

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230011731

APPLICANT REQUESTS: through counsel,

- reconsideration of his prior request for physical disability retirement
- as a new request, award of combat-related special compensation (CRSC)

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- partial Statement for Enlistment, dated 7 October 2004
- DA Form 5691-R (Request for Reserve Component Assignment Orders), dated 18 September 2007
- partial DA Form 3540-R (Certificate and Acknowledgement of U.S. Army Reserve (USAR) Service Requirements and Methods of Fulfillment)
- 6th Transportation Battalion (Truck) Permanent Orders 289-21, dated 16 October 2007
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 27 October 2007
- DA Form 3286 (Statement of Understanding), dated 23 September 2010
- DA Form 3286 (Statement for Enlistment), dated 28 April 2011
- numerous Medical Record documents, dated between 25 October 2013 – 4 February 2014
- Headquarters III Corps and Fort Hood Orders 023-0126, dated 23 January 2014
- Polysomnogram Report, dated 31 March 2014
- Titration Report, dated 8 April 2014
- DD Form 214, covering the period ending 27 April 2014
- Enlisted Record Brief (ERB), dated 29 April 2014
- Department of Veterans Affairs (VA) letter, dated 5 February 2021
- VA Health Summary (Continuity of Care Document), dated 30 January 2022
- numerous Progress Notes, dated between 27 June 2023 – 30 June 2023
- Discharge Summary, dated 30 June 2023
- VA Health Summary (Continuity of Care Document), dated 5 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 Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210015682 on 3 August 2022.

2. Counsel states:

a. The applicant respectfully requests that a Physical Evaluation Board (PEB) convene to determine if he should have been medically retired from the U.S. Army and obtain combat-related special compensation benefits.

b. The applicant entered the U.S. Army on 28 October 2004. See Exhibit 1. The applicant enlisted for 8 years into the U.S. Army Reserve (USAR), 3 years of which were to be served in the Regular component in the Military Occupational Specialty (MOS) 88H (Cargo Specialist). See Exhibits 2 & 3. The applicant served in a designated imminent danger pay area between 1 September 2005 to 15 August 2007 when he was deployed to Iraq. Exhibit 1. The applicant received the Army Commendation Medal, National Defense Service Medal, Global War on Terrorism Service Medal, and Iraq Campaign Medal, among others at the close of his active duty service in October 2007. The applicant was further awarded an Army Good Conduct Medal on 16 October 2007, for his service from 28 October 2004 to 27 October 2007. See Exhibit 4. The Applicant was separated honorably for "Completion of Required Active Service" on 27 October 2007, and assigned to Fort Buchanan, Puerto Rico. Exhibit 1. He was assigned to Fort Buchanan to complete the remainder of his 8 years of service with the USAR. See Exhibit 5.

c. On 23 September 2010, the applicant agreed to enlist and report to Atlanta Military Entrance Processing Station (MEPS) in MOS 13M (Multiple Launch Rocket System (MLRS) Crewmember) for an additional 3 years. See Exhibit 6. The applicant enlisted on 28 April 2011. See Exhibit 7. The applicant then served at Camp Stanley in South Korea between 25 July 2011 and 17 July 2012. See Exhibit 8. The applicant was transferred to Fort Hood, TX, and remained there until the initiation of the separation process in January 2014. See Exhibit 9. The applicant was separated on 27 April 2014, with an honorable character of service and a narrative reason for separation of completion of required active service. See Exhibit 10. The applicant separated having attained a second Army Good Conduct Medal, Korean Defense Service Medal and a Noncommissioned Officer (NCO) Professional Development Ribbon. Exhibit 10.

