ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230011021

APPLICANT REQUESTS: reconsideration of his previous request for:

- a medical retirement
- award of the Combat Action Badge

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement, 15 July 2023
- Physician Letter, LB, 2 June 2009
- Psychology Note, 24 February 2010, pages 49-50
- Podiatry Consult Results, 30 March 2010
- Post-Traumatic Stress Disorder (PTSD) Consult Results, 22 April 2010, pages 19-23
- Extract, Army Regulation 40-501 (Standards of Medical Fitness), page 19
- Physician Letter, NH, 1 June 2010
- Sleep Log, 6 July 2010
- Extract Army Regulation 40-501, pages 27-28
- Three DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service)
- Orders D-08-212767, U.S. Army Human Resources Command, 28 August 2012
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings Docket Number AR20200001199, 26 February 2021
- Article, “What is the Global Assessment of Functioning (GAF) Scale?,” 15 July 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20200001199 on 26 February 2021.

2. The applicant provides new evidence or argument, which warrants consideration by the Board.

3. The Board will not consider award of the Combat Action Badge in the applicant's request, as there is no evidence the applicant exhausted his administrative remedies by first applying to the U.S. Army Human Resources Command (AHRC), the agency with the authority to award the Combat Action Badge to eligible Veterans retroactive to 18 September 2001.

4. The applicant states, in effect, his bilateral foot condition, chronic insomnia, and chronic mental condition did not meet Army Regulation 40-501.

a. Medical evidence from Dr. LB, DPM and Dr. JP showed posterior tibial tenosynovitis and plantar fasciitis aggravated by overall pes planus foot structure deformity. Based on the report it shows that he would meet the Army regulation standard. Army Regulation 40-501 states, in part, the criteria for feet.

(1) Pes planus, when symptomatic, moderately severe, with pronation on weight-bearing which prevents the wearing of military footwear, or when associated with vascular changes.

(2) Pes cavus when moderately severe, with moderately severe discomfort on prolonged standing and walking, metatarsalgia, and which prevents the wearing of military footwear.

(3) Plantar fasciitis or heel spur syndrome that is refractory to medical or surgical treatment, or prevents the wearing of military footwear, meet the definition of a disqualifying medical condition or physical defect as in paragraph 3-1.

b. Medical evidence from Dr. NH shows he was in sleep group therapy for 4 weeks. It shows his sleep log from 30 June 2010 to 6 July 2010. Based on the report it shows that he would meet the Army regulation standard. Army Regulation 40-501 states criteria for sleep disorders. Causes for referral to the Disability Evaluation System (DES) are as follows: Chronic insomnia disorder. Insomnia is defined as difficulty initiating sleep, maintaining sleep, or waking earlier than desired which occurs at least 3 nights per week for at least 3 months with associated daytime impairment that can include symptoms of fatigue, mood disturbance/irritability, daytime sleepiness, decreased motivation, or increased propensity for errors/accidents. Insomnia which does not respond to cognitive behavioral therapy and/or requires medications to promote sleep (defined as using any medication with sedative properties specifically for sleep up to or more than three times a week) over 6 consecutive months and despite or due to therapy meets the definition of a disqualifying medical condition or physical defect as in paragraph 3-1 and requires a referral to the DES.

c. Medical evidence from Dr. NAB and Dr. PP shows a post-traumatic stress disorder (PTSD) diagnosis with treatment plan, a prescribed medication for anti-depressant for Citalopram and Global Assessment of Functioning (GAF) score of 51. Based on the report it shows that he would meet the Army regulation standard. Army Regulation 40-501 states the criteria for learning, psychiatric, and behavioral health diagnostic concepts and terms used in this section are in consonance with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The minimum behavioral health evaluation will include evaluation for primary behavioral health disorders and medical conditions by a behavioral health provider which can result in significant symptoms. The causes for referral to the DES are as follows:

(1) Disorders with psychotic features. For example, delusions, hallucinations, disorganized thinking, or speech, grossly disorganized or abnormal motor behavior, or negative symptoms, not secondary to intoxication, infections, toxic, or other identifiable medical causes resulting in interference with social adjustment or with duty performance.

(2) Bipolar and depressive disorders. (a) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization. (b) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. (c) Any history of a manic episode, not secondary to intoxication, infections, toxic, or other identifiable medical causes.

(3) Anxiety, obsessive-compulsive, dissociative, somatic symptom, and related disorders (excluding factitious disorder), and trauma and stressor related disorders. (a) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization. (b) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment.

(4) Chronic adjustment disorder. Referral to a DES will occur when the Soldier exhibits persistent or recurring symptoms meeting the criteria detailed in the current edition of the DSM-5. These symptoms must be directly caused by exposure to an enduring stressor and must last longer than 6 months. The causes for referral to DES for chronic adjustment disorder are: (a) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization. (b) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment.

