

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20230013210

APPLICANT REQUESTS: medical retirement; in the alternative, a medical separation with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Five DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Two DA Forms 2442 (Department of the Army Certificate of Achievement)
- Three diplomas
- DA Form 4980-14 (Army Commendation Medal Certificate)
- DA Form 4980-18 (Army Achievement Medal Certificate)
- Two DA Forms 87 (Department of the Army Certificate of Training)
- Task Force Certificate of Completion
- Certificate of Completion
- DA Form 3881 (Rights Warning Procedure/Waiver Certificate)
- Medical Records, 23 pages
- DA Form 3822-R (Report of Mental Status Evaluation)
- Separation Packet
- DD Form 458 (Charge Sheet)
- Pre-Trial Agreement
- DA Form 5111 (Summary Court-Martial Rights Notification/Waiver Statement)
- DA Form 4430 (Department of the Army Report of Result of Trial)
- DD Form 2329 (Record of Trial by Summary Court-Martial)
- DD Form 2707 (Confinement Order)
- Civilian Behavioral Health Provider Psychological Evaluation
- Department of Veterans Affairs (VA) Letter
- Army Review Boards Agency (ARBA) Letter
- DD Form 256A (Honorable Discharge Certificate)
- Army Discharge Review Board (ADRB) Case Report and Letter

FACTS:

1. Counsel states, based upon the ADRB's character of service upgrade to honorable, the Board's approval of a medical retirement for the applicant would make him whole. The injuries he incurred while on active duty were not recognized by the Army until 2022 (apparently referring to the ADRB's findings). After summarizing the applicant's service history, stating why the Board has jurisdiction, and addressing the timeliness of the applicant's request, counsel made the following arguments:

- The main error prejudicing the applicant's rights is that his post-traumatic stress disorder (PTSD) went undiagnosed and untreated while on active duty; his behavioral health issue significantly contributed to the misconduct that led to his adverse separation
- Given the applicant's recent PTSD diagnosis, VA's subsequent service connection designation, and Department of Defense liberal consideration guidance, the Board should grant either a medical retirement or referral to a medical evaluation board (MEB) for severance pay

2. The applicant provides documents from his service record, evidence of a post-service PTSD diagnosis, and the ADRB's upgrade of his character of service.

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

- On 15 February 2006, the applicant enlisted into the Regular Army for 3 years and 19 weeks
- Upon completion of initial entry and airborne training at Fort Benning, GA, the Army awarded military occupational specialty 11B (Infantryman) with "P" skill qualification identifier; he remained assigned at Fort Benning
- On 1 August 2006, the applicant deployed to Iraq; effective 1 September 2007, his command promoted him to specialist (SPC)/E-4; on 1 November 2007, he redeployed; orders subsequently assigned him to Fort Bragg, NC
- On 2 June 2008, the applicant immediately reenlisted 4 years; as his reenlistment option, he requested reassignment to Fort Benning; he arrived at his Fort Benning unit, on or about 17 July 2008
- On 30 March 2010, the applicant's command preferred court-martial charges against him for one specification of missing movement (Article 87, Uniform Code of Military Justice (UCMJ)) and two specifications of disrespect toward a commissioned officer (Article 89, UCMJ)
- Also on 30 March 2010, the applicant's company commander-initiated separation action, under the provisions of paragraph 14-12c (Commission of a Serious Offense), Army Regulation 635-200 (Active Duty Enlisted Administrative Separations)

- On 19 April 2010, a summary court-martial convicted the applicant of violating UCMJ Articles 87 and 82; the court sentenced him to 30-days' confinement, forfeiture of \$964 per month for one month, and reduction to private (PV1)/E-1
- On 18 May 2010, the separation authority approved the commander's separation recommendation and directed the applicant's under other than honorable conditions discharge; on 26 May 2010, orders discharged the applicant accordingly
- On 27 August 2017, the applicant petitioned the ADRB for an upgraded character of service; on 3 April 2019, the ADRB conducted a records review and voted to deny relief
- On 26 April 2021, the applicant submitted a second request to the ADRB; on 6 September 2022, the ADRB determined the applicant's discharge had been inequitable and voted to upgrade him to an honorable character of service
- On or about 15 December 2022, ARBA reissued the applicant a corrected DD Form 214

4. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a medical retirement. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his discharge.

b. 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:

