

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230013450

APPLICANT REQUESTS: through Counsel, physical disability retirement in lieu of honorable release from active duty due to completion of required active service

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- DD Form 2807-2 (Medical Prescreen of Medical History Report), dated 21 September 2011
- DD Form 2807-1 (Report of Medical History), dated 4 November 2011
- U.S. Military Entrance Processing Command (USMEPCOM) Form 40-1 (Medical History Provider Interview, dated 4 November 2011
- DD Form 2808 (Report of Medical Examination), dated 4 November 2011
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 24 August 2012
- Reserve Officers' Training Corps (ROTC) Program Orders 210-1, dated 27 July 2015
- Office of the Under Secretary of Defense memorandum, dated 25 August 2017
- U.S. Army Installation Management Command Orders EX-233-0016, dated 21 August 2018
- Medical Record, dated 5 August 2019
- DD Form 214 covering the period ending 8 October 2020
- Department of Veterans Affairs (VA) letter, dated 3 May 2022
- VA letter, dated 16 May 2022
- VA letter, dated 9 March 2023
- witness statement from J____ H____, dated 23 March 2023
- applicant's self-authored statement, dated 20 April 2023
- wife's statement, dated 24 April 2023

FACTS:

1. Counsel states:

a. The applicant respectfully submits this application requesting the Board to convene a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) to determine whether he qualifies for medical retirement, correct his narrative reason for separation to medical retirement, and to change his separation code to reflect a corresponding code.

b. The applicant entered the Army National Guard (ARNG) for his first term of service on 8 May 2012, where he served as an Infantryman. See Exhibit 1. During this service period, the applicant earned the National Defense Service Medal and the Army Service Ribbon. The applicant was separated under honorable conditions and was released from active duty training for completion of required active service. The applicant's enlistment medical report showed that he did not suffer from any physical or mental health conditions at the time of enlistment. See Exhibit 2. The applicant was in the U.S. Army Individual Ready Reserve between first honorable separation and the rest of his service. See Exhibit 3. The applicant was discharged from the U.S. Army Reserve effective 31 July 2015.

c. The applicant continued his term of active duty in the U.S. Army on 14 November 2015. See Exhibit 4. During this period of service, he received the Army Commendation Medal with C Device, the Army Commendation Medal, the National Defense Service Medal, the Global War on Terrorism Service Medal, the Afghanistan Campaign medal with campaign star, the Army Service Ribbon, the Overseas Service Ribbon, and the NATO Medal.

d. On 21 October 2018, the applicant was deployed to Afghanistan in support of Operation Freedom's Sentinel. After deployment, the applicant reported to the military medical for his post-deployment medical exam. See Exhibit 6. At this exam, he reported that he drank alcohol monthly or less in the past year and that he was "bothered a little" by health concerns after returning from deployment. His symptoms included back pain, pain in the arms, legs, or joints, feeling tired or having low energy, trouble concentrating on things, memory problems, noises in his head, trouble hearing, sensitivity to bright light, becoming easily annoyed or irritable, numbness or tingling in the hands or feet, pain with urination, frequency of urination, or strong urge to urinate. Despite such findings, his physical symptoms reflected "minimal concerns," and he continued his service career.

e. The applicant stated he notices he was drinking much more than he had before he left for deployment. See Exhibit 7. He stated he became reclusive and isolated himself from people because being around friends and family was difficult for him. He

felt angry, fearful, and worrisome and did not enjoy the things he used to enjoy. Instead of spending time with friends and family, he drank alone to occupy his time. This caused him to miss feeling appreciative of the time spent with friends and family and his sense of accomplishment at work.

f. The applicant was discharged under honorable conditions on 8 October 2020 for completion of required active service. See Exhibit 4. After he was discharged, he stated his mental health got even worse, leading him to binge drink, abuse drugs, and smoke cigarettes. His job as a truck driver caused him immense levels of anxiety due to the sheer number of people he was in contact with, and he had to quit. The applicant reported to the VA in 2022 to receive a disability rating for his symptoms. See Exhibit 8. The VA ruled his mental health symptoms were service-connected disabilities and awarded him a 100 percent service-connected evaluation, rendering him totally and permanently disabled due solely to his service-connected disability as of 4 February 2022. The applicant has continued to receive a service-connected disability rating of 100 percent. See Exhibits 9 and 10.

g. In this case, it is respectfully submitted that the applicant suffered a material error of discretion by his chain of command regarding their failure to further inquire into his physical health when injuries were evident in his post-deployment exam. He exhibited physical pain in several limbs, demonstrated low energy, and other symptoms of mental health conditions, trouble hearing, sensitivity to light, and problems with urination.

h. It is respectfully submitted that his chain of command should have recognized these symptoms as a warning that a more serious condition was present and should have intervened for further investigation rather than allowing the applicant to proceed with his service career and risk the chance of his conditioning worsening. By the chain of command's failure to recognize the applicant's troubling symptoms and failing to convene an MEB and PEB at time they were evidenced prior to his discharge, they caused the applicant to continue to suffer injuries that may have inhibited his ability to perform to the highest degree. Had the applicant received further medical treatment at the time, he may have been able to receive a diagnosis and recognition of his service-connected injuries sooner and would not have had to suffer the discharge that is currently under review by this Board but would have instead received a medical retirement.

i. Pursuant to the Under Secretary of Defense Kurta memorandum of August 2017, liberal consideration is generally given to veterans seeking discharge review when the application is based in whole or in part on matters relating to mental health. See Exhibit 11. Symptoms may be evidenced by victim statements, statements from friends or family, changes in behavior, substance abuse, episodes of depression or anxiety without an identifiable cause, and unexplained social behavioral changes.

j. The applicant requests the Board convene an MEB and PEB to evaluate the percentage of disability he suffered while in the service and continues to suffer to this day to receive the status of a medical disability retirement. He respectfully submits that the current state of his military record does not reflect the presence of his mental health impairment and it is unjust to allow his existing military record to stand without correcting his narrative reason for separation to medical retirement, since it is supplemented by a VA disability rating to reflect such. Failure to correct his records to reflect his disability as found by the VA would serve as a further injustice.

k. To be eligible for a military medical disability retirement, the applicant must demonstrate his injuries were caused or exacerbated by his military service, the injuries were not a result of his own misconduct, and the injuries rendered him unfit for continued service at the time of his discharge. To receive a permanent disability retirement, he must also receive a minimum disability rating of 30 percent.

l. First, the applicant can demonstrate that his injuries were caused or exacerbated by military service because the VA has already determined that his disability is 100 percent service-connected. See Exhibit 8. Second, the injuries were not a result of his own misconduct because they became prevalent when he returned from his deployment to Afghanistan, which was not a matter of his own choosing, as he was ordered to deployment as part of his active duty responsibilities in the Army. He had no opportunity to avoid the understandable mental health effects of his deployment without facing adverse action by the military for failure to comply with orders. Third, the applicant can also establish that his injuries rendered him unfit for continued service at the time of his discharge due to the already established VA determination that his service-connected injuries or mental health conditions rendered him totally and permanently disabled. See Exhibit 8.

m. It is evident that applicant suffered physical injuries at the time of his return from deployment that were not taken seriously and were clearly present at the time of his discharge. The VA, again recognized in 2022, when it was reinforced, his injuries were related to his military service. Additionally, because the VA determined his injuries or mental health conditions were service-connected with a 100 percent disability rating, there should be no reason for the MEB and PEB to determine any other rating when they are convened. However, should they find a lesser disability percentage, any percentage over 30 percent will still allow the applicant to receive a medical retirement and it would be unjust not to correct his records to show medical retirement.

