

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20230009693

APPLICANT REQUESTS:

- change his honorable discharge to a medical discharge with pay and benefits due to post-traumatic stress disorder (PTSD)
- an appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States)
- Incident Log
- Service Request
- National Personnel Records Center Letter
- Legal Letter
- Applicant Letter
- Medical Documents

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, in effect, he wants a medical discharge and all benefits owed, to include medical and mental assistance due to his issues of PTSD and for his PTSD to be acknowledged. His PTSD has cause him to drink heavily and end up in jail, prisons etc. with no help or regards from the Department of Justice (DOJ) that hates Veterans. He started this process 10 April 2012 and due to the DOJ corrupt/retaliation officers-administration, and him being moved from facility to facility, he did not get any help form the Department of Veterans Affairs (VA) etc. He has sent all documents to the VA. He has no more.

3. The applicant provides:

a. An incident log, staff narrative, processed 25 March 2020 reflects that the applicant was throwing punches on 18 March 2020. He was actively battering an inmate. The applicant advanced on the Officer with clinched fists. The officer stuck him in the upper right back area with a baton.

b. A legal letter, 18 September 2023 shows the state of California received the applicant's recent complainant against a California judge.

c. A self-authored letter, 9 October 2023, states he sent medical incidents and issues he is having due to his PTSD. Instead of getting help, he was mistreated and abused by unprofessional lying union staff members. His military confidential mail is always opened without him being present.

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

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

a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of the United States) reflects he enlisted in the Regular Army on 29 December 1986.

b. The General Counseling Form shows he was counseled on 20 January 1988 for failing to meet the Army weight standards.

c. The Memorandum, Subject, Notification of Consideration of Separation Proceedings, 3 March 1988 shows due to insufficient progress in the Weight Control Program, the applicant was notified he was being considered for separation proceedings.

d. Initiation of separation action (failure to make satisfactory progress in a Weight Control Program), 3 March 1988 was initiated by his commander. The applicant acknowledged receipt on the same date.

e. DA Form 3822-R (Report of Mental Status Evaluation), 30 March 1988 shows the applicant had the mental capacity to understand and participate in the proceedings. He was mentally responsible, able to distinguish right from wrong, and to adhere to the right. There was no evidence of a mental disease or defect which warranted disposition through medical channels.

f. The applicant's immediate commander notified him of his intention to initiate action to effect his discharge on 5 April 1988 for failure to lose the required amount of

weight despite being counseled on the importance of make his target weight and possible consequences for failure and recommended an honorable discharge.

g. The applicant consulted with counsel on 5 April 1988 and was aware of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He did not elect to submit statements in his own behalf. He did not request treatment in a VA hospital.

h. The applicant's immediate commander recommended, on 5 April 1988 the applicant be process for discharge prior to his expiration term of service specifically because in effect, he had been in the weight program from 26 May 1987 to 20 November 1987 and failed to lose weight.

i. The separation authority approved the separation with an honorable discharge certificate. The applicant would not be transferred to the individual ready reserve.

j. He was honorably released from active duty on 18 May 1988 and transferred to the U.S. Army Reserve. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 5-5 failure to meet body fat standards with separation code of LFV and reenlistment code 3, 3C. He completed 1 year, 4 months and 20 days of net active service this period.

k. Orders D-01-501250, 3 January 1995 shows the applicant was honorably discharged from the USAR.

5. On 28 December 2023, in the processing of this case the U.S. Army Criminal Investigation Division searched their criminal file indexes, which revealed no Sexual Assault records pertaining to the applicant.

6. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change his to honorable discharge to a medical discharge with pay and benefits due to mental health conditions including PTSD. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 29 December 1986; 2) The applicant was counseled on 20 January 1988 for failing to meet the Army weight standards. On 03

March 1988, the applicant was notified he was being considered for separation proceedings due to insufficient progress in the Weight Control Program. Initiation of separation action was initiated by his commander on the same day; 3) The applicant was honorably released from active duty on 18 May 1988 and transferred to the U.S. Army Reserve. His DD Form 214 shows he was discharged, Chapter 5-5- failure to meet body fat standards; 4) On 3 January 1995, the applicant was honorably discharged from the USAR.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and medical documentation provided by the applicant were also examined.

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. He was seen for a Mental Status Evaluation on 30 March 1988. The applicant was not diagnosed with a mental health condition, and he was found capable to understand and participate in his separation proceedings.

d. A review of JLV provided evidence the applicant has been incarcerated for a number of years, but he completed a Compensation and Pension evaluation for mental health conditions in 2013. The applicant reported to the evaluator a military history inconsistent with his military service records. He was diagnosed with PTSD as a result of his report of PTSD symptoms related to his experiences as a member of Special Operations community where he was involved in active combat when he described being stationed in Germany. The applicant also provided various recent documents connected to his incarceration where he reported being diagnosed with PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD by the VA in 2013, but this was as a result of his report of a military history inconsistent with his military service records. In addition, there is insufficient evidence the applicant consistently attended behavioral health treatment, was found to not meet medical retention standards from a psychiatric perspective, was ever placed on a psychiatric profile, or required inpatient treatment during his active service. Therefore, with the evidence currently, there is insufficient evidence this case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, that the applicant has been diagnosed with service-connected PTSD by the VA in 2013, but this was as a result of his report of a military history inconsistent

with his military service records. In addition, there is insufficient evidence the applicant consistently attended behavioral health treatment, was found to not meet medical retention standards from a psychiatric perspective, was ever placed on a psychiatric profile, or required inpatient treatment during his active service. Therefore, with the evidence currently, there is insufficient evidence this case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

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

REFERENCES:

1. Title 10, U.S. Code (USC), section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this

subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. 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 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, 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; 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 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.

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

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

8. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code LFV to be used for Soldiers discharged for failure to meet body fat standards).

9. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "LVF" for failure to meet body fat standards.

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

of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

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

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

13. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth

criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

14. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

15. 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 DRBs and 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

16. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

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

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

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

//NOTHING FOLLOWS//