

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230015017

APPLICANT REQUESTS:

- reconsideration of his previous request to be reinstated on active duty, in the rank of Master Sergeant (MSG) with backpay, and a personal appearance before the Board.
- In the alternative, he requests:
 - Retirement with an honorable characterization of service, with his narrative reason, separation code, and reentry code changed to reflect "Secretarial Authority."
 - Referral to the Integrated Disability Evaluation System (IDES) for medical retirement, with at least 30 percent (%) disability; and backpay.
 - Removal of all adverse administrative separation proceedings from his service record.

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

- Application Package 1: DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) and Legal Brief (11 Pages), Daniel Conway & Associates, dated 20 September 2023
- Application Package 2: DD 149 and Legal Brief (13 pages), Daniel Conway & Associates, dated 25 September 2023
- Enclosures
 - TAB A, Excerpts of Army Regulation (AR) 15-6 (Procedures for Investigating Officers and Boards of Officers) Investigation
 - TAB B, DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 3 October 2021
 - TAB C, Article 15 Rebuttal Matters, dated 22 September 2021
 - TAB D, General Officer Memorandum of Reprimand (GOMOR), 15 October 2021
 - TAB E, Separation Board Findings & Recommendations, 18 December 2020
 - TAB F, Memorandum, Subject: Separation Under the Provisions of..., 16 February 2022

- TAB G, Memorandum, Subject: Article 138 Complaint..., 30 March 2022
- TAB H, Memorandum, Subject: Final Response to Request for Redress...20 April 2022
- TAB I, Memorandum, Subject: Involuntary Separation..., 13 July 2022
- TAB J, Request for Reconsideration, Daniel Conway & Associates, 31 July 2022
- TAB K, Medical Documentation, May 2022
- TAB L, Memorandum, Secretary of Defense, Chuck Hagel, 3 September 2014
- TAB M, Supplemental Statement to Army Board for Correction of Military Records (ABCMR), 22 August 2022
- TAB N, Record of Proceedings (ROP), 22 August 2023 and ABCMR Decision letter, 24 August 2023
- TAB O, DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 23 December 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220010632 on 22 August 2023.

2. Counsel states, in effect:

- The separation authority was dilatory in acting on the findings of the separation board.
- The separation authority falsely asserted that the applicant's post-traumatic stress disorder (PTSD) was not as severe as he claimed during separation board proceedings. The assertion was made without any consultation with mental health providers.
- The applicant petitioned the Secretary of the Army to reconsider his separation. He never received a response, which was an effective denial of the request for reconsideration.
- The applicant developed and was diagnosed with mental health conditions, as evidenced by records, during his period of service.
- At the time of his misconduct, the applicant was suffering from behavioral health conditions which qualifies him for consideration and relief pursuant to the Hagel Memorandum.
- The applicant's discharge was improper and inequitable. He should have been medically retired.

3. The applicant enlisted in the Regular Army on 18 May 2004 and held an aviation specialty. He served through multiple extensions or reenlistments in a variety of

stateside or overseas assignments, including (below) and he attained the rank of master sergeant (MSG)/E-8.

- Iraq from 19 June 2008 to 15 July 2009
- Afghanistan from 14 September 2011 to 7 September 2012
- Afghanistan, 12 September 2014 to 6 May 2015
- Sinai, dates unclear

5. On 7 June 2021, an Investigating Officer (IO) was appointed to investigate the facts and circumstances surrounding allegations of fraternization and inappropriate relationships against the applicant and Specialist (SPC) M.S.

6. A memorandum, from Headquarters, Task Force Sinai (TFS), Multinational Force and Observers (MFO), Sinai, Egypt, dated 22 July 2021, shows the IO made the following findings and recommendations:

a. The IO found that [the applicant] did engage in an inappropriate sexual relationship with SPC M.S. Additionally, the IO found recurring alcohol policy violations by a specific group of TFS personnel and additional allegations which required further investigation.

b. In video testimonies, both [the applicant] and SPC M.S. admitted to having an inappropriate sexual relationship.

c. The IO recommended, in pertinent part, the commander consider appropriate punishment in consultation with the Staff Judge Advocate, including a potential relief for cause from his position, reduction in rank, and/or reassignment from TFS; a blanket prohibition for the consumption of alcohol at noted locations; and fraternization training for all incoming TFS personnel.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 3 October 2021, for violating a lawful general regulation, between on or about 1 May 2021 and 5 June 2021, by wrongfully engaging in an intimate relationship with SPC M.S. His punishment consisted of forfeiture of \$2,630.00 pay per month for two months, 45 days of extra duty, 60 days of restriction, and a written reprimand.