n. Additionally, per the Under Secretary of Defense Kurta memorandum, it is well established that the applicant suffered mental health conditions which this Board should consider in correcting his record to reflect medical retirement. His mental health conditions, despite no direct diagnosis of post-traumatic stress disorder (PTSD) in his medical file, demonstrate the presence of PTSD and his own reports of symptoms and

changes in his behavior bolster that determination, as stated in the Under Secretary of Defense Kurta memorandum. Research demonstrates that PTSD symptoms are difficult to detect but are common among those who experience traumatic events like war, assault, or disaster. Although difficult to detect, some common symptoms that indicate the presence of PTSD include irritability and angry outbursts, excessive fear and worry, fatigue, problems sleeping, and changed is behavior or personality.

o. Again, although not diagnosed with PTSD, the applicant reported and showed all of the symptoms of PTSD in his post-deployment medical exam and in his own personal statements, which demonstrate the likely presence of PTSD after his discharge, which this Board should consider. The Board should also consider the statements from the applicant's wife and his Army colleague. His wife stated he was "off" when he returned from his deployment, isolating himself, bingeing alcohol, exhibiting rage, sadness, and anxiety and became impossible to spend time with. See Exhibit 12. She also corroborated his statement and medical findings that he experienced panic attacks and daily struggles with anxiety at his new job after being discharged from the Army. She stated he seemed hopeless and depressed and felt like he had no choice but to quit his job, all of which demonstrate the symptoms of PTSD. The applicant's symptoms were also identified by his Army comrade, who stated his alcohol use had worsened after returning from Afghanistan, demonstrating the presence of mental health conditions. See Exhibit 13. His alcohol use became concerning when he began to drink as soon as he woke up on Saturday mornings and would consume over 40 beers over the weekend. Such alcohol use should be considered in addition to his VA disability rating, as it demonstrates the presence of mental health conditions not encompassed under PTSD.

p. The applicant will suffer should the Board fail to consider these findings. Although the diagnosis of a disability was brought to light by the VA approximately 1 1/2 years after he was discharged, several findings were documented during the applicant's post-deployment medical exam, which should have been considered in reviewing the type of discharge he received. Because there was the presence of a physical injury at the time of his discharge and that he has been given a 100 percent service-connected disability rating by the VA after his discharge, it is requested that his request be considered liberally in accordance with the Under Secretary of Defense Kurta memorandum. Because the applicant is able to establish all three elements necessary for a medical retirement, his records should be corrected to reflect a medical retirement for his service-connected disability to avoid further injustice and the continued stigma of mental health conditions without just compensation.

2. The applicant states:

a. He joined the North Carolina (NC) ARNG in November 2011, during his freshman year of college. During that time, he was also enrolled in the Army ROTC program

offered at East Carolina University. He thoroughly enjoyed ROTC and the ARNG. He was extremely excited when he graduated and commissioned as an engineer second lieutenant in the U.S. Army.

b. He began his engineer training at Fort Leonard Wood, MO, in November 2015. After graduating in May 2016, he was stationed at Fort Knox, KY. After 2 years at Fort Knox, his route clearance company deployed to Kandahar, Afghanistan for 9 months to conduct route clearance for 2nd Brigade, 10th Mountain Division during Operation Freedom's Sentinel. Upon returning from deployment in August 2019, he immediately made a permanent change of station (PCS) move back to Fort Leonard Wood for the Engineer Captains Career Course, where he was then promoted to captain.

c. When he first returned from Afghanistan, he began noticing he was drinking much more than he had before he left. Before his deployment, he would have considered himself a very friendly, energetic person who enjoyed having a good time with friends. After returning, he became reclusive and no longer wanted to be around people. He found that time with friends and family was extremely difficult. He chose to occupy his days drinking alone rather than being with those who cared for him. Things he once enjoyed did not seem fun to him anymore. Nothing was anything anymore. What he did feel was anger, fear, and worry. He could never sit still or enjoy present moments because his mind was always somewhere else. He missed feeling appreciative of time with friends or accomplishments at work. Everything seemed gray.

