

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009885

APPLICANT REQUESTS: reconsideration of his prior request for a physical disability retirement in lieu of his honorable discharge and a personal appearance hearing before the Board.

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

- ARBA online application in lieu of DD Form 149 (Application for Correction of Military Record)
- Enlisted Record Brief (ERB)
- DD Form 214 (Certificate of Discharge or Release from Active Duty), 1 October 2010
- Honorable Discharge Certificate, 1 October 2010
- memorandum, subjected: Record of Events, 26 June 2012
- DD Form 215 (Correction to DD Form 214), 26 May 2021
- Department of Veterans Affairs (VA) summary of benefits letter, 30 May 2023
- Social Security Administration (SSA) benefit verification letter, 30 May 2023
- DP letter of support
- TRS letter of support
- AB letter of support
- medical records (57 pages)
- documents pertaining to former spouse and child (152 pages)

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 AR20170010234 on 17 July 2020 and AR20210015056 on 21 April 2022.

2. The applicant states his record show he was discharged for committing domestic violence against his ex-wife. He did not. It was all falsified by his ex-wife and a police officer to defraud the Transitional Compensation program for financial gain. The evidence he has forced the police officer resign. The situation resulted in the loss of his career and his son was kept from him. He was not given a fair process and should have received a medical board and a medical retirement. He cannot receive Combat Related

Special Compensation (CRSC) unless he is retired. The VA found him 100% total and permanently disabled from the 6 improvised explosive device (IED) explosions he was involved in. He has post-traumatic stress disorder (PTSD), a traumatic brain injury (TBI), and a spine injury. He did not deserve what happened to him. His ex-wife stole military equipment he had to pay for, and he did not receive pay for 72 days of accrued leave.

3. The applicant underwent a medical examination on 28 July 2003 for enlistment in the Indiana Army National Guard the same day. His DD Form 2807-1 (Report of Medical History) shows he reported he was in good health without defect. The corresponding DD Form 2808 (Report of Medical Examination) shows he was found qualified for service without defect and was 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 completed Initial Active Duty for Training (IADT) from 3 November 2003 to 30 January 2004.

5. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows on 25 September 2004 the applicant injured his ankle while participating in a company sporting activity. His injury was found in the line of duty.

6. The applicant served on active duty for training from 4 January 2005 to 18 March 2005.

7. The applicant underwent a medical examination on 11 February 2006 for enlistment in the Regular Army. His DD Form 2808 shows he again was found qualified for service without defect and was assigned a physical profile of 111111.

8. The applicant was honorably discharged from the National Guard on 1 March 2006 and immediately enlisted in the Regular Army on 2 March 2006.

9. The applicant's Enlisted Record Brief shows he deployed to Iraq from 20 October 2006 to 19 October 2007 and Afghanistan from 10 October 2008 to 10 March 2009.

10. The applicant's record contains a Fort Campbell Police report, dated 21 August 2009, showing a complaint of a verbal altercation between the applicant and

his wife. A second report, dated 5 September 2009, shows an offense of assault (domestic violence).

11. The applicant was counseled on 17 September 2009 for failing to complete his packing list for Air Assault School.

12. On 18 September 2009, the applicant was counseled for being dropped from Air Assault School for being more than an hour late, and for lying about his whereabouts and severity of his tardiness.

13. The applicant accepted non-judicial punishment on 27 October 2009 for willfully disobeying an order by failing to have his packing list ready for inspection and making a false statement with the intent to deceive.

14. The applicant's record contains a DA Form 3975 (Military Police (MP) Report, dated 14 December 2009, for the offense of domestic assault.

15. On 25 January 2010, the applicant was counseled for fraternization with junior Soldiers.

16. A Request for Mental Health Consultation, dated 2 February 2010, shows a psychiatric evaluation was requested for chapter action/fitness for duty based on the applicant's problem with domestic abuse, constantly being late for duty and communicating a threat.