5. The applicant enlisted in the Army National Guard on 23 August 2004. He successfully completed training and he was awarded military occupational specialty 88M (Motor Transport Operator).

6. Evidence shows he served in Iraq from 15 March 2008 to 9 December 2008 .

7. The applicant provides:

a. Letter from physician LB dated 2 June 2009, who states, in effect, findings are consistent with posterior tibial tenosynovitis and plantar fasciitis aggravated by his overall pes planus foot structure deformity. Instituted a comprehensive treatment plan including bracing of his right rearfoot and oral anti-inflammatory medications. Instructed on home care. Hopeful techniques will provide relief. Understands custom-made prescription functional orthotics may be necessary for long-term control of abnormal foot motions.

b. Psychology Note dated 24 February 2010, assessing the applicant's behavioral health needs per reported history of PTSD. Noted after serving a 9 month deployment to Iraq in December 2008, reported feeling socially withdrawn from friends and family. Uncomfortable in crowded environments. Experiencing intrusive thoughts and nightmares and distressing memories from Iraq. Recurring dreams of getting shot at and almost killed. Loud noises trigger flashbacks. A PLC-M was administered and scored 53. Stated he fell off a truck during a mission losing consciousness for a few seconds. Expressed interest in individual psychotherapy in a PTSD outpatient program.

c. Podiatry consultation results dated 30 March 2010, in which the applicant related he tried over-the-counter arch supports and had been prescribed custom orthotics in the past, but had difficulty wearing them due to comfort, fit and size of shoe gear. One injection in right and left heal over a year ago. Also used a night splint. Denied pain when first standing up in the morning or other symptoms consistent with dyskinesia. Pain when standing in one place for a long time or increased walking. Will get numbness in right foot, discomfort greater right than left foot. Assessed with tarsal tunnel bilaterally. Informed consent obtained for injection into the posterior tibial nerves, at the side of the porta pedis, on both right and left foot. Requested custom-molded orthotics. Follow up in 6 weeks.

d. PTSD consult results dated 22 April 2010; applicant complained of still having problems. Diagnostic impression: Axis I: PTSD; Axis II: deferred; Axis III: musculoskeletal pain; Axis IV: work related, school related, relationship stressors; Axis V: GAF 51.

e. Letter from physician NH dated 1 June 2010, informing the applicant of the dates, times, and locations of a Sleep Group for PTSD. Provided a Sleep Log for 30 June to 6 July 2010.

8. Upon reaching his expiration term of service, the Army National Guard honorably discharged him and transferred him to the U.S. Army Reserve (USAR). On 28 August 2012, he was honorably discharged from the USAR.

9. The applicant previously provided a Department of Veterans Affairs (VA) Rating Decision dated 19 June 2015, which showed a combined evaluation for compensation at 80% from 30 October 2009, 90% from 8 December 2010, and 100% from 11 May 2012 for numerous service-connected disabilities. However, any disability rating action by the VA does not demonstrate an error or injustice on the Army's part. Operating under different laws and their own policies, the VA does not have the authority or the responsibility for determining medical unfitness for military service; only the Army can make that determination. The VA may award ratings because of a medical condition related to service (service-connected) that affects the individual's civilian employability.

10. On 26 February 2021, in response to his petition for a medical retirement, and after reviewing the application and all supporting documents, the Army found relief is not warranted. The Board concurred with the conclusion of the ARBA Medical Advisory that the evidence is insufficient to support a conclusion that the applicant had conditions that warranted his referral to the DES to determine if he should be separated or retired due to a disability incurred in the line of duty. Based on a preponderance of evidence, the Board determined the applicant's discharge upon reaching his ETS was not in error or unjust.

11. The applicant also provides:

a. Article, “What is the GAF Scale.” Article notes scale is used to rate how serious a mental illness may be. From the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, a score between 51-60 indicated moderate symptoms (e.g., flat, and circumstantial speech, occasional panic attacks) or moderate difficulty in social occupational, or social functioning (e.g., few friends, conflicts with workers).

b. Various extracts from Army Regulation 40-501. Three DD Forms 214, NGB Form 22, discharge orders and his two previous Record of Proceedings.

