

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230004326

APPLICANT REQUESTS: in effect,

- medical disability retirement
- an upgrade of his under honorable conditions (General) discharge

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 9 June 2012
- Orders 068-009, Discharge from the Army National Guard (ARNG), 8 March 2016
- Two General Officer Memoranda of Reprimand (GOMOR), 13 November 2018 and 3 April 2020
- Two Acknowledgements of Receipt of GOMOR, 16 November 2018 and 8 April 2020
- Two Rebuttals to GOMOR, 20 November 2018 and 8 April 2020
- Filing Determination of GOMOR, 14 December 2018
- Request from Honolulu Police Department, 18 May 2019
- Hawaii Armed Service Police Form
- Involuntary Discharge Instructions, 18 December 2019
- Officer Record Brief, 11 March 2020
- DA Form 4856 (Developmental Counseling Form), 16 March 2020
- DA Form 268 (Report to Suspend Favorable Personnel Action (Flag)), 16 March 2020
- Character Reference from Captain (CPT) C- B. B-, 8 April 2020
- Character Reference from Lieutenant Colonel (LTC) Retired (R) R- K. D-, 9 April 2020
- Character Reference from Sergeant First Class (SFC) C- N. S-
- Character Reference from CPT C- M. M- , 15 April 2020
- Chain of Command Filing Recommendation
- DA Form 31 (Request and Authority for Leave), 19 May 2020
- Orders 141-0002, Separation Orders, 20 May 2020

- Initiation of Elimination, 21 May 2020
- Request for Retention Beyond Mandatory Removal Date (MRD), 29 May 2020
- Chain of Command Recommendations
- Amendment of Involuntary Discharge, 1 June 2021
- Orders 153-0001, Separation Orders Rescinded, 1 June 2020
- Acknowledgement of Receipt of Notification of Initiation of Elimination, 2 June 2020
- Resignation in lieu of Elimination Proceedings
- Personal Statement of Characterization of Service, 10 June 2020
- Character Reference from First Lieutenant (1LT) T- A. P-, 10 June 2020
- Character Reference from LTC (R) R- K. D-, 10 June 2020
- Character Reference from CPT C- B. B- 11 June 2020
- Department of Veterans Affairs (VA) Evaluation System Proposed Rating, 24 June 2020
- Letter from VA, 25 June 2020
- Initiation of Elimination, 2 October 2020
- Request for Extension Beyond MRD, 24 October 2020
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 11 August 2020
- U.S. Army Human Resources Command (AHRC) Memorandum Involuntary Discharge, 18 December 2020
- Civilian Court Documents, 21 June 2021
- VA Fact Sheet

FACTS:

1. The applicant states he was discharged due to receiving a GOMOR for driving under the influence (DUI) but he was never issued a DUI. His charge was dropped to reckless driving. He was also given this GOMOR months to almost a year after the incident. He was subject to multiple prejudices while serving as the deputy S1 at the Soldier Recovery Unit at Schofield Barracks, Hawaii. Although he was undergoing a medical separation, at the time, this GOMOR was given after the fact and created dual processing in which the commanding general decided on an administrative separation in lieu of medical retirement that was fully approved by the Secretary of the Army.

2. The applicant provides:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) which shows he was ordered to active duty as an enlisted member of the ARNG on 1 May 2011 and was honorably released on 9 June 2012. He completed 1 year, 1 month, and 9 days of active duty service. He served in Iraq from 1 September 2011 to 31 December 2011.

b. Orders 068-0009, published by Joint Force Headquarters, 8 March 2016, show he was honorably discharged from the ARNG effective 6 March 2016 for expiration term of service.

c. Hawaii Armed Service Police document shows the applicant was stopped for operating a vehicle under the influence of an intoxicant on 18 May 2019. He had a court date on 17 June 2019. The applicant was stopped by an officer and she noticed a smell of alcohol coming from him. He appeared sluggish when trying to separate his paperwork. He was administered a field sobriety test and he showed signs of impairment throughout the test. He refused to participate in the preliminary alcohol screening and became uncooperative. He was arrested for operating a vehicle under the influence of an intoxicant.