17. The applicant completed a DD Form 2807-1 on 2 February 2010 for separation purposes. He indicated he was on Zoloft, Budesonide, and Trazodone. He indicated issues with:

- shortness of breath (with anxiety attacks) and bronchitis
- hearing loss
- arthritis, rheumatism, or bursitis, foot trouble, swollen or painful joints, and knee trouble (IED 2007)
- frequent indigestion or heartburn
- sexually transmitted disease
- adverse reaction to serum, food, insect stings or medicine
- dizziness or fainting spells, frequent or severe headache, head injury and memory loss, a period of unconsciousness or concussion (IED 2007)
- nervous trouble of any sort (anxiety) and depression or excessing worry
- habitual stammering or stuttering
- frequent trouble sleeping
- received counseling of any kind
- been evaluation or treated for a mental conditions

- attempted suicide (14 December 2009)
- used illegal drugs or abused prescription drugs

18. The applicant underwent a behavioral health evaluation on 3 February 2010 for PTSD and TBI screening. His behavior was normal, and he was fully alert and partially oriented. His mood was unremarkable. His thinking process was confused with hallucination and fair memory. He was referred for further examination due hallucinations and prior suicide attempt.

19. A Report of Medical Assessment, completed by the applicant on 2 February 2010 shows he reported his health was worse since his last examination. He indicated he was being evaluated for PTSD and had a procedure on his esophagus. He was on Zoloft and Trazodone. He indicated he was limited from working due to PTSD, TBI and his knee injury.

20. A DD Form 2808, dated 4 February 2010, shows the applicant was qualified for separation and maintained a physical profile of 111111.

21. On 22 February 2010, the applicant was counseled for failure to report for duty.

22. The applicant was counseled on 23 February 2010 advising him the requirement to repay an enlistment bonus and an Army Emergency Relief loan, totaling \$5,855.56.

23. On 25 March 2010, the applicant was notified action was initiated to separate him from the Army under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12b, for a pattern of misconduct. He acknowledged receipt the same day.

24. The applicant underwent a second behavioral health evaluation on 11 August 2010 in relation to his separation. His behavior was normal. He was fully alert and oriented. His mood unremarkable with clear thinking process, normal thought content, and good memory. He was diagnosed with adjustment disorder with mixed emotional features. He was found to have the mental capacity to understand and participate in the proceedings and was mentally responsible.

25. The applicant was discharged on 1 October 2010 under honorable conditions (general) for pattern of misconduct. His DD Form 214 shows he was discharged under the provisions of chapter 14-12 of AR 635-200 for a pattern of misconduct (Separation Code JKA and Reentry Code 3). He completed 4 years and 7 months of active service.

26. The applicant applied to the Army Discharge Review Board (ADRB) on 2 November 2011 requesting his character of service be changed to honorable, stating

he was not ready to leave the Army and he was seeking possible reinstatement. His contention at that time was the same; that his wife had contributed to his situation.

27. The ADRB considered his application on 9 May 2012 and determined the applicant did not receive an administrative separation board as required by regulation. Due to this error, his character of service was changed to honorable and reason for discharge changed to Secretarial Authority.

28. On 25 May 2012, the applicant's original DD Form 214 was voided. He was reissued a new DD Form 214 that shows he was honorably discharged in accordance with chapter 5 (Secretarial Authority) of AR 635-200 with Separation Code JFF and Reentry Code 1.

29. The applicant provided a memorandum for record, subjected: Record of Events for [the applicant], dated 26 June 2012, stating the applicant had been under investigation for engaging in sex with a minor. The investigation provided no evidence, and no charges were filed against the applicant.

30. The applicant submitted a series of applications to the ABCMR:

a. On 13 August 2013 (AR20120022644), the Board denied him relief to add State awards to his DD Form 214 and informed him that his request for award of the Purple Heart was premature. He was redirected to the U.S. Army Human Resources Command.

b. On 17 July 2020 (AR20170010234), after reviewing the application and all supporting documents, the Board determined a medical retirement was not warranted. Based upon the available documentation and the findings and recommendations of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's narrative reason for separation.

c. On 22 June 2020 (AR20190003493), the Board found the eyewitness statements, taken in the context of the applicant's service records, to be compelling evidence indicating the applicant suffered loss of consciousness from an IED explosion that met the criteria for the Purple Heart. The Board determined the applicant should be awarded the Purple Heart and it should be added to his DD Form 214.

d. On 21 April 2022 (AR20210015056), the Board reconsidered his request to change the narrative reason for his separation to medical retirement; award of the Purple Heart, to clear his record of any misconduct, and to be granted Combat Related Special Compensation (CRSC). The Board found insufficient new evidence to support a recommendation to change the Board's previous decision in this case regarding his

request for medical retirement. The Board found the evidence does not demonstrate that the applicant had a medical condition that did not meet retention standards prior to his discharge, and therefore there was no basis for referring him to the Disability Evaluation System. Based on a preponderance of evidence, the Board determined the applicant's discharge, after upgrade by the Army Discharge Review Board, is not in error or unjust.