12. MEDICAL REVIEW:

a. 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). This is a request for reconsideration of the previous requests that were denied AR20220004593 (board date 12Jan2023); AR20200001199 board date 26Feb2021). In this most recent application dated 21Jul2023, the applicant requests to be medically retired or provided a severance pay. He maintains that his bilateral foot condition, chronic insomnia and chronic mental health conditions did not meet retentions standards. It is noted that the new evidence presented and not readily available in the electronic record, was a Sleep Log from 30June to 06July 2010.

b. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army National Guard 23Aug2004. He was in active service 20080105 to 20091029. His MOS was 88M10, Motor Transport Operator. He was deployed in Iraq 20080315 to 20081209. He was released from active duty due to completion of required active service under provisions of AR 635-200, chapter 4. He was discharged from the Army National Guard 22Aug2010 due to expiration of service, and he was transferred to USAR Control Group. He was discharged from USAR effective 28Aug2012. His service was characterized as honorable.

c. Bilateral Foot Condition. The applicant's 23Aug2004 enlistment exam did not show foot abnormalities. Several months after beginning his tour, in August 2008 the applicant was seen for complaints of bilateral foot/heel pain with walking. There was no history of trauma. He was diagnosed with Congenital Pes Planus (Flat Feet) and Plantar Fasciitis. He was treated with NSAIDs and rest as needed and referred to physical therapy for bilateral arch supports for boots/running shoes. NSAIDs, rest prn. He returned on 09Feb2009, and he was given a 30-day soft shoe profile. He reported continued foot pain with standing, walking, and climbing stairs (27Feb2009 Podiatry Eisenhower AMC). He was unable to wear the custom orthotics he was given because they hurt his feet. He was given Sher inserts and night splints and a profile. He was advised recovery may take 2-3 months. His final visit with podiatry while on active orders was in June 2009 (02Jun2009 LRAFB 314th Medical Group). At that time, he reported continued pain in his heel and arch of both feet. The podiatrist diagnosed Posterior Tibial Tenosynovitis and Plantar Fasciitis aggravated by his Pes Planus condition and devised a comprehensive treatment plan including custom made prescription orthotic for bracing the right rear foot, and oral anti-inflammatory medication. While in WTU he participated in physical therapy July and August 2009 for Plantar Fasciitis. The pain was documented as 2-3/10. He returned 6 months later for purposes of VA C&P evaluation in February 2010. Three years after discharge from USAR, the 19Jun2015 VA Rating Decision showed the following pertinent ratings which were effective 30Oct2009: Achilles Tendonitis, Right Foot (10%); and Achilles Tendonitis, Left Foot (10%); Bilateral Plantar Fasciitis (10%).

d. Chronic Insomnia. While on active orders, the applicant reported prior trials of Ambien and Trazadone for sleep without benefit (30Mar2009 Community Care Center). His Total Epworth Sleepiness score for likelihood of falling asleep during the day was 3 out of 24 which was suggestive that a sleep abnormally was unlikely (17Apr2009 Sleep Disorder Clinic note). The cause of his sleep condition was considered to be multifactorial: The condition had onset while he was deployed in a combat zone; and migraine pain (occasionally) and pain in shoulder and neck (more regularly) interrupted his sleep. While in service, the applicant was not diagnosed with a standalone sleep disorder condition. His sleep issues were subsumed under his mental health condition detailed below.

e. Chronic Mental Health condition. The applicant was first seen by BH (behavioral health) services In February 2009 after having been referred as a result of positive PTSD and TBI screens during in-processing WTU BH assessment. *He had entered the WTU for headaches.* The applicant reported the following life stressors: While in Iraq his grandmother had a stroke and then passed away shortly after his return. His long-term girlfriend broke up with him. While deployed he worked as a tower guard, gate guard, escort, and Quick Reaction Force. When he returned from deployment, he noted sleep disturbance (nightmares); and problems adjusting after deployment. He reported feeling anger towards persons of middle eastern decent. He also reported that he had a fear of large crowds that began prior to his entering the military but worsened since his deployment (05May2009 Psychology Clinic Eisenhower AMC). While in WTU, he attended college courses initially online then switched to online classes due to not tolerating being around others. He anticipated completing an associate degree in computer information systems in August 2010. He was enrolled in work study program with the IT program, 5 hours daily, 5 days week which he had been doing prior to deployment. While still in service, he was initially diagnosed with Adjustment Disorder with Mixed Emotional Features, and later he was diagnosed with PTSD. His PCL-M score was 53 on 24Feb2010. He participated in PTSD therapy while in WTU which included individual therapy during his time there; and a 4-session PTSD Sleep Group from June to July 2010 learning coping strategies and grounding techniques for his nightmares. Five months after discharge from the Army National Guard, in April 2011 he was going to school part-time and working as a file clerk at the regional office. He reported trouble controlling his anger. He was referred for therapy on 2 more occasions, but he did not participate in regular therapy while in the Army. When he returned for VA C&P evaluation, he reported being employed at the VA primarily collecting papers for shredding (26Apr2014 Review PTSD DBQ). Combat stressor: While patrolling the road outside Camp Taji, he was ordered to check a pothole for an IED. Although the hole was empty the event was very stressful to him— “I thought my life was over”. Current diagnoses: PTSD; and Alcohol Use Disorder, Moderate. He denied a history of using medications for control of his PTSD symptoms. The examiner assessed that the level of occupational and social impairment attributable to his PTSD was due to mild or transient symptoms, which decreased work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by medication (10% disability level). The 19Jun2015 VA Rating Decision showed the VA rated PTSD at 30% effective 30Oct2009.

