dated 7 January 2010
- Exhibit W – VA Rating Decision, dated 12 May 2006
- Exhibit X – VA Rating Decision, dated 27 December 2006
- Exhibit Y – VA Psychiatrist's letter
- Exhibit Z – MHSL (Mental Health Service Line) Initial Psychiatric Assessment
- Exhibit AA – MHSL PTSD Screening Group

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190006359, on 23 February 2021.

2. Counsel states the applicant is requesting this reconsideration for two reasons: he met the requirements for disability processing at the time of his separation, regardless of whether or not he sought treatment for PTSD while on active duty, and he did not receive adequate counsel at the time of his separation.

a. Facts. Counsel summarizes the applicant service history and describes the events that caused the applicant's PTSD.

(1) As a result of the applicant's exposure to trauma while deployed, he started suffering PTSD symptoms; on 18 December 2004, and, on 27 December 2004, DA Forms 2173 show the applicant respectively sought and received medical treatment for upper extremity tremors and anxiety.

(2) Upon his redeployment, the applicant received treatment at a VA medical center for anxiety, insomnia, and nightmares; on 11 April 2005, he received a positive screen for PTSD. Effective 14 March 2005, the VA awarded the applicant a 30 percent disability rating for PTSD.

(3) Over time, the applicant's PTSD symptoms worsened, and the VA successively increased the applicant's disability ratings until, effective 7 January 2010, the VA awarded the applicant a 100 percent rating for PTSD; the applicant continues to receive behavioral health treatment.

b. Legal Analysis. Counsel presents arguments as to why the applicant met Disability Evaluation System (DES) referral criteria while still in an active USAR status and asserts the applicant was not properly counseled during his separation processing.

(1) The Army has issued regulations outlining when patients must be referred into the DES; specifically, according to the version of Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), (in effect at the time until cancelled in 2014), a Soldier with a mental health condition like an anxiety disorder or PTSD must be referred into the DES when, "symptoms are persistent, recurrent, unresponsive to treatment, require continuing psychiatric support, and/or are severe enough to interfere with satisfactory duty performance." (Counsel is citing paragraph E4.13.4 (Anxiety, Somatoform Dissociative Disorders (Neurotic Disorders), DODI 1332.38).

(a) Despite the ABCMR's finding that the applicant suffered from service-incurred PTSD, and the evidence of record indicating the applicant sought treatment for PTSD-related symptoms on multiple occasions, the OTSG incorrectly asserted the applicant did not require DES referral because he never sought care or received treatment from behavioral health providers while on active duty. Counsel points out that DES referral is based on a Soldier's symptoms, not the level of care sought by the Soldier or the treatment given by the Army.

(b) (In a 2 December 2021 memorandum to OTSG, an Army Health Clinic Licensed Clinical Psychologist opined, "Even though [applicant] was diagnosed with PTSD after being released from active duty, there is no evidence in the available medical records to confirm that, while in active military duty, [applicant] ever sought care or was ever treated for any behavioral health conditions by military or civilian health providers"; OTSG subsequently affirmed the opinion).

(c) Counsel contends, "PTSD is a (sic) considered a condition under Army Regulations that requires referral to a Medical Evaluation Board (MEB) when service members do not meet retention standards." "Members of the Reserve Component with a disabling condition will be processed under provisions of AR 40-501 (Standard of Medical Fitness)."

(2) With regard to separation counseling, counsel states, "Army Regulations require the U.S. Army Reserve to counsel Reserve Component Soldiers on their right to review by a Physician (sic) Evaluation Board."

(a) The applicant's separation papers listed the applicant's 50 percent VA disability rating for PTSD as the basis for his separation; however, the USAR granted the applicant's separation request due to a "supposedly nonduty-related, medically disqualifying condition," per Title 10 (Armed Forces), United States Code

(USC), section 12731b (Special Rule for Members with Physical Disabilities not Incurred In Line of Duty).

(b) The applicant should have been counseled to request a duty-related informal physical evaluation board (PEB) to review his medical records for a determination as to whether he was unfit for duty due to his service-connected PTSD.

