ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20230012123

APPLICANT REQUESTS: in effect, to go through the medical evaluation board (MEB) process to be able to receive a medical discharge.

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

- DD Form 149 (Application for Correction of Military Record) (online)
- Inspector General (IG) Complaint
- Two Emails
- Department of Veterans Affairs (VA) Statement in Support of Claim
- Three Medical Documents (partial)
- Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation) Information (partial document)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He wants to be allowed to go through the MEB process. He needs his November MEB termination repealed so he can re-enter the MEB process. In an email his Army leaders knew he was in a MEB process but they issued him a no-contact order with his own company commander so he could not complete the MEB paperwork. His own Army leaders intentionally ordered him to perform duties that had nothing to do with his MEB.

b. After he was terminated, he sent 3 emails to Colonel (COL) D__ to see if she was aware of how his Army leaders blocked him from going through the MEB process before he filed an IG complaint. His current Army command not only denied him the opportunity to go through the MEB process, but they worsened his post-traumatic stress disorder (PTSD) in the process. As of 13 June 2023, the Department of Veterans Affairs

(VA) officially rated his PTSD as 100% permanent and total disability. A part of his claim was a statement supporting how his current Army leaders directly worsened his PTSD.

c. Army leadership directly knew and obstructed his ability to go through the MEB process. As a result, he was terminated from the MEB process in November 2022. In December 2022, his brigade commander directly denied his request to go through PTSD testing. Only 2 months later he was officially diagnosed with PTSD for the first time by a VA medical examiner. He wants to go through the MEB process, and it should be expedited now that he has an official VA rating for a Medical Disability Discharge.

d. He believes he should be medically discharged because being assaulted by another Soldier and combat experiences caused his PTSD. Moreover, not only did his current Army leaders worsen his conditions, they deliberately obstructed his ability to go through the MEB process to get identified for the medical treatment he needs. Furthermore, the MEB processes Soldiers to the VA because they have the same medical standards as the DoD. More than half the MEB process has been completed.

3. The applicant provides:

a. Medical document (partial), 3 October 2021 shows the applicant has expressed suicidal ideation to both a cousin and a military superior. The applicant returned for a tour in Germany last winter, since then he has been trying to switch units within the military because he does not agree with or get along with his leaders. He has been unsuccessful in transferring units.

b. Emails from his commander RLW__ and MA__ 310 ESC show:

- 20 July 2022, redacted shows “I have been told that he is supposedly undergoing a medical board
- 28 December 2022, shows the applicant was denied his request for orders for PTSD testing at Fort Knox, KY

c. VA Statement in Support of Claim, undated shows the applicant had ongoing stressors created by his Army leadership and hospitalization for suicidal ideations. He reiterates the above assertions.

d. IG Complaint, 10 January 2023, the applicant requested the revocation of COL D__’s non-compliance termination memo for the applicant and allow him to re-enroll into the DES process. He filed the IG complaint on COL D__ for terminating him from the DES process for non-compliance. On 3 occasions he asked COL D__ if she was aware that his own military command ordered him to perform duties that would intentionally prevent him from the completing the medical process for the Disability Evaluation System (DES). Command Sergeant Major (CSM) R__ and CSM A__ controlled every

battle assembly and annual training from July until November. In every instance the applicant was asked to perform duties, it was always something that prevented him from being able to complete his medical process.

e. Additionally, Lieutenant Colonel (LTC) T__ signed an order in August that prevented him from having any communication to his own company commander first lieutenant/1LT K __. Since he was not allowed to speak to his company commander, he could not start the paperwork process for the Medical DES.

4. Review of the applicant's service records show:

a. He enlisted in the U.S. Army Reserve (USAR) on 9 June 2003.

b. He entered active duty on 23 November 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty on 21 January 2005 and transferred to the USAR. He completed 1 month and 29 days net active service.

c. He entered active duty on 26 July 2005. His DD Form 214 shows he was honorably released from active duty on 14 September 2006 and transferred to the USAR. He completed 1 year, 1 month and 19 days net active service.

d. The applicant reenlisted in the USAR on 27 February 2009.

e. He entered active duty on 23 October 2009. His DD Form 214 shows he was honorably released from active duty on 7 January 2011 and transferred to the USAR. He completed 1 year, 2 months and 15 days net active service.

f. He entered active duty for training on 19 August 2013. His DD Form 214 shows he was honorably released from active duty on 7 May 2015 and transferred to the USAR. He completed 1 year, 8 months and 19 days net active service.

g. The applicant reenlisted in the USAR on 6 August 2016 and 1 October 2019.

h. He entered active duty on 23 May 2020. His DD Form 214 shows he was honorably released from active duty on 6 January 2021 and transferred to the USAR. He completed 7 months and 14 days net active service.

i. Memorandum, Subject: General Officer Memorandum of Reprimand (GOMOR), 26 August 2022 shows the applicant was reprimanded for criminal misconduct, harassment, threatening and bullying behavior. On or about 28 May 2019, the applicant's former domestic partner received an order of protection against him. On or about 19 August 2019, he was convicted in civilian court. He was sentenced to two

consecutive terms of 180 days in confinement, with 3 days served and the remainder suspended. On or about 2 January 2022 he sent a series of group text messages to members of his unit which included the phrase “Don’t’ worry about calling me back now. I’ll see you in 3 weeks you piece of s__.”