8. The applicant received a General Officer Memorandum of Reprimand (GOMOR), from commanding general (CG), Major General (MG) M.R., 1st Theater Sustainment Command, Fort Knox, KY on 15 October 2021, for violating a lawful general regulation, by wrongfully engaging in an intimate relationship with SPC M.S., by his own admission; when informed she was going to report the incident, he directed her to delete the messages between them; he then lied to the Criminal Investigation Division (CID) when

given the opportunity to make a statement. The GOMOR was imposed as punishment under Article 15, of the UCMJ.

9. On 18 December 2021, an administrative separation board convened to determine whether the applicant should be separated under the provisions of AR 635-200, Chapter 13 (Unsatisfactory Performance), Chapter 14-12b (Pattern of Misconduct), and Chapter 14-12c (Commission of a Serious Offense).

a. The administrative board found the allegation of violating a lawful general regulation by engaging in an intimate relationship was supported by a preponderance of evidence. The other allegations against the applicant (permitting risk taking and leadership failure) were unfounded.

b. The administrative board determined these findings did not warrant separation and recommended the applicant be retained. An additional hand-written note recommended the applicant be referred to BH immediately.

10. On 16 February 2022, the Commanding General (CG), 1st Theater Sustainment Command notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 15, for substantial and substantiated misconduct.

a. The CG noted the applicant fostered a permissive environment with alcohol and standards, which emboldened aircrews to perform dangerous, risky maneuvers and resulted in a fatal aircraft crash; by his own admission, he engaged in an intimate relationship with a married junior enlisted Soldier; he discouraged her from reporting a sexual assault as he believed it would uncover their illicit relationship; he lied to CID agents; [SPC M.S.] was medically evacuated from theater for BH reasons; he created an "us versus them" mentality due to the number of investigations and disciplinary actions from higher headquarters; the evidence presented to the board from the company was highly skewed and [SPC M.S.] was victim blamed. Additionally, the CG noted the applicant wished to remain in theater until the resolution of the investigation. The delay in BH treatment was not having the impact stated by the board, which called into question the severity of his claim.

b. The applicant was notified of his right to consult counsel, request representation by counsel, and submit statements in his own behalf. The CG further recommended the applicant receive an under honorable conditions (general) characterization of service.

11. On 30 March 2022, the applicant formally requested redress under Article 138 of the UCMJ. He specifically requested the board findings and recommendations, dated 18 December 2021, be approved and executed; the Chapter 15 separation be withdrawn; his flag be lifted and his orders to Joint Base Lewis-McChord be re-issued;

and that he be allowed permanent change of station leave to the continental U.S. He noted that MG M.R. continued to seek his separation, despite being recommended by the board to be retained and referred to BH "immediately." The board evaluated 319 pages of evidence. The refusal to approve the findings/recommendations of the board and keep him flagged for an indefinite time raised a wrong that continued to adversely affect him. It was either arbitrary, capricious, or an abuse of discretion. At a minimum, it was materially unfair.

12. On 20 April 2022, MG M.R., denied the applicant's request for redress, stating his decision was neither arbitrary nor capricious. He disagreed strongly with the board's recommendations, not from personal animus, but from having reviewed the facts. He did not believe the applicant's BH issues excused his misconduct, as they were conscious actions. He was convinced the applicant exhibited failures in leadership both before and after the (helicopter) accident. His recommendation was not to punish the applicant, but because he believed the applicant was unfit for continued service. He had the authority to recommend separation under Chapter 15, despite the recommendation of the board, when he believed it was in the best interest of the Army. The situation was not materially unfair; the applicant was subject to a process prescribed by regulation which included procedural safeguards.

13. A memorandum, from Office of the Assistant Secretary, Manpower and Reserve Affairs (ASA (M&RA)), shows the Acting Assistant Secretary of the Army approved the applicant's involuntary separation from service, under the provisions of AR 635-200, Chapter 15 (Secretarial Plenary Authority), with an under honorable conditions (general) characterization of service.