d. Memorandum from U.S. Army Human Resources Command (AHRC), 18 December 2019, subject Involuntary Discharge states the separation as the result of the Secretary of the Army, Manpower and Reserve Affairs denial of promotion pertaining to the applicant effective 15 June 2020 was involuntary.

e. DA Form 31 (Request and Authority for Leave), 19 May 2020, shows he was to start transition leave on 1 June 2020 through 15 June 2020. His supervisor recommended approval of the leave and the approving authority approved his leave.

f. Orders 141-0002, published by Headquarters, Tripler Army Medical Center, 20 May 2020, show he was to be discharged on 15 June 2020.

g. Memorandum, Request for Retention Beyond MRD, 29 May 2020, states the applicant was in the Medical Evaluation Board (MEB) phase and due to unprojected delays related to COVID-19 and concurrent administrative action, he required an additional 150 days extension to complete the transition process. The Chief, Disability Evaluation System recommended approval of an MRD extension through 15 November 2020.

h. Memorandum from AHRC, 1 June 2020, subject amendment of involuntary discharge or involuntary transfer states retention on active duty until 15 November 2020 or until completion of disability proceedings, whichever was earliest, was approved.

i. Orders 13-0001, published by Headquarters, Tripler Army Medical Center, 1 June 2020 rescinded his discharge orders.

j. VA Disability Evaluation System Proposed Rating, 24 June 2020, states the proposed disability ratings were:

- the evaluation of other specified trauma and stressor related disorder (claimed as post traumatic stress disorder (PTSD)) to 50 percent disabling,
- establish service connection for lumbosacral strain with lumbar myofascial pain syndrome as directly related to military service with a 20 percent evaluation
- establish service connection for right ankle fracture, status post open reduction and internal fixation with residuals as directly related to military service with a 20 percent evaluation
- confirm and continue the 10 percent evaluation for right biceps tendonitis
- confirm and continue the 10 percent evaluation for right medial and lateral epicondylitis
- establish service connection for left wrist fracture status post open reduction and internal fixation as directly related to military service with a 10 percent evaluation
- confirm and continue the 10 percent for right gracilis muscle strain
- establish service connection for tinnitus as directly related to military service with a 10 percent evaluation
- establish service connection for gastroesophageal reflux disease as directly related to military service with a 10 percent evaluation
- establish service connection for temporomandibular disorder with bruxism and paresthesia related to military service with a 10 percent evaluation

k. Letter from the VA, 25 June 2020, states they were proposing his total combined rating for service-connected disabilities was 90 percent.

l. Memorandum, Request for Retention Beyond MRD, 24 October 2020, states the applicant was in the transition phase of the Integrated Disability Evaluation System (IDES). His case had been placed in deferment and he would need to be extended on active duty to complete the board process. The Chief, Disability Evaluation System recommended approval of an MRD extension through 15 February 2021.

m. Civilian court documents from the First Circuit Honolulu Division State of Hawaii, 21 June 2021, show count one as operating a vehicle under the influence of an intoxicant. He was ordered to 14 hours SARP [sic], alcohol/drug assessment and treatment, and he had to pay fines to include for DUI. The entire document is available for the Board's review.

3. A review of the applicant's service records show:

a. Having prior enlisted service in the ARNG, a DA Form 71 (Oath of Office - Military Personnel) shows he took the oath of office as a Reserve commissioned officer on 12 May 2017.

b. DA Form 4856 (Developmental Counseling Form), 28 September 2018 shows he was counseled regarding a suspension of favorable personnel actions and of the possible adverse effects it could have on his career. He did not report to duty for two of the three days he was assigned duty at the Command Post Exercise (CPX). He agreed with the counseling and signed the form.

c. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 28 September 2018 shows he was flagged for adverse action.

d. GOMOR, 13 November 2018, shows he was reprimanded for intentionally failing to report to duty on three consecutive days during the CPX in addition to lying to two superior commissioned officers. On 16 November 2018, he acknowledged receipt of the GOMOR and stated he would submit written matters.

e. GOMOR Rebuttal, 20 November 2018, states:

(1) He sincerely apologized for the inconvenience that he caused anyone due to his actions. He accepted full responsibility for his action and realized the actions he took were not that of an officer in the U.S. Army. In the 10 years he had served in the Army, he would not expect anyone to conduct themselves in that manner.

