

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230006250

APPLICANT REQUESTS: in effect:

- a. correction of his DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings) to show:
  - his condition of post-traumatic stress disorder (PTSD) be found duty related instead of non-duty related (NDR)
  - the addition of his back injury to his L3, L4, L5 and S1 as a duty related condition
- b. issuance of a DA Form 5016 (Chronological Statement of Retirement Points) to showing fifteen qualifying years for retirement.
- c. issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) effective 15 March 2023.
- d. personal appearance via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214, effective 7 December 2007
- 3 Periodic Health Assessment (PHA) - 2 February 2015, 2 February 2016, and 28 April 2017
- 2 Results of (PHA) - 11 February 2015 and 26 February 2016
- DD Form 2978 (Deployment Mental Health Assessment (MHA), 26 February 2016
- Orders T-07-706232, 6 July 2017
- 4 DD Forms 3024 (Annual PHA), 21 October 2018, 13 November 2019, 10 March 2021, 4 April 2022
- 3 DA Forms 3349 (Physical Profile Record), 22 January 2019, 18 August 2021, 25 April 2022

- Request for Authorization for Rescheduled Training (RST) Equivalent Training (ET), or Excuse from Regular Scheduled Unit Training, 6 February 2020
- Record of Individual Performance of Reserve Duty Training, 12 February 2020
- 2 DA Forms 5016, 4 March 2020, 16 October 2022
- Order 067630, 26 May 2020
- Department of Veterans Affairs (VA) rating decision, 25 January 2021
- VA service connected letter, 5 February 2021
- DA Form 3822 (Report of Mental Status Evaluation), 13 August 2021
- memorandum, subjected: Non-Duty Related Condition(s), Notification of Medical Disqualification, 13 September 2021
- DA Form 4856 (Developmental Counseling Form), 17 October 2021
- Statement of Understanding and Election of Options Acknowledgement of Notification of Medical Unfitness for Retention, 20 October 2021
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 30 November 2021
- memorandum, subjected: Request for Copy of Formal Hearing Audio Recording, 8 November 2022
- DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 17 November 2022
- Acknowledgement of Counseling on Legal/Procedural Rights, 8 November 2022
- memorandum, subjected: Appeal of Formal Physical Evaluation Board, 8 December 2022
- Orders 0004164697.00, 8 March 2023
- email exchange, subjected Application for Review of Discharge with CPT BJP, 14-15 March 2023
- Medical Records (644 Pages)
- VA Administrative or Processing Documents (369 Pages)
- Service Dog Administrative Documents (54 Pages)

#### FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The Board will not consider the applicant's request for issuance of a DA Form 5016 (Chronological Statement of Retirement Points) to showing fifteen qualifying years for retirement because he has not exhausted his administrative remedies through the Army Human Resources Command (AHRC). The applicant may reapply to this Board if the AHRC denies his requested relief; however, his application to the Board must include a

denial letter from AHRC. This portion of the applicant's request will not be further addressed in this record of proceedings.

3. The applicant statement is provided for the Board below as a brief summary, the full statement is provided and available for the Board to review if full. The applicant states, in summary:

a. He was commissioned in the United States Army National Guard on 28 April 2005, and he served as an infantry officer.

b. He was a platoon leader, scout platoon leader, executive officer, and commander among other various jobs. He volunteered to deploy to the Former Republic of Yugoslavia in 2006. During this deployment the troubles his Soldiers experienced or communicated to him weighed on his mind and he became restless, not sleeping or often sleeping on the floor, continuously analyzing, planning, and thinking.

c. It has not been easy talking about or expressing his mental health. He had many injuries throughout his career consisting of a back injury to his L3, L4, L5 and S1; hearing loss, a cracked left foot, and PTSD. He was diagnosed with PTSD at [REDACTED]. While at [REDACTED], he trained forty-seven days with his therapy dog. He was rated at 50 percent by the VA for PTSD and 20 percent for his back. He paid out of pocket to treat his issues and continues to suffer from the loss of military friends from battle or suicide. It has affected him on a daily basis and impacted his military career, daily living, family life, and marriage for the past sixteen years.

d. In Autumn of 2021, he requested a Medical Evaluation Board (MEB) for his physical and mental injuries. He waited 13 months and was summoned to a PEB instead of a MEB. His military counsel stated he was not put through the proper process for his injuries. He received his PEB not MEB in November 2022. It was concluded that none of his injuries were caused by the Army. They were due to his civilian career working for the Federal Bureau of Investigation (FBI), with which he disagrees.

e. On 5 December 2022, his military counsel appealed the conclusion. In December 2022, he received notification that his appeal was denied for a MEB and that it would take some time for him to get processed out of the military. From January of 2023 to March 2023, he continued attending Battle Assembly. He obtained over 50 points for this year, which would put him over 15 years of service. Two of his seventeen years, he was short his fifty points due to medical emergencies in his family. He was shocked to hear in February 2023 that this year's retirement points are not accruing after his PEB of November 2022. He had already earned enough points for a good year before his PEB, which would give him over 15 years. Additionally, he has been going to Battle Assembly this entire time. He communicated with the Judge Advocate General (JAG) and as of 10 March 2023, he was told by a member of his unit that orders have been cut for

discharge effective 15 March 2023. Through this abrupt dismissal, he has had no time to out-process, turn his equipment in, attend a retirement briefing, and he has not received his DD Form 214.