d. The following year he decided to get out of the Army. After being discharged, his mental health took a turn for the worst. He began binge drinking, abusing drugs, and smoking cigarettes. He had a horrible job driving a truck for a large uniform company. His anxiety was at its peak being in contact with so many people that he had to quit. He tried working from home to be around his service dogs every day, but unfortunately, being a mortgage lender, he could no longer find customers with the continuous rising interest rates.

e. He misses the Army every day. He misses the sense of purpose and feelings of camaraderie he had during his service. He misses the sense of security. He has thought about joining again, but unfortunately, with his current conditions, he would not be fit for service. It is because of these reasons that he is requesting to be medically retired from the Army after his 9 years of dedicated, honorable service.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that

performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A DD Form 2807-2, dated 21 September 2011, a DD Form 2807-1, dated 4 November 2011, and a USMEPCOM Form 40-1, dated 4 November 2011, all show the applicant provided his medical history for the purpose of ARNG enlistment and indicated on the forms he had no listed conditions aside from chicken pox as a child.

5. A DD Form 2808, dated 4 November 2011, shows the applicant underwent medical examination on the date of the form for the purpose of ARNG enlistment and was found qualified for service with a PULHES of 111111.

6. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the NCARNG on 4 November 2011.

7. A DD Form 214 shows the applicant entered active duty training (ADT) on 8 May 2012, for one station unit training (OSUT) at Fort Benning, GA.

8. A National Guard Bureau (NGB) Form 594-1 (ARNG Simultaneous Membership Program (SMP) Agreement) shows on 21 June 2012, the applicant signed the form amending his previous ARNG enlistment by enrolling in the SMP, allowing for Reserve service and simultaneous participation in the ROTC program as a cadet.

9. A DD Form 214 shows the applicant was honorably released from OSU ADT at Fort Benning, GA, on 24 August 2012, due to completion of required active service and transferred back to the NCARNG. He was awarded the Military Occupational Specialty (MOS) 11B (Infantryman) and credited with 3 months and 17 days of net active service this period.

10. A second DD Form 4 shows on 26 September 2012, the applicant enlisted in the USAR Control Group (ROTC) as a cadet.

11. A DA Form 597 (Senior ROTC Nonscholarship Cadet Contract) dated, 26 September 2012, outlines the applicant's ROTC contract, stipulating cadet education commencement on 21 August 2012 and completion on 12 December 2015.

12. ROTC Program Orders 210-1, dated 27 July 2015, discharged the applicant from the USAR Control Group (ROTC) effective 31 July 2015, for the purpose of selection for Reserve Forced Duty (RFD) and accepting a commission in the U.S. Armed Forces.

13. An NGB Form 22 (National Guard Report of Separation and Record of Service) shows the applicant was honorably discharged from the ARNG effective 31 July 2015, for the purpose of appointment in any Reserve component. He was credited with

3 years, 8 months, and 27 days of enlisted service in the ARNG.

14. On 1 August 2015, the applicant was appointed a Reserve commissioned officer of the U.S. Army in the branch of Engineer.

15. Headquarters, U.S. Army Cadet Command Orders 273-021, dated 30 September 2015, show effective he acceptance of appointment in the USAR, he was ordered to active duty to attend Engineer Basic Officer Leader Course (BOLC) effective 16 November 2015, with follow-on assignment at Fort Knox, KY, to fulfill his active duty commitment of 3 years.

16. U.S. Army Installation Management Command Order KX-233-0016, dated 21 August 2018, ordered the applicant to deployment in Afghanistan in support of Operation Freedom's Sentinel for a period not to exceed 290 days, effective 21 October 2018.