d. Prior to separation from the service, the applicant received medical attention for post-traumatic stress disorder (PTSD), chronic PTSD, hypersomnia, and insomnia. His medical records show a "PCL-S" evaluation on 25 October 2013, which found the Applicant "'MEETS criteria for PTSD diagnosis." See Exhibit 11. The applicant reported

to the Carl R Darnall Medical Center in Fort Hood, TX, on 18 November 2013, for a trauma interview. See Exhibit 12. The appointment report states the applicant had been diagnosed with "Chronic Post-Traumatic Stress Disorder." Exhibit 12. The psychologist conducting the interview reported the applicant's "index trauma was related to an improvised explosive device (IED) blast that killed his interpreter on his first deployment." The plan established by the appointment was scheduling cognitive processing therapy (CPT) for the applicant for further treatment. The applicant attended twelve therapy sessions between 13 December 2013 and 4 February 2014, to limited success. See Exhibit 13. Each of the session reports lists the diagnosis of chronic PTSD and attribute the diagnosis to either "Iraq 2005" or "Deployment Related: Iraq 2005." Exhibit 13.

e. During the 31 January 2014 session, the applicant expressed his displeasure that he "[couldn't] stay in the military," and the psychologist noted the applicant's "difficulty staying awake during the session," which was being assessed "for possible sleep apnea." Exhibit 13. The applicant first sought treatment for sleep related issues on 16 December 2013, at Carl R Darnall Medical Center, where the assessing physician primarily diagnosed the applicant with adjustment disorder and noted the relation between the applicant's "long [history] of sleep difficulties" and ongoing counseling "for combination of anxiety/depression/PTSD." See Exhibit 14. The physician began prescribing selective serotonin reuptake inhibitors (SSRIs) to the applicant at this appointment. Exhibit 14. The applicant was seen next on 13 January 2014, at the Darnall Medical Center's CRDAMC Sleep Disorder Clinic. See Exhibit 15. At this appointment the attending physician diagnosed him with organic hypersomnia (excessive daytime sleepiness) and organic insomnia, and the physician noted the applicant would "see [him] back following results of [the Applicant's] sleep study for further evaluation." Exhibit 15. The applicant sought a sleep study, or polysomnogram, on 8 March 2014, where it was determined that "a Titration study (procedure used to determine the optimal pressure setting for a continuous positive airway pressure (CPAP) machine) to treat sleep apnea" would be scheduled. See Exhibit 16. The Titration study took place on 8 April 2014. See Exhibit 17.

f. The applicant's medical issues have continued past his date of discharge. An appointment at Atlanta VA Medical Center on 30 January 2022, showed the applicant still dealing, with "anxiety around sleep" and "waking up from sleep with inability to move for [a] period of time." See Exhibit 18. The applicant sought further medical attention from Washington VA Medical Center Emergency Department for "insomnia and chest pain" on 27 June 2023. See Exhibit 19. The applicant received a "Suicide Prevention Safety Plan" from the Washington VA Medical Center on 30 June 2023. See Exhibit 20. The 30 June 2023 visit to the Washington VA Medical Center was prompted by worsening mental stability: "[The Applicant reports difficulty sleeping at night, nightmare related to PTSD," and "feeling helpless, irritable. and increasingly feeling on edge at work." See Exhibit 21. Additionally, he attended a "Psychiatry Outpatient Visit"

at the Washington VA Medical Center on 5 July 2023. See Exhibit 22. At this appointment, the applicant reported in an interview "symptoms of paranoia and nightmares. "[The Applicant reported] that he has been disturbed by all the things he did in his service and is being traumatized by all that he did to hurt people during his deployment." Exhibit 22.

g. The applicant's letter from the VA detailing his benefits lists the applicant as having a combined service-connected evaluation at 100 percent and is designated as totally and permanently disabled due to his service-connected disabilities as of 21 May 2015. See Exhibit 23.

h. It is respectfully submitted that the applicant suffered a material injustice as a result of not receiving a medical retirement upon his separation from service to the Army. It is respectfully submitted that the applicant suffered a further material injustice due to not being granted CRSC. To be eligible for a military medical retirement, the applicant must demonstrate that the injuries were caused or exacerbated by military service, that the injuries were not the result of his misconduct, and that the injuries rendered the applicant unfit for continued service at the time of discharge.

i. Additionally, Title 10, U.S. Code, section 1413a lays out the requirements for a service member to receive CRSC. Subsection (c) on "Eligible retirees" states that "an eligible combat-related disabled uniformed services retiree" is one who is "a member of the uniformed services who- (1) is entitled to retired pay" and "(2) has a combat-related disability." Subsection (e) provides that a "combat-related disability is a "disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that." Per subsection (2), occurred "(A) as a direct result of armed conflict: (B) while engaged in hazardous service: (C) in the performance of duty under conditions simulating war; or (D) through an instrumentality of war." Title 10, U.S. Code, section 1413a.

j. Further, the Kurta Memorandum, dated 25 August 2017, details guidance for Discharge Review Boards and Boards for the Correction of Military and Naval Records regarding "Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment." The memorandum provides that the standard of "liberal consideration" will be applied in cases where a veteran is seeking discharge relief, and the application for relief is "based in whole or in part on matters relating to mental health conditions, including PTSD."

k. The applicant's injuries, namely his PTSD and sleep disorders, were caused by his military service because the events that began his PTSD occurred during his 2005 deployment. During the applicant's counseling sessions, the attending psychologist reported the applicant's "index trauma was related to an IED blast that killed his interpreter on his first deployment." Exhibit 12. Each of the applicant's CPT counseling

session reports attribute his chronic PTSD to either "Iraq 2005" or "Deployment Related: Iraq 2005." Exhibit 13. Further, in the 6 December 2013 counseling session, the applicant is reported as saying, "If the interpreter was in my vehicle, he would have survived." The applicant's sleep disorders are commonly discussed alongside his PTSD diagnosis and related symptoms of anxiety and depression. During the 13 January 2014 appointment, where the applicant was diagnosed with hypersomnia and insomnia, the physician notes the applicant's "history of generalized anxiety disorder with some depression," no family history of sleep disorders. and the applicant's ongoing treatment for PTSD. Exhibit 15.

l. Further. the applicant's injuries were not a result of his misconduct: The applicant separated from the Army due to completion of required active service with an honorable character of service. The index trauma leading to the applicant's PTSD occurred as a result of standard duties on deployment in Iraq and not through any misconduct on his part. See Exhibits 10 & 13. Additionally, the applicant's Official Military Personnel File (OMPF) and available records show no evidence of incidents of misconduct. Finally, the applicant's injuries rendered him unfit for continued service at the time of his discharge. The CPT counseling records note that the applicant considered it "not fair [he couldn't] stay in the military" during the 31 January 2014 session. Exhibit 13. During this session, the applicant's "difficulty staying awake during the session" was evident and also contributed to his eventual separation. Additionally. the applicant has been considered "totally and permanently disabled due to his service-connected disabilities since 21 May 2015, according to his letter from VA. Exhibit 20. The applicant's dutiful and formidable service is apparent from a review of his records. His talent and strength, however, have taken a toll upon his mind and post-service life. Not being allowed to medically retire yesterday has led to the applicant enduring a further burden today and this does a disservice to his upright character and determined career as a Soldier. It is respectfully submitted that the U.S. Army has committed a material injustice against the applicant by separating him and not allowing a medical retirement.

m. Under a medical retirement designation, it is a further material injustice against the applicant that he does not receive CRSC for his service in the Army. Per section 1413a(c). a service member is an "Eligible Retiree" when he or she is (1) entitled to retired pay and (2) has a combat-related disability. 10 U.S.C. 1413a. With the applicant having satisfied subsection (c)(1), whether he has a "combat-related disability" under subsection (c)(2) must be determined.

