

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230003962

APPLICANT REQUESTS: correction of his records to show the physical evaluation board (PEB) found him fit for duty (vice unfit) and/or his Reentry (RE) Code from RE-4 (ineligible to reenter) be changed to RE-1 (fully eligible to reenter) military service.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- 2 X DA Form 1059 (Service School Academic Evaluation Report)
- Letter of Recommendation
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was medically retired in June of 2016 and was issued a DD Form 214 that reflects RE-4. Shortly after that, he was placed on the Permanently Retired list in 2018. Since June of 2016, he has gone through several Cognitive Therapies and Transcranial Magnetic Stimulation (TMS). Due to a successful treatment, he is not on any medication nor is he affected by the "no longer traumatic" experiences. At this point in his journey, they are merely memories. The post-traumatic stress disorder diagnosis was extreme along with the time between initial and case review to go from Temporary Disability Retired List to Permanent Retired List did not allow him enough time to put together a case to show he does not have PTSD and does not apply to his current level of behavior health.
  - a. For those who are not familiar with the TMS therapy, he recommends readers research TMS as there have been articles published in the journal Biological Psychiatry that show patient symptoms improve after treatment. He believes they stated an average of 2/3rds of the patients see improvement. TMS is a therapy where you place

an electromagnet on the patient's head and send a series of magnetic pulses into the brain to exercise the underdeveloped synapsis. It was once explained to him that during multiple exposures or one extremely traumatic one changes the brain to be amped up for survival purposes. TMS targets the relaxation production of the brain to balance it. So, when the brain is in survival mode you are going to have elevated anxiety, increased aggression and be more impulsive with decisions. Basically, the experience or experiences places the person in a semipermanent "survival mode" and the person loses the ability to relax or calm down to a healthy level. As TMS targets the areas of the brain to help the person calm down it returns the patient's ability to relax. Having participated with TMS, he assures the Board that it worked . When he was diagnosed in August 2015, he was put on multiple medications. He can't remember what those meds are because they have extremely complicated names ... or at least for him. Long story short, he is not medicated, and he is able to not only function appropriately as a human being but, he is also able to make life and death decisions as a Police Officer using facts. Fear, anxiety, uncertainty do not dictate his action as it once did prior to all the Behavior Health interventions.

b. He explains the different “clusters” of PTSD according to the Diagnostic and Statistical Manual of Mental Disorders (DSM), currently on version 5. He then explains why PTSD diagnosis does not apply. He has been in the Law Enforcement Community for over 2 years now. He attended the Police Academy in January 2018. He has been serving as a Law Enforcement Officer since graduating. During that time, he has been involved with a few car chases, multiple arrests, cardiac arrests where the patients died, a few fights from resisting arrestees, multiple domestic violence calls with one resulting in an Officer Involved Shooting (OIS). His decision to even go to the Police Academy was to better assess how his road to recovery had progressed. Being able to learn new things, retain a lot of knowledge about local laws in a short amount of time and having conducted myself without incident was exhilarating. He was placed into simulations of sexual assault, combatant criminals, and had multiple training munitions fired at him. Even though it was a training environment, he reacted appropriately, maintained self-control, executed a plan of action and was able to clearly articulate that plan with other officers with very little time to think.

c. He briefly goes over patrolling the city and explains how during car chases there is increased adrenaline into a person’s system, and that a lot of people have diminished cognitive abilities during this time. During a car chase one must weigh the consequences with the reward. He gives examples of what happens during a murder scenario, shooting, domestic violence, and he relives his own experience with shooting a suspect. He concludes that someone with PTSD would not be able to continually preform at the levels expected of a Police Officer. The anxiety, aggression, and the need to avoid re-living stressful situation would be too much, and that he is not affected by the required symptoms of each PTSD cluster.

