

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230013928

APPLICANT REQUESTS:

- retirement due to service-connected physical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period 5 April 2010-15 May 2011
- third-party statement
- Department of Veterans Affairs (VA) benefits decision letter, dated 18 January 2018
- medical statement, dated 9 October 2019
- High School and Bachelor of Arts Diplomas

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 that prior to his discharge, he believes he should have been placed on the Permanent Disability Retirement List. He is currently 100% permanently disabled due to post-traumatic stress disorder(PTSD). He became 70% PTSD disabled on 23 January 2017. He separated from the military on 5 March 2017. This information confirms that he was diagnosed with 70% PTSD while being in the military and that the condition got worse over time. His life has never been the same since he was diagnosed with this unfortunate issue. He has lost many jobs and his two little girls' mother feels he is not a good fit as a father due to this issue. He deployed to Afghanistan in 2010. The life that he knew prior to going to war is gone. He personally saw an Afghan little boy with an improvised explosive device (IED) detonator in his right hand ready to set off the IED with his truck being the target. The little boy died in front of him. He somehow pushed the button early and the IED went off on him.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 6 March 2009 for a period of 8 years. He was trained in and held military occupational specialty 88M, Motor Transport Operator
4. The applicant's DD Form 214 shows he entered active duty in support of Operation Enduring Freedom on 5 April 2010 and he served in Afghanistan from 16 May 2010 to 1 April 2011.
5. Orders issued on 6 April 2011 directed the applicant's release from active, not by reason of physical disability, effective 15 May 2011. The authority is chapter 4 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) and the reason for separation is listed as completion of his required active service.
6. Orders issued on 7 March 2012 directed the applicant's reassignment to the Standby Reserve (Active Duty List) effective 7 March 2012 by reason of overseas residency/employment.
7. Orders issued on 7 March 2017 directed the applicant's honorable discharge from the USAR effective 7 March 2017 for completion of his 8-year statutory obligations.
8. The applicant provided:
  - a. A statement from his mother stating, in part, the applicant returned from Afghanistan with the look of death in his eyes and with a very different attitude. He did not like to be touched, did not like surprises, was very anxious, and his attitude was snappy.
  - b. A VA benefits decision letter, dated 18 January 2018, showing he was granted service-connected disability compensation for PTSD with a disability rating of 70% effective 23 January 2017 increased to 100% effective 20 November 2017.
  - c. A statement from a health care provider, dated 9 October 2019, stating the following:

I met with [the applicant] today and I can assure you that his condition will be completely under control. I see [the applicant] every week and he has made progress with his current condition. I also believe that he is not a threat to society. [The applicant] suffers from severe trauma which is also known as a PTSD level 2. However, I feel that with the prescribed medication to help out with his current condition no issues will arise.
9. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability

rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement due to service-connected physical disability related to PTSD. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the U.S. Army Reserve (USAR) on 6 March 2009; 2) The applicant entered active duty in support of Operation Enduring Freedom on 5 April 2010 and he served in Afghanistan from 16 May 2010 to 1 April 2011; 3) On 7 March 2012 directed the applicant's reassignment to the Standby Reserve (Active Duty List) effective 7 March 2012 by reason of overseas residency/employment; 4) On 7 March 2017 directed the applicant's honorable discharge from the USAR effective 7 March 2017 for completion of his 8-year statutory obligations.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided.

c. The applicant asserts he incurred a psychiatric disability, specifically PTSD, while he was on active service, which warrants a referral to IDES and medical retirement. There is insufficient evidence the applicant ever reported mental health symptoms including symptoms of PTSD while on active service. There was evidence in the Electronic medical record that the applicant continued to deploy overseas while on active service. He was seen on one occasion while deployed overseas in August 2012 for difficulty falling asleep and increased anxiety related to the recent loss of his father-in-law and previous loss of his father. He was prescribed a short-term sleep aid, and he was instructed to return if the insomnia or symptoms continued. During his Predeployment health assessment for a yearlong deployment to Qatar in November 2016, the applicant denied any behavioral health concerns and was cleared to deploy. Also, prior to his discharge from military service during his medical assessment, the applicant denied any mental health symptoms. There is no evidence during the applicant's active service he ever engaged in behavioral health treatment, required inpatient psychiatric treatment, was placed on a temporary or permanent psychiatric profile, or was found to not meet retention medical standards from a psychiatric perspective.

d. A review of JLV provided evidence the applicant engaged with the VA in October 2016 for Compensation and Pension Evaluation related to his report of PTSD symptoms

as the result of his deployment to Afghanistan from 2010-2011. He was found to be experiencing service-connected PTSD (70%SC) in 2016, which was later increased to 100% in 2017.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has been diagnosed with service-connected PTSD by the VA. However, there was evidence the applicant was performing sufficiently while on active service and continued to deploy overseas after his deployment to Afghanistan. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD at the time of his active service. Thus, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical retirement at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected PTSD by the VA. However, there was evidence the applicant was performing sufficiently while on active service and continued to deploy overseas after his deployment to Afghanistan. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD at the time of his active service. Thus, there is insufficient evidence his case warrants a referral to IDES to assess his suitability for a medical retirement at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and

medical review, the Board concurred with the advising official finding insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD at the time of his active service. The opine noted the applicant's record is absent any evidence that he attended behavioral health treatment, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards from a psychiatric perspective.

2. The Board determined there is insufficient evidence to support the applicant's contentions for retirement due to service-connected physical disability. The Board found the applicant's record is absent sufficient evidence that supports his case warranting a referral to IDES to assess his suitability for a medical retirement at this time. Based on the preponderance of evidence from the medical opine and the applicant's service record, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 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 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.
  - 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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, expiration term of service, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

4. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

5. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

7. 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//