(1) His behavior was unacceptable. As an NCO he was expected to display the highest standards of honor, trust, judgment, character, and integrity. He failed to meet those standards.

(2) The reprimand is imposed as an administrative measure and to as punishment under the Uniform Code of Military Justice (UCMJ).

j. Memorandum, Subject: Filling Determination for GOMOR, 4 November 2022 shows the GOMR would be placed permanently in the applicant’s record.

k. Retirement Accounting Statement, 11 October 2023 shows the applicant had 20 years qualifying for retirement.

l. The Memorandum, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), 10 September 2023, shows the applicant had completed the required years of service and will be eligible for retired pay upon his applicant at age 60.

m. The email, 21 September 2023 shows the IG, Major AR__ had been told that the “unexcused” absence codes would be changed to “excused” absences-awaiting confirmation. A follow-up email was not available for review.

n. Orders 0006059136, 21 September 2023 shows a demotion to private/E-1 and that the applicant was approved for an under other than honorable conditions discharge.

o. Orders 0006078280, 22 September 2023 shows the applicant was involuntarily discharged. Effective date 20 September 2023.

p. Orders 0006059155, 22 September 2023 revoked this order.

q. The applicant’s record is does not contain and the applicant does not provide any MEB proceedings, Physical Evaluation Board (PEB) proceedings, or DES proceedings.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical discharge for PTSD. 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 U.S. Army Reserve (USAR) on 9 June 2003; 2) A GOMOR, dated 26 August 2022, shows the applicant as reprimanded for criminal misconduct, harassment, threatening and bullying behavior. On 28 May 2019, the applicant's former domestic partner received an order of protection against him. On 19 August 2019, he was convicted in civilian court. He was sentenced to two consecutive terms of 180 days in confinement; 3) On 21 September 2023, the applicant was demoted to private/E-1 and was approved for an under other than honorable conditions discharge. On 22 September 2023, the applicant was involuntarily discharged.

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

c. The applicant asserts he met the requirements for a mental health condition that did not meet medical retention standards, specifically PTSD. Consequently, he requests to be referred to DES to be assessed for a medical discharge. There is evidence the applicant deployed to multiple different theaters of operations. The applicant began psychopharmacological treatment for ADHD in February 2014, and he consistently maintain medication management appointments for this condition consistently during his active service. There is insufficient evidence the applicant reported depressive, anxious, or PTSD symptoms during any of his behavioral health appointment or during his pre/post deployment assessments. Then in February 2021, the applicant noted in a phone message to his prescribing provider, he felt he was experiencing some PTSD symptoms, but the applicant was not diagnosed with PTSD or recommended for individual therapy for PTSD. The applicant had numerous no shows for appointments with the provider till a call was made to the Veterans Crisis Line on 03 October 2021. The applicant was reporting suicidal ideation related to domestic issues, criminal charges, and problems with his unit. The applicant reported recently being diagnosed with Depression in March 2021. He was referred to a civilian inpatient psychiatric program for period of time. There is insufficient evidence the applicant was diagnosed with PTSD that did not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service.

d. A review of JLV provided evidence the applicant was diagnosed with service-connected PTSD (100%SC) in December 2023. The applicant provided civilian medical

documentation from Riverside Methodist Hospital in Columbus, OH, dated 03 October 2021. The applicant was noted to have reported to the emergency department with suicidal ideation and depressive thoughts. He was diagnosed with Major Depressive Disorder and Suicidal Ideation.

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. During his active service, he was diagnosed and treated for ADHD, and he was seen for emergency psychiatric treatment for suicidal ideation and depression related to current stressors. However, there is insufficient evidence the applicant was diagnosed with PTSD that did not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES 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. During his active service, he was diagnosed and treated for ADHD, and he was seen for emergency psychiatric treatment for suicidal ideation and depression related to current stressors. However, there is insufficient evidence the applicant was diagnosed with PTSD that did not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES 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:

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 that the applicant was

diagnosed after his discharge with service-connected PTSD. The Board noted the applicant was treated in service for ADHD and seen for emergency psychiatric treatment for suicidal ideation and depression; however, determined there was insufficient evidence the applicant was diagnosed with PTSD that did not meet medical retention standards, attended more than 6 months of treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permanent profile while on active service. The Board concluded the applicant's case did not warrant a referral to the Disability Evaluation System and denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[redacted]

X //SIGNED//

CHAIRPERSON

Signed by:

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in

determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(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. 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.

6. Title 10, USC, Chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty

Medical Retention Board; 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 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.

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.

7. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit

commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not in the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

9. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

10. 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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless

of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

12. 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.

13. Title 26 U. S, Code, section 104 states, in pertinent part, that for purposes of this subsection, the term “combat-related injury” means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

//NOTHING FOLLOWS//