- The applicant enlisted into the Regular Army on 15 February 2006, and he deployed to Iraq from August 2006 until November 2007.
- On 30 March 2010, the applicant's command preferred court-martial charges against him for one specification of missing movement and two specifications of disrespect toward a commissioned officer, and the applicant's company commander initiated separation action, under the provisions of paragraph 14-12c (Commission of a Serious Offense), Army Regulation 635-200.
- On 19 April 2010, a summary court-martial convicted the applicant of violating UCMJ Articles 87 and 82.
- The applicant was discharged on 26 May 2010 with an UOTHC discharge.
- The applicant petitioned the ADRB for an upgraded character of service, and on 3 April 2019, the ADRB conducted a records review and voted to deny relief.
- On 26 April 2021, the applicant submitted a second request to the ADRB; on 6 September 2022, the ADRB determined the applicant's discharge had been inequitable and voted to upgrade him to an honorable character of service
- On 15 December 2022, ARBA reissued the applicant a corrected DD Form 214.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that his PTSD went undiagnosed and untreated while on active duty and his behavioral health issues significantly contributed to the misconduct that led to his adverse separation. A Report of Mental Status Evaluation dated 3 February 2010 showed that the applicant was diagnosed with Anxiety Disorder not otherwise specified (NOS) and Depression, but it was noted that no mental health problems were seen that would require disposition through medical channels and that he met retention standards. An Outpatient Medications document, which was undated, showed prescriptions for Melatonin (for sleep), Nortriptyline (for anxiety, anger, headaches, sleep, and mood), and Prazosin (for distressing dreams). An Outpatient Psychiatry document dated 4 February 2010 showed that the applicant reported increased anger and anxiety since his deployment to Iraq. He also reported several symptoms of PTSD, and the evaluator noted "symptom clusters are sufficient to meet criteria for mild PTSD." The applicant reported trauma exposure as "working with Special Forces teams in Iraq and enduring frequent combat engagements," and he also discussed witnessing the loss of life of civilian Iraqis, primarily children and women, as being distressing. The documentation also discussed childhood history of physical abuse/trauma, and the evaluator concluded that "his PTSD symptoms are likely EPS (existed prior to service) and exacerbated by combat experiences" and concluded a diagnosis of Anxiety Disorder NOS. A primary care note from 19 February 2010 showed the applicant screened positive for depression (score was 8, indicating mild symptoms) and PTSD (score was 44, indicating the possible presence of PTSD). A VA Rating Decision letter dated 22 August 2021 showed the applicant is service connected for PTSD at 50%. A psychological evaluation, which included objective psychological testing, by Child & Family Wellness Institute dated 20 February 2016 (*signed on 20 February 2017*) showed a diagnosis of PTSD. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initially presented as a walk-in to behavioral health on 29 December 2009, and his primary complaint was related to upcoming deployment and knee problems. He reported he did not believe he could handle the deployment but had been cleared by medical, and he disagreed with that decision. He was seen for another visit on 6 January 2010 and reported anger, pain, depressed mood, and anxiety as well as difficulty integrating into his new unit. He was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, and a full intake was conducted on 12 January 2010. The applicant discussed his pending UCMJ, which was a result of a verbal outburst toward a military medical provider who had told the applicant he was cleared to go to deployment training. The applicant reported multiple symptoms of PTSD as well as a significant childhood history of trauma exposure. The evaluating psychologist recommended a referral for medication and diagnosed him with Anxiety Disorder NOS and Depression. The previously discussed

encounters on 3 and 4 February 2010 were also noted, and both concluded diagnoses of Anxiety Disorder NOS and Depression. It was noted that the applicant is 100% service connected for several conditions with a 70% service connection for PTSD. There are no records of any mental health treatment through the VA.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a medically disabling condition while on active service, and there is insufficient evidence to warrant a referral to a medical evaluation board or a medical retirement. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). There was documentation of diagnoses of Anxiety Disorder NOS, Adjustment Disorder, and Depression while on active service, and these diagnoses were made just prior to his discharge when he sought mental health services related to his pending UCMJ charges. VA records show he is 70% service connected for PTSD and rated at 100% disabled for additional physical health conditions. However, the Disability Evaluation System (DES) compensates an individual only for service incurred medical condition(s) that 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

f. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical retirement
- (2) Did the condition exist or experience occur during military service? NA; request is for medical retirement
- (3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical retirement

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 counsel's statement, 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 through counsel of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a medically disabling condition while on active service, and there is insufficient evidence to warrant a referral to a medical evaluation board or a medical retirement. The opine noted the documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition.
2. The Board determined the applicant, nor his counsel has demonstrated sufficient evidence to support the contentions for a medical retirement; in the alternative, a medical separation with severance pay. The Board recognized the applicant is 100% service connected for several conditions with a 70% service connection for PTSD. Evidence in the records also shows the applicant was diagnosed with a psychiatric condition while on active service. However, the Board found insufficient evidence of any mental health problems that would require disposition through medical channels and that he met retention standards. Furthermore, the Board determined based on the medical opine there are no records of any mental health treatment through the VA. Based on the preponderance of evidence, the Board denied relief.

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 correction of the records of the individual concerned.



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 (ABCMR) applicant's (and/or their counsel) prior to adjudication.
2. Army Regulation (AR) 40-501 (Standards of Medical Fitness), in effect at the time, provided guidance for determining when Soldiers failed medical retention standards, listed in chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement).
 - a. Paragraph 3-3 (Disposition) Policy. Members with conditions listed in this chapter were to be evaluated by a medical evaluation board (MEB) and referred to a physical evaluation board (PEB).
 - b. Paragraph 3-4 (General Policy). Possession of one or more of the conditions listed in this chapter did not mean automatic retirement or separation from the Service.

Physicians were responsible for referring Soldiers with conditions listed in chapter 3 to an MEB.

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

- a. Chapter 3 (Policies), paragraph 3-1 (Standards of Unfitness Because of Physical Disability) 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).

(1) Section II (Initiation of Medical Evaluation). 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) Section III (Medical Processing Related to Disability Evaluation). Medical authority convened an MEB to document the Soldier's medical status and determine whether the Soldier met the medical retention standards outlined in AR 40-501. Those Soldiers who failed medical retention standards were referred to a PEB for a fitness determination.

(2) Section IV (Physical Disability Evaluation). 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) Section VI (Disposition Subsequent to Adjudication). 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

- In cases where the condition was not sufficiently stable to render a disability rating, Soldiers were placed on the Temporary Disability Retired List for up to 5 years with periodic reevaluations; if stable, they were immediately added to the Permanent Disability Retired List

4. Title 38 (Veterans' Benefits), U.S. Code, sections 1110 (Wartime Disability Compensation – Basic Entitlement) and 1131 (Peacetime Disability Compensation – Basic Entitlement) permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service; for its disability determinations, the Army's disability system operates under a separate provision of Federal law: chapter 61 (Retirement or Separation for Physical Disability), Title 10 (Armed Forces), U.S. Code.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

6. 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 Board 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 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs 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.

8. 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.

//NOTHING FOLLOWS//