4. The applicant was commissioned in the Army Reserve on 29 April 2005 and in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 26 May 2005.

5. The applicant underwent a Pre-Deployment Health Assessment on 9 April 2006 for deployment to Kosovo. He reported he was in excellent health without defect.

6. The applicant was mobilized in support of Balkans 8 (Operation Enduring Freedom) on 17 July 2006. He was honorably released from active duty on 7 December 2007. His DD Form 214 shows he deployed to Kosovo.

7. The applicant's record shows his deployment to Kosovo, addressed above, was the only period of active duty service he completed which met the or exceeded the 90 day threshold required for the issuance of a DD Form 214.

8. He provides a statement of points showing his service in the ARNG ended on 26 May 2011, and his service in the United States Army Reserve (USAR) began on 27 May 2011.

9. The applicant provided a series 7 documents, which include: 3 Periodic Health Assessments, 2 Periodic Health Assessment Results, 1 Annual Periodic Health Assessments, and 1 Deployment Mental Health Assessment, dated from 2 February 2015 to 21 October 2018, which show:

a. His Annual and Periodic Health Assessments and the results of said assessments during this period show he reported he was not being treated in any compacity for any condition. The results of the PHAs collected during this period show he was physically fit for retention and able to deploy to an austere environment within the next 6 months.

b. His Deployment Mental Health Assessments during this period show:

(1) He answered "no" to having ever had any experience that was so frightening, horrible, or upsetting that, in the past month that he:

- had nightmares about it or thought about it when he did not want to
- tried hard not to think about it or went out of his way to avoid situations that remind him of it
- were constantly on guard, watchful, or easily startled
- felt numb or detached from others, activities, or his surroundings

(2) He answered “not at all” to over the last 2 weeks, how often has he been bothered by the following problems:

- little interest or pleasure in doing things
- feeling down, depressed, or hopeless

10. The applicant provided a DA Form 3349 (Physical Profile) showing a combined physical profile of 111111 effective 19 January 2019. The reason for the profile shows lower back injury/pain, of a severe nature of unknown cause. He was restricted as follows through 24 March 2019:

- no taking the Army Physical Fitness Test (APFT)
- no lifting/carrying over 10 pounds
- standing no more than 30 minutes

11 The applicant provided an Annual PHA, dated 13 November 2019.

a. He reported the following:

- high blood pressure, received medical care, no longer under treatment
- change in his hearing that impacts duty performance, did not get medical care
- recurring muscle, joint, or low back pain, now under treatment
- stomach problems, now under treatment
- on a temporary profile for L3, L4 back issues
- in the past year he received care for a mental health condition - anxiety
- in the past month, was constantly on guard, watchful or easily startled
- was in good health
- during the last 2 weeks, got less than 5 hours sleep on most days
- rates his average pain over the past 24 hours at a 5 – interrupts some activities
- receiving treatment for pain

b. The medical officer indicated the applicant was not on a permanent profile but had spent 2 months on a temporary profile. He was found to have low back pain being managed by the VA. He was ultimately found to be fully medically ready.

12. On 6 February 2020, the applicant requested to reschedule his training due to an absence resulting from being hospitalized for falling off a ladder. He indicated during his make up days he will be working on medical records for a permanent profile, administrative functions, and Officer Evaluation Report. His request was approved.

13. The applicant receive a rating decision from the VA on 25 January 2021, showing he was awarded service connected disability ratings effective 10 March 2020 as follows:

- PTSD at 70 percent
- degenerative arthritis of lumbosacral spine and spondylolisthesis at 20 percent
- tinnitus at 10 percent
- bilateral hearing loss at 0 percent

14. The applicant provided an Annual PHA, dated 10 March 2021.

a. He reported the following:

- persistent or recurring noises in his head or ears, did not get medical care
- change in his hearing that impacts duty performance, did not get medical care
- recurring muscle, joint, or low back pain, now under treatment
- on a profile for back issues and hearing issues
- recommended for surgery for the back pain L3, L4, L5, S1
- was in the process to obtain a permanent profile
- in the past year he received care for a mental health condition – PTSD, depression, anxiety

b. He answered “yes” to having ever had any experience that was so frightening, horrible, or upsetting that, in the past month that he:

- had nightmares about it or thought about it when he didn’t want to
- tried hard not to think about it or went out of his way to avoid situations that remind him of it
- were constantly on guard, watchful, or easily startled
- felt numb or detached from others, activities, or his surroundings

c. He answered “more than half the days” to over the last 2 weeks, how often has he been bothered by the following problems:

- little interest or pleasure in doing things
- feeling down, depressed, or hopeless

d. He also responded that he -

- was in good health
- during the last 2 weeks, got less than 5 hours sleep on most days
- has had unexplained weight loss or gain since his last PHA
- has applied for VA disability for physical activity, PTSD, anxiety, depression, back issues
- rates his average pain over the past 24 hours at a 7 – focus of attention, prevents doing daily activities

- not receiving treatment for pain
- had received treatment for PTSD, depression and anxiety since his last PHA

e. The medical officer indicated a discrepancy between the applicant's list of outside care and the outside care found in the record:

- the record states none and he states PTSD, depression, anxiety
- the applicant was not on a permanent profile
- the provider did not refer him for mental health treatment as he was already being treated
- he was found to be partially medically ready

15. The applicant underwent a command directed behavioral health evaluation on 13 August 2021, which shows he did not meet medical retention standards, has reached the medical retention determination point, and a Disability Evaluation System (DES) referral is indicated.

- his cognition and perceptions were not impaired
- his behavior and impulsivity were normal
- he could understand and participate in administrative proceedings and appreciate the difference between right and wrong
- use of alcohol was prohibited and access to weapons and range duties was restricted
- diagnosis shows PTSD and major depressive disorder

16. A DA Form 3349 shows the applicant was assigned a physical profile of 111113 for PTSD effective 18 August 2021 and was currently in the MEB/DES process.

17. A memorandum to the applicant, subjected: Non-Duty Related Condition(s), Notification of Medical Disqualification, dated 13 September 2021 advises the applicant he no longer met Army medical standards for retention under Army Regulation (AR) 40-501 (Standards of Medical Fitness), chapter 3 due to his P3/P4 condition on his DA Form 3349. He had a suspense of 13 September 2021 to requests additional conditions be added to or changed on all his P3/4 limiting conditions; however, P2 condition(s) would not be considered in this process. He must choose to be medically discharged or request a Physical Disability Evaluation System (PDES) board.

a. A medical records review conducted by an Army Reserve Medical Management Center (AR-MMC) Nurse Case Manager (NCM) and Profiling Medical Provider determined his condition(s) were Non-Duty Related (NDR) because he did not have an approved Line of Duty (LOD) for his condition(s), and per the review, his condition(s) and/or the circumstances of said condition(s) did not meet Integrated Disability Evaluation System (IDES) Referral Memo (IDRM) criteria.

b. He was encouraged to consult counsel prior to selecting from the following 4 options:

(1) Option A: Army Reserve Military Retirement, must have twenty (20) or more credible years of service. This is NOT a Medical Retirement and any benefits eligible will be received at age 60 - minus qualified Active Duty years after 2008.

(2) Option B: Early Army Reserve Military Retirement, must have fifteen (15), but less than twenty (20), credible years of service. This is NOT a Medical Retirement and any benefits eligible will be received at age 60 minus qualified Active Duty years after year 2008.

(3) Option C: Honorable Discharge, is available in the event he has less than fifteen (15) credible years of service.

(4) Option D: PDES, is also commonly referred to as the Non-Duty Physical Evaluation Board (NDPEB). This is NOT a Medical Evaluation Board (MES). The main purpose of this election is for a board to make a final determination of his medical fitness for retention and/or separation. The NDPEB does not make any determination of benefits of any kind.

c. He was advised the procedures to request a LOD.

18. The applicant was formally counseled on 17 October 2021. The purpose of the counseling was to ensure compliance with Army Disability Evaluation System (DES) medical readiness processing, define his rights, responsibilities, and duties, and it constituted an order for compliance with all the elements of the counseling.

a. He had entered the initial stage of the DES process. The Army Reserve Medical Management Center (AR-MMC) validated the information on his DA Form 3349 Physical Profile that indicates he has a medical condition requiring evaluation in accordance with the provisions of AR 40-501, Chapter 3. All Soldiers that receive a Permanent 3 Profile must be medically evaluated for continued service in the United States Army Reserves. His full participation was necessary and mandatory.

b. The counseling further states, in part, IAW AR 635-40, paragraph 4-34, Reserve Component (RC) Soldiers not on call to active duty of more than 30 days and who are pending separation for Non-Duty Related Medical Conditions may request to enter the DES for a determination of fitness and whether the condition is duty related. If the Soldier does not request referral, they are subject to separation for medical disqualification under RC regulations. He must attend all BA/UTA and perform assigned duties in a satisfactory manner unless excused. The applicant acknowledged the counseling with his digital signature.



19. The applicant's Statement of Understanding and Election of Options Acknowledgement of Notification of Medical Unfitness for Retention, dated 20 October 2021 show he acknowledged receipt of the Notification of Medical Unfitness for Retention and acknowledged he understood his right to counsel, that he must remain in a drilling status, he must comply with all medical documentation requests, and that he did not meet the Army's medial retention standards. He requested referral to the Physical Disability Evaluation System (PDES) for final determination of his medical fitness for retention.