(2) He was focused more on his personal life (divorce) than his professional career and clearly saw that his career had a major impact on many people, not just himself. He understood that an officer was to maintain a high level of professionalism and set the standard for his/her subordinates. He was fortunate to have served with many great leaders who had influenced him throughout the years. They would be disappointed to hear of his actions and he felt embarrassed to even be in the situation. He hoped his actions would not affect his future service in the U.S. Army.

(3) He had served as an enlisted member of the ARNG for eight years. He joined the Army in 2008 as a private, since that time, he had always served with honor and upheld the Army Values. He participated in the Inauguration of President Barack Obama, multiple state wide missions in South Carolina and North Carolina, and had also served in support of Operation New Dawn in Taji, Iraq. The Army had been his whole life since he left high school, it had made him a better leader, brother, and Soldier. For those reasons, he decided to commission as an officer in the Army to better lead Soldiers and become a great leader that he never imagined he could be.

(4) He took the following remedial measures:

- he attended a Strong Bonds retreat with his spouse, in hopes to help renew their marriage and not get divorced

- he attended counseling with his spouse at his brigade, to ensure they both were understanding each other and the active duty lifestyle change they experienced
- he read books for self-development in an effort to develop himself as a leader and husband to his spouse
- he participated regularly at a Sunday service with his spouse to renew his faith with God and develop himself spiritually as well as emotionally

(5) He again apologized for his actions as an officer of the U.S. Army and realized his personal issues need not interfere with his professional career. He had a remarkable career opportunity in the Army and learned from his mistake. He hoped this one mistake would not end a long career expectation in the Army.

f. Character reference letters, which state:

(1) From CPT A- G. M- who knew the applicant for more than eight years and served with him in the South Carolina ARNG. The CPT knew him to be a dedicated focused, and duty-oriented person. The CPT found him to be among the most reliable of the many Soldiers he was responsible for. The CPT requested the GOMOR be filed in the applicant's local file. Considering his length of service filing in that manner met the disciplinary and development end-status the CPT believed the issuing authority sought to accomplish with the GOMOR.

(2) From First Lieutenant (1LT) T- A. P- who knew the applicant for three years and met him at Army Reserve Officer's Training Corps. The applicant was professional, well spoken, and very knowledgeable of the Army. He was a team player, dedicated to the mission, and reliable. He recommended the GOMOR be filed in the applicant's local file.

(3) From SFC V- B. T- who knew the applicant for over a year. The applicant was dedicated, motivated, and had years of experience from his prior service in the ARNG. The applicant was a very humble leader who may do a great service to the newer Army they were going into. The SFC requested his GOMOR be filed in the applicant's local file.

(4) From SFC C- N. S- who knew the applicant for around 10 years. The applicant was dedicated, industrious, and thoroughly professional through the years. He took personal pride in his work and always displayed a good example to young Soldiers and superiors alike. He was one of the better young Soldiers in their battalion in the ARNG. He could handle any situation with thoughtfulness and maturity.

(5) From SFC A- K. W- who knew the applicant for 10 years. The applicant's character has always shown he was a well-rounded Soldier with great skills to lead the

future of today's Army. He could help with the new generation of Soldiers by coaching, training, and mentoring them to become better Soldiers and better people by his experiences and his leadership abilities. The SFC requested the GOMOR be filed in the applicant's local file.

g. The applicant's chain of command recommended the GOMOR be filed in his Army Military Human Resource Record (AMHRR). On 14 December 2018, the GOMOR issuing authority directed the GOMOR be filed in his AMHRR.

h. Memorandum from Secretary of the Army, 4 November 2019, states effective immediately, the Secretary of the Army removed the applicant's promotion eligibility to 1LT.

i. Order Number 343-903, published by AHRC, 9 December 2019 promoted the applicant to 1LT effective 27 November 2018. Orders 352-901, published by the same Headquarters, 18 December 2019, revoked his promotion orders.

