

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20230013428

APPLICANT REQUESTS:

- Permanent disability retirement
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Official Military Personnel File (OMPF) Request
- Training Certificate
- Orders 9034013, dated 3 February 2009
- SGLV 8292 (Servicemembers Group Life Insurance Election and Certificate), dated 23 March 2009
- Orders 099-038, dated 9 April 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 3 July 2009
- DA Form 4187, dated 7 March 2010
- Army National Guard (ARNG) Current Annual Statement, dated 9 March 2010
- Personnel Qualification Record, dated 7 April 2010
- Orders 149-001, dated 29 May 2010
- Orders 264-111, dated 21 September 2010
- Orders 350-460, dated 16 December 2010
- ARNG Current Annual Statement, dated 4 February 2011
- Orders CS-164-0271, dated 13 June 2011
- Orders CS-164-0271 (A1), dated 29 September 2011
- Orders CS-164-0271 (A2), dated 22 October 2011
- Two Oklahoma Army National Guard (OKARNG) Forms 38 (OKARNG Service Awards), dated 13 January 2012
- ARNG Current Annual Statement, dated 1 February 2012
- Meritorious Unit Commendation (MUC), for the period 15 July 2011 through 15 March 2012
- Orders 080-0143, dated 20 March 2012
- Orders 088-131, dated 28 March 2012

- Orders 109-038, dated 18 April 2012
- DD Form 214, for the period ending 29 April 2012
- Orders 229-080, dated 16 August 2012
- DA Form 4187 (Personnel Action Form), dated 10 January 2013
- Permanent Order 241-10, dated 29 August 2013
- ARNG Current Annual Statement, dated 5 June 2014
- Orders 026-025, dated 26 January 2015
- Information Report, dated 6 April 2015
- Information Report, dated 22 September 2021
- Medical Records (297 Pages)

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, in effect, he is requesting a permanent disability retirement. During his service in Afghanistan from 15 July 2011 through 15 Mar 2012, he was assigned as a sniper and a rifleman.

a. He was awarded multiple awards for his service in support of Operation Enduring Freedom (OEF), to include the Combat Infantryman Badge. He was engaged in daily ground operations, and multiple firefights. He received proper training before he served in combat, however he was not as prepared to be reintegrated in a normal, post combat environment. Upon his return from deployment, he was unable to adapt to life after combat.

b. He ultimately sought out help for his extreme behavior and physical reactions from post-traumatic stress disorder (PTSD) because it not only affected him, but it also severely impacted his family. He is now unable to work and is limited on all basic life functions, due to the effects of PTSD. He humbly asks the Board to review his medical records and consider relief.

3. The applicant provides and the service record shows:

a. On 29 January 2009, he enlisted in the ARNG.

b. On 27 March 2011, he was ordered to active duty in support of OEF. He was honorably released from active duty on 29 April 2012. He completed 1 year, 1 month, 3 days of active-duty service, and 8 months, 26 days of foreign service (Afghanistan). He was awarded the Combat Infantryman Badge for his actions during OEF.

c. On 28 January 2015, he was honorably released from the OKARNG, after serving for six years, due to his expiration of active status commitment in the Selected Reserve.

d. There is no documentation to show the applicant received a physical profile, medical evaluation board or a physical evaluation board.

e. The applicant provides medical records, which will be reviewed and discussed by the medical staff at the Army Review Boards Agency (ARBA).

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge. She contends PTSD is related to her request. 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 17 July 1992; 2) The applicant was counseled multiple times between February-April 1993 for misconduct such as not being at her place of duty, sleeping on duty, not attempting to run, and lacking motivation; 3) On 13 April 1993, the applicant accepted non-judicial punishment for failing to go to her Special Physical Training formation; 4) On 29 April 1993, the applicant's commander notified her that he was initiating actions to separate her under, Chapter 13, for unsatisfactory performance. As for the specific reasons, the commander noted: the applicant's inability to pass the APFT, lack of motivation, and general attitude towards military; 5) On 7 May 1993, the applicant was discharged, Chapter 13, for unsatisfactory performance. Her service was characterized as under honorable conditions (general). She completed 9 months and 21 days of active service.

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

c. The applicant asserts she experienced PTSD, which mitigates her misconduct. There is evidence the applicant had experienced physical injuries such as a broken foot and shin splints during her active service along with having her wisdom teeth removed. There is also evidence she was experiencing difficulty passing her APFT in more than one event. There was evidence in her medical record that she was also experiencing difficulty adjusting to military life and experiencing some depressive symptoms such as lack of motivation, difficulty sleeping, and low mood. The applicant was seen for a psychiatric consultation on 14 April and 4 May 1993. She was evaluated by a military clinical psychologist and diagnosed with an Adjustment Disorder with physical complaints. She was recommended for an administrative separation as a result.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed or treated for a service-connected mental health condition including PTSD, and the applicant does not receive any service-connected disability.

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 condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced PTSD which mitigates her misconduct. The applicant was diagnosed with an Adjustment Disorder while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced PTSD which mitigates her misconduct. The applicant was diagnosed with an Adjustment Disorder while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced PTSD, while he was on active service. The applicant was experiencing difficulty adapting to military life and her injuries. She was identified as experiencing an Adjustment Disorder by behavioral health services and recommended for an administrative separation as a result. However, there is insufficient evidence the applicant was unable to understand the consequences of her actions/misconduct prior. Yet, the applicant contends she was experiencing a mental health condition that mitigates her misconduct, and per Liberal Consideration her contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the lack of unfitting conditions identified within the medical review, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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 (Armed Forces), 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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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 applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary

hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Title 10, United States Code (USC) (Armed Forces), chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS 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 the Informal Physical Evaluation Board (PEB) Proceedings. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Title 38, United States Code (USC) (Veterans' Benefits), 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.

5. Title 38, United States Code (USC) (Veterans' Benefits), 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.

6. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U. S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active-duty period, will be processed as follows. Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 or discharged from the USAR per Army Regulation 135-175 (Separation of Officers) or Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

b. Reservists who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reservists with nonduty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with this regulation.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. As such, this regulation implements the requirements of Title 10 (Armed Forces), United States Code, Chapter 61; DODI 1332.18, DODM 1332.18 (Volumes 1 through 3), and DOD policy memorandums to these issuances; and Army Directive 2012-22 as modified by DODI 1332.18.

a. Chapter 4 provides, Public Law 110-181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

b. A Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the Department of Veterans Affairs (VA) or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

c. The objectives of the Disability Evaluation System (DES) are to:

(1) Maintain an effective and fit military organization with maximum use of available manpower.

(2) Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the line of duty (LOD).

(3) Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

d. The DES begins for a Soldier when the Soldier is issued a permanent profile approved in accordance with the provisions of AR 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40-501 (see glossary). Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command's Medical Management Center before their referral into the DES.

e. The DES concludes for Soldiers as set forth below:

(1) For Soldiers determined by the MEB to meet medical retention standards and MAR2 did not refer the Soldier to the DES, the DES concludes the date the MEB returned the Soldier to duty. (If referral to MEB resulted from MAR2 evaluation, referral to the PEB may be mandatory.

(2) For Soldiers referred to the PEB and determined fit, the DES concludes as of the date of USAPDA's memorandum approving the finding of fit.

(3) For Soldiers referred to the DES under a Legacy Disability Evaluation System (LDES) process and determined unfit, the DES concludes on the date of the Soldier's separation or retirement for disability.

(4) For Soldiers referred to the DES under the Integrated Disability Evaluation System (IDES) process and determined unfit, the DES concludes on the date of the Soldier's notification of the VA's benefits decision. However, the Soldier's military status as a member of the Regular Army (RA) or Reserve Component (RC), as applicable, ends on the date of the Soldier's disability separation or retirement.

f. A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation.

g. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

h. Combat related injuries are those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) Armed conflict. A SM may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists. Armed conflict may also include such situations as incidents

involving a Soldier while interned as a prisoner-of-war or while detained against their will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under conditions simulating war. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

8. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces), 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%.

9. Title 10, United States Code (USC) (Armed Forces), 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.

//NOTHING FOLLOWS//