ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012939

APPLICANT REQUESTS: through counsel, a physical disability retirement in lieu of honorable discharge due to weight control failure.

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

- DD Form 149, Application for Correction of Military Record
- Counsel's letter
- Applicant's statement
- 2-DA Forms 4700, Resilience and Restoration Center Intake Questionnaire
- 2-MEDCOM Forms 774, Medical Record-Respect-Mil Primary Care Screening,
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Department of Veterans Affairs (VA)

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. Counsel states, in effect, the applicant served on active duty and after he returned from a combat deployment in Iraq, he was diagnosed with post-traumatic stress disorder (PTSD) on 24 August 2012. The applicant's medical record contains evidence of his treatment for PTSD. However, he was not referred to a Medical Evaluation Board (MEB) for his unfitting condition. He was instead administratively discharged for weight management in 2012. The Army erred when they failed to refer the applicant to the Disability Evaluation System (DES) to properly consider his medical condition which was incurred in the line of duty. This error denied the applicant a medical retirement. The Board should consider the applicant's narrative wherein he states, in effect:

a. Having prior service in the U.S. Air Force (USAF), he enlisted in the Regular Army. At the time of his enlistment, he had no issues, physical or otherwise. He deployed to Iraq in August of 2010. His personal safety was constantly in jeopardy, and he was acutely aware of this. It was an incredibly difficult, stressful situation. His daily

place of duty was in an Iraqi Army compound outside the wire. He drove an unarmored non tactical vehicle as his daily mode of transportation. He went without body armor or other protective equipment beside a rifle with no combat load, and no support except an elderly unarmed interpreter. He was forced to work with the Iraqis; however, he never trusted them. During his deployment he experienced many blasts and explosions in his vicinity from indirect fire on a regular basis. He was eventually removed from this position when a line unit was attacked and suffered casualties on 29 April 2011. He contends that his combat experience led to his disruptive to his sleep pattern, sleep apnea and other issues. While deployed he initially received a provisional diagnosis of combat stress. This condition is not documented in his medical record because it was a combat zone and record keeping was not necessarily complete. He was reassigned to a new unit at a different patrol base as a replacement for the casualties suffered there. This assignment further made him feel as though he was expendable. He contends that he was immediately subject to a toxic command climate for no discernable cause.

b. He finished the tour, and upon his return home, he was immediately diagnosed as suffering from combat stress again and sent to various places for treatment and given various medications. He was first diagnosed with PTSD on 24 August 2011. This is referenced in a document, 9 September 2011. During all of this, he was depressed, anxious, irritable, suffering memory lapses, sleep problems and headaches. He was on Paxil for depression. The records are clear that he had been diagnosed with PTSD. Even so, he was working an unreasonable 24-hour rotation as Charge of Quarters. This only continued to exacerbate his issues. Yet, he was still passing physical training assessments. He continued to be treated poorly by his command, which continued even after the change in command. He was further marginalized and threatened with various adverse administrative actions, including discharge. The weight control regulation was used a guise and pretense to improperly discharge him without medical evaluation.

c. He was denied the opportunity for a medical board, and honestly did not have the presence of mind to fight about it at the time. He was offered involuntary separation pay (which he eventually was made to pay back before he could receive VA disability benefits) and he received no support or guidance to the contrary. He frankly did not have the time to think about much except how to try to work to support myself. In addition, he had been made to feel as if he did not deserve anything.

d. He considered reenlisting in a Reserve Component, only to discover he was precluded because of the medications he had been prescribed and conditions documented in his medical records, in particular the use of Paxil to treat his depression and his PTSD diagnosis. He did not file a disability claim with the VA until 2015, nearly three years after his discharge, as he had been made to feel that he did not deserve anything. However, he found a support system that encouraged him to file for veterans' benefits. As a result, he was granted a 50% rating for PTSD on or about February 2016, but did not receive any or only partial payments until approximately 2017 as he had to

repay the $15,000.00 severance pay, he received upon discharge. On or about early 2019, he received a rating increase to 70% that was later raised to 100% based on unemployability. In approximately September 2022, he was finally rated permanent and totally disable because of PTSD and individual unemployability.

e. He still suffers from PTSD, physical pain, sleep problems, depression, anxiety, irritability, being constantly on guard, concerns with safety, nightmares, headaches, and other issues. The duration and severity of his conditions led him to understand that this was something that should have been addressed through a medical board and not an administrative discharge. He did not believe at or around the time of discharge that he deserved or even qualified for a medical board because of the way the Army treated him. He felt threatened. He never even knew to research the circumstances of his discharge. He was simply trying to get through the days one day at a time and trying to support myself. He suffered mentally because of the Army's choice as it often made him question what was wrong with him and only further served to exacerbate his trust issues, anxiety and depression.