j. DA Form 4856 (Developmental Counseling Form), 16 March 2020, counseled the applicant to educate him on DUI and reasons for initiating an adverse action flag. On 22 May 2019 he received a law enforcement flag and was counseled for operating a vehicle under the influence of an intoxicant. The applicant disagreed with the counseling stating flags are to be initiated 72 hours from the date of the incident. The date of the incident was almost a year prior. He signed the form.

k. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 16 March 2020 shows he was flagged for adverse action.

l. GOMOR, 3 April 2020, shows he was reprimanded for DUI with a blood alcohol content of .137 percent, which was above the legal limit. On 8 April 2020, he acknowledged receipt of the GOMOR and stated he was going to submit written matters.

m. Memorandum subject Rebuttal for GOMOR, 8 April 2020, states:

(1) He made an error that affected his character and credentials. He took full responsibility for his actions on the night of 18 May 2019. As an officer in the U.S. Army, he should have conducted himself in a more appropriate manner and been more responsible. Furthermore, he should have explained to his chain of command his current marital issues and the behavioral health issues he was facing and trying to cope with. He sincerely apologized for his actions and hoped the issuing authority would consider filing the GOMOR locally. He had served in the Army for over 12 years and he was undergoing an MEB for separation from the service. He wished nothing more than to exit the service gracefully.

(2) The following were some of his accomplishments, while serving in the Army. He participated in the 2008 Presidential Inauguration of President Barack Obama. He served on multiple state missions to include North Carolina, South Carolina, Virginia, Georgia, and Florida. He deployed to Camp Taji, Iraq in support of Operation New Dawn. He successfully served as a platoon leader and was serving as the Battalion Strength Manager/Assistant S1.

(3) The Army had been his whole life since he left high school in 2008. It had made him a better leader, brother, and Soldier. He had lived his life on the basis of becoming a better person, which is why he chose to commission as an officer in the Army. He wanted to be a better leader, Soldier, and mentor to younger Soldiers so that one day they might find themselves sharing some of their experiences and knowledge that was taught to them. He hoped this information was sufficient and quantifiable enough to support his rebuttal that the issuing authority may consider in his filing decision.

n. Character reference letters, wherein the author's requested the GOMOR be filed locally. The letters are available for the Board's review.

o. The applicant's chain of command recommended filing the GOMOR in his AMHRR. On 15 May 2020, the GOMOR issuing authority directed the GOMOR be filed in his AMHRR. On 20 May 2020, the applicant acknowledged receive of the filing determination.

p. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 21 May 2020, shows he was flagged for involuntary separation.

q. On 21 May 2020, the applicant's commander stated he was required to show cause for retention on active duty due to his misconduct, moral or professional dereliction, or in the interest of national security. The commander's actions were based on him receiving a GOMOR on 13 November 2018 for failing to report to duty and on 3 April 2020 for receiving a DUI. The applicant's chain of command recommended he show cause for retention. On 2 June 2020, the applicant acknowledged receipt of initiation of elimination.

r. On 9 June 2020, the applicant submitted a resignation in lieu of elimination proceedings. He stated having been informed that he was being considered for elimination, he voluntarily tendered his resignation from the Army in lieu of further elimination proceedings, condition on him receiving a characterization of service no less favorable than honorable. He had been advised he may consult with and be represented by legally qualified counsel, he had been fully advised and counseled by his military counsel, and fully understood the implications of the voluntary action. He understood if the resignation was accepted he would be furnished either an honorable

or under honorable conditions (General) discharge as determined by Headquarters, Department of the Army.

s. Self-authored memorandum Personal Statement for Characterization of Service upon Separation, 10 June 2020, states:

(1) He made a mistake and compromised his character as an officer in the Army. He took full responsibility for his actions on the night of 18 May 2019. As an officer in the U.S. Army, he should have conducted himself in a more appropriate manner and been more responsible. Furthermore, he should have reached out for assistance a lot sooner concerning his mental health issues. He sincerely apologized for his actions and hoped for consideration of giving him an honorable discharge from the service. He had served in the Army for over 12 years and was undergoing an MEB. He wished nothing more than to exit the service gracefully.