14. The applicant was discharged on 23 December 2022 in the rank/grade of master sergeant/E-8, under the provisions of AR 635-200, by reason of secretarial authority. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JFF and reentry code 4. He was credited with 18 years, 7 months, and 6 days of net active service. He was awarded or authorized the:

- Meritorious Service Medal (3rd award)
- Army Commendation Medal (3rd award)
- Army Achievement Medal (2nd award)
- Meritorious Unit Commendation Medal (2nd award)
- Army Good Conduct Medal (5th award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with two campaign stars
- Iraq Campaign Medal with one campaign star
- Noncommissioned Officer Professional Development Ribbon (4th award)

- Army Service Ribbon
- Overseas Service Ribbon (3rd award)
- North Atlantic Treaty Organization Medal
- Senior Aircraft Crewman Badge
- Basic Aviation Badge

15. The applicant applied to the ABCMR to request rescindment of his Chapter 15 discharge, reinstatement on active duty in the rank of MSG, and backpay from the effective date of his separation. The ABCMR reviewed his request on 22 August 2023.

a. In the processing of the case, the Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor provided a medical review. A review of his military electronic medical record (AHLTA), Department of Veterans Affairs (VA) electronic medical record (JLV), and casefiles showed that he was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood and PTSD during his time in service. He did not have a service-connected disability with the VA. However, his actions demonstrated he did not have a condition that rendered him unable to distinguish right from wrong. Therefore, neither of his diagnoses mitigated his misconduct, and the misconduct was not natural sequela of PTSD.

b. After careful review of the application, supporting documents, BH advisory opinion, and liberal consideration guidance, a majority of the Board determined the applicant committed serious misconduct, as a result he received an Article 15 and GOMOR. Regulatory guidance provides for separation under Secretarial Authority in the case of substantial and substantiated misconduct. The Board was persuaded by the separation authority's determination that the applicant exhibited failures in leadership, both before and after the November 2020 helicopter accident (as related to his PTSD), which rendered him unfit to continue to serve. His condition did not render him unable to distinguish right from wrong. Given the gravity and impact of his serious misconduct, his separation remained in the Army's best interest. The Board denied his request for relief.

16. Counsel provides the following:

a. Two legal briefs from Daniel Conway & Associates, dated 20 September and 25 September 2023 are summarized, in pertinent part, in paragraph two of this ROP. The legal briefs are available for review, in their entirety, in the supporting documents.

b. Tabs A through O, of the supporting documents, contain 86 pages of service records which are summarized, in pertinent part, in the ROP above. Several of the documents provided by counsel were not included in the applicant's Army Military Human Resource Record (AHMRR) or were not summarized above.

(1) Tab A includes sworn statements which were collected in conjunction with the applicant's AR 15-6 investigation.

(2) Tab C contains a memorandum from the applicant, dated 22 September 2021, written in mitigation of his Article 15, wherein he stated he was deeply sorry for his actions. He neglected to uphold the trust given to him by having a consensual intimate relationship with a junior enlisted Soldier. He was not 100 percent, mentally. The past year was highly challenging for him, to include having to recover the bodies of friends and fellow Soldiers following a helicopter crash. He was tired and needed a break but was told to carry on. When questioned by CID about his relationship with SPC M.S., he did not hesitate to tell the truth. The Army was the best thing that happened to him. He received stellar evaluations and wished to continue his career in the Army.

(3) Also included in TAB C is a character statement from Command Sergeant Major (CSM) B.M.G, dated 22 September 2021, wherein he stated, he saw first-hand the stress experienced by [the applicant], as a result of the downed aircraft and recovery of their fallen. He carried the weight of staying resilient for his formation and personal regret for selecting some of the passengers. Although he lost his military bearing, it was not a reflection of the leader he was or his potential for the future.

(4) Tab J contains a request for reconsideration, from [Counsel] dated 31 July 2022, wherein counsel requested the Chapter 15 separation action against the applicant be withdrawn. Counsel currently states, the applicant never received any response whatsoever from the Secretary of the Army (SECARMY) regarding this request.

(5) Tab K contains a patient movement record and associated documents, which show the applicant was medically evacuated from Kuwait to Landstuhl Regional Medical Center in May 2022. