

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20230004358

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to honorable
- a medical retirement, and in the alternative a Disability Evaluation System (DES) processing to show his post-traumatic stress disorder (PTSD)
- an appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)(two)
- Attorney Brief
- DA Forms 4187, 16 September 2014 to 3 November 2014
- Medical Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Forms (2)
- Character reference letters
- VA Rating Letter (2)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. Counsel states,

a. The applicant did not fully appreciate his condition. The error of failing to refer him for further disability processing, despite clear signs of PTSD, this error was not corrected during reassessment.

b. Had the behavioral health specialist correctly diagnosed the applicant's post-traumatic stress disorder (PTSD) would have been determined to be the direct or substantial contributing cause of his misconduct and his case processed through

medical channels. Had he been referred into the Integrated Disability Evaluation System (IDES) process; his PTSD would have been found to have failed the medical retention standards. His PTSD rendered him unfit for continued service.

c. The VA Disability Rating Decision, clearly shows the applicant should have received medical processing for PTSD, and ultimately medically retired under Title 10 U.S.C. section 1201, rather than administratively separated for the misconduct that was directly caused by his PTSD. The applicant is eligible for disability retirement. The full brief is available for review.

3. Counsel provides the following documents:

a. A statement from the applicant, which states that the evidence demonstrates that his post-traumatic stress disorder (PTSD) warrants a 100 percent (%) disability rating under the VA Schedule for Rating Disabilities (VASRD) and rendered him unfit for continued service. In the alternative, he respectfully requests that the ABCMR order a DES processing so that it can be definitively shown that his PTSD was 100% disabling under the VASRD, and that his PTSD made him unfit for continued service. In addition, he respectfully requests, at a minimum, that the characterization of his military discharge be upgraded to honorable.

b. While deployed to Afghanistan, he went on over 150 combat patrols and experienced direct combat in July 2014. During an attack on Forward Operating Base (FOB) Walton, he was forced to engage in a direct firefight and witnessed the shooting of a Georgian Soldier, assisting U.S. forces. His resulting PTSD symptoms eventually became so severe and overwhelming that he went absent without leave (AWOL) three separate times after returning from deployment.

c. On 5 November 2014, at his mandatory separation physical, he requested and received a behavioral health referral, but he never got the behavioral health treatment he was seeking. The only mental health visit he attended after his deployment was his mandatory 14 November 2014 mental health assessment. He screened positive for PTSD and exhibited a multitude of PTSD symptoms, but the mental health evaluator determined without an adequate explanation that he only suffered from an occupational problem, denying him the possibility of disability processing. Nevertheless, a letter from the VA, 22 October 2015, Disability Rating Decision, granted him a service connection for PTSD, major depressive disorder with psychotic features, and alcohol use disorder, with an evaluation of 100%, effective 31 December 2014, the day after his service ended.

d. Medical documents, which will be reviewed and discussed by the mental health staff at the Army Review Boards Agency (ARBA).

e. Service documents multiple DA Form 4187 (Personnel Action) regarding absent without leave (AWOL) and his return discussed below.

f. Request for Behavioral Health Evaluation, undated shows the applicant's commander requested the evaluation for under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, misconduct. The reason for the referral was he had gone AWOL three times in the last month, and he was disrespectful to another. He had been transferred and got into an argument his first day at the new unit and had no future in the Army.

g. In a medical document, dated 5 November 2014, it reflects that the applicant requested a behavioral health referral for anxiety and depressive symptoms. However, the attending provider noted that "he is otherwise asymptomatic as this time".

h. In a medical document, dated 14 November 2014, he was seen by a military health provider for a separation process evaluation. It states, in pertinent part, "This service member does not suffer from any deployment related mental health issues or traumatic brain injury. SM IS PSYCHOLOGICALLY CLEARED FOR ADMINISTRATIVE SEPARATION. Prepared and provided 3822 for command indicating member was cleared from a behavioral health perspective for administrative disciplinary action...SM meets retention standards under AR 40-501: Misconduct should be managed through administrative and disciplinary channels and does NOT represent mental illness. SM does NOT fall below medical retention standards IAW AR 40-501, therefore does not need to be referred to the IDES process".

i. A character reference letter from his father, 31 August 2015 shows the applicant no longer communicates like he used to have he has noticed he hardly gets any sleep or rest. He has become standoffish and very irritable. His father believes his issues are affecting his performance and is having issues completing tasks because of what his combat tour did to him; he was concerned for his son.

j. A character letter, 2 September 2015 from a fellow Soldier, shows the applicant had great fear. They went on over 150 combat patrols that were dangerous and their lives were at risk. When they returned home, the applicant continued to show signs of PTSD.

k. VA Statement in Support of Claim for Service Connection for PTSD, 4 September 2015 reflects the applicant states he felt great fear of death. "He can't hold a job; can hardly sleep; is irritable and depressed with suicidal thoughts (seldom)".

l. VA Disability Rating Decision letter, 22 October 2015 reflects the applicant was rated as service connected for PTSD with major depressive disorder with psychotic features and alcohol use disorder and received a 100% disabling rating.