n. The applicant has a combat-related disability, "as a direct result of armed conflict" due to the incident during his first deployment to Iraq in 2005. 10 U.S.C. 1413a. The applicant's CPT sessions explain and attribute his diagnosis of "chronic PTSD" to "Iraq 2005" or "Deployment Related: Iraq 2005." Exhibit 13. In the applicant's initial "60 minute trauma interview" on 18 November 2013, the psychologist reported that the Applicant's "index trauma was related [to] an IED blast that killed his interpreter on his

first deployment." Exhibit 12. In the 6 December 2013 CPT session, the applicant is reported as saying and believing "if the interpreter was in [his] vehicle, he would have survived." Exhibit 13. This trauma also appears in the 17 December 2013 session, with the applicant believing he "should have been there" and the psychologist discussing "reasons why [the Applicant] was positioned in his truck rather than [the] lead truck."

o. Additionally, in the 5 February 2021 letter from the VA, the applicant is designated as having a combined service-connected evaluation of 100 percent and is considered to be totally and permanently disabled due to his service-connected disabilities, effective on 21 May 2015. Exhibit 20. The letter further defines "service-connected disability" as a "condition incurred during or aggravated by military service, for which the veteran is receiving VA benefits." and states "the Veteran's disability rating for all conditions is determined to be service-connected."

p. The applicant has availed himself well in his post-service endeavors, but the trauma of his service continues to assert itself in his everyday life. It is an inequity to not provide further assistance to the applicant, considering the challenges he overcame during his service and the challenges he dutifully faces during the present day. This perseverance and strength of will are hallmarks of a true Soldier and these values deserve their due weight. It is respectfully submitted that not providing CRSC to the applicant is a material injustice done to him.

q. In light of the presented arguments, the applicant respectfully requests that a PEB be convened to determine if he should have been medically retired from the Army. He further respectfully requests CRSC benefits to assist him in his post-service life. The Kurta Memorandum states that applications for discharge relief "based in whole or in part on matters relating to mental health conditions, including PTSD" will receive liberal consideration upon examination. The applicant has shown a history of dutiful service as a Soldier and a strength of will to carry on admirably as a veteran and it is respectfully requested that these characteristics are fully considered. This honorable Board should grant the applicant's request and correct his records for reasons of material injustice.

3. A review of the applicant's service records show:

- a. The applicant enlisted in the Regular Army on 28 October 2004.
- b. He deployed to Iraq from 1 September 2005 through 15 August 2007 [sic]; his record of foreign service shows 11 months and 1 day.
- c. He was honorably released from active duty on 27 October 2007, due to completion of required active service, with corresponding separation code MBK, reentry code of 1, and transferred to a Troop Program Unit (TPU) in the USAR.

- d. He completed 3 years of active service.
4. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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 (P) or temporary (T).
5. The applicant's enlisted record brief, dated 3 March 2008, shows:
 - a. He deployed to Iraq from 3 September 2005 through 3 August 2006, a period of 11 months and 1 day.
 - b. His PULHES was 111111.
6. A DD Form 2807-1 (Report of Medical History) shows on 23 September 2010, the applicant provided his medical history for the purpose of enlistment in the Regular Army. He indicated he was in good health, taking no medications, marked "no" to having any nervous trouble, depression or excessive worry.
7. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 23 September 2010, for the purpose of Regular Army enlistment and was found qualified for enlistment with a PULHES of 111111. The only listed significant disqualifying defect is overweight, for which he was deemed qualified on 28 April 2011
8. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Regular Army on 28 April 2011, for a period of 3 years.
9. U.S. Army Human Resources Command (AHRC) Orders D-05-107068, dated 3 May 2011, honorably discharged the applicant from the USAR effective 27 April 2011.
10. The applicant provided numerous Medical Record documents, dated between 25 October 2013 – 4 February 2014, all of which have been provided in full to the Board for review, and in pertinent part show:
 - a. He was seen at the Carl R. Darnall Medical Center, Strong Star Clinic on 25 October 2013, for Strong Star PTSD Research Consortium. The notes show he meets the criteria for PTSD and was admitted to the Strong Star program.

b. He was seen at the Carl R. Darnall Medical Center, Strong Star Clinic on 18 November 2013, for a 60-minute trauma interview. He reported referring himself to the Strong Star program, which is a multidisciplinary research consortium funded by the Department of Defense. He was randomized into group Cognitive Processing Therapy (CPT). He identified his index trauma was related to an IED blast that killed his interpreter on his first deployment.