(2) In 2011 through 2012, he served in support of Operation New Dawn/Operation Spartan Shield. Upon return from his deployment, he was diagnosed with PTSD (anxiety disorder). As he came into service as a commissioned officer, he was under the impression that this disorder was under control. He came to realize that the anxiety disorder was still present and further aggravated from continued service. He had worked with his behavioral health provider and was getting the assistance needed for his disorder. Furthermore, he had been receiving the medical care needed for other physical limitations that were encountered, while serving on active duty.

(3) He wanted to apologize once again for any inconvenience and disappointment he may have caused his leadership. He had always tried to live his life on the basis of becoming a better person, which is why he chose to commission as an officer in the Army. He wanted to be a better leader, Soldier, and mentor to younger Soldiers so that one day they might find themselves sharing some of their experiences and knowledge that was taught to them.

t. Character references, wherein the author's request the applicant receive an honorable discharge are available for the Board's review.

u. The applicant's commanders recommended the request for resignation be denied. His company commander recommended the case be closed without further action.

v. DA Form 199 (Informal Physical Evaluation Board Proceedings), 11 August 2020 shows he had lumbar myofascial pain syndrome and lumbosacral strain and the recommended rating was 20 percent; post right ankle (lateral malleolus) fracture with strain and surgical residuals and the recommended rating was 20 percent; and status post left wrist (scaphoid) fracture with strain and surgical residuals with a recommended

rating of 10 percent. The board found him to be physically unfit for duty, recommended a rating of 40 percent, and that he be permanently retired due to disability. He concurred with the findings of the board, waived a formal hearing of his case, and did not request reconsideration of his VA ratings.

w. On 20 October 2020, his commanding general stated he was required to show cause for retention on active duty because of his misconduct, moral or professional dereliction, and derogatory information filed in his AMHRR. He was previously notified of his requirement to show cause for retention on active duty on 21 May 2020. That previous notification was rescinded and replaced with this notification. The basis of the action were his receipt of GOMORs on 13 November 2018 and 3 April 2020.

x. Memorandum from the Commanding General, 30 October 2020, states on 2 October 2020, elimination was initiated against the applicant for misconduct. On 24 July 2020, an MEB was completed. On 13 October 2020, the applicant submitted a Request for Resignation in lieu of Elimination. After careful consideration of his case, the MEB, and the command's recommendation, the commanding general recommended his request for resignation be approved with an under honorable conditions (general) discharge.

y. On 9 February 2021, the Department of the Army Officer Elimination Board reviewed the resignation in lieu of elimination tendered by the applicant and the Informal PEB convened on 11 August 2020. The Board accepted his resignation and he would be discharged with an under honorable conditions (General) characterization of service. The elimination was based on misconduct and moral or professional dereliction and derogatory information.

z. Memorandum subject Administrative Termination of PEB Findings, 12 February 2021 stated the Physical Disability Agency had administratively terminated the IDES case for the applicant. All authorizations and the PEB proceedings were void.

aa. On 19 February 2021, the applicant was dismissed from the Army. He had completed 3 years, 7 months, and 25 days of active duty service with 1 year, 7 months, and 13 days of prior active duty service and 2 years, 7 months, and 20 days of prior inactive duty service. He was discharged for unacceptable conduct with an under honorable conditions (General) discharge. His separation code was BNC, and the reentry code was not applicable.

4. Based on the applicant going through the PEB process and assertion he has been diagnosed with PTSD, the ARBA Medical Section provided a medical review for the Board's consideration

5. 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 prior ABCMR denial (2 September 2014, AR20140000761), 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, the Army Aeromedical Resource Office (AERO), 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 requesting reversal of the DASA-RB's decision to terminate his disability processing in the Integrated Disability Evaluation System (IDES). He states in part:

"The Veteran was subject to multiple prejudices while serving as the deputy S1 at the Soldier Recovery Unit in Schofield Barracks, HI. Although I was undergoing a medical separation at the time, this GOMOR [General Officer Memorandum of Reprimand] was given after the fact and created a Dual Processing in which the CG [Commanding General] of the command decided on an administrative separation in lieu of a Medical Retirement that was fully approved by the Secretary of the Army."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former Officer entered the regular Army on 25 June 2017 and received an under honorable conditions (general) discharge 19 February 2021 under the provision provided in AR 600-8-24, Officer Transfers and Discharges (8 February 2020: Unacceptable Conduct. It does not show a period of Service in a hazardous or imminent danger pay area.

d. A second DD 214 shows the prior Army National Guard Soldier was a former enlisted member, was activated, and Served in Iraq from 1 September 2011 thru 31 December 2011 and Kuwait from 1 January 2012 thru 18 April 2012. It shows he was released at the completion of his required active service with an honorable characterization of Service.

e. On 13 November 2018, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for dereliction of duty and lying:

“You are reprimanded for intentionally failing to report to duty on three consecutive days during Command Post Exercise (CPX) 3 in addition to lying to two separate superior commissioned officers.

On 10-13 September 2018, you were to report to the Mission Training Center to work the night shift during CPX3. After showing up for in-processing, you never returned during the entire three-day exercise.

In addition, you lied to CPT C. S., whom you were to report to, and told him that your unit was likely going to be pulling you from the exercise. This statement was false.

You then proceeded to tell your Battalion S3, CPT C.G., that you couldn't pull staff duty on 10 September 2018 because you would be working the night shift at CPX3. This was also false and resulted in CPT Gates having to work your duties on staff duty.”

f. The applicant was arrested and charged by civilian authorities (Honolulu Police) on 18 May 2019 for “Operating a Vehicle under the Influence of an Intoxicant.” The police report shows that after failing to make a left turn from the left turn only lane and driving straight forward into the left of center lane of oncoming traffic on a two-way street, he was stopped by a civilian police officer. After assessing the situation and believing the applicant was under the influence of intoxication (alcohol), she administered standardized field testing which the former Army Officer failed and then refused to cooperate. From the report:

“Standardized Field Sobriety Test (SFST):

The SFST was conducted on a sidewalk in a close vicinity of the location where the above vehicle was stopped. [applicant] agreed to participate in the SFST. Officer A. verbally instructed [Applicant] that she would explain and demonstrate the SFST and explained that she would judge on how he followed instructions. [Applicant] showed signs of impairment throughout the SFST.

Preliminary Alcohol Screening (PAS)

Officer A. then asked [Applicant] if he wanted to participate in the PAS. However, [applicant] became uncooperative and proceeded to call 911 to complain about being pulled over. Officer A. informed [Applicant] that her camera was on and he needs to pay attention to the PAS paperwork that Officer A. was reading to him. [Applicant] refused to listen and refused to take any further tests.

Arrest:

On 05-18-19 at about 0105 hours Officer A. informed to [Applicant] that he was being arrested for Operating a Vehicle under the Influence of an Intoxicant.”

g. The applicant received his second GOMOR on 3 April 2020 for this incident of driving under the influence of alcohol:

“On 18 May 2019, the Honolulu Police Department conducted a traffic stop. After approaching you in the traffic stop, the officer detected the odor of an alcoholic beverage emitting from your breath as you spoke. You were administered a series of Standardized Field Sobriety Tests, which you performed poorly. You were then arrested and transported to the Honolulu Main Police Station, where you submitted a breath sample of .137% Blood Alcohol Content, which is above the legal limit.”

h. On 21 May 2020, the Commanding General of the 8th Theater Sustainment Command notified the applicant he was “required to Show Cause for retention on Active Duty under the provisions of AR 600-8-24 due to your Misconduct, moral or professional dereliction, or in the interests of national security.”

i. On 9 June 2020, after having been informed that he was am being considered for elimination, he voluntarily tendered his resignation from the Army under the provisions of AR 600-8-24, chapter 4, in lieu of further elimination proceedings, conditioned on his receiving a characterization of service of Honorable.

j. On 11 August 2020, an informal physical evaluation board determined he had three conditions which were unfitting for continued military service: “Lumbar myofascial pain syndrome and lumbosacral strain,” “Status post right ankle (lateral malleolus) fracture with strain and surgical residuals,” and “Status post left wrist (scaphoid) fracture with strain and surgical residuals.” They applied the VA derived ratings of 20%, 20%, and 10% respectively and recommended the applicant be permanently retired for physical disability with a combined military disability rating of 40%. On 24 August 2020, after being counseled on the Board’s findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VA reconsideration of his ratings.

k. On 30 October 2020, the Commanding General of the 8th Theater Sustainment Command recommended the applicant be eliminated from the United States Army with a General (under Honorable conditions) characterization of service.