5. The applicant's service record shows the following information:

a. DD Form 4 (Enlistment/Reenlistment Document Armed forces of the United States) reflects he enlisted in the Regular Army on 19 March 2013.

b. His Enlisted Record Brief shows he served in Afghanistan from 1 March 2014 to 6 August 2014.

c. DA Forms 4187 (Personnel Action), 23 September 2013, 22 June 2014, 16 October 2014, 17 October 2014, 21 October 2014, 24 October 2014, 27 October 2014, 29 October 2014, and 3 November 2014 show the applicant was:

- absent without leave (AWOL) on 16 September 2014
- present for duty (PDY) on 22 September 2014
- AWOL on 16 October 2014
- Dropped from Rolls (DFR) on 17 October 2014
- PDY on 21 October 2014
- confined by military authorities on 21 October 2014
- PDY on 23 October 2014
- AWOL on 27 October 2014
- DFR on 29 October 2014
- PDY on 3 November 2014

d. DD Form 616 (Return of Return of Absentee), 15 December 2015 shows he surrendered on 3 November 2014 and returned to military control.

e. The applicant's available record is void of a separation packet and separation memorandum containing the specific facts and circumstances surrounding the pattern of misconduct.

f. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200) Chapter 14-12B, for a pattern of misconduct on 30 December 2014. He had separation code JKA and reentry code 3. His service was characterized as under honorable conditions (general). He completed 1 year, 8 months, and 21 days of net active service. He had lost time from 16 September 2014 to 22 September 2014; 17 October 2014 to 21 October 2014; 22 October 2014 to 23 October 2014; 27 October 2014 to 29 October 2014; and 30 October 2014 to 3 November 2014. He was awarded or authorized the following awards:

- Afghanistan Campaign Medal with campaign star
- Combat Action Badge
- Army Achievement Medal
- National Defense Service Medal

- Global War on Terrorism Service Medal
- Army Service Ribbon
- North Atlantic Treaty Organization Medal
- Certificate of Achievement

6. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

7. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable and a medical retirement or a DES processing. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 19 March 2013.
- The applicant deployed to Afghanistan from March to August 2014.
- The applicant's available record is void of a separation packet and separation memorandum containing the specific facts and circumstances surrounding the pattern of misconduct. DA Forms 4187 showed he was AWOL on three occasions between September and October 2014. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200) Chapter 14-12B, for a pattern of misconduct on 30 December 2014.
- The applicant was discharged on 30 December 2014 and completed 1 year, 8 months, and 21 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he has a diagnosis of PTSD that mitigates his misconduct, and he should have been discharged via medical channels through the Integrated Disability Evaluation System (IDES) process. A Report of Medical History dated 26 September 2012 showed no indication of any mental health related symptoms or diagnoses, and pre-deployment screening notes dated 15 August 2013 and 23 January 2014 also

showed no mental health history. Documentation from a Phase 2 Chapter Physical dated 5 November 2014 showed that the applicant requested a referral to behavioral health for anxiety and depressive symptoms, and he reported sleep onset difficulty. He also scored a 41 on a PTSD screener, which is indicative of the presence of PTSD symptoms, and he scored an 8 on a depression screener, which indicates mild depressive symptoms. On a Report of Medical History dated 5 November 2014, the applicant noted difficulty with nightmares, anger problems, and depression since his deployment, and he discussed difficulty in his work environment.

d. Documentation dated 14 November 2014 by a DoD psychologist showed that the applicant completed a chapter separation evaluation, and the evaluator noted symptoms of depression, anxiety, irritability, and sleep difficulty and discussed the applicant's report of problems in getting along with others in his unit "for about one year." He reported his biggest stressor as his current unit and feelings of persecution, and he attributed some of his endorsement of items on the PTSD screener as related to these problems (i.e. most distressing 'stressful experience' as "being move to new battalion on redeployment"). His score on this screener was 47, which is indicative of the presence of PTSD. However, upon query, it was noted that some of these symptoms were attributed to being in the Army in general (as opposed to specific deployment related experiences; see PCL-C notations by psychologist). It was also noted that the applicant reported a long-standing history of anger toward others, physical altercations, and fighting. Additionally, he reported excessive alcohol use, and a history of marijuana use. It was concluded that the applicant met retention standards and did not need to be referred to the IDES process. He was diagnosed with Occupational Problems with a rule out diagnosis of Adjustment Disorder.

e. A Request for Behavioral Health Evaluation (not dated) showed that the applicant had a history of an Article 15 for fighting while in AIT in June 2013, and in addition to his AWOLs, he was "disrespectful to others." It also noted that the applicant had been transferred to a new unit in an attempt at rehabilitation.