c. He was seen at the Carl R. Darnall Medical Center, Strong Star Clinic on for 12 CPT sessions between 3 December 2013 through 4 February 2014, wherein the applicant actively participated. His diagnosis is consistently shown as PTSD.

d. He was seen at the Carl R. Darnall Medical Center, Sleep Disorder Clinic on 13 January 2014, for excessive daytime sleepiness and fatigue. He stated he was also being seen for depression. The assessment/plan shows diagnoses of sleep disorders organic hypersomnia and sleep disorders organic insomnia.

11. A DA Form 2166-8 (NCO Evaluation Report), covering the period from 30 March 2013 through 29 March 2014, shows:

a. The applicant was rated in his principal duty as launcher gunner. His Rater rated him as "Excellence" or "Success" in all sections of in Part IV (Rater) Values/NCO Responsibilities.

b. He passed his Army Physical Fitness Test (APFT) on 9 April 2013.

c. His Senior Rater rated his overall performance as "Successful/2" and his overall potential as "Superior/2."

12. A Polysomnogram Report, dated 31 March 2014, shows an impression of moderate obstructive sleep apnea-hypopnea syndrome with exacerbation in rapid eye movement (REM) sleep, N1, N3, excessive N2 sleep. A Titration study was recommended to treat sleep apnea-hypopnea syndrome and to follow up in the clinic to discuss the results and treatment options.

13. A Titration Report, dated 8 April 2014, has been provided in full to the Board for review and shows in pertinent part the applicant's sleep efficiency upon testing was 89.5 percent and the normal range is greater than 90 percent.

14. The applicant's DD Form 214 covering the period of service from 28 April 2011 to 27 April 2014, shows:

a. The applicant was honorably discharged on 27 April 2014, due to completion of required active service, with corresponding separation code KBK and a reentry code of 1.

b. He was credited with 3 of net active service this period, 3 years of total prior active service, and 3 years and 6 months of total prior inactive service.

c. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) includes:

- Iraq Campaign Medal with Two Campaign Stars
- Army Commendation Medal
- Army Good Conduct Medal (2nd Award)
- Global War on Terrorism Service Medal
- NCO Professional Development Ribbon

15. The applicant's ERB, dated 29 April 2014, shows:

a. He deployed to Iraq from 25 July 2005 through 3 March 2007.

b. His PULHES was 112111, with physical profile rating of 2 in factor L.

c. His Medical Readiness Code (MRC) was 1, fully medically ready/deployable, with his last physical exam on 16 May 2013.

d. He passed his Army Physical Fitness Test (APFT) in August 2013

16. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) and they do not show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

17. A VA Rating Decision, dated 20 October 2020, shows:

- the applicant's service-connected evaluation of bilateral pes planus with plantar fasciitis and osteoarthritic changes, which is currently 50 percent disabling, is continued
- his evaluation of eczematous dermatitis and tinea corporis, which is currently 30 percent disabling, is continued

18. A VA letter, dated 5 February 2021, shows:

- the applicant's combined service connected evaluation is 100 percent, effective 1 December 2020
- he is considered to be totally and permanently disable due to his service-connected disabilities effective 21 May 2015.

19. The applicant previously applied to the ABCMR in October 2021, requesting in effect, physical disability discharge or retirement.

20. A VA Health Summary (Continuity of Care Document) shows the applicant was seen on 30 January 2022 for a mental health consult. He had a history of PTSD, service-connected at 50 percent, obstructive sleep apnea, and chronic pain, and presented for medical complaints and wanting to speak with mental health for medication refills for anxiety around sleep.

21. In the adjudication of the applicant's prior request to the ABCMR, an advisory opinion was obtained from the Army Review Boards Agency (ARBA) medical advisor on 1 August 2022, which has been provided in full to the Board for review. In pertinent part, the advisor's opinion shows there is no probative evidence the applicant had a service incurred medical condition which would have failed the medical retention standards of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness) prior to his discharge, or which prevented him for reenlisting. Thus, there was no cause for referral to the DES. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. It was the opinion of the ARBA medical advisor that referral of his case to the DES was not warranted.