17. The applicant deployed to Afghanistan from 21 October 2018 through 28 July 2019.

18. The applicant's DA Form 67-10-1 (Company Plate (O1-O3; WO1-CW2) Officer Evaluation Report (OER)), covering the period from 1 June 2018 through 31 May 2019, the period encompassing the applicant's deployment, shows:

a. The applicant was rated in his principal duty as Company Intelligence support Team (COIST) Officer in Charge (OIC) for Route Clearance Company assigned to a modular engineer battalion with in VXII Airborne Corps, forward deployed to Afghanistan.

b. He passed his Army Physical Fitness Test (APFT), his Rater rated him "Proficient," and his Senior Rater rated him "Highly Qualified."

c. The comments include:

- exceptional performance as a COIST
- his agility and flexibility during complex situations proved invaluable in combat
- his is the best COIST in the battalion

19. A Medical Record, dated 5 August 2019, shows:

a. The applicant was seen at Soldier Readiness Processing (SRP), Pre and Post Deployment Clinic, at Army Health Clinic Ireland-Knox, for his post-deployment evaluation after deployment to Afghanistan.

b. He denied injuries and illnesses during deployment. Intermittent knee pain since injury in Ranger School 3 years prior. Continues to have intermittent pain. Also reports exposure to fumes and smoke from burn pit. Pain currently 0/10.

c. Alcohol screening shows he responded to the question of how often he had a drink containing alcohol in the past year with "monthly or less." He responded to the question of how many drinks he had on a typical day when he was drinking in the past year with "3 or 4." He responded to the question of how often he had 6 or more drinks on one occasion in the past year with "never."

d. Post-deployment health concerns shows his list of symptoms reported as bothered a little on deployer questions 11a through 11ee: back pain, pain in the arms, legs, or joints (knees, hips, etc.), feeling tired or having low energy, trouble concentrating on things (such as reading a newspaper or watching television), memory problems, noises in his head or ears (such as ringing, buzzing, crickets, hummin, tone, etc.), trouble hearing, sensitivity to bright light, becoming easily annoyed or irritable, numbness or tingling in the hands or feet, pain with urination, frequency of urination, or strong urge to urinate. Severity score: minimal; less than 4 (0-4).

e. The applicant was released without limitations without any supplemental services recommendations or provider identified concerns needing referrals.

20. A DA Form 1059 (Service School Academic Evaluation Report), shows the applicant attended the Engineer Captains Career Course (ECCC) from 23 October 2019 through 7 January 2020, at Fort Leonard Wood, MO, and did not graduate. He passed his APFT on 22 October 2019, but was compassionately dismissed from ECCC on 7 January 2020, failing to achieve course standards.

21. The applicant's OER covering the period from 1 June 2019 through 7 April 2020, shows:

a. The applicant was rated in his principal duty as Assistant S4.

b. He passed his Army Physical Fitness Test (APFT), his Rater rated him "Proficient," and his Senior Rater rated him "Highly Qualified."

c. The comments include:

- his ability to multi-task and his dedication to high standards defined his performance while in support of the brigade
- clearly a top 25 percent officer his year group
- promote to major and send to Intermediate Level Education (ILE) at first opportunity

22. U.S. Army Maneuver Support Center of Excellence Orders 106-1302, dated 15 April 2020 reassigned the applicant to the U.S. Army transition point, Fort Leonard Wood, MO, for transition processing. After processing, he would be released from active duty not by reason of physical disability effective 8 October 2020, and transferred to the USAR Control Group (Individual Ready Reserve (IRR)).

23. The applicant's DD Form 214 covering the period beginning 14 November 2015 shows he was honorably released from active duty on 8 October 2020, due to completion of required active service with corresponding separation code and transferred to the USAR Control Group (IRR). He was credited with 4 years, 10 months, and 25 days of net active service this period, 3 months and 17 days of total prior active service, and 3 years, 8 months, and 23 days of total prior inactive service. Among his awards and decorations authorized or received are the Army Commendation Medal with C Device, denoting exceptionally meritorious service performed under combat conditions.