(3) Based on the foregoing, the Board should grant the applicant a permanent disability retirement for his service-connected PTSD.

3. The applicant provides documents from his service records and service treatment records, VA psychiatric evaluations and rating decisions, memoranda and the record of proceedings pertaining to his initial ABCMR consideration.

4. A review of the applicant's service record reveals the following:

a. On 27 August 1979, the applicant enlisted into the USAR for 6 years; upon completion of initial entry training and the award of military occupational specialty (MOS) 76W (Petroleum Supply Specialist), the applicant continued his USAR service until, effective 20 September 1985, orders honorably discharged the applicant from the Ready Reserve.

b. On 30 May 1987, the applicant enlisted into the Pennsylvania Army National Guard (PAARNG); on 23 February 1989, after completing 1 year, 8 months, and 24 days of PAARNG service, the PAARNG honorably discharged the applicant so he could enlist in the USAR. On 24 February 1989, the applicant reenlisted into the USAR for 3 years.

c. On 23 February 1992, orders honorably discharged the applicant from the USAR; on 24 April 1992, the applicant reenlisted in the USAR for 6 years. On or about 13 February 1997, the USAR released the applicant and, on 14 February 1997, the applicant enlisted into the North Carolina ARNG (NCARNG) for 4 years. On 15 December 2000, the NCARNG honorably discharged the applicant; on 16 December 2000, the applicant reenlisted into the USAR for 6 years.

d. On 7 December 2003, the applicant entered active duty in support of Operation Iraqi Freedom. On 22 February 2004, the applicant deployed to Kuwait/Iraq; on 10 February 2005, the applicant redeployed, and, on 13 March 2005, orders honorably released the applicant from active duty due to the completion of required active service and returned him to the USAR. The applicant's DD Form 214 shows he completed 1 year, 3 months, and 7 days of net active duty service.

e. Regional Readiness Command orders, dated 24 April 2006, reassigned the applicant from his Troop Program Unit to The Retired Reserve, effective 24 May 2006; the cited reason was "MEDICALLY DISQUALIFIED – NOT RESULT OF OWN MISCONDUCT." On 5 May 2006, the U.S. Army Reserve Personnel Command (ARPERCEN) notified the applicant, via memorandum, that, as a Selected Reserve member with at least 15 years of qualifying service, he was eligible to apply for retired pay at age 60; as its authority, the memorandum listed Title 10, USC, section 12731b.

f. On 14 February 2018, the applicant filed a DD Form 108 (Application for Retired Pay Benefits) with the U.S. Army Human Resources Command (HRC). On 19 March 2018, he provided HRC a DD Form 2656 (Data for Payment of Retired Personnel), in which he identified his spouse and children and affirmed he did not elect participation in the Survivor Benefit Plan (SBP); the form additionally reflected his spouse's concurrence with the applicant's SBP election.

g. On 17 May 2018, HRC orders placed the applicant on the Army of the United States Retired List, effective 15 June 2018.

h. On 17 April 2019, the applicant petitioned the ABCMR, requesting, in effect, a medical retirement.

(1) The ARBA Medical Advisor reviewed the applicant's case and noted the absence of medical documentation and specific information about the applicant's medically disqualifying condition; the ARBA Medical Advisor added, "Circumstantial evidence strongly suggests his PTSD was the cause of his medical disqualification for a 'non-duty related' condition." "It is unknown why the applicant was separated as if his PTSD was not related to his military service to our country when multiple Army regulations require referral of such cases to the DES." After detailing the applicant's VA medical treatments following his redeployment, the ARBA Medical Advisor concluded, "It is the opinion of the Agency Medical Advisor that a long overdue referral of his case to the DES is clearly warranted."

(2) On 23 February 2021, the Board recommended partial relief by referring the applicant's record to the OTSG. The OTSG was to determine whether the disability evaluation the applicant received prior to his separation accurately depicted his medical conditions as they existed at the time. If the OTSG found the applicant failed medical retention standards at the time, he would be referred into the DES.

i. On 6 December 2021, the OTSG stated, "Medical evidence based on the review of [applicant's] medical records indicate that an MEB was not warranted at the time of his separation." On 7 December 2021, ARBA advised the applicant via letter of OTSG's determination.

