

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20230011767

APPLICANT REQUESTS:

- In effect, reconsideration of his previous request for a physical disability separation or retirement and an amended date for a post-traumatic stress disorder (PTSD) diagnosis
- Permission to appear personally before the Board

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

- DD Form 293 (Application for Army Discharge Review Board (ADRB))
- Medical Records; 114 pages

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210006553 on 15 November 2021.

2. The applicant states, in effect, he was discharged under the Trainee Discharge Program (TDP) in 1975; however, his honorable discharge does not speak to the comprehensive reason for his separation.

a. At the time of his discharge, the Department of Defense did not recognize PTSD as a disability; as a result, the Department of Veterans Affairs (VA) has denied him benefits. His drill sergeant (Sergeant R__) physically assaulted him in the early morning hours of 2 July 1975 after the applicant had spoken against the unit cadre's practices during a brigade meeting.

b. "Drill SGT R__ was choking me and placed his knee on my groin area while stating racist epithets and making threats to me. (SGT) R__ referred to me as being 'an uppity n__r' and that he was going to kill me. He stated that he could make it happen during training (accident w/grenades), (firing range). He also said I could be killed by things such as being pushed down a flight of stairs or being crushed with equipment."

c. "(SGT) R__ told me that wherever I would have transferred to, he had connections to people who would have accomplished his threat for him. The incident was reported to the chaplain by me, and he spoke with command. I want my DD214 changed to that of a discharge due to a service-connected disability so I may be afforded benefits. My life has been profoundly affected because of this incident."

d. In support of his request, the applicant provides 114 pages of medical records; the documents detail his medical conditions and state he has a history of PTSD.

3. A review of the applicant's service record shows the following:

a. On 10 June 1975, after obtaining his parents' permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old. Orders immediately assigned him to Fort Leavenworth for basic combat training (BCT), and he arrived at his BCT unit, on or about 17 June 1975.

b. On 2 July 1975, medical authority issued the applicant a temporary, 30-day profile (DA Form 3349 (Medical Condition – Physical Profile Record). The form identified the medical condition as hernia, listed the physical factor as "P" (Physical Capacity or Stamina), and showed "3" as the numerical designation "3" (i.e., Soldier meets medical retention standards but requires assignment restrictions). The form additionally directed the following limitations: no crawling, stooping, running, jumping, marching, or standing for long periods (not to exceed 15 minutes).

c. On 14 July 1975, the applicant's BCT commander advised him, via memorandum, that he was initiating separation action against the applicant, under the provisions of Department of the Army message DTG (date time group) 011510Z, subject: Evaluation and Discharge of Enlistees before 180 Active Duty Days.

(1) The commander stated the reasons for his action were that the applicant had displayed a "quitter's attitude, in that you want out of the Army, you cannot adjust to the military environment, and you lack all motivation to become a Soldier in the U.S. Army."

(2) The commander further indicated he would recommend the applicant for an honorable character of service, but the final decision rested with the separation authority. The applicant had a right to submit a rebuttal and/or statements in his own behalf, and, if desired, he could consult with counsel (a commissioned officer other than the applicant's BCT commander).

(3) The commander added, "...if you do not have prior military service, you should understand that, due to noncompletion of requisite active duty time, VA and other benefits normally associated with completion of honorable active duty service will be affected."

d. On 15 July 1975, the applicant acknowledged his commander's notification and indicated he did not desire counsel. In addition, he affirmed he did not wish to have a separation medical examination and would not be submitting statements or submit a rebuttal. He acknowledged he understood his noncompletion of the requisite active duty time would affect his eligibility for VA benefits.

e. On 17 July 1975, the separation authority approved the commander's separation recommendation and directed the applicant's honorable discharge. On 22 July 1975, orders discharged the applicant accordingly; his DD Form 214 (Report of Separation from Active Duty) shows he completed 1 month and 13 days of his 3-year enlistment contract. The report additionally reflects the following:

- Item 9c (Authority and Reason) – DA Message DAPE MPE 01510ZAUG 73, separation program designator "JNF" (Miscellaneous-General (Trainee Discharge Program)
- Item 26 (Decorations, Medal, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – None

f. On 31 December 2020, the applicant petitioned the ABCMR, requesting a medical separation/retirement and an amended effective date for his PTSD diagnosis. To support his request, the applicant offered multiple VA letter and disability ratings and a neuropsychology consult.

(1) Before the Board met to consider the applicant's case, the Army Review Boards Agency Medical Advisor provided a medical review. The Medical Advisor concluded, "after considering all the available medical documentation, it is the opinion of the Agency psychologist that there is insufficient evidence to warrant a referral of the applicant's record to IDES (Integrated Disability Evaluation System) for consideration of military medical disability/retirement. Nor is there evidence to amend the effective date of his post-traumatic stress disorder (PTSD) diagnosis."