3. A review of the applicant's record shows he enlisted in the Regular Army on 14 October 2009, and was awarded the military occupational specialty (MOS) 19D (cavalry scout). He served in Iraq from 20 August 2010 to 5 August 2011.

4. The complete facts of the applicant's discharge are not available in the Army Military Human Resource Record. However, his record does contain a Headquarters, 3rd Cavalry Regiment, Fort Hood, TX, memorandum, 6 December 2012, Subject: Separation under Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 18, Failure to Meet Body Fat Standards pertaining to the applicant. This document shows that after carefully reviewing all matters, the separation authority directed that the applicant be discharged with an honorable characterization of service.

5. The applicant's DD Form 214 shows he was honorably released from active duty on 6 December 2012, under the provisions of AR 635-200, chapter 18, due to weight control failure. He was assigned Separation Code JCR and Reentry Code 3 (eligible to reenlist with waiver). He was credited with 6 years of net active service this period. He received $15,649.16 in separation pay.

6. The applicant provides several medical documents some of which were not legible. The legible documents are listed below.

a. Resilience and Restoration Center Intake Questionnaire, 19 September 2011**,** which indicates that on 24 August 2011t, he was diagnosed with combat Stress/PTSD. The symptoms listed on this form include anger, stress, and irritability. The

problem/concern section indicated his symptom were related to deployment. Medications listed include Paxil, Fiorecet, Celebrex. The questionnaire contains

a. 17-item checklist where problems and complaints are rated by the applicant as Not at All, A little bit, Moderately, Quite a bit, and Extremely in terms of how much he is bothered by the specified item. This document indicates that during deployment the applicant experienced a blast or explosion and his irritability, headaches, and sleep problems had gotten worse after the incident.

b. RESPECT-Mil Primary Care Screening, 5 December 2011, indicates that the applicant was feeling down, depressed, and hopeless. He indicated that he had little interest or pleasure in doing things. He indicated that he had nightmares, and tried to avoid situations that reminded him of upsetting events. He further indicated that he was on guard, watchful or easily startled. He indicated that he felt numb, and detached from others, activities or surroundings. The applicant screened positive for depression and PTSD. Adjustment disorder is listed as “Other diagnosis.”

c. Resilience and Restoration Center Intake Questionnaire, 10 August 2012. This document shows the applicant stated “I am being threatened with a chapter that I think is unfair based on mental/medication issues and my personal circumstances.” The document indicates a diagnosis of PTSD/Anxiety/Depression. Medications listed are Temazepam and Wellbutrin. Included is a 17-item checklist where problems and complaints are rated by the applicant as Not at All, A little bit, Moderately, Quite a Bit, and Extremely in terms of how much he is bothered by the specified item. The document indicates that the date of diagnosis of Combat Stress/PTSD was 24 August 2011.

d. A VA summary of benefits, 27 June 2023, which shows the applicant has one or more service-connected disabilities and he is receiving disability compensation at the 100% rate, effective 11 April 2018.

e. His DD 214, 17 December 2012. This form shows the applicant served in a designated imminent danger pay area and completed foreign service in Iraq from 20 August 2010 to 5 August 2011. The applicant received separation pay totaling $15,649.16. His awards include the U.S. Army Reserve Longevity Service Award Ribbon and the U.S. Air Force Training Ribbon. The narrative reason for separation was weight control failure.

7. Counsel refers Psychiatric Evaluation, 9 January 2012, which reportedly contains a diagnosis of adjustment disorder with anxiety and irritable mood. (NOT ATTACHED).

