

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 April 2024

DOCKET NUMBER: AR20230010000

APPLICANT REQUESTS:

- retirement due to service-incurred medical disabilities
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) My HealtheVet Personal Information Report
- VA rating decision and verification of service-connected disabilities
- 40 pages of medical records

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 asking the Board to review his Department of Defense (DoD) and VA disability in order to grant retirement and Tricare status. He was a dedicated and patriotic Soldier who was more than willing to commit 20 years to the U.S. Army. Unfortunately, after his deployment to Iraq, he began having multiple symptoms and conditions that began during deployment that affected his entire life, thereafter, precluding him from finishing his time in service. In review of his service records, he was advised that a medical board should have been completed while he was still on active duty. This request is an attempt to rectify this unfortunate situation.

b. When his symptoms began immediately upon return from deployment, he was ashamed and confused. He could not ask for help nor explain his symptoms, thoughts, triggers, or behaviors to his command or medical staff because he did not understand them. He believes that if these were to be treated in time, the damage could have been

less severe, and he would have been able to complete his time in service. He would have committed 20 years to the U.S. Army, as he was proud of his job, and he was good at what he did. He was an outstanding Soldier who continued to progress consistently. He shouldered the burden for his Soldiers, and he did so with pride. He believed in himself and his Soldiers. Mostly, he believed in our country and the U.S. Army. Unfortunately, his symptoms were left untreated, and it has now become a chronic disability. He has lost hope.

c. During the review of his records, the Board will notice he experienced numerous struggles with mental health following deployment, including anxiety, negative thoughts, hypervigilance, terror, fear, anger, severe depression, and severe post-traumatic stress disorder (PTSD). At this point, he was unable to continue with his military career because his symptoms were so severe. Desperately, he searched for a way to numb the pain, which led me to self-medicate with alcohol in order to endure the struggle. Drinking only made problems worse. Drinking in combination with the severity of his symptoms, affected his family, and unfortunately, they were unable to understand or continue caring for him.

d. His wife divorced him and took full custody of their daughter. He was left alone, and his symptoms worsened. Today, his family has decided they cannot be in his life due to his extreme symptomatology. He has been abandoned by everyone close to him. To his credit, he quit drinking nine years later and has not had a drop of alcohol since February 2015. This shows how hard he has tried to get better. Another setback occurred after his active duty service during his employment with the federal government. Despite his conditions, he was an outstanding federal employee. He was hanging on by a thread but used all of his willpower to get through each day. Eventually he could not keep the symptoms at bay, and he collapsed while at work. He was not offered reasonable accommodations but forced to medically retire from his federal job. Since that time, he has thrown himself into full-time treatment in an attempt to get his life back and recover.

e. Part of his recovery would include correcting the error in his records regarding his military service or discharge status. Since his discharge, he has been living as a total and permanent disabled veteran. Recently, he learned about the possibility of being a medical board candidate. During the process of separating from active duty, his chain of command never informed him of this option, which was a major disservice. If he had been given the opportunity to request a medical board, he believes it would have been approved. Regardless of the outcome, he believes this would help to validate his pride in service to the Nation and assist him with medical coverage through Tricare.

f. He struggles with episodes not only on a daily basis, but on a minute-to-minute basis. He has attended over 20 in-patient psychiatric hospital stays and intensive day treatment programs. He receives regular psychiatric care, consistent counseling within

the VA, and treatment within the private sector at his expense. He is a consistent and committed patient. This all began after his deployment to Iraq. While in Iraq, he was able to help many wounded Soldiers. He dealt with dead bodies, blood, combat, terror and bloody/dismembered body parts on a daily basis. He soon discovered that vomiting would help him cope with some of the trauma he was experiencing . Unfortunately, it has now become the way he copes today. It has become nearly impossible for him to stop vomiting. He vomits multiple times per day and write thousands of pages of notes per week to resolve all of these concerns, trying to fix his life. He placed a tent in his basement where he sleeps on the floor and spends most of the day. He has tried to leave the tent but cannot find a way to feel safe in any other environment. He realized this is not normal behavior, but he cannot figure out how to feel safe otherwise. It is overwhelming and frustrating not being able to stop this self-destruction.

