

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230005709

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to an honorable and restoration of his previous rank of E-4
- as a new issue, referral to the Disability Evaluation System (DES)

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

- DD Form 149 (Application for Correction of Military Record)
- 2 pages of email transmissions, subject: medical discharge, 7 March 2015 - 13 December 2016
- 16 pages of text messages between applicant and Staff Sergeant (SSG) R, from 5 June 2016 - 27 December 2016
- memorandum of support, Mr. WOR, 30 December 2021
- Department of Veterans Affairs (VA) summary of benefits letter, 1 March 2023
- VA disability ratings, printed 1 March 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20170005839 on 2 June 2020 and AR20220008405 on 13 April 2023.

2. The applicant provides new argument or evidence.

3. The applicant states his military career was derailed due to mental health issues. He notified his unit of his mental health issues and attempted to seek a Medical Evaluation Board (MEB). At the time of his discharge, he was diagnosed with adjustment disorder, however, he is now diagnosed with posttraumatic stress disorder (PTSD). His is

currently rated 100 percent disable by the VA. His application to the Board notes his request is related to PTSD and other mental health.

4. The applicant served in the Regular Army from 1 September 2009 to 31 August 2013. On 24 July 2013, he enlisted in the Army Reserve for 6 years and was assigned to 5th Medical Brigade in Birmingham, AL.

5. The applicant provides:

a. two pages of email traffic, subject: medical discharge, involving the applicant, Colonel (COL) A_ L. W_, and Lieutenant Colonel (LTC) D_ J. T_ showing:

(1) The applicant emailed COL W on 13 December 2016, stating he is in the process of trying to get a medical board started and requested a ticket initiated in order to take a new Periodic Health Assessment (PHA).

(2) COL W_ emailed the applicant back the same day, stating he would look into his request and that he needed to get scheduled for dental work.

(3) LTC T_ emailed the applicant on 7 March 2017, advising hm to call AR-MC to find out how to get him on a perm[anent] 3 for HMD.

b. 16 pages of text messages between applicant and SSG R, dated from 5 June 2016 - 27 December 2016, which addresses the applicant's desire to get medical appointments to address mental health issues related to his previous deployment.

6. The complete facts and circumstances surrounding his discharge from the Army Reserve are not available for review. Orders Number 17-065-00058, show he was reduced from Specialist 4 (SPC)/E-4 to Private (PVT)/E-1 effective 5 March 2017 and discharged from the Army Reserve in accordance effective 13 March 2017, in accordance with Army Regulation (AR) 135-178 (Army National Guard and Reserve-Enlisted Administrative Separations), with an under other than honorable conditions characterization of service.

7. The ABCMR previously considered the applicant's request for an upgrade of his Characterization of service in ABCMR Docket Number AR20170005839, on 2 June 2020.

a. During the processing of his request, his record was reviewed by the Army Review Board Agency (ARBA) Medical Advisor who stated the applicant met physical fitness standards at the time of his enlistment in the Army Reserve. Additionally, the Medical Advisor stated "...there is documentation to support a behavioral health condition at the time of his discharge. There is no medical documentation to support he

did not meet retention standards at the time of his discharge. Without documentation of the specific misconduct that led to his discharge, [it would be difficult to] ...opine regarding mitigation based on behavioral health diagnoses."

b. The Board determined, after reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, that relief was not warranted. Based upon the available documentation and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service.

8. The ABCMR reconsidered the applicant's request for an upgrade of his under other than honorable conditions discharge to an honorable and restoration of his previous rank of E-4, in ABCMR Docket Number AR20220008405, on 13 April 2023.

a. During the processing of his request, his record was reviewed by the Army Review Board Agency (ARBA) Medical Advisor who noted:

(1) There was evidence the applicant had PTSD, a condition or experience that may excuse or mitigate a discharge. It was noted the applicant contended he had PTSD while in service and had a 70 percent VA rating for the condition. However, the medical advisor was not able to opine on whether the condition or experience excused or mitigated his discharge because despite his assertions of seeking a medical Board, there were no records detailing the circumstances leading to his discharge.

(2) "There is insufficient evidence to support a referral to IDES process at this time as all records support that he was fit for duty, met medical retention standards and did not diagnose during his time in the Reserves (adjustment disorder, other trauma and specified stressor disorder vs PTSD) ...even an in-service diagnosis of adjustment disorder or PTSD is not automatically unfitting and would not automatically result in medical separation processing.

b. The Board considered the applicant's statement and his record of service to include deployment. However, the available records do not document the frequency and nature of his misconduct or the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the lack of documentation of the misconduct that led to his discharge making a mitigation determination impossible at this time. Based on a preponderance of evidence, the Board determined the character of service the applicant

received upon separation and his reduction to the lowest enlisted grade were not in error or unjust.

9. The applicant also provided:

a. A VA summary of benefits letter, dated 1 March 2023, stating his combined service-connected evaluation is 100 percent effective 1 July 2019.

b. A printout of his VA disability ratings, which include a 70 percent rating for PTSD, effective 1 July 2019.

10. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior requests for an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable and restoration of his previous rank. He contends that he experienced mental health conditions including PTSD, which mitigates his misconduct and warrants a medical discharge.

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 enlisted in the Regular Army on 1 September 2009. On 24 July 2013, he enlisted in the Army Reserve; 2) The complete facts and circumstances surrounding his discharge from the Army Reserve are not available for review. Orders Number 17-065-00058, show he was reduced from Specialist 4 (SPC)/E-4 to Private (PVT)/E-1 effective 5 March 2017 and discharged from the Army Reserve in accordance effective 13 March 2017, in accordance with Army Regulation (AR) 135-178 (Army National Guard and Reserve-Enlisted Administrative Separations), with an under other than honorable conditions characterization of service; 3) The ABCMR considered and denied the applicant's request for an upgrade of his Characterization of Service on 2 June 2020 and 13 April 2023.

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), the VA's Joint Legacy Viewer (JLV), emails, and texts provided by the applicant were also examined.

d. The applicant states he incurred mental health conditions including PTSD while on active service, which mitigates his misconduct and should have resulted in a medical disability discharge. There is sufficient evidence the applicant was deployed to an active combat area. There is insufficient evidence the applicant reported mental health symptoms while on active service or was diagnosed with a behavioral health condition before his enlistment in the Army Reserves. A review of JLV provided evidence the applicant began to engage in care at the VA in April 2014. Initially during his first Compensation and Pension Evaluation. He was not diagnosed with PTSD, but he was diagnosed with an Anxiety Disorder related to his experiences during his deployment to Afghanistan. The applicant was later diagnosed with an Adjustment Disorder by the VA in 2016 and eventually with PTSD in 2019. Presently, the applicant has been diagnosed with service-connected PTSD (70%). There is insufficient evidence in the applicant's military medical record while he was enlisted in the Army Reserves that he was ever found to not meet physical fitness standards for a mental health condition, placed on a permanent profile for a mental health condition, or required inpatient psychiatric treatment.

e. Based on the available information, it is the opinion of the Agency BH Advisor there is sufficient evidence the applicant has been diagnosed with mental health conditions including PTSD. However, the complete facts and circumstances surrounding his discharge from the Army Reserve are not available for review, and therefore, there is insufficient evidence available to provide an opinion on possible mitigation regarding his discharge. Also, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced mental health conditions including PTSD while on active service. The applicant has been diagnosed with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD while on active service. The applicant has been diagnosed with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant has been diagnosed with mental health conditions including PTSD. However, the complete facts and circumstances surrounding his discharge from the Army Reserve are not available for review, and therefore, there is insufficient evidence available to provide an opinion on possible mitigation regarding his discharge. Also, there is insufficient evidence the applicant warrants a referral to IDES from a behavioral health perspective. Specifically, he was never found to not meet physical fitness standards for a mental health condition, placed

on a permanent profile for a mental health condition, or required inpatient psychiatric treatment. However, the applicant contends a mental health condition resulted in his misconduct, and per the Liberal Consideration Policy, his contention is sufficient for consideration.

BOARD DISCUSSION:

1. As the applicant's previous request for a correction to his DD214 ending 31 August 2013 was granted in docket AR20220008405, his DD214 has been amended and reflects the character of service as honorable and a rank of SPC/E-4, Board took no further action on that portion of the request

2. The Board considered that portion of the request pertaining to a referral to the Disability Evaluation Board. The Board noted the applicant's period of foreign service and deployment. Documentation in the applicant's military record does not reveal that the applicant was evaluated by a behavioral health specialist or received a behavioral health diagnosis while on active duty. Although, the Department of Veterans Affairs diagnosed him with Anxiety Disorder due to his deployment and later a diagnosis of Adjustment Disorder, his military record does not reveal supporting documentation showing he could not meet standards to due to mental health condition or a condition requiring inpatient psychiatric treatment. As the applicant did not provide any supporting documentation on his own behalf, after due consideration of the request the Board determined the evidence presented insufficient to warrant a recommendation for relief and a referral to the Disability Evaluation System is not wanted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20170005839 on 2 June 2020 and AR20220008405 on 13 April 2023.

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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. AR 135-178 (Army National Guard and Reserve-Enlisted Administrative Separations) addressed the administrative separation of Reserve Component Soldiers for various reasons. Paragraph 13-3. Characterization of service, of this regulation provides:
 - a. Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in chapter 2, section III.
 - b. For soldiers who have completed entry level status, characterization of service as Honorable is not authorized unless the Soldier's record is otherwise so meritorious that

any other characterization clearly would be inappropriate. In such cases, separation for unsatisfactory participation with an Honorable characterization will be approved by the separation authority (para 1-1 0). As an exception, the separation authority will approve separation with service characterized as Honorable when an administrative separation board has recommended such characterization.

c. When characterization of service as Under Other Than Honorable Conditions is not warranted for a soldier in entry level status under chapter 2, section III, the service will be described as uncharacterized.

2. 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 DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS 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. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical

impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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. AR 635-40 (Personnel Separations-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. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). 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. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

7. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. 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.

8. 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.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

//NOTHING FOLLOWS//