8. The following documents are not legible, and the content of these documents cannot be confirmed. This information was taken from the applicant's statement discussed earlier in this Record of Proceedings.

a. RESPECT-Mil Primary Care Screening, 25 April 2012. This document indicates that the applicant had little interest or pleasure in doing things. He indicated that he had nightmares, tried to avoid situations that reminded him of upsetting events. He indicated that he was on guard, watchful or easily startled. He indicated that he felt numb, detached from others, activities or surroundings. The document indicates the screened positive for depression.

c. RESPECT-Mil Primary Care Screening, 16 May 2012. This document indicates that the applicant was feeling down, depressed, and hopeless. He indicated that he had little interest or pleasure in doing things. He indicated that he was on guard, watchful or easily startled. He indicated that he felt numb, detached from others, activities or surroundings. The document indicates the screened positive for depression and PTSD. Diagnosis checked is depression.

d. RESPECT-Mil Primary Care Screening, 18 July 2012. This document indicates that the applicant was feeling down, depressed, and hopeless. He indicated that he had little interest or pleasure in doing things. He indicated that he was on guard, watchful or easily startled. He indicated that he felt numb, detached from others, activities or surroundings. The document indicates the screened positive for depression and PTSD. Diagnosis checked is PTSD.

9. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

10. By regulation, separation action may not be initiated under AR 635-200, chapter 18, until the Soldier has been given a reasonable opportunity to comply with and meet the body fat standards. If no medical condition exists, initiation of separation proceedings is required for Soldiers who do not make satisfactory progress in the program after a period of 6 months, unless the responsible commander chooses to impose a bar to reenlistment.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability retirement in lieu of his honorable discharge due to weight control failure. He contends he did not meet medical retention standards as a result of PTSD at the time of his discharge. 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 14 October 2009 after serving in the Air Force; 2) The applicant deployed to Iraq from 20 August 2010-05 August 2011; 3) The complete facts of the applicant's discharge are not available in the Army Military Human Resource Record. However, his record does contain a Headquarters, 3rd Cavalry Regiment, Fort Hood, TX, memorandum, 6 December 2012, Subject: Separation under Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 18, Failure to Meet Body Fat Standards pertaining to the applicant; 4) The applicant's DD Form 214 shows he was honorably released from active duty on 6 December 2012, under the provisions of AR 635-200, chapter 18, due to weight control failure.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA), VA's Joint Legacy Viewer (JLV), and military and VA hardcopy behavioral health records/documents provided by the applicant were also examined.

c. The applicant asserts he developed PTSD while on active service, which warrants a referral to IDES and medical discharge due to not meeting medical retention standards at the time of his discharge. The applicant had prior service in the Air Force before enlisting in the Regular Army. There is evidence that he was engaged in behavioral health treatment prior to his enlistment in the Army on 18 May 2009. He reported to behavioral health services requesting an off-base referral for counseling. He stated he had been attending treatment through Military OneSource. He was provided information, and he was diagnosed with a Relational Problem. After he enlisted in the Army and prior to his deployment, the applicant was seen at behavioral health on 17 June 2010. He reported being in the Air Force for six years before joining the Army. He joined the Army to be a Cav Scout and possibly a Ranger. He did not like his current unit/leadership or his proposed assignment during deployment. The applicant described having a long history of anger issues prior to the military, and he "partly joined the military because it would allow him to do things to people." He was provided assistance with problem-solving and stress management. The applicant was deployed to Iraq in 2010-2011. There was much more access to electronic medical records and behavioral health resources at this time during GWOT. There is evidence he was seen by a Combat Stress Clinic on 23 June 2011. He reported his primary stressors were the Army and family. He described diminished sleep, low mood/energy, and poor concentration. He was recommended to follow up at the clinic, and the cause of his stress was considered non battle related/combat operational stress reaction. He was diagnosed with an unspecified Adjustment Disorder.