5. AR 15-185 (ABCMR) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. MEDICAL REVIEW:

a. The applicant requests reconsideration of his previous request to show his U.S. Army Reserve separation was due to a combat-related disability and that he be placed on the Permanent Disability Retirement List. He contends his request is associated with PTSD.

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: 1) On 16 December 2000, the applicant enlisted into the USAR for 6-years; 2) On 7 December 2003, the applicant entered active duty in support of Operation Iraqi Freedom and served in Kuwait/Iraq 22 February 2004 to 10 February 2005; 3) On 13 March 2005, orders honorably released the applicant from active duty due to the completion of required active service and returned him to the USAR; 4) Regional Readiness Command orders, dated 24 April 2006, reassigned the applicant from his Troop Program Unit to The Retired Reserve, effective 24 May 2006; the cited reason was "Medically Disqualified – Not Result of Own Misconduct."; 5) On 17 April 2019, the applicant petitioned the ABCMR, requesting, in effect, a medical retirement; 6) On 23 February 2021, the Board recommended partial relief by referring the applicant's record to the OTSG. The OTSG was to determine whether the disability evaluation the applicant received prior to his separation accurately depicted his medical conditions as they existed at the time; 7) On 6 December 2021, the OTSG stated, "Medical evidence based on the review of applicant's medical records indicate that an MEB was not warranted at the time of his separation."; 8) On 7 December 2021, ARBA advised the applicant via letter of OTSG's determination.

c. The military electronic medical records (AHLA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA was void of any BH diagnosis of treatment history for the applicant during active-duty service. A review of JLV showed the applicant 100 percent SC for PTSD. C&P Examination, dated 8 September 2005, showed the applicant's PTSD diagnosis associated with his deployment to Iraq where he was exposed to multiple IED and mortar fire as a truck driver. Records suggest the applicant initial BH-related engagement with the VA occurred on 16 March 2005 at the Fayetteville, NC VA, ED, whereby the applicant presented with complaints of anxiety and need for blood pressure medication renewal. He also endorsed recent combat and occasional flashback. He was diagnosed with Anxiety Disorder. On 11 April 2005 the applicant was screened for mental health needs and scored in the severe range for depression and PTSD. He was noted to have endorsed symptoms of reexperiencing, avoidance, irritability, sleep difficulty, loss of

interest flashbacks, emotional numbing, difficulty concentrating, and a sense of foreshortened future. He was diagnosed with Depression NOS and a provisional diagnosis of PTSD. Encounter noted dated 23 May 2005 showed he was determined to have met diagnostic criteria for PTSD, Depressive Disorder NOS, Alcohol Abuse Continuous, and Cocaine Abuse, and referred for treatment. Records showed the applicant entered the Chemical Addiction Rehabilitation Program for substance related treatment on 7 June 2005; records suggest he remained in the program through November 2005.

d. Encounter noted dated 25 January 2006 showed the applicant was seen with complaints that his depressive symptoms had returned, that he was experiencing nightly flashbacks, having night sweats, and awakes yelling. He reported discontinuing his psychotropic medication and experiencing mind acceleration and panic attacks daily. Medication reconciliation was conducted, and the applicant was referred for group therapy for PTSD. Records showed the applicant has remained in BH treatment via individual and group therapy, and medication management, intermittently, through February 2023.

e. The applicant is requesting reconsideration of his previous request to show his USAR separation was due to a combat-related disability and that he be placed on the Permanent Disability Retirement List. A review of the records was void of any BH diagnosis or treatment history during active service. Post-service records showed the applicant 100 percent SC for PTSD associated with his deployment to Iraq. While the applicant is 100 SC for PTSD there is no documentation in the record to support the applicant was ever diagnosed or treated for PTSD during active-duty service, that he had a permanent profile for a psychiatric disorder, or that he met MRDP for PTSD, and thus nothing that would have triggered a referral for MEB. In absence of documentation showing the applicant failed medical retention standards IAW AR40-501 Chapter 3, while on active duty, there is no evidence the applicant should have been referred to DES during active duty. Regarding service in the USAR, although there is documentation the applicant met diagnostic criteria for PTSD while in the USAR, there is insufficient evidence that applicant's PTSD failed medical retention standards, and in absence of evidence showing the applicant was separated because of PTSD, there is insufficient evidence to support placing the applicant on the Permanent Disability Retired List for PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service. However, there is insufficient evidence to support he should have been medically retired for PTSD.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 100 percent SC for PTSD