20. His DA Form 199 shows, an Informal PEB, which convened on 30 November 2021, found him physically unfit and recommended that his disposition be referred for case disposition under Reserve Component regulations.

a. The applicant was found unfit for PTSD; (non-compensable) because his condition was determined to be Non Duty Related (NDR). His PTSD was considered NDR because the applicant first sought treatment for this condition in October 2018. This condition was caused by civilian employment with the FBI where he investigated traumatic crime scenes to include the [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

(1) The condition is not compensable because at the time the applicant was diagnosed with this condition, he was not in an Active Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within the applicant's available case file that indicates military service aggravated the condition.

(2) IAW AR 635-40, this Officer is unfit because the DA Form 3349, Physical Profile Record, Section 4, functional activity limitations associated with this condition make this Officer unable to reasonably perform required duties. The Officer is mentally competent for pay purposes and able to understand and participate in the Physical Evaluation Board proceedings.

b. The PEB made the following administrative determinations:

(1) The disability disposition was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

(2) The disability did not result from a combat-related injury.

d. The applicant did not concur and demanded a formal hearing of his case on 10 December 2021. He requested regularly appointed counsel.

21. The applicant provided an Annual PHA, dated 4 April 2022.

a. He reported the following on this PHA:

- periods of dizziness, fainting or loss of consciousness, did not get medical care
- persistent or recurring noises in his head or ears (ringing, buzzing, humming), got medical care but no longer under treatment
- change in his hearing that impacts duty performance, got medical care but no longer under treatment
- recurring muscle, joint, or low back pain, currently under treatment
- on a permanent profile for back injury
- in the past month had experience difficulty with employment, sleep, and behavioral health and received treatment through the VA
- answered “yes” to having ever had any experience that was so frightening, horrible, or upsetting that, in the past month that he:
  - had nightmares about it or thought about it when he didn’t want to
  - tried hard not to think about it or went out of his way to avoid situations that remind him of it
  - were constantly on guard, watchful, or easily startled
  - felt numb or detached from others, activities, or his surroundings.
  - felt guilt or unable to stop blaming self or other for the event
- answered “more than half the days” to over the last 2 weeks, how often has he been bothered by the following problems:
  - little interest or pleasure in doing things
  - feeling down, depressed, or hopeless
  - trouble falling/staying asleep, sleep too much
  - feeling tired or having little energy
- was in good health
- during the last 2 weeks, got less than 5 hours sleep on most days
- received a VA disability rating of 80 percent for PTSD, back injury, and hearing effective January 2021
- rates his average pain over the past 24 hours at a 6 – hard to ignore, avoid usual activities
- not receiving treatment for pain

b. The medical officer indicated the applicant was on a deployment limiting profile. He was found to be partially medically ready.

22. A DA Form 3349 shows the applicant assigned a physical profile of 111313 for PTSD (18 August 2021) and Bilateral Hearing Loss (25 April 2022). He was in the MEB/DES process at the time.

23. The applicant provided a memorandum, subjected: Request for Copy of Formal Hearing Audio Recording, dated 8 November 2022, for the Formal PEB convening on 16 November 2022. He also submitted his Acknowledgement of Counseling on Legal/Procedural Rights also dated 8 November 2022.

24. A DA Form 199-1 shows a Formal PEB , which convened on 17 November 2022, found the applicant physically unfit and recommended his disposition be referred for case disposition under Reserve Component regulations. The original disposition is restated and upheld.

a. The applicant contends that his PTSD is unfitting, and his lumbar back condition is unfitting. He also contends that his PTSD was incurred while he was on active duty and requests the PEB return the case to AHRC for reconsideration of the Line of Duty Opinion. Based on the preponderance of evidence, the PEB has determined that the applicant's PTSD is unfitting and determined not to be in the line of duty. The PEB also determined that the applicant's lumbar back condition is not unfitting.

b. The PEB notes his case was adjudicated based upon a review of the objective evidence of record. including the applicant's testimony and exhibits provided during Formal Board proceedings; and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of DoDI 1332.18, Enc. 3, App. 2 and AR 635-40, to include combined, overall effect.

c. The applicant did not concur and submitted his written appeal on 7 December 2022.

25. The applicant and his counsel submitted a memorandum, subject: Appeal of Formal Physical Evaluation Board, dated 8 December 2022, wherein counsel states:

a. There was sufficient evidence for the PEB to request an AHRC LOD opinion regarding his unfitting PTSD condition. At the formal board the applicant submitted significant evidence that his unfitting PTSD was incurred and/or aggravated by his active duty deployment.

b. ARMMC originally agreed the applicant's case warranted an IDRMM Memo and sought the same. It appears that this case was only submitted as an NDR case because the IDRMM memo was declined despite multiple behavioral health treatment notes that his condition was aggravated by his active duty deployments.

c. The applicant provided multiple treatment notes showing his condition was brought on primarily by his active military duty. The applicant and counsel assert that it was in error for the PEB to NOT seek an opinion as to the Line of Duty status for the applicant's PTSD, and he requests that the LOD opinion be sought at this time.