22. On 3 August 2022, the Board denied the applicant's request, determining the evidence presented does not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

23. The applicant provided multiple Progress Notes dated between 27 June 2023 – 30 June 2023, all of which have been provided to the Board in full to review. In pertinent part they show the applicant presented to the emergency department with complaints of

panic attacks and underlying depression. He had an incident at work resulting in emotional upset accompanied by chest pain and panic attacks.

24. A Discharge Summary, dated 30 June 2023, shows the applicant was admitted to the Washington VA Medical Center on 29 June 2023 and discharged on 30 June 2023, with diagnoses of major depressive disorder; PTSD, chronic; and generalized anxiety disorder. He had presented to the emergency department with a worsening mood, altercation at work, and very aggressive thoughts about a coworker. This was his first psychiatric hospitalization.

25. A VA Health Summary (Continuity of Care Document) dated 5 July 2023, shows the applicant received a follow-up call to his care, but he was unreachable and a voicemail was left. His listed diagnoses are PTSD, depression, and anxiety.

26. 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 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

2. The applicant is applying to the ABCMR requesting the Board reconsider their prior denial of his request for a referral to the Disability Evaluation System (DES). He has indicated on his DD form 149 that PTSD and TBI (traumatic brain injury) are conditions related to his request. Counsel states in part:

Prior to separation from service, the Applicant received medical attention for Post Traumatic Stress Disorder, Chronic Post Traumatic Stress Disorder, hypersomnia, and insomnia. The Applicant's medical records show a "PCL-S" [PTSD Checklist – Specific] evaluation on 25 October 2013 which found the Applicant 'MEETS criteria for PTSD diagnosis.' See Exhibit 11 (emphasis in original).

The Applicant reported to the Carl R Darnall Medical Center in Fort Hood, Texas, on 18 November 2013 for a trauma interview. See Exhibit 12. The appointment report states the Applicant had been diagnosed with "Chronic Post-Traumatic Stress Disorder." Exhibit 12. The Psychologist conducting the interview reported the Applicant's "index trauma was related to an IED blast that killed his interpreter on his first deployment." Id. The plan established by the appointment was scheduling Cognitive Processing Therapy (or CPT) for the Applicant for further treatment. Id.

The Applicant attended twelve (12) therapy sessions between 13 December 2013 and 04 February 2014 to limited success. See Exhibit 13. Each of the session reports lists the diagnosis of 'Chronic Post-Traumatic Stress Disorder' and attribute the diagnosis to either 'Iraq 2005' or 'Deployment Related: Iraq 2005.' Exhibit 13.

During the 31 January 2014 session, the Applicant expressed his displeasure that he "[couldn't] stay in the military," and the psychologist noted the Applicant's 'difficulty staying awake during the session,' which was being assessed 'for possible sleep apnea.' Exhibit 13.

The Applicant first sought treatment for sleep related issues on 16 December 2013 at Carl R. Darnall Medical Center, where the assessing physician primarily diagnosed the Applicant with 'adjustment disorder' and noted the relation between the Applicant's 'long [history] of sleep difficulties' and ongoing counseling 'for combination of anxiety/depression/ptsd.' See Exhibit 14. The physician began prescribing SSRIs [selective serotonin reuptake inhibitors] to the Applicant at this appointment. Exhibit 14.

The Applicant was seen next on 13 January 2014 at the Darnall Medical Center's CRDAMC Sleep Disorder Clinic. See Exhibit 15. At this appointment the attending physician diagnosed the Applicant with 'Organic Hypersomnia' and 'Organic Insomnia,' and the physician noted the Applicant would 'see [him] back following results of [the Applicant's] sleep study for further evaluation.' Exhibit 15. The Applicant sought a sleep study or polysomnogram on 8 March 2014, where it was determined that 'a Titration study to treat sleep apnea' would be scheduled. See Exhibit 16. The Titration study took place on 8 April 2014. See Exhibit 17.