d. After returning from deployment, he was seen on 14 August 2011 for a redeployment behavioral health assessment. He reported difficulty with sleep and high

startle response and again irritability. He declined services at that time, but he was given information on how to obtain services at a later date. In September 2011, the applicant endorsed symptoms of depression at his primary care clinic. He was diagnosed with Depression with Anxiety by a primary care provider and prescribed psychiatric medication. He was referred to the RESPCT-mil program. The applicant was diagnosed with an Adjustment disorder due to his reported problems with mood and sleep post-deployment. He denied exposure to active combat, but he did report some exposure to mortars while deployed. He described completing a "Combat Stress program", but there is insufficient evidence the applicant attended more than one session prior to redeploying. He attended individual counseling primarily focused on supportive counseling, problem solving and stress management starting in September 2011. In addition, he was referred to regular biofeedback sessions starting in November 2011 for his problems with sleep and knee pain. Due to his report of marital problems, he and his wife were referred to marital therapy starting on 06 Dec 2011. They were seen regularly for a number of months. Lastly, he was referred to off post psychiatry starting in January 2012. He was prescribed predominately sleep medication. Later, the applicant started to attend a ten-session PTSD/Anger group starting in February, which he completed. Also, in February 2012, the applicant was evaluated by the program RESET for his suitability for their program for deployment related PTSD. On 07 March 2012, the applicant was diagnosed with PTSD and enrolled in the program starting on 29 May 2012. The applicant continued in individual counseling, medication management, group therapy, and marital therapy till the start of the program. He was also started on an antidepressant. The applicant was never determined to require inpatient psychiatric care or placed on a temporary or permanent psychiatric profile by any behavioral health or medical provider.

e. On 29 May 2012 started RESET PTSD program. He attended acupuncture, group and individual therapy as well as medication management appointments. He was found to have responded well to the program, and he demonstrated significant progress. He was not recommended for limited duty at any time. He was still diagnosed with PTSD, but he was never placed on a psychiatric profile, required inpatient psychiatric treatment, or found to not meet medical retention standards as a result of PTSD. After the program completed, he continued to see his individual therapist as needed till he was discharged.

f. A review of JLV provided evidence the applicant has been engaged with the VA for behavioral health treatment for PTSD starting 2015, and he continues to be actively involved in treatment. He has been diagnosed with service-connected PTSD, and he has been awarded service-connected disability for PTSD (70%) since 2018.

g. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant was diagnosed with PTSD while on active service as a result of his deployment to Iraq. However, there is insufficient evidence the applicant was ever

placed on a permeant psychiatric profile, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective. He was actively engaged in various types of treatment for over a year, but prior to his discharge for not meeting height and weight standards, he was demonstrating significant improvement in symptoms. In addition, he was evaluated by numerous behavioral health providers during the course of his treatment, and he was not referred for a MEB. Therefore, while there is sufficient evidence the applicant was experiencing PTSD at the time of his active service, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed with PTSD while on active service as a result of his deployment to Iraq. However, there is insufficient evidence the applicant was ever placed on a permeant psychiatric profile, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective. He was actively engaged in various types of treatment for over a year, but prior to his discharge for not meeting height and weight standards, he was demonstrating significant improvement in symptoms. In addition, he was evaluated by numerous behavioral health providers during the course of his treatment, and he was not referred for a MEB. Therefore, while there is sufficient evidence the applicant was experiencing PTSD at the time of his active service, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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 was ever placed on a permanent psychiatric profile, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective.

2. The Board determined based on the applicant's record there is sufficient evidence he was experiencing PTSD at the time of his active service, however, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical discharge at this time. The Board agreed there is insufficient evidence that the applicant was not fit for duty from a mental health standpoint, that he was on a psychiatric profile, that he did not meet medical retention standards, nor that he was at the medical readiness decision point and needed a referral to the IDES process. The Board recognized the applicant's request for referral to the DES for a behavioral health condition, however it is without merit and relief was denied.

3. The Board determined DES compensates an individual only for service incurred 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.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

[redacted]

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 Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200, Personnel Separations – Active Duty Enlisted Administrative Separations, in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Chapter 18, Failure to Meet Body Fat Standards, provides that Soldiers who fail to meet the body fat standards set forth in AR 600-9, The Army Body Composition Program, are subject to separation per this chapter when such condition is the sole basis for separation.

b. Separation action may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to comply with and meet the body fat standards. Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter. If no medical condition exists, initiation of separation proceedings is required for Soldiers who do not make satisfactory progress

in the program after a period of 6 months, unless the responsible commander chooses to impose a bar to reenlistment.

c. The service of Soldiers separated per this chapter will be characterized as honorable.

3. 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.

4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.
6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

7. Title 10, U.S. Code, section 1556 of, 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.

8. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//