26. A memorandum, subjected: Rebuttal to Formal PEB (FPEB) Findings, dated 13 December 2022, to the applicant's counsel from the Army PDA states:

a. The 28 October 2021 Memorandum prepared in accordance with the Non-Duty Related (NDR) Case format noted: "The medical record is insufficient to support the finding that the applicant's PTSD was incurred or aggravated by service.

b. The applicant deployed in 2006 and did not seek BH treatment until 2018 when he was initially evaluated for substance abuse related to physical issues and civilian related trauma. The case was referred for consideration of IDRM, and IDRM was denied.

c. The formal contention email and exhibits dated 15 November 2022 were reviewed and considered. The resubmitted exhibits includes a VA PTSD clinic intake note, "The event that bothers the Veteran the most in terms of intrusive thoughts, negative emotions, guilt is an event where 3 fellow Soldiers were killed in a suicide bombing. While Veteran was not there, he saw photos of the bombing and aftermath, he is aware of details of trauma and aftermath".

d. The Joint Legacy Viewer (JLV) records reveal that the applicant was last seen in the PTSD clinic at the VA on 13 June 2022 and at that time his behavioral health treatment provider noted, "He requested provider write letter in support of his appeal stating he has not improved, and symptoms are still present. Provider declined indicated rationale, including dual relationship, policy. Also, provider has not seen him since November 2021, she can't speak to how he is or has been doing, he has not been engaged in treatment."

e. The PDA is unable to conclude differently than the FPEB concluded as summarized on the DA Form 199-1 dated 17 November 2022. The applicant is unfit for PTSD (non-compensable).

f. The PDA's conclusion is that the applicant's case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System (PDES) in making its determination. The findings and recommendations of the board are supported by a preponderance of evidence and are therefore affirmed.

27. A memorandum, subjected: Non-Duty Related Case, dated 14 December 2022, was provided to the applicant's Reserve unit advising the disposition of his PEB.

28. The applicant was discharged effective 15 March 2023.

29. The applicant provides 644 pages of medical records from the Army, the VA, and civilian providers; 369 pages of VA administrative or processing documents; and 54 pages of administrative documents related to his service dog.

30. 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.

31. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant had several requests. Pertinent for this medical review, he requests for his PTSD condition, already found unfitting by a Non-Duty Related PEB, to be found duty related. He also requests for his lumbar condition to be found unfitting.

2. The ABCMR ROP provides a detailed summary of the applicant's record and circumstance surrounding his case. Of note, he entered the US Army National Guard 28Apr2005. He was deployed in Kosovo 20061011-20071031. His primary MOS was Infantry Officer. He initially served in the [REDACTED] Army National Guard and later [REDACTED] National Guard starting in 2008. He was ultimately discharged (effective 15Mar2023) after undergoing a non-duty related PEB convened 17Nov2022 for PTSD. JLV search revealed the applicant was service connected by the VA for PTSD at 50%; and for Degenerative Arthritis of the Lumbar Spine at 20%.

3. Behavioral health condition: PTSD

a. 04Sep2006 Pre-Deployment Health Assessment (DD Form 2795). The applicant endorsed being in excellent health.

b. 30Mar2009 Primary Care Note [REDACTED] VAMC. Visit for federal job employment and/or for [REDACTED] police physical fitness test. "No psychiatric history" was annotated.

c. 13Oct2011 Primary Care Nurse Practitioner Note VAMC. City [REDACTED] civil service commission police physical fitness test did not indicate BH concerns.

d. 15Oct2018 Social Work Note [REDACTED] VAMC. The applicant was back in Massachusetts visiting family. After an incident involving his intoxication, his family took him to Urgent Care to get help for drinking. At the time, he shared that he worked within the FBI investigating deaths "I see a lot of dead bodies".

e. 21Oct2018 Periodic Health Assessment (DD Form 3024). The applicant endorsed there were no significant major life stressors that had interfered with work or home life; and no traumatic experiences that were causing symptoms.

f. 23Sep2019 Mental Health Note [REDACTED] VAMC. The applicant reported a history of drinking that began early years in college with social occasions. He reported that problematic drinking began in August 2018 when he was diagnosed with an L4-L5 back injury. He shared that his drinking increased to manage pain; and to manage stress for fear of losing his nonmilitary job in security forces with the government. He had anxiety due to this, his back prognosis, and he was being monitored for possible cancer by his community primary care provider. Diagnoses: Anxiety, Unspecified; Alcohol Use Disorder, severe; Tobacco Use Disorder, Mild; and Rule Out PTSD.

g. 15Oct2019 Psychosocial Assessment [REDACTED] VAMC. The applicant sought treatment for problem drinking (of 2 years duration). The drinking was an attempt to self-medicate. He reported hyper-vigilance and avoidance trauma symptoms related to traumatic events encountered during his civilian federal career. Specifically, he reported being present in some capacity at the [REDACTED], [REDACTED], and [REDACTED]. For military trauma history, the applicant reported the following traumatic experience(s) during military service: He endorsed stressors related to being in command in Kosovo. Diagnosis: Alcohol Use Disorder. The military stressors are noted to be not directly related to combat.