The Applicant's medical issues have continued past his date of discharge. An appointment at Atlanta Veterans Affairs Medical Center on 30 January 2022 showed the Applicant still dealing with 'anxiety around sleep' and 'waking up from sleep with inability to move for [a] period of time.'"

3. The Record of Proceedings and the prior denial detail the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 28 April 2011 and was honorably

discharged on 27 April 2014 at the completion of his required active service under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It does not contain a period of Service in an imminent danger pay area.

4. This request was previously denied by the ABCMR on (AR20210015682). 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 issues brought forth by counsel and new evidence submitted with the application.

5. AHLTA shows the applicant was enrolled in a mental health PTSD clinical research project called Strong Star in October 2013. During the program, the applicant was diagnosed with PTSD which was treated with group therapy and oral medication (sertraline / Zoloft).

6. His PCL-S score at the time was 68 and did meet the criteria for a PTSD diagnosis. However, the PCL-S is just a tool used by providers and not a diagnostic test per se. It is a 17-item self-report measure reflecting DSM-IV symptoms of PTSD. The PCL has a variety of purposes, including:

- screening individuals for PTSD
- aiding in diagnostic assessment of PTSD
- monitoring change in PTSD symptoms

7. The PCL-S asks about symptoms in relation to an identified “stressful experience.” The PCL-S aims to link symptom endorsements to a specified event. Similar to the PCL-C (civilian), it is optimal to assess traumatic event exposure to ensure that the index event meets PTSD Criterion A. Respondents also can be instructed to complete the PCL-S in reference to a specified event or event type (e.g., assault, disaster, or accident). (PTSD: National Center for PTSD at <https://www.ptsd.va.gov/>)

8. From his 11th Strong Star group session on 31 January 2014:

“SM [service member] participated in session. Challenged stuck point ‘I’m broken,’ and ‘It’s not fair I can’t stay in the military.’ SM had some difficulties challenging these stuck points. SM also had difficulty staying awake during the session. He is being assessed by the sleep clinic for possible sleep apnea.”

9. From his 12th and final Strong Star group session on 4 February 2014:

“The first and final Impact statements were compared, which led to discussion about the course of therapy. SM noted that many of his thoughts were similar though he feels like he has gained tools to challenge those thoughts. Goals for the future were established, and the patient was encouraged to continue using his developed skills

and to share his treatment experiences with his referring clinician. Group members were asked to continue using the Challenging Beliefs Worksheets following therapy to work on any stuck points that have not been resolved, as of yet.

SM continues to endorse significant symptoms of PTSD and depression. He will be formally assessed in 2-weeks. He plans to follow-up with behavioral health care with his prescriber."

10. It does not appear the applicant made any follow-up appointments with his regular behavioral health care provider as directed at his final Strong Star group session.

11. There is only one more behavioral health encounter in the EMR and it was a 21 February 2014 follow-up for the Strong Star research program:

SM was cooperative during assessment. SM reports no significant life events or changes since his last assessment. SM endorses that he has added Viagra and Tramadol to his medications. Mood was euthymic with appropriate affect. Speech was logical, goal directed, and absent of any unusual content. There was no indication of auditory or visual hallucinations or delusions. SM was well oriented as indicated by responses to open-ended questions. SM denied any suicidal or homicidal ideation, intention, or plan. SM ambulated without assistance. SM was well groomed and attire was appropriate to situation.