f. An Initial PTSD Disability Benefits Questionnaire dated 16 October 2015 showed that the applicant endorsed the requisite number of symptoms to warrant a diagnosis of PTSD, and he reported trauma exposure including witnessing another soldier being shot when his FOB was overrun and witnessing a suicide bomber being shot and then detonating. The evaluator remarked "the claimant requires psychotherapy and medication immediately" and noted that he was referred to a Vet Center. The applicant was diagnosed with PTSD, Major Depressive Disorder, and Alcohol Use Disorder secondary to PTSD, and it was noted that the applicant "presents as not psychologically prepared for the duress of combat" and had "dependent personality features" that do not warrant a separate diagnosis but "are contributing to the severity of his PTSD and depression." A VA Rating Decision letter dated 22 October 2015 showed that the

applicant is 100% service connected for PTSD effective 31 December 2014. VA records were included in the application but are summarized below.

g. There was sufficient evidence to support that the applicant was diagnosed with a psychiatric condition while on active service.

h. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed. In addition to the DoD documentation discussed above, it was noted that the applicant engaged in a post-deployment health assessment on 24 December 2014 where there was no indication of mental health symptoms, but it was acknowledged that the applicant was referred to VA for resources.

i. The applicant initially engaged care through the VA in February 2015 and was referred to the PTSD clinic, and after multiple scheduling attempts, the consult was discontinued in May 2015. On 14 August 2015, he completed an intake and was diagnosed with PTSD and substance abuse. He had recently lost a job and a relationship and was homeless. In September 2015 he completed an evaluation for the substance abuse program, and he discussed excessive alcohol use since returning from deployment with only a week of sobriety over the previous year. He was provided with housing assistance and medications were prescribed. However, he did not engage in follow up, and a primary care note dated 29 December 2015 stated that he declined a referral to vocational rehab, indicating he is "unemployable," but it was noted that "going to a public gym several times a week does not impact his PTSD." He was next seen by mental health in July 2016, and he continued to report PTSD symptoms, occupational problems, and a recent break up in a relationship. He was started on medications for mood, sleep, anxiety, and nightmares, and he was referred to the PTSD program again. Through the end of 2016, he routinely engaged in an education-based group therapy and medication management, and he had some improvement in symptoms with medication changes. In 2017, he discontinued group therapy but continued with medication management with intermittent treatment adherence and improvement in symptoms. He was lost to follow up in September, and it was noted that he did not follow through with referrals for substance abuse treatment or individual PTSD psychotherapy. He briefly reengaged psychiatry in 2018, and in March 2020 he made a call to the Veterans Crisis Line reporting suicidal thoughts, homelessness, unemployment, estrangement from family and friends, and a desire to be hospitalized so that "somebody can handle my affairs, find me housing, and give me everything that I am entitled to." He was not admitted but was scheduled for outpatient treatment, and he did not keep that appointment. He next presented to mental health in December 2020 requesting to reestablish care and restart medications and psychotherapy, and he was again referred for substance abuse treatment. However, he failed to respond to scheduling efforts or he did not keep follow up appointments.

j. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition or experience that mitigates his misconduct. However, the documentation does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of the misconduct. The applicant did report mental health related symptoms as part of the evaluation associated with his discharge process, but he was not diagnosed with PTSD until a year later when he was evaluated by the VA for his disability claim. He is 100% service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Documentation supports that he reported symptoms of anxiety, depression, and sleep difficulty following his deployment to Afghanistan.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed the applicant did report mental health related symptoms during his discharge evaluations, and although diagnosed with Occupational Problems, there was a rule out diagnosis of Adjustment Disorder. Notably, he attributed some of his symptoms to interpersonal difficulties and anger problems that existed prior to his deployment, and some of his PTSD symptoms were attributable to other, non-trauma based experiences. Nonetheless, the applicant's misconduct of being AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the basis for separation could be mitigated. However, there is insufficient evidence that the applicant was experiencing a disabling mental health condition while on active service. While the applicant is currently service connected for PTSD, documentation does not support the applicant had PTSD at the time of discharge. Moreover, documentation does not support the applicant was psychiatrically unfit at the time of discharge for any condition as he did not have persistent or

reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c).

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, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant served on active duty from March 2013 to December 2014. He was AWOL on three occasions between September and October 2014. Although his separation packet is not available for review, other evidence shows he was discharged from active duty due to a pattern of misconduct after completing 1 year, 8 months, and 21 days of net active service with multiple periods of lost time. He received a general discharge.

a. Discharge upgrade: Grant. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on this mitigation, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

b. Disability separation: Deny. The Board also agreed with the advisory official's determination that the documentation does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition. The disability evaluation system compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The disability system does not compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 30 December 2014, as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to disability separation.

■

■

■

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 (USC), 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. Section 1556 of Title 10, USC, 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.
3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
5. Army Regulation 635-40, in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states 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. Chapter 4-3 (Enlisted Soldiers subject to administrative separation)

(1) Except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

(2) If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

d. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal

requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

7. 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any 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 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.

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.

8. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

9. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

10. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to

benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. 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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

11. 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.

12. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; 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 to those conditions or experiences.

13. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

14. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JKA (is to be used for RA Soldiers discharged for pattern of misconduct.

15 The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JKA has a corresponding RE Code of "3."

16. Army Regulation 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation

- RE-4 Applies to persons who are definitely not eligible for reenlistment

18. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

19. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

20. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

//NOTHING FOLLOWS//