24. The applicant's Officer Record Brief (ORB), dated 22 December 2020, shows he passed his APFT in October 2019, was deployable, and his PULHES was 111111, based on his last physical exam on 23 January 2020.

25. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) for any physical or mental health conditions, nor do they show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his Military Occupational Specialty (MOS)/Area of Concentration (AOC) and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

26. The applicant provided multiple VA letters, which show:

a. The VA letter dated 3 May 2022, shows the applicant has one or more service-connected disabilities with a combined service-connected evaluation of 100 percent effective 1 April 2022, and that he is considered to be totally and permanently disabled due solely to his service-connected disabilities. His disabling conditions are not listed.

b. The VA letter dated 16 May 2022, shows the applicant's combined service-connected evaluation is 100 percent effective 1 April 2022. His disabling conditions are not listed.

c. The VA letter dated 9 March 2023, shows the applicant's combined service-connected evaluation is 100 percent effective 1 December 2022. His disabling conditions are not listed.

27. The applicant provided two letters of support, which have been provided in full to the Board for review, and in pertinent part show:

a. The applicant's former Army colleague states he first met the applicant in Engineer BOLC at Fort Leonard Wood, MO, in November 2015, after they had both recently commissioned as lieutenants from ROTC. They enjoyed their time together and remained friends and keeping in touch ever since, although they were not again stationed together. It was clear that when the applicant returned from Afghanistan, there was something different about him. Once loud and energetic, he seemed quiet and reserved. He became concerned when the applicant told him he just wanted to stay home and drink alcohol and that he would start drinking Saturday morning and drink the entire weekend. His girlfriend at the time broke up with him because of how he changed on alcohol. After she broke up with him, he decided to get out of the Army and has struggled finding a fulfilling job or go out in public. He since quit drinking and got back together with his girlfriend, and they got married. He does not know what happened to him in Afghanistan, but it had a horrible effect on his life, and he ought to be retroactively retired.

b. The applicant's wife states before his deployment, the applicant was confident, strong-willed, and resilient, able to overcome any obstacle. After his return from Afghanistan, she could tell something was "off." Once a proud Soldier who never stopped talking about the Army, he would not go into detail about his 9 months in Afghanistan. Time he previously spent with hobbies or friends and family was replaced with isolation and alcoholic binges. His formerly enthusiastic, optimistic spirit was replaced with rage, sadness, and anxiety. After his discharge, his daily struggles with anxiety intensified and he felt hopeless and depressed, forcing him to quit his job driving a truck. He should be retired from the Army after his 9 years of dedicated service.

28. 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.

29. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting Disability Evaluation System (DES) for PTSD. He states in part through counsel :

"The Applicant stated he noticed that he was drinking much more than he had before he left for deployment. See Exhibit 7. He stated that he became "reclusive" and isolated himself from people because being around friends and family was difficult for him. See Exhibit 7. He also stated that he felt angry, fearful, and worrisome and did not enjoy the things he used to enjoy anymore. Id. He stated that instead of spending time with friends and family, he drank alone to occupy his time. Id. This caused him to miss feeling appreciative of the time spent with friends and family, and he also missed the sense of accomplishment at work. Id.

The Applicant was discharged from the United States Army on 08 October 2020 under "Honorable" conditions for completion of required active service. See Exhibit 4. After he was discharged, the Applicant stated that his mental health got even worse, leading him to binge drink, abuse drugs, and smoke cigarettes. Id. He stated that his job as a truck driver yielded less than decent work and caused him immense levels of anxiety due to the sheer number of people he was in contact with that he had to quit. Id.