12. The applicant's final two NCO Evaluation Reports were annuals covering 1 April 2012 thru 29 March 2014 and show he had continued to be a successful Soldier. His final report shows he passed had passed his Army Physical Fitness Test and met the Army height/weight standards. For the five Values/NCO Responsibilities, his rater marked with Excellence (Exceeds Standards) for two, Success (Met Standards) for three, and marked him as "Fully Capable." His senior rater marked him with a 2's on a scale of 1 to 5 for Overall Performance and for Overall Potential opining:

- "promote to SSG when available
- send to Advanced Leaders Course when available
- has the potential to grow into an outstanding NCO, with further development in utilizing the Army's seven steps to problem solving
- insert into positions of increased responsibility"

13. The applicant's PTSD/anxiety disorder did not fail medical retention standards. Paragraph 3-33 of AR 40-501, Standards of Medical Fitness (4 August 2011) states the criteria for referring such a condition to the DES:

The causes for referral to an MEB are as follows:

- a. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- b. Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- c. Persistence or recurrence of symptoms resulting in interference with effective military performance.

14. No evidence was identified showing the applicant's mental health condition met one or more of these criteria for referral to the DES.

15. On 13 January 2014, the applicant was evaluated "excessive daytime sleepiness and fatigue" at the Sleep Disorder Clinic. He was diagnosed with hypersomnia and insomnia for which a sleep study was ordered and sleep hygiene was discussed. The 8 March 2014 sleep study revealed moderate sleep apnea. A follow-up appointment for CPAP titration was scheduled and good sleep hygiene was again discussed. The post-titration study follow-up encounter shows the applicant would be successfully treated with CPAP:

"Moderate obstructive sleep apnea-hypopnea syndrome treated successfully with CPAP at 9 cm H2O using small Quattro mask. Significant improvement in sleep fragmentation, arousal index along with rebound REM sleep was noted on CPAP therapy. No EEG or EKG abnormalities were noted. No significant periodic leg movements in sleep were noted."

16. Because his sleep apnea could be successfully treated with CPAP, it did not fail medical retention standards. Paragraph 3-41c of AR 40-501, Standards of Medical Fitness (4 August 2011) states the criteria for referring sleep apnea to the DES:

"Obstructive sleep apnea or sleep-disordered breathing that causes daytime hypersomnolence or snoring that interferes with the sleep of others and that cannot be corrected with medical therapy, nasal continuous positive airway pressure (CPAP), surgery, or an oral appliance."

17. There are no TBI encounters, diagnosis, or TBI sequelae related diagnoses in the EMR.

18. In May 2018, the applicant was a civilian contractor with the Army and underwent a pre-deployment health assessment for an upcoming 365-day deployment to Afghanistan. At that time, he reported his health as "excellent." The pre-deployment examinations included a mental health assessment. The applicant was cleared for deployment.

19. There is insufficient probative evidence the applicant had a service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge; or which prevented him for reenlisting. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

20. JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD (50%) and sleep apnea (50%). However, the DES compensates an individual only for condition(s) which have been determined to disqualify him or her from further military service. 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. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

21. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive 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 the applicant had a service incurred medical condition which would have failed medical retention standards or that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to

his discharge. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

2. Upon review of the applicant's petition and available military records, the Board was unable to determine if the applicant is eligible for CRSC TBI and post-traumatic stress disorder (PTSD) as they are unable to establish a causal relationship because a combat related event and the conditions. The Board , therefore determined there was no basis to establish a CRSC rating.

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 amendment of the ABCMR decision rendered in Docket Number AR20210015682 on 3 August 2022.

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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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, on those conditions or experiences.

2. 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in 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 (MMRB); 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.

3. Army Regulation 635-40 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.

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 military service.

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

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

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

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

d. 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, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

5. Title 10, U.S. Code, section 1413a, as amended, established Combat-Related Special Compensation (CRSC). CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for Reserve retirement at age 60) or who have a physical disability retirement with less than 20 years' service for injuries that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. CRSC eligibility includes disabilities incurred as a direct result of:

- armed conflict (gunshot wounds, Purple Heart, etc.)
- training that simulates war (exercises, field training, etc.)
- hazardous duty (flight, diving, parachute duty)
- an instrumentality of war (combat vehicles, weapons, Agent Orange, etc.)

6. Title 38, U.S. Code, 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.

7. Title 38, U.S. Code, 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.

8. Title 10, U.S. Code, section 1556 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//