

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008692

APPLICANT REQUESTS: in effect, a physical disability retirement in lieu of his voluntary, honorable discharge due to resignation.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- applicant statement to the Board
- list of medical physicians
- list of medications and side effects

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 Number AR20140020507 on 27 August 2015.

2. The applicant states at the time of his separation in 2012, he was suffering from combat related post-traumatic stress disorder (PTSD) and prescribed multiple psychotropic medications. He had a compromised mental state and should have been medically retired from the Army.

a. His chain of command was aware of his mental health profile and failed to act in an ethical and professional fashion. His Officer Evaluation Report (OER) ending 6 August 2007 show his rater stated: "It is up to [the applicant] to rebound from the rigors and the stressors he experienced during a rough mission in Baghdad, Iraq" and "[The applicant] started the deployment with great ability and motivation to accomplish duties of Battle captain. He significantly contributed to our success in the beginning of the deployment. His motivation significantly decreased and he not proven that he can truly handle the rigors of combat. This is his third mobilized tour. Only one in a combat zone, I believe that was one too many."

b. His disability clearly interfered with his ability to work and maintain his career as an Army officer at the time of his separation in 2014. He followed the advice of a veteran's advocacy representative and sought help through his chain of commander, the suicide hotline, support groups and the chaplain.

c. His chain of commander was award of his health and welfare situation for 24 months since he went to the Walter Reed Emergency Room for life-threatening issues with PTSD until his separation from service in May 2016.

3. The applicant underwent a medical examination on 26 November 1986 for enlistment in the Army National Guard. His Standard Form (SF) 88 (Report of Medical Examination) shows he was found qualified for service and assigned a physical profile of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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. The applicant served in the Army National Guard from 26 November 1986 to 15 March 1990. Section VII (Current and Previous Assignments) of the applicant's Personnel Qualification Record shows he served in the Reserve from 23 September 1992 to 22 September 1995 and 13 July 1998 to 23 April 2000.

5. The applicant underwent a medical examination for commissioning in the Army National Guard. His SF 88 shows he was qualified for service and assigned a physical profile of 111111.

6. On 15 July 2001, the applicant was commissioned in the Army National Guard and as an Army Reserve.

7. A DA Form 67-9 (Officer Evaluation Report) covering the period 17 January 2002 through 19 August 2002 shows the applicant was rated outstanding performance, must promote by his rating officer. He was rated fully qualified by his senior rater.

8. The applicant was ordered to active duty in support of the Operation Noble Eagle effective 1 September 2002.

9. An Officer Evaluation Report covering the period 20 August 2003 to 6 July 2004 shows the applicant was responsible for planning, coordination and execution of detainee operations at Guantanamo Bay, Cuba. He was rated outstanding performance, must promote by his rating officer. He was rated best qualified by his senior rater.
10. The applicant was released from active duty and returned to his National Guard unit on 21 August 2004.
11. An Officer Evaluation Report covering the period 7 July 2004 to 10 December 2004 shows the applicant worked to reconstitute his platoon after the twenty-two-month deployment to Operation Novel Eagle and Enduring Freedom. He was rated satisfactory performance, promote by his rating officer. He was rated fully qualified by his senior rater.
12. An Officer Evaluation Report covering the period 11 December 2004 to 30 September 2005 shows the applicant was rated outstanding performance, must promote by his rating officer. He was rated fully qualified by his senior rater.
13. The applicant was ordered to active duty in support of the Operation Iraqi Freedom effective 10 October 2005.
14. An Officer Evaluation Report covering the period 1 October 2005 to 30 September 2006 shows the applicant served as a Battalion Battle Captain in Baghdad, Iraq in direct support of Operation Iraqi Freedom. His rater indicated during the first half of the deployment the applicant's performance demonstrated his capabilities, intelligence and innovation. He was unable to sustain his strong efforts and express frustration. He volunteered for this deployment following two previous deployments. "It is up to him to rebound from the rigors and the stressors he experienced during a tough mission in Baghdad, Iraq." He was rated satisfactory performance, promote by his rating officer. His senior rater indicated, "His motivation significantly decreased and he [has] not proven that he can truly handle the rigors of combat." He was rated fully qualified by his senior rater.
15. The applicant was released from active duty and returned to his National Guard unit on 8 January 2007.
16. A memorandum from the applicant to his unit, subjected: Request for resignation of commission, dated 15 February 2009, states in pertinent part:
  - a. He has endured traumatic challenges and life altering changes while serving in multiple deployments.

b. During his tours he learned of his wife's infidelity and came home to a broken marriage and homelessness. While deployed his wife overextended them financially resulting in foreclosure of their home and displacement. His wife took his children, incurring court and attorney fees to gain visitation in 2007.

c. In July 2008, his former wife left his two daughters on his doorstep, relinquishing her custodial and parental rights.

d. He and his children are trying to recover from the ordeal. He needs to be home for his daughters. He requests an honorable discharge from the Army as soon as possible.

17. On 28 February 2009, the applicant was transferred to the Ready Reserve.

18. The applicant's request was approved on 11 August 2009 because he was unable to participate in unit training due to conflicts with his personal and family commitments.

19. The applicant was honorably discharged from the Army National Guard of the United States, effective 28 February 2009.

20. The applicant previously applied to the Board on 17 September 2014, requesting a physical disability retirement on the basis his former wife had falsified his resignation letter and he was diagnosed with PTSD. On 27 August 2015, the Board denied the applicant's requests, determining the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of his case were insufficient as a basis for correction of his records.

21. 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 requests narrative reason for separation to be changed to medical retirement. He contends that in 2012 when he was separated, he was suffering from a disabling mental health condition. This is a request for reconsideration of ABCMR August 2015 decision.

2. The applicant's complete military record was not available. The ABCMR ROP provides a summary of the applicant's available record and circumstances surrounding his case. Of pertinence, he was commissioned in the Army National Guard 15Jul2001. His primary MOS was Military Police. He was on active orders 20020901 through 20040821 in support of Operation Noble Eagle which included extended active-duty

service for “GBay Cuba” per Personnel Qualification Record. He was on active orders in support of Iraqi Freedom 20052010 and released to his National Guard unit 08Jan2007. He was deployed in Iraq 20051219 through 20061210 per DD214. The applicant’s request to resign his commission due to personal and family commitments was approved for separation from the Army National Guard effective 28Feb2009. His service was characterized as honorable.

3. On 15Feb2009, the applicant requested to resign his commission to be present for his two daughters and to provide stability. He cited as contributing to his decision: His daughters had suffered homelessness and neglect by their mother, his former wife while he was deployed; foreclosure of the home and legal custody battles causing financial stress; and deployments (Cuba and Iraq).

4. Pertinent medical records and related concerning the PTSD condition.

a. 26Nov1986 Report of Medical History (Standard Form 93) for enlistment in the National Guard. The applicant endorsed being in excellent health. He was hospitalized for a car accident age 5 for unknown injuries.

b. 15Mar2001 Report of Medical History (Standard Form 93) for commission in the National Guard. The applicant endorsed being in good health. The accompanying exam (Standard Form 88) showed one defect: Asymptomatic Pes Planus.

c. DD Forms 689 annotating “Suicide watch” for the following dates: 04Apr2006, 27Apr2006 and 11Sep2006 (submitted as evidence for the 27Aug2015 ABCMR proceedings). No BH treatment records were submitted or found in JLV for 2006.

d. 20051001 through 20060930 Officer Evaluation Report. The senior rater commented “his motivation significantly decreased and he [has] not proven he can truly handle the rigors of combat”. However, the rater did endorse that the applicant was “fully qualified” and had performance and potential for promotion designated as “satisfactory performance, promote”. This was the final OER.

e. 06Mar2008 Occupational Health Division DiLorenzo Tricare Health Clinic. Annual PFPA fitness exam. He met PFPA medical standards.

f. 28May2009 Consult Psychology Initial Mental Health Evaluation Washington DC VAMC. The applicant stated his family was concerned about him because he had depression and suicidal thoughts since his return from Iraq. The stressor was annotated “trauma occurred in combat”. He also endorsed persistent avoidance/numbing and/or social alienation, increased arousal and/or irritability and/or concentration problems, hypervigilance and/or startle response, and sleep issues.

There were no substance abuse issues. He was a single parent caring for his daughters. He was separated from his wife with divorce pending, and in a relationship for one year. He was working at the Pentagon as a police officer and going to school online (Excelsior College in NY) getting a certificate in Homeland Security (and to finish his bachelor's degree). Diagnosis: Major Depressive Disorder, Sever, Recurrent; and Rule Out PTSD. This was the first BH note found in JLV.

g. 04Jun2009 Tides Initial Visit Note. He reported having flashbacks brought on by media reports. He saw roads on the news he recalled riding on. He avoided military news. He reported thoughts of suicide and wrote a suicide letter in July 2007 and his mother intervened. He endorsed having good support of family, friends and girlfriend who were aware of his symptoms. There was no history of psychosis or mania. He had no previous counseling, psychiatric medication, or hospital admissions. Citalopram was started for depression and Trazadone for sleep. Guantanamo Bay and Iraq deployment were mentioned; however, stressors were not further detailed.

h. 25Jun2009 Mental Health Treatment Plan Note. The applicant reported he had been a camp commander at Guantanamo Bay from 2002-2003. He stated he had to deal with detainee issues such as "riots on the blocks" and "having feces and urine thrown on us". He reported being in Iraq in January of 2006 and serving in multiple locations (Fallujah, Camp Liberty, etc.). He conducted investigations after deaths from IED explosions "many times the vehicles would not be cleaned of all the body parts and there'd be chunks of flesh left and blood all over"; suicides; attempted suicides; and deaths of entire Iraqi families killed by other Iraqis because one member of the family cooperated with US troops. He reported being especially horrified at seeing partially decomposed children). Diagnoses: PTSD. He was also diagnosed with Depression (loss of interest in activities; weight loss due to loss of appetite; loss of energy, etc.).