g. Despite how hard he has attempted to improve, he has experienced little improvement. He still has multiple episodes and attacks per day, constant chest pain, followed by deep depressive episodes where he is unable to leave the tent. He thought he could handle all of this and that with the help from the VA he could get better. He realizes now that he is 50 years old and things are only getting worse. Treatment over the years has been helpful but it is still lacking. He is very committed to treatment and rarely misses a scheduled appointment. After therapy sessions, he spends hours a day attempting treatment recommendations and using personal finances to attempt additional treatments. However, he needs more than he is receiving. His conditions require constant management. He believes that more frequent sessions with the help of Tricare coverage (rather than paying for providers out of pocket) would help him carry this burden and lead him home to safety.

h. If he were to receive medical retirement through Tricare, this option would help him tremendously; both financially and emotionally. It would help offset the financial burden he experiences by helping pay providers for continued constant care. More importantly, it would help him feel that his time in service was validated and had purpose. That he fulfilled his destiny with meaning and purpose. It will motivate and encourage him towards the path of recovery. He will feel that his time was worth the sacrifices he made. He is motivated to continue working on his mental health conditions. Please consider his story and what this revision would mean to him. While he uses the VA regularly, granting him DoD retirement status would help restore his pride. Additionally, this status would expand healthcare options for him.

i. He seems to fall into obsessive thoughts, compulsive conduct, bulimic rituals that lead to general weakness and bed rest, post-traumatic stress behavior, depressive episodes, panic/terror episodes, somatization (e.g. chest pain, palpitations, dizziness, headaches), anxiety (e.g. teeth grinding and pressing, and even hair pulling) that deeply affect his thought process and consume him, as well as impacting his physical, interpersonal, family, social, work, and academic levels in a very negative way. His

experiences as a combat veteran deeply traumatized something within him. He was the liaison officer for the 101st Airborne Division in Iraq from 2005-2006. His mission was to track all the wounded Soldiers injured in combat that were medically evacuated to Balad Air Base, where he was stationed.

j. He was constantly exposed to mortal threats and daily mortar attacks and had prolonged exposure to his fellow Soldier's mutilated/dead bodies/carnage. His wife was pregnant and the only time out of combat was to witness the birth of his daughter. He returned straight back to war. War/horror exposure and its severe critical tension exacerbated something in him which has traumatized him permanently. He thought he had it all under control, but he was wrong. He was told this is typical of his military occupational specialty (MOS) series 68 (medical), as they always took care of the Soldiers, but they never took care of themselves. He believes that this was the case.

k. His episodes increased, which eventually led to divorce and prevented him from reenlisting. He became an alcoholic from 2006 to 2015, as he used it as self-medication to calm the "monster." He would blackout constantly. He was functional under the influence but in 2013, while at work, his mind and body finally gave up and he collapsed. He had to inevitably confront his demons and it has never been the same. He immediately sought medical treatment as he believed it was a physical condition (i.e., cardiac problems). After a long journey of trials and errors, it has become his understanding that the real cause is a mental condition. Inner conflict and doubt plague him as he exposes his shame and his invisible wounds. After years of research, therapy, and treatment, he can admit that his limitations are very real, and he cannot deny the magnitude of them. Through working with dozens of providers, he has learned that these conditions are chronic:

(1) He constantly battles intrusive thoughts, combat and non-combat related, which cause constant pain, struggle, suffering, panic, desperation, discomfort, aggressiveness. Catastrophic thoughts are now part of his personality.

(2) His mind and nerves betray him, and he is unable to handle many responsibilities in life efficiently.

(3) Everything has become a threat and he cannot stand any more attacks, injuries, or losses .

(4) His nerve-wrecking condition is time and energy consuming and it negatively affects his thinking, conduct, eating, sleeping, learning, and concentration abilities. He believes it has robbed him of his military career, marriage, family and his job.

(5) The severity of his episodes and his mental limitations are real, chronic and incapacitating, rendering him unemployable.

(6) He is also proud to carry this burden, since he did make a difference upon helping Soldiers, completed the mission and helped this great Nation.

(7) This is his daily cycle. Overwhelmed becomes threatened, symptoms rise and overtake him, and eventually it becomes self-destructive.

3. The applicant enlisted in the Regular Army on 2 October 2003 for a period of four years. He was awarded MOS 68G (Patient Administration Specialist) upon completion of initial entry training.