f. The 17Feb2009 preemployment physical (Occupational Health Clinic Eisenhower AMC) did not reveal any complaints. 22Sep2010 Enlisted Record Brief showed PULHES 111111. The medical review did not show a permanent level 3 physical profile for any condition. The applicant’s bilateral foot condition appeared mild in severity and responsive to conservative treatment measures while he was in service. Likewise, the applicant’s PTSD condition was not associated with suicide ideation/attempts, psychosis, mania, frequent absence from work, psychiatric emergency services or

hospitalization. Despite symptoms, his PTSD condition did not require modification of his work environment or psychotropic medication. The applicant was able to continue the same academic and occupational pursuits pre and post service. Based on records available for review, evidence was insufficient to support the applicant had a condition which failed medical retention standards. Referral for medical discharge processing is not warranted.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. Upon review of the applicant’s petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition which failed medical retention standards; therefore, referral of his case to the Disability Evaluation System (DES) is not warranted. The Board noted the Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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 amendment of the ABCMR decision rendered in Docket Number AR20200001199 on 26 February 2021.

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. National Guard Regulation 600-200 (Enlisted Personnel Management), dated 31 July 2009 establishes standards, policies, and procedures for the management of the ARNG and the ARNG of the United States (ARNGUS) enlisted Soldiers in the functional areas of classification and reclassification, personnel management, assignment, and transfer, including interstate transfer, special duty assignment pay, enlisted separations, and Command Sergeant Major program. Paragraph 6-35 (Separation/Discharge from State ARNG and/or Reserve of the Army) paragraph 6-35l (8) states commanders who suspect that a Soldier may not be medically qualified for retention will direct the Soldier to report for a complete medical examination per Army Regulation 40-501 (Standards of Medical Fitness). Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or ineligible to reclassify into a new military occupational specialty.

2. Army Regulation 40-501 governs medical fitness standards for enlistment, induction, appointment, retention, separation, and retirement.

a. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) provides guidance on the various medical conditions and physical defects that may render a Soldier unfit for further military service, and that fall below the standards required for service. These medical conditions and physical defects, individually or in combination, are those that: significantly limit or interfere with the Soldier's performance of their duties; may compromise or aggravate the Soldier's health or well-being if the Soldier were to remain in the military service; may compromise the health or well-being of other Soldiers; or may prejudice the best interests of the government if the individual Soldier were to remain in the military service.

b. Chapter 10 (ARNG) provides guidance on the basic policies, standards, and procedures for medical examinations and physical standards for ARNG and ARNGUS Soldiers.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), establishes the Army physical 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. It provides for Medical Evaluation Boards (MEBs), which are convened to document a Soldier's medical status and duty limitations insofar as duty is effected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in chapter 3 of Army Regulation 40-501. If the MEB

determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a Physical Evaluation Board. The disabling condition must have been incurred or aggravated while the Soldier was entitled to basic pay.

a. Paragraph 3-1 provides that 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 office, rank, grade or rating. The Army must find that a Solider is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 3-2b provides for retirement or separation from active service. This provision of regulation states that 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service. The regulation also states that, when a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement creates a presumption that the Soldier is fit.

4. Title 10, U.S. Code, section 1201 (10 USC 1201), provides for the physical disability retirement of a member who has at least 20 years of qualifying service or a disability rated at least 30 percent.

5. Title 10, U.S. Code, section 1203 (10 USC 1203), provides for the physical disability separation with severance pay of a member who has less than 20 years of qualifying service and a disability rated less than 30 percent.

6. Title 10, U.S. Code, Section 12731a, enacted the early qualification for retired pay at age 60 to reduce the number of service members in certain grades who possess certain skills and for service members found medically disqualified for retention in the USAR on or after 5 October 1994. Under this provision, service members who complete at least 15 but less than 20 years of qualifying service and are deemed excess to the needs of the service or are medically disqualified for retention are eligible to receive retired pay at age 60. The amount of retired pay is based on the total number of qualifying years of service at time of removal rather than the 20 years normally required. Only Soldiers who transfer to the Retired Reserve as a result of the medical disqualification are entitled to receive this benefit.

7. Title 38, U.S. Code, sections 1110 (10 USC 1110) and 1131 (10 USC 1131), permit the VA to award compensation for disabilities which were incurred in or aggravated by

active military service. However, an award of a higher VA rating does not establish an error or injustice in the Army rating. The Army rates only conditions determined to be physically unfitting at the time of discharge that 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 awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. 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. However, these changes do not call into question the application of the fitness standards and the disability ratings assigned by proper military medical authorities during the applicant's processing through the DES.

8. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//