d. Everything we experience goes on to shape who we are. Everyone's journey is different, everyone's perspective will not be the exact same and how one gets through it will be based on that person. He has seen and done a lot that has put him in difficult places. However, he has recovered each and every time taking the lessons learned and applying them to his life so he may be better equipped to not only handle future situations but help others in need. Prior to being discharged, he had the opportunity to work on a Moral Injury Recognition and Recovery program. He would enjoy nothing more to expand on that, tie into whatever the Chaplain Corps has created thus far and help other Soldiers suffering through mendable wounds recover. Military Service was never about traveling, education or money. Although he has enjoyed traveling, using the education benefits earned to expand his horizon and the monetary compensation that he believes has always been adequate. He wanted to serve because it felt like the right thing to do. He still does. Serving in the Army has been one of the highlights of his life. He would like nothing else then to be able to continue serving at least for the full 20 years if not longer and prove that he is an asset and not a liability.

3. Review of the applicant's service records shows:

a. Having had prior enlisted service in the Army National Guard, he enlisted in the Regular Army on 2 June 2006, and he held military occupational specialties 56B, Chaplain Assistant and 13B, Cannon Crewmember.

b. He served through multiple reenlistments in a variety of assignments, including tours in Kuwait and in Iraq, and he attained the rank/grade of staff sergeant (SSG)/E-6.

c. On 4 February 2016, an informal physical evaluation board (PEB) convened and found the applicant unfit for PTSD, attributed to combat stressors during deployments. Soldier is unfit because this condition prevents him from being able to perform the required activities or his PMOS (Chaplain Assistant). As an NCO, his symptoms of anxiety, depressed mood, suspiciousness, poor impulse control, irritability, and outbursts of anger interfere with his ability to function effectively as a military leader within the scope of his PMOS.

(1) The PEB assigned a 50% disability rating and determined his disposition is placement on the temporary disability retired list (TDRL) with future reexamination.

(2) His case was adjudicated as part of the Integrated Disability Evaluation System (IDES). As documented in the Department of Veterans Affairs (DVA) memorandum dated 28 January 2016, the DVA determined the specific VASRD code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed DVA disability rating(s) and in accordance with applicable statutes and regulations.

(3) The applicant was counseled: He concurred with the PEB's findings and recommendation, waived his right to formal hearing of his case, and did not request reconsideration of his VA rating.

d. On 9 March 2016, Headquarters, U.S. Army Cyber Center, Fort Gordon, GA published Orders 069-0905 retiring him due to disability effective 2 June 2016 and placing him on the TDL effective 3 June 2016.

e. The applicant retired on 2 June 2016 and he was placed on the TDRL on 3 June 2016. His DD Form 214 show he retired in accordance with Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4. He was assigned Separation Code SEK and Reentry Code 4.

f. On 16 March 2018, following a physical examination, a TRDL PEB convened and found the applicant's condition remained unfitting. He continues to experience behavioral health symptoms due to combat related stressors from deployments to Iraq. This condition has received a final static rating from the VA which is used for purposes of determining Soldier's final rating. Condition is considered permanent and stable for final rating and continues to be unfitting. The TDRL PEB assigned a 50% disability rating and determined his disposition is placement on the permanent disability retired list. The applicant concurred on 27 March 2018.

g. On 4 April 2018, the U.S. Army Physical Disability Agency published Orders D094-57, removing the applicant from the TDRL on 4 April 2018 and permanently retiring him effective 4 April 2018.

4. By regulation (AR 635-5-1), SPD code "SFK is the appropriate code to assign to Soldiers separated under the provisions of AR 635-40, paragraph 4-24b(2), by reason of disability, temporary. The SPD/RE Code Cross Reference Table in effect then stipulates that a RE-4 code will be assigned to members separated under these provisions with an SPD code of "SFK."

#### 5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR correction of his records to show the physical evaluation board (PEB) found him fit for duty (vice unfit) and/or his Reentry (RE) Code from RE-4 (ineligible to reenter) be changed to RE-1 (fully eligible to reenter) military service.