31. The applicant provided:

a. A VA summary of benefits letter showing he is 100 percent service connected, totally and permanently disabled effective 12 April 2022.

b. A SSA benefit verification letter, stating he was found disabled and is receiving benefits.

c. A letter of support from DP discussing the applicant's situation with his ex-wife. It does not discuss the applicant's medical conditions or provide information relevant to his request.

d. A letter of support from TRS discussing the applicant's situation with his son. It does not discuss the applicant's medical conditions or provide information relevant to his request.

e. A letter of support from AB discussing the applicant's situation with his ex-wife. It does not discuss the applicant's medical conditions or provide information relevant to his request.

32. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR requesting, in essence, referral to the Disability Evaluation System and a medical retirement for PTSD and TBI (traumatic brain injury).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows the former infantryman entered the regular Army on 3 March 2006 and was honorably discharged on 1 October 2010 under the separation authority provided in paragraph 5-3 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Secretarial Authority. The reenlistment code of 1 means he was fully qualified to reenter the Army. The DD 214 shows he served in both Iraq and Afghanistan from 10 October 2008 thru 10 March 2009. He was awarded a Combat Infantryman Badge.

d. This request was denied by the ABCMR on 17 July 2020 (AR20170010234) and again by the ABCMR on 22 April 2022. Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. Apparently new evidence is a discharge summary showing the applicant was admitted to a civilian facility from 14-23 December 2009 after admitting to having attempted suicide when he took eight (8) Perocets. His discharge diagnosis was Adjustment Disorder with Depressed Mood."

f. The remaining new medical evidence are non-contemporaneous Veterans Hospital Administration documents showing he has cervical spine arthritis (2019), avascular necrosis of the right femoral head (2014), and a small vascular anomaly on MRI of the Brain (2012)

g. The prior medical advisory addressed the applicant's PTSD and TBI. A review of the EMR and additional administrative documents confirmed their findings and analysis.

h. The EMR shows the applicant was seen by mental health services numerous times starting on 25 August 2009. While most encounters were related to family concerns (diagnosed as "Marital Problems," "Partner Relational Problem," or "Other Specified Life circumstances"), the applicant was diagnosed with "Anxiety Disorder NOS" (not otherwise specified) and treated with a combination of therapy and sertraline. This diagnosis was later changed to adjustment disorder with mixed emotional features. There is no evidence he was placed on a duty limiting physical profile as it appears he was always released without limitations.

i. His final behavioral health encounter occurred on 1 October 2010 and was part of his out-processing. Following the evaluation, the provider opined: NO PSYCHIATRIC DIAGNOSIS OR CONDITION ON AXIS I (New) : History of anxiety, adjustment disorder, alcohol dependence."

j. The EMR also shows the applicant was evaluated and treated for migraine headaches in 2010. A brain MRI and electroencephalogram (EEG) were both normal.

k. There remains insufficient probative evidence the applicant had one or more medical conditions would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

l. JLV shows the VA has awarded him multiple service-connected disability ratings, including one for PTSD (100%), migraine headaches (30%), and traumatic brain disease (10%). However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. It is the opinion of the ARBA medical advisor that a referral to his case to the DES remains unwarranted.

BOARD DISCUSSION:

1. The Board determined the evidence of record 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.

2. 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, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was discharged from active duty due to a pattern of misconduct (disobeying orders, making a false official statement; failing to report, failing to obey a military protective order, failing Air Assault School; and being picked up by the MPs on three separate occasions for domestic assault). He received a general discharge. However, because his chain of command did not offer him an administrative separation board, this constituted a prejudicial error to his rights, making his discharge improper, and warranting the ADRB to upgrade his character of service to honorable and change the narrative reason for the discharge to Secretarial Authority.

b. The Board reviewed the current application regarding medical retirement and agreed with the medical reviewers finding that there is insufficient probative evidence the applicant had one or more medical conditions would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, the Board

determined there was no cause for referral to the Disability Evaluation System (DES) then, and that a referral to his case to the DES now remains unwarranted.

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 to amend the decision of the ABCMR set forth in Dockets Number:

- AR20170010234 on 17 July 2020
- AR20210015056 on 21 April 2022.

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

REFERENCES:

1. 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 (Disability 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 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:

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//