I. Paragraph 4-3g of AR 635-40, Disability Evaluation for Retention, Retirement, or Separation (19 January 2017) states:

“g. Officers pending administrative elimination.

(1) Generally, officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB and PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the MEB and/or PEB must be completed and the case dual processed as described in paragraph 4–3g(2).

(2) Officers pending administrative elimination under AR 600–8–24 are normally dual processed for the elimination action and completion of the DES. For dual processing to occur, referral to the MEB must occur before the date the Deputy Assistant Secretary of the Army (Review Boards) approves the officer’s elimination.”

m. The DASA-RB subsequently determined his three physical disabilities were not the cause of or significant contributors to the applicant’s misconduct for which his elimination had been recommended. On 9 February 2021, he accepted the applicant’s voluntary resignation in lieu of elimination:

“I accept his resignation and he will be discharged from the United States Army with a General (Under Honorable Conditions) characterization of service. This elimination is based on misconduct and moral or professional dereliction (Army Regulation 600-8-24, paragraph 4-2b), and derogatory information (Army Regulation 600-8-24, paragraph 4-2c).”

n. On 21 February 2021, the United States Army Physical Disability Agency administratively terminated his case in the Integrated Disability Evaluation System (IDES) because he was being separated from service under Non-IDES processes: “All authorizations and Physical Evaluation Board Proceedings are void.” JLV shows he has been awarded a VA service-connected disability rating for PTSD.

o. It is the opinion of the ARBA Medical Advisor that neither a referral of this case to the DES nor a discharge upgrade is warranted.

p. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: The condition has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially: As PTSD is associated with avoidant behaviors and self-medicating with drugs and/or alcohol, the condition mitigates his dereliction of duty / absences from the Command Post Exercise (CPX3) PTSD and arrest for driving under the influence of alcohol. However, PTSD does not adversely affect one's capacity to differentiate right from wrong and adhere to the right. Therefore, it cannot mitigate the multiple UCMJ violations of "lying" / making false official statements which led to his voluntary resignation in lieu of elimination.

BOARD DISCUSSION:

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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding neither an upgrade of his discharge from under honorable conditions (General) to honorable or referral of his case to the Disability Evaluation System for consideration for a medical disability retirement is warranted. The Board noted the applicant's contention of he was undergoing a medical separation at the time of his elimination proceedings; however, the Board determined the applicant's misconduct outweighed his contention, including his two records of General Officer Memoranda of Reprimand filed in his Army Military Human Resource Record. Based on a preponderance of the evidence, the Board concluded relief was not warranted.

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 for correction of the records of the individual concerned.



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. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of officer personnel. Chapter 4 of this regulation prescribes reasons and procedures for eliminating officers of substandard performance of duty, misconduct, moral or professional dereliction, and in the interests of national security.

a. The characterization of service will be predicated on the officer's behavior and performance while a member of the Army. Characterization normally will be based on a pattern of behavior and duty performance rather than an isolated incident. However, there are circumstances in which conduct reflected by a single incident may provide the basis of characterization of service.

b. Honorable characterization of service. An officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty.

c. General (under honorable conditions) characterization of service. An officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under honorable conditions will normally be appropriate when an officer submits an unqualified resignation or a request for Release from Active Duty (REFRAD) under circumstances involving misconduct.

2. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code BNC is used for dismissal for unacceptable conduct.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD;

traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, 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.

6. Title 10, USC, 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

7. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; 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 or 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 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 are either 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 onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

8. Title 10, USC, 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, USC, 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.

9. AR 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

10. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

11. 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//