h. 30Oct2019 Discharge Note Addendum. The applicant was admitted 10Oct2019 to inpatient Substance Abuse Treatment Program [REDACTED] VAMC Addiction Treatment Program for Alcohol Use Disorder, Severe. He endorsed being a social drinker. He disclosed that in August of last year he fractured both L3 and L4 while pulling a tree from the yard. Per his report, he started self-medicating to ease his pain. He stated his drinking caused him to be less organized and less motivated to do things he once enjoyed. Diagnoses: Alcohol Use Disorder, Severe. Other medical diagnosis pertinent to this admission: Chronic Pain. He was discharged 31Oct2019 to continue treatment in outpatient services.

i. 13Nov2019 PHA he endorsed symptoms consistent with hyper alertness

j. 24May2020 to 07Jul2020 (approximately). A 47 day stay at [REDACTED] Inpatient had dual emphasis, on Alcohol Dependence and PTSD treatment.

k. 15Jan2021 VA Form 21-0781. The applicant stated his stressor was the death of a friend killed in action on 04Apr2012. He endorsed that driving by the memorial on the freeway in his hometown was triggering for him.

l. 13Aug2021, he underwent command directed BH exam by Department of Behavioral Health, [REDACTED]. He reported that he started drinking after returning from deployment to help him sleep. He reported increased hypervigilance since he no longer carried a weapon all the time. Combat exposure: "Raids on houses, see packages on road-call EOD, patrols (only getting 4-5 hours of sleep between patrols), hearing gunfire". Reported traumas: He "saw a guy's arm ripped off in a Humvee" accident. And in 2009, a soldier broke into his hotel room. He stated that in 2009, he had a DUI that was reduced to a misdemeanor for reckless operation of a vehicle. He reported his drinking increased again in about 2017/2018 to manage pain after injuring his back. He stated he was afraid to seek medical care due to possibilities of negatively affecting his job with the FBI. He left the FBI to focus on family. At the time of the note, he reported he had to drive daily by the memorials of 3 soldiers from his hometown which was triggering for him. Collateral history obtained from command: "CPT [REDACTED] was released from the FBI in 2019. After his release from the FBI, CPT [REDACTED] began to show signs of depression and substance abuse". The BH examiner diagnosed PTSD and Major Depressive Disorder.

m. 27Sep2021 Mental Health Note [REDACTED] VAMC. The applicant reported while "nothing happened while I was there," a friend died overseas in 2012 and he was shown pictures and images of the "carnage". He sees their memorials on the highway, and it evokes grief, sadness, and memories of them when they were alive.

n. 25Oct2021 Mental Health Note. He discussed aspects of trauma exposure history while he was working with the FBI recovering dead bodies and managing situations involving domestic terror. He reported while these events were distressing, they didn't bother him as much as losing military friends/personnel.

o. The 28Oct2021 [REDACTED] Reserves Command endorsed the applicant initially sought BH treatment due to increased use of alcohol secondary to work related stress from his civilian employment with the FBI where he investigated traumatic crime scenes to include "the [REDACTED]". They also noted that later, in February of 2021 the applicant was diagnosed with PTSD related to multiple traumatic stressors which included experiences during his deployment in 2006-2007.

p. 01Nov2021 Tele-Mental Health Note. He was employed by the City [REDACTED]. His work involved outdoor physical labor. He enjoys being outside. He was taking hydroxyzine (an antihistamine) only for anxiety (avoiding SSRIs etc. due to concerns for liver toxicity following history of alcohol excess).

q. 15 November 2021 VA PTSD Clinic Intake Note. "The event that bothers the Veteran the most in terms of intrusive thoughts, negative emotions, guilt is an event where 3 fellow Soldiers were killed in a suicide bombing. While Veteran was not there, he saw photos of the bombing and aftermath, he is aware of details of trauma and aftermath."

r. 17Nov2022 Formal PEB findings. The FPEB found the PTSD condition was unfitting for continued service. The FPEB also found the PTSD condition was non-compensable due to its determining the condition was not incurred in the line of duty. The complete FPEB narrative is part of the record.

s. 13Dec2022 U.S. Army Physical Disability Agency response to the applicant's Rebuttal to FPEB findings: "We are unable to conclude differently than the FPEB concluded as summarized on the DA Form 199-1 dated 17 November 2022. The soldier is unfit for posttraumatic stress disorder (non-compensable)".

t. 18Jan2023 Mental Health Outpatient PTSD Note. He was abstinent from alcohol. He was still serving in the Reserves, and still working for the city [REDACTED]. He continued to participate in individual therapy through February 2024.