The Applicant reported to the Department of Veterans Affairs (VA) to receive a disability rating for his symptoms in 2022. See Exhibit 8. The VA ruled his mental health symptoms were service-connected disabilities and awarded him a 100% service-connected evaluation, rendering him totally and permanently disabled due solely to his service-connected disability as of 04 February 2022. Id. The Applicant has continued to receive VA disability compensation for his service-connected disability at a 100% rating."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former Officer entered the regular Army on 14 November 2015 and received an honorable discharge 8 October 2020 at the completion of his required active service

under the provision provided in AR 600-8-24, Officer Transfers and Discharges (8 February 2020). It shows he served in Afghanistan from 21 October 2018 thru 28 July 2019. His reentry code of "1" denotes he was fully qualified to reenter the Army.

d. The applicant underwent his Post-Deployment Health Evaluation (PDHA) on 5 August 2019. He denied any injuries or illnesses during the deployment. He noted he had some intermittent left knee pain which was the result of an injury 3 years earlier while in ranger school. He noted he was "Bothered a Little" by multiple mild musculoskeletal issues, feeling tired or having low energy, trouble concentrating on things (such as reading a newspaper or watching television), Memory problems, Noises in your head or ears (such as ringing, buzzing, crickets, humming, tone, etc.), Trouble hearing, Sensitivity to bright light, Becoming easily annoyed or irritable, Numbness or tingling in the hands or feet, Pain with urination, frequency of urination , or strong urge to urinate."

e. His mental health screenings were negative. The applicant requested no additional services, released without limitations, and directed to follow-up with his primary care provider as needed.

f. There are no contemporaneous mental health encounters in the EMR. On 16 May 2020, his EMR records underwent a pre-separation mental health screening after which the provider opined there was no need for an in-person pre-separation mental health evaluation and he was cleared for separation: "The SM [service member] records fall within one of the below parameters for pre-clearing and does not require a face-to-face encounter: SM was not a patient in the BHSL within the last 180 days. SM was provided with the BH contact information and walk-in hours."

g. His final two Company Grade Plate Officer Evaluation Reports (OER) covering 1 June 2018 thru 7 April 2020 show he was and exceptional Soldier and Officer. He passed his Army Physical Fitness Tests and met height/weight standards in both rated periods. In his penultimate OER, his senior rater marked him as "Highly Qualified" and opined: "Great potential. 1LT [Applicant] is the best COIST [company intelligence support team] in the battalion; easily a top 33% officer. Henry is a talented officer that was critical in the development and execution of the company's culminating training event prior to deployment. While deployed in support of OFS, Henry continued to provide critical intel analysis and synchronization to support over 100 route clearance missions in Afghanistan. Promote to Captain and send to the Captain's Career's Course."

h. In his final OER, his new senior rater also marked him as “Highly Qualified” and was likewise laudatory: “Exceptional Performance. CPT [Applicant] is among the top 3 of 12 Captains on the Brigade Staff and clearly a top 25% officer in his year group. Unlimited potential to serve in direct and organizational level leadership positions; ready today to excel as a company commander. Promote to Major and send to ILE [Intermediate Level Education/ Advanced Operations Warfighting Course] at first opportunity.”

i. There is no probative evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

j. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including one for PTSD. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

k. It is the opinion of the ARBA Medical Advisor that a referral of this case to the DES is not warranted.

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 applicant’s contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was honorably released from active duty on 8 October 2020, due to completion of required active service with corresponding separation code and transferred to the IRR. His ORB shows he passed his APFT in October 2019, was deployable, and his PULHES was 1-1-1-1-1-1, based on his last physical exam on 23 January 2020. The Board did not find a permanent physical profile

or that he was diagnosed with a medical condition that warranted his entry into the disability evaluation system.

b. The Board also reviewed and agreed with the reviewing official's finding no probative evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Therefore, based on available evidence, the Board determined that a referral of this case to the disability evaluation system is not warranted.

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 concerned¹.

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. 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 Boards 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, on those conditions or experiences.
2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.
3. Title 10, U.S. Code, 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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 Physical Evaluation Board (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. 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. Army Regulation 635-40 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.

a. 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. 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. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). 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.

d. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

5. 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.

6. Title 38, U.S. Code, 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.

7. Title 38, U.S. Code, 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.

8. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//