4. The applicant's record shows he served in Iraq from 28 September 2005 to 3 September 2006.

5. The applicant's Enlisted Record Brief shows he was promoted to the rank of sergeant/E-5 effective 1 June 2007.

6. The applicant's Noncommissioned Officer Evaluation Report covering the period 1 June – 30 September 2007 does not show he was unable to perform his military duties due to a physical disability.

7. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty and transferred to the U.S. Army Reserve (USAR) on 1 October 2007 by reason of completion of required active service. The DD Form 214 also shows he completed four years of active service.

8. The applicant provided VA documents showing he is receiving service-connected disability compensation, with a disability rating of 100%, for the following conditions:

- obsessive compulsive disorder with bulimia nervosa (also claimed as anxiety, chest pain, panic attacks, PTSD, eating disorder, depression, fear of death, cannot leave the house, paralization, debilitating effect, palpitations, general discomfort)
- right and left knees patellofemoral pain syndrome, claimed as muscle contraction and joint pain
- tinnitus
- tension headaches

9. 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.

MEDICAL REVIEW:

1. The applicant is requesting retirement due to service-incurred medical disabilities.
2. 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:
 - a. The applicant enlisted in the Regular Army on 2 October 2003.
 - b. The applicant's record shows he served in Iraq from 28 September 2005 to 3 September 2006.
 - c. The applicant's Noncommissioned Officer Evaluation Report covering the period 1 June – 30 September 2007 does not show he was unable to perform his military duties due to a physical disability.
 - d. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty and transferred to the U.S. Army Reserve (USAR) on 1 October 2007 by reason of completion of required active service. The DD Form 214 also shows he completed four years of active service.
3. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR ROP, VA rating decision, and medical records. 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.
4. The applicant states he is asking the Board to review his Department of Defense (DoD) and VA disability in order to grant retirement and Tricare status. He was a dedicated and patriotic Soldier who was more than willing to commit 20 years to the U.S. Army. Unfortunately, after his deployment to Iraq, he began having multiple symptoms and conditions that began during deployment that affected his entire life, thereafter, precluding him from finishing his time in service. In review of his service records, he was advised that a medical board should have been completed while he was still on active duty. This request is an attempt to rectify this unfortunate situation.
5. Contrary to the applicant's statement of his mental health condition precluding him from finishing his time in service, the service record shows he successfully completed his required active service enlistment. In addition, the applicant's Noncommissioned

Officer Evaluation Report covering the period 1 June – 30 September 2007 indicates he was successful in all areas rated and excelled in certain areas being rated as among the best. During his time in service, the applicant participated in a BH encounter on 17 January 2007 where he reported increased anxiety due to the demands of the military and multi-tasking. He reported that stress caused him to become "cranky and upset" and then binge and purge. He further reported that during his deployment he was prescribed Klonopin as needed for his anxious symptoms. Applicant was referred to a stress management class and completed his military service soon after.

6. The VA electronic record indicates the applicant is currently 100% service connected for Neurosis, Obsessive Compulsive Disorder effective 27 June 2017. The VA record indicates a longstanding history of mental health treatment starting in 2014. The applicant is diagnosed with Obsessive Compulsive Disorder, along with trauma related symptomatology and characterological personality traits. The applicant has a history of psychiatric hospitalizations and day treatment/partial hospital participation.

7. 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 service connected for Obsessive Compulsive Disorder, 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 obsessive compulsive disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of obsessive compulsive disorder 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. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

8. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

b. Did the condition exist or experience occur during military service? Not applicable.

c. Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's request for a personal appearance hearing. In this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. A personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
3. Although the VA diagnosed and service connected the applicant for Obsessive Compulsive Disorder, the VA does not have the authority to determine whether a medical condition met or failed Army retention criteria or if it was a ratable condition. Additionally, an in-service diagnosis of obsessive compulsive disorder is not automatically unfitting nor would it automatically result in medical separation processing.
4. The Board concurs with the opinion of the ARBA Medical Advisor; there is insufficient evidence to support a referral to the IDES process at this time. The documentation available for review showed no indication an omission or error occurred that would warrant a referral to the IDES process.

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.

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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, 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. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. The regulation in effect at the time states:

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, expiration term of service, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

4. 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.
5. Title 38, Code of Federal Regulations, Part IV is the VA 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/her 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.
6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//