#### (1) Summary

The record showed no history of childhood neglect/trauma. The applicant served in a designated imminent danger pay area in 2006/2007. There were no BH treatment records during this period of active duty service. The post deployment health assessment and post deployment health reassessment forms were not available for review. In 2021, approximately 14 years after deployment, the applicant was diagnosed with PTSD with anxiety symptoms having started in 2018. In the interim between his deployment and the PTSD diagnosis, he presented to the VA for different evaluations over the years for employment during which BH concerns were denied and/or PTSD screens were negative to include a March 2009 employment physical for City [REDACTED] police department; an October 2011 physical certificate for the City [REDACTED] civil service commission police physical fitness; and admittance into the FBI in 2011 after passing BH screening/evaluation. The applicant first accessed BH services in 2018 for help with increased alcohol use that had resulted in decreased functioning. Annual PHAs were negative for BH concerns until the 13Nov2019 PHA when he endorsed symptoms consistent with hyper alertness. Based on what the applicant was reporting from 2018 through 2020, his problematic drinking was self-medicating to assist with pain management for his back injury; and the trauma related symptoms (hyper-vigilance and avoidance) were due to traumatic exposures related to his employment at the FBI. In January 2021 on VA claim Form 21-0781), the applicant stated his stressor was learning about the death of a friend killed in action on 04Apr2012. During the August 2021 command directed BH evaluation, the applicant recalled his drinking increased to manage pain after a back injury and due to concerns the injury may negatively impact his job with the FBI.



(2) BH symptom onset was in 2018, and PTSD was definitively diagnosed in 2021—both occurred while the applicant was not in active duty status. In addition, there were many years of military service post deployment with effective performance/no impairment in occupational and social functioning: He completed a 2-week 80 hour CBRN training course in April 2007, later he completed FBI training, and finally 75-hours of phase one of Military Police Captain's Career Course in June 2017. The Officer Evaluation Reports showed senior rating 'best qualified' or 'highly qualified' thru 20200210.

(3) The first BH physical profile was issued in 2018. There was no Line of Duty issued for the applicant's BH condition. Based on records available for review, the applicant did not report symptoms suggestive of the presence of PTSD or exhibit signs of occupational or social impairment that would support the onset of a PTSD condition while in active duty status. In addition, review of medical records did not show objective evidence of worsening of the PTSD condition due to his military service.

4. Back condition. The 25Jan2021 Disabled American Veterans Rating Decision showed the VA established service connection for Degenerative Arthritis of the Spine at 20% effective 10Mar2020.

a. 30Mar2009 Orthopedic Surgery Consult [REDACTED] VAMC. He was in the [REDACTED] Army National Guard and considering a position with the Naval Police Force in [REDACTED]. He also wanted assessment for participation in the [REDACTED] in uniform. He had been referred to orthopedics due to his history of left knee surgical procedure in 2004. The orthopedic specialist determined there was no indication of a medical problem—and specifically there were no orthopedic issues that would prohibit him from full participation in the military.

b. 28Apr2017 PHA (periodic health assessment) showed PULHES 111111. The applicant did not endorse back pain.

c. 19Sep2018 Orthopedic One. The private orthopedist referred the applicant to physical therapy for diagnosis Lumbago, Muscle Strain. Etiology was not discussed.

d. 21Oct2018 PHA. The applicant selected response 'no/does not apply to me' for 'recurring muscle, joint, or low back pain'. His pain was rated at 0, or no pain.

e. 14Dec2018 Orthopedic One. The applicant was being seen for evaluation of low back pain with pain extending into his bilateral buttock and hip region, worse on the right than the left. He had been having this issue since August 2018 following an event in which he was pulling out a bush. Diagnosis: Severe Lumbar Stenosis and Disc Protrusion (by 05Dec2018 lumbar spine MRI results). He was advised against

participation in an upcoming physical fitness test. He was given a work excuse for sedentary work for 60 days; and he was advised to limit lifting to 10 pounds and limit standing to 30 minutes.

f. 02Jan2019 Surgery Center (Easton) Operative Report. The applicant underwent Bilateral Lumbar Transforaminal Epidural Steroid Injection at L4.

g. 22Jan2019 Physical Profile Record (DA Form 3349). The temporary profile for Lower Back Injury/Pain was to expire 23Mar2019. Multiple functional activity limitations were listed.

h. 30Jan2019 Surgery Center (Easton) Operative Report. The applicant underwent Bilateral Lumbar Transforaminal Epidural Steroid Injection at L3.

i. 03Apr2019 Chronological Record of Medical Care (SF 600) note: "Currently there is no validating medical documentation or evidence received to support profile limitations."

j. 22Oct2019 Chiropractic Note. The applicant stated his "back went out" in August while either working or at home. He stated he did not recall what caused the pain. He responded well to treatment and felt a decrease in pain and increase in movement (25Oct2019) and was discharged from the clinic 29Oct2019.

k. 30Oct2019 Discharge Note Addendum [REDACTED] VAMC. The applicant reported that in August of the year prior, he fractured both L3 and L4 while pulling a tree from the yard. Per his report, he started self-medicating to ease his pain.

l. 13Nov2019 PHA. It was noted that his recurring muscle, joint, or low back pain was under treatment by the VA. He was on a no sit-ups, push-ups, or cardio profile. He was ultimately found to be fully medically ready at the time.

m. 11Feb2020 Orthopedic One. He was given another work excuse for sedentary work 60 days.