(2) On 15 November 2021, the Board voted to deny the applicant's requests after determining the preponderance of the evidence did not warrant a recommendation for relief.

4. Army Regulation (AR) 15-185 (ABCMR), currently in effect, states in paragraph 2-11 (ABCMR Hearings) that applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for a physical disability separation or retirement and an amended date for a

PTSD diagnosis. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 10 June 1975 and reported to Basic Training on 17 June 1975; 2) On 2 July 1975, medical authority issued the applicant a temporary profile for a hernia; 3) On 14 July 1975, the applicant's BCT commander advised the applicant he was initiating separation action against the applicant before 180 Active Duty Days; 4) The applicant was honorably discharged on 22 July 1975; 5) On 15 November 2021, the ABCMR reviewed and denied the applicant's request for a physical disability separation or retirement.

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

c. The applicant is requesting a physical disability separation or retirement and an amended date for a post-traumatic stress disorder (PTSD) diagnosis. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD that did not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permanent profile while on active service.

d. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD related to his report of racism and trauma he experienced during his Basic Training since 2018. He is currently rated at 100% disabled for service-connected PTSD since 2023.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed after his discharge with service-connected PTSD. However, there is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed after his discharge with service-connected PTSD. However, there is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not

meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

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

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

BOARD DISCUSSION:

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that the applicant was diagnosed after his discharge with service-connected PTSD. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed after his discharge with service-connected PTSD. However, there is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

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

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

3. The Board found insufficient evidence in the applicant's service record to indicate he suffered from a medically unfitting condition at the time of his discharge, nor was there any indication that his separation was the result of a behavioral health condition. The record shows the applicant was separated under the trainee discharge program due to his inability to adapt to military service, and he was afforded the opportunity to respond

to the proposed separation, which he declined. The Board acknowledged the applicant's post-service mental health diagnosis and VA disability ratings; however, these are not determinative in establishing military medical unfitness at the time of service. The Army evaluates only those conditions determined to be unfitting at the time of separation. Based on the evidence of record and the advisory opinion, the Board determined there is no basis for relief.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210006553 on 15 November 2021.

X //SIGNED//

CHAIRPERSON

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 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations. In 1973, the Army issued a Department of the Army message to implement the Trainee Discharge Program (TDP).

a. The Army designed the program to remove trainees who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers and later incorporated it into paragraph 5-39 (TDP) of this regulation.

b. The regulation further mandated that Soldiers being considered for separation had to have voluntarily enlisted; be in basic combat training or advanced individual training; and, by his/her separation date, would be completing less than 180 days of active duty service. Additionally, the regulation stated it was contrary to the intent of the policy for commanders to use this provision in place of processing Soldiers through medical channels due to physical or mental defects.

c. If the Soldier opted not to rebut the proposed discharge, the commander exercising special court-martial authority had the authorization to order separation. The regulation required the Soldiers to receive an honorable character of service.

3. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Physical Disability Evaluation System (PDES), and implemented chapter 61 (Retirement or Separation for Physical Disability), Title 10, U.S. Code. The regulation set forth policies, responsibilities, and procedures that governed the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. Chapter 3 (Policies) stated the mere presence of impairment did not alone justify a finding of unfitness because of physical disability. In each case, it was necessary to

compare the nature and degree of the physical disability with the requirements of the Soldier's duties, as required by his or her office, rank, grade or rating.

b. Chapter 4 (Procedures). Commanders or medical authority could refer Soldiers into the DES when there was evidence a medical condition/disability was inhibiting a Soldier's ability to perform his/her duties.

(1) Medical authority convened an MEB to document the Soldier's medical status and determine whether the Soldier met medical retention standards, per AR 40-501. Those Soldiers who failed medical retention standards were referred to a PEB for a fitness determination.

(2) PEBs investigated the nature, cause, degree of severity, and probable permanency of the Soldier's disability, evaluated the Soldier's physical condition against the physical requirements of the Soldier's grade/rank and military occupational specialty, and then submitted findings and recommendations as to the Soldier's disposition.

(3) If the Soldier was entitled to disability benefits, the PEB decided the rating for each compensable disability using the VASRD, as modified by the regulation's Appendix B (Army Application of the VASRD). The percentage ratings were to reflect the severity of the Soldiers' disabling condition(s) at the time of the rating. Concerning the VASRD, the PEB was advised that the first 31 paragraphs of the VASRD did not apply and were replaced by sections I and II in Appendix B.

(4) Final disposition could include the Soldier being returned to duty or separated under the following circumstances:

- With or without severance pay, depending on whether the disability was incurred in the line of duty, where the combined disability rating was 20 percent or less
- Retired, when the combined disability rating was 30 percent or higher

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//