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) The applicant, after having had prior enlisted service in the Army National Guard, enlisted in the Regular Army on 2 June 2006; 2) He served through multiple reenlistments in a variety of assignments, including tours in Kuwait and in Iraq; 3) On 4 February 2016, an

informal physical evaluation board (PEB) convened and found the applicant unfit for PTSD, attributed to combat stressors during deployments; 4) The PEB assigned a 50% disability rating and determined his disposition is placement on the temporary disability retired list (TDRL) with future reexamination; 5) On 9 March 2016, Headquarters, U.S. Army Cyber Center, Fort Gordon, GA published Orders 069-0905 retiring him due to disability effective 2 June 2016 and placing him on the TDL effective 3 June 2016; 6) The applicant retired on 2 June 2016, and he was placed on the TDRL on 3 June 2016. His DD Form 214 show he retired in accordance with Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4. He was assigned Separation Code SEK and Reentry Code 4.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined. No additional medical documentation was provided.

d. The applicant states the PTSD he developed while on active service and resulted in his medical disability discharge has resolved. He would like to have his Reentry Code changed to allow him to reenter military service. There is sufficient evidence the applicant was deployed to an active combat area, and he was actively engaged in behavioral health care both during his deployment and after returning. He was diagnosed with an occupational problem, adjustment disorder, anxiety disorder not otherwise specified, and PTSD. Eventually, the applicant was determined to be unable to fulfill his military duties due to his mental health condition of PTSD, and he was medically discharged appropriately in 2016. He was evaluated by appropriate licensed behavioral health providers, and the applicant agreed with the medical disability discharge.

e. A review of JLV provided evidence the applicant began to engage in behavioral health care at the VA shortly after his discharge. He has been actively engaged in behavioral health treatment till present. However, the applicant continues to be determined to be service-connected for PTSD (70%), and recently in the last few months has demonstrated occupational difficulty due to his symptoms of PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant was properly evaluated by a licensed behavioral health provider while on active service and was found to not meet the retention standards due to his mental health condition of PTSD. The applicant has demonstrated improvement, but there is insufficient evidence at this time to warrant a change his Reentry Code.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Based on the available information, it is the opinion of the Agency BH

Advisor that the applicant was properly evaluated by a licensed behavioral health provider while on active service and was found to not meet the retention standards due to his mental health condition of PTSD. The applicant has demonstrated improvement, but there is insufficient evidence at this time to warrant a change his Reentry Code.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and applicable regulatory guidance. The Board noted the applicant's period of service and that he had multiple reenlistments. The Board considered the determination of the informal physical evaluation board which diagnosed him with several behavioral health conditions to include PTSD and noted the applicant's concurrence with the outcome as attested to by his signature.

2. The Board carefully considered the applicant's reference to having post-service treatment of his PTSD, and after having successful results, is no longer is on medication or experiencing further PTSD symptoms. The applicant states that he has undergone several cognitive therapies and Transcranial Magnetic Stimulation and, as a result he is no longer on medication or affected by his military experiences. However, documentation available for review does not reveal any supporting medical documentation nor did he provide any on his own behalf for Board consideration of his request. Further, were there supporting medical documentation regarding the successful post-service treatment, such documentation would not negate the findings of the Physical Evaluation Board at the time of his discharge nor warrant a correction to his DD214 to show his Reentry (RE) Code as RE-1. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from

active duty, and the SPD codes to be entered on the DD Form 214. It states the SPD code "SFK is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-40, paragraph 4-24b(2), by reason of disability, temporary. The SPD/RE Code Cross Reference Table stipulates that a RE-4 code will be assigned to members separated under these provisions with an SPD code of "SFK."

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the U.S. Army Reserve. Table 3-1 included a list of the Regular Army RE codes:

a. RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army. They are qualified for enlistment if all other criteria are met.

b. RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE-4 applies to Soldiers who are separated from their last period of service with a nonwaivable disqualification. They are ineligible for enlistment.

4. Army Regulation 635-8 (Separation Processing and Documents) prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It states a DD Form 214 will not be prepared for a Soldier removed from the TDRL.

//NOTHING FOLLOWS//