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. active service. Post-service records showed the applicant 100 percent SC for PTSD associated with his deployment to Iraq. While the applicant is 100 SC for PTSD there is no documentation in the record to support the applicant was ever diagnosed or treated for PTSD during active-duty service, that he had a permanent profile for a psychiatric disorder, or that he met MRDP for PTSD, and thus nothing that would have triggered a referral for MEB. In absence of documentation showing the applicant failed medical retention standards IAW AR40-501 Chapter 3, while on active duty, there is no evidence the applicant should have been referred to DES. Regarding service in the USAR, although there is documentation the applicant met diagnostic criteria for PTSD while in the USAR, there is insufficient evidence that applicant's PTSD failed medical retention standards, and in absence of evidence showing the applicant was separated because of PTSD, there is insufficient evidence to support placing the applicant on the Permanent Disability Retired List for PTSD.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The applicant is requesting reconsideration of his previous request to show his USAR separation was due to a combat-related disability and that he be placed of the Permanent Disability Retirement List. The applicant was eligible to apply for retired pay at age 60; as a member of the Selected Reserve member with at least 15 years of qualifying service. He was placed on the retired list in June 2018. The Board previously recommended partial relief by referring the applicant's record to the OTSG determine whether the disability evaluation the applicant received prior to his separation accurately depicted his medical conditions as they existed at the time. Following a review of his medical records, OTSG determined the medical evidence indicated an MEB was not warranted at the time of his separation. The Board reviewed and agreed with the OTSG determination. Additionally, the Board reviewed and was persuaded by the medical official's finding that although there is sufficient evidence that the applicant had an experience or condition during his time in service; however, there is insufficient evidence to support he should have been medically retired for PTSD.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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 to amend the decision of the ABCMR set forth in Docket Number AR20190006359, on 23 February 2021.

█

█ █

█

█

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. AR 40-400 (Patient Administration), in effect at the time, stated MEB consideration was required for patients whose medical fitness for return to duty was questionable, problematic, or controversial.

a. When a member's fitness for further military duty was questionable, it became essential that all abnormalities in his/her condition to be thoroughly evaluated. Individuals determined by an MEB to fail the medical retention standards outlined in AR 40-501 were forwarded to a PEB for a fitness determination.

b. The version in effect in February 2008 stated, "If the Soldier does not meet retention standards, an MEB is mandatory and will be initiated by the physical evaluation board liaison officer (PEBLO)."

2. Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, stated:

a. "The mere presences of an 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. PEBs were charged with investigating the nature, cause, degree of severity, and probable permanency of a Soldier's disabling conditions; assessing the Soldier's physical conditions against the physical requirements of the Soldier's particular office, grade, rank, or rating; and making findings and recommendations, to include ratings determinations, in accordance with the law.

c. The PEB's available dispositions for the Soldier included:

- return to duty
- separate with severance pay when the combined disability rating was 20 percent or less
- For combined ratings of 30 percent or more: when the PEB could not confirm the permanency of a disabling condition, it recommended the Soldier for the Temporary Disability Retired List; conditions not likely to change over time resulted in placement on the Permanent Disability Retired List

d. A disability could be considered a direct result of armed conflict if it was incurred while the Soldier was engaged in armed conflict or in an operation or incident involving armed conflict or the likelihood of armed conflict if a direct causal relationship exists

between the armed conflict or the incident or operation and the disability, or if the disability which is unfitting was caused by an instrumentality of war and was incurred in the line of duty during a period of war.

3. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

4. Title 26 (Internal Revenue Code), USC, section 104 (Compensation for Injuries or Sickness) states, in part, that for purposes of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

5. AR 15-185 states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//