n. 08Aug2020 lumbosacral spine film [REDACTED] VAMC. There was no acute radiographic abnormality of the thoracic or lumbar spine; there was stable grade 1 anterolisthesis L5-S1 and associated spondylolysis and degenerative changes.

o. 10Mar2021 PHA (DD Form 3024). The applicant reported 6/10 pain and endorsed that he was not receiving treatment for pain. He had not received any treatment for any medical or mental health condition since the last PHA (in 2019). He had received a disability rating which included a rating for back injury.

p. 17Oct2021 DES (Disability Evaluation System) Commander's Performance and Functional Statement. Command believed the applicant was not capable of deployment or operating within an OCONUS/ austere environment due to mental health concerns. No concerns were mentioned concerning the back condition.

q. 27Oct2021 Personnel Qualification Record showed PULHES 111113.

r. 01Nov2021 Tele-Mental Health Note. He worked outside, physical labor for the City of Dublin.

s. Company Grade Plate Officer Evaluation from 20210211 through 20220210 showed he passed APFT 07Nov2021.

t. 04Apr2022 Functional Capacity Certificate (Form 507). The examiner listed current physical limitations as "none".

u. 31Aug2022 Primary Care Note [REDACTED] VAMC. The applicant reported he had been admitted to [REDACTED] Medical Center at [REDACTED] due to injuries from motor vehicle accident on 09Jul2022. He sustained C2 spine fracture, and the initial CT of the head demonstrated a possible small IPH (Intraparenchymal hemorrhage).

v. 13Oct2022 Neurology [REDACTED] VA Ambulatory Care Center. The applicant was seen approximately 3 months after the car accident. He reported minimal to no neck pain. The Lumbar spine MRI showed grade I listhesis of L5 on S1 due to a pars defect at L5 and S1. He reported chronic low back pain that was tolerable. He denied radicular leg pain. He also denied numbness/tingling and weakness in his legs. He had not received any conservative treatment for the lumbar spine condition. The exam showed a nontender cervical spine. He had normal gait, 5/5 muscle strength and normal reflexes. The applicant endorsed that he did not wish to have any conservative treatment or surgical intervention at the time. He was to follow up as needed. He did not return for further treatment except for request for therapeutic massage (04May2023).

#### (1) Rationale/Opinion

The applicant contends his back condition onset was during deployment and that wear and tear from a 15-year military career was contributory to his back disability. JLV search revealed back issues began in August 2018 with onset reportedly due to pulling a bush (or tree). Initial treatment for the reported back injury was through a private orthopedic specialist (as early as September 2018) and later by the VA. There was no report of back concerns in PHAs until November 2019. There was no documentation of back injury while on active orders for greater than 30 days. There was no Line of Duty issued for the applicant's back condition.

(2) Treatment for the back condition included anti-inflammatories, physical therapy, steroid injections (January 2019), chiropractic treatment (October 2019), and temporary profiling (expired March 2019 and February 2022) and activity restriction. Although the back condition did temporarily interfere with physical training and physical testing, in the ARBA Medical Reviewer's opinion, the back condition did not fail medical retention standards of AR 40-501 chapter 3 for the following reasons: The 17Oct2021 statement by command did not indicate the applicant's back condition significantly interfered with performance near the time of discharge. And although he sustained back injury in 2018, the applicant passed every APFT from 28Aug2008 until the one on 05Jan2020 and he subsequently passed the 07Nov2021 APFT. At the time of discharge, he did not have a permanent L3 physical profile, and he was not undergoing any treatment for the back condition.

#### BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. Neither the applicants PTSD nor the back condition appear to be service connected. The decision is based predominantly on the medical advisory and the fact that it is documented the applicant's FBI position was the cause of his PTSD; there is no evidence his PTSD occurred while he was on orders for greater than 30 days or while deployed.

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.

6/6/2024

X

CHAIRPERSON

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 635-8 (Personnel Separations - Separation Processing and Documents) provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. Paragraph 5-1 (When to prepare the DD Form 214) states a DD Form 214 will be prepared for Reserve component Soldiers completing 90 days or more days of continuous active duty. For example, such periods may consist of ADOS, contingency operations-ADOS, active duty operational support-RC, AGR, or full-time National Guard duty for operational support.

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). 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.

3. Army Regulation 635-40 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 (LOD) 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 was incurred in the LOD in a time of war or national emergency or was incurred in the LOD after 14 September 1978.

(3) 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.

4. Army Regulation 40-501 (Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. USAR or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed as follows. Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 or discharged from the USAR per Army Regulation 135-175 (Separation of Officers) or Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

b. Reservists who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reservists with nonduty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with this regulation.

c. Reserve Component Soldiers with nonduty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of Reserve Component Soldiers with nonduty related medical conditions, MEBs are not required and cases are not sent through the PEBLOs (Physical Evaluation Board Liaison Officers) at the military treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB by the USARC Regional Support Command or the U.S. Army Human Resources Command Surgeon's office and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

5. 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.

6. 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.

7. 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.

8. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//