

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230007094

APPLICANT REQUESTS:

- upgrade of his discharge characterization from under honorable conditions (General)
- in effect, physical disability discharge in lieu of administrative discharge for unsatisfactory performance
- award of an unspecified service medal

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

- DD Form 149 (Application for Correction of Military Record)
- 181 pages of Department of Veterans Affairs (VA) medical records, dated from November 2022 – August 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He is requesting to change his discharge from general under honorable conditions to honorable and in effect, to receive a physical disability discharge for his post-traumatic stress disorder (PTSD). He is also requesting to receive a service medal because he served for 3 years before receiving any reprimand.

b. His PTSD treatment started while he was in the service with alcohol classes and marriage counseling. He does not think any of that was considered in his discharge and now that he is trying to get the needed support for his disability, correcting his discharge is the last step toward getting him the help he needs to combat depression and PTSD.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.
4. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 15 September 1999, for the purpose of Regular Army enlistment and was found qualified for enlistment with a PULHES of 111111.
5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 15 September 1999.
6. The applicant was discharged from the DEP and enlisted in the Regular Army on 19 October 1999. He was awarded the Military Occupational Specialty (MOS) 91W (Nuclear Medical Specialist).
7. The applicant's available records do not contain a DA Form 3349 (Physical Profile), nor do they show diagnosis of or treatment for any mental health conditions.
8. The applicant's available service records do not show:
 - he was issued a permanent physical profile rating
 - he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
 - he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
 - he was diagnosed with a condition that failed retention standards and/or was unfitting
9. The complete facts and circumstances surrounding the applicant's discharge are not in his available records. His record does not contain nor did the applicant provide his discharge packet, including any possible nonjudicial punishment (NJP), counseling, notification of separation, acknowledgement of separation notification, election of rights, chain of command endorsements, or discharge approval.
10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. He received an under honorable conditions (General) characterization of service on 10 January 2003, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 13, for unsatisfactory performance.

b. He was credited with 3 years, 2 months, and 22 days of net active service.

c. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon

11. There is no evidence of any additional awards, decorations, or medals not listed on his DD Form 214 that were awarded or authorized to the applicant.

12. The applicant provided 181 pages of VA medical records dated between November 2022 and August 2023, which have been provided in full to the Board for review and in pertinent part show:

a. A Compensation and Pension (C&P) Examination Note, Initial PTSD Disability Benefits Questionnaire, dated 1 June 2023, shows the applicant was diagnosed with PTSD. He was one of the first responder medics to the Pentagon during the September 11th terrorist disaster and was camped out in front of the Pentagon for 28 days, clearing the wreckage of the plane crash and building debris, to include dead bodies and asbestos. He had ongoing difficulties with PTSD since that event where he was involved in clearing out the wreckage of the plane crash, clearing out the dead, and triaging the patients from the building. He has resultant ongoing difficulties of intrusive thoughts, insomnia, nightmares, startles easily, and has trouble being in crowds.

b. A Primary Care Clinic Note, dated 15 August 2023, show the applicant's active problems to include:

- back pain
- obstructive sleep apnea
- mood disorder
- insomnia
- hyperlipidemia
- sickle cell trait R69
- hypertension
- hernia
- vitamin D deficiency

13. 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.

14. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. Request: The applicant is requesting an upgrade of his discharge characterization from general under honorable conditions to honorable as well as a physical disability discharge in lieu of administrative discharge for unsatisfactory performance.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- Applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 15 September 1999. He was discharged from the DEP and enlisted in the Regular Army on 19 October 1999.
- The complete facts and circumstances surrounding the applicant's discharge are not in his available records. His record does not contain nor did the applicant provide his discharge packet, including any possible nonjudicial punishment (NJP), counseling, notification of separation, acknowledgement of separation notification, election of rights, chain of command endorsements, or discharge approval.
- Applicant was discharged on 10 January 2003, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 13, for unsatisfactory performance. His service was characterized as under honorable conditions (general), with separation code JHJ and reentry code RE-3.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, VA medical records, and ABCMR Record of Proceedings (ROP). The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he is requesting to change his discharge from general under honorable conditions to honorable and in effect, to receive a physical disability

discharge for his post-traumatic stress disorder (PTSD). He is also requesting to receive a service medal because he served for 3 years before receiving any reprimand. He claims his PTSD treatment started while he was in the service with alcohol classes and marriage counseling. He does not think any of that was considered in his discharge and now that he is trying to get the needed support for his disability, correcting his discharge is the last step toward getting him the help he needs to combat depression and PTSD.

e. The applicant's electronic in-service medical record is void of any documentation. Overall, the applicant's available service record does not show any evidence that he was issued a permanent physical profile rating, was treated for any behavioral health condition, was diagnosed with a condition that failed retention standards and/or rendered him unfit for military service.

f. The VA electronic record indicates the applicant is currently 50% service connected for PTSD. A C and P Examination dated 1 June 2023, shows the applicant was diagnosed with PTSD. He reported during the assessment being one of the first responders to the Pentagon during the September 11th terrorist disaster and was camped out in front of the Pentagon for 28 days, clearing the wreckage of the plane crash and building debris, to include dead bodies and asbestos. He reported ongoing difficulties with symptoms of PTSD since that stressor/index event. His symptoms include intrusive thoughts, insomnia, nightmares, hyper startle response, and trouble being in crowds.

g. After reviewing the application and all supporting documents, this Agency Behavioral Health Advisor cannot provide an opine regarding mitigation based on behavioral health diagnoses or condition without documentation of the specific misconduct that led to his discharge. In addition, based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been 50% service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the applicant is 50% service connected for PTSD. His DD Form 214 shows he was discharged for unsatisfactory performance with over 3 years of service, indicating the applicant was functioning adequately during part of his enlistment. Given the nexus between PTSD and challenges with performance, due to symptoms such as depressed mood, irritability, avoidance, and emotional flooding, his BH condition would potentially mitigate certain misconduct if it did not involve violence, bodily harm, or major crimes.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, regulatory guidance, and published DoD guidance for liberal consideration of discharge upgrade requests were carefully considered.
2. The Board determined the applicant's discharge was not in error or unjust and therefore denied relief. The Board concurred with the medical advisor's review finding without the specific facts and circumstances leading to discharge, were unable to determine if the conduct was mitigating based on the applicant's service-connected disability of PTSD. Additionally, based on the available evidence, there is no indication that an omission or error occurred that would warrant a referral to IDES.
3. The Board noted the applicant's request for an unidentified medal. The Board determined without the applicant's specific request for an award, they were unable to grant relief.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, 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, on those conditions or experiences.

3. 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.

a. 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.

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.

4. Title 10, U.S. Code, 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/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.

5. 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 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. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 contains policy and outlines procedures for separating individuals for unsatisfactory performance and provides that commanders will separate a member under this chapter when, in the commander's judgment, the member will not develop

sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

b. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

c. 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.

8. Title 38, U.S. Code, 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.

9. Title 38, U.S. Code, 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.

10. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to

Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

11. Army Regulation 15-185 (Army Board for Correction of Military Records (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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//