i. 16Dec2009 Occupational Health Division DiLorenzo Tricare Health Clinic. Visit for annual fitness for duty exam. No change in health status since last exam on 06Mar2009. Physical findings: Pes Planus. Referral for podiatry. His PTSD diagnosis was also noted without further details. He met PFPA medical standards.

j. 30Aug2010 and 27Jun2011 Occupational Health Division DiLorenzo Tricare Health Clinic. Annual PFPA fitness exams. He met PFPA medical standards.

k. 19Sep2012 Occupational Health Division DiLorenzo Tricare Health Clinic. Annual PFPA fitness exam. He reported that he had no previous history of anxiety and no depression. He drank no alcohol. He exercised 60-90 minutes, 4-5 times per week. This was the final PFPA exam.

l. 26Sep2012 Mental Health Note. The applicant was offered a position with U.S. Immigration and Custom Enforcement Agency. The applicant disclosed his history of PTSD; therefore, his records were requested concerning any possible limitations. The BH provider noted PCL score 25 “indicating resolution of PTSD symptoms”. The applicant had married in October 2009 and reported a stable supportive relationship. He had also continued to work as a police officer at the Pentagon which required that he carry a handgun. He denied suicide ideation, psychosis, and substance abuse. He was not in treatment since 2009 and was not taking medication. The BH specialist endorsed that the applicant did not pose any danger to himself or others.

m. 11Dec2012 Washington DC VAMC. The applicant sought to reengage in BH services after he quit his job due to feeling increasing stress at work.

n. 21Mar2013 Psychiatry Emergency Room Note. The applicant had been actively planning suicide (writing goodbye letters, planning method etc.) He had noted increased depression, loss of energy etc., after stopping his antidepressant. Also reported marital discord because he had been unemployed since quitting his job and moving to Tampa with his wife. He quit his job because he was having almost daily thoughts of shooting coworkers with his firearm.

o. 18Oct2013 VA C & P Review PTSD DBQ. Diagnoses: PTSD and Major Depressive Disorder, Recurrent, Severe, without Psychotic Features. The examiner determined the applicant’s Major Depressive Disorder was part of the post-traumatic stress syndrome. The applicant was unemployed and looking for work. He quit his last job (police officer for the Department of Defense) which he held from 2007 to 2012, because he realized that he should not be carrying a gun. He had a recent suicide attempt 6 days prior and prior psychiatric hospitalization in March 2013 for 5 days Tampa VAMC.

5. Evidence submitted for the 27Aug2015 ABCMR proceedings showed the applicant’s PTSD condition initially rated at 10%, was changed to 30% effective 01Jun2009 (per 14Apr2010 VA Rating Decision and 02Jun2010 correspondence). The 28May2014 VA rating Decision showed PTSD at 100% effective 08Jul2013.

#### 6. Rationale/Opinion

After release from his commission in February 2009, the applicant engaged in trauma therapy—CPT (Cognitive Processing Therapy) for PTSD in July through December 2009. He only attended 8 of 12 sessions because of work commitments. During his annual PFPA fitness exams, he continued to meet PFPA fitness standards 16Dec2009, 30Aug2010, 27Jun2011, 14Oct2011. The applicant maintained his position as a police officer for the pentagon from 2007 until 2012. In September 2012, BH cleared him to work for the U.S. Immigration and Custom Enforcement Agency. At the time of his release from Army National Guard in 2009 (by his request), there had been a history of

the applicant having been on suicide watch in 2006; there was no psychiatric hospitalization; BH profiling was unknown; and he had been working fulltime as a police officer at the pentagon for almost 1 year. He continued to meet PFPA standards until late 2012, more than 3 years after his release from the Army National Guard. An Army separation physical at the time of his release was not found. Based on records available for review, evidence was insufficient to support that the applicant's PTSD condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. Referral for medical discharge processing was not warranted.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient to support that the applicant's PTSD condition failed medical retention standards at the time of discharge. The opine found referral for medical discharge processing was not warranted.
  
2. The Board determined based on the advising opine, there is insufficient evidence to support the applicant's contentions for a physical disability retirement in lieu of his voluntary, honorable discharge due to resignation. The Board recognize the applicant's multiple deployments and his family concerns; however, the Board found no indications the applicant did not meet medical retentions standards or his required job standards at PFPA. Based on the preponderance of evidence the Board found the applicant's request is without merit and denied relief.

BOARD VOTE:


<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION




BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 of the ABCMR set forth in Docket Number AR20140020507 on 27 August 2015.

3/25/2024


  
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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. 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.

2. 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.

3. 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.

4. AR 635-40 (Physical 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

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

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

5. 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.

6. 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.

7. 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.

8. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

9. 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.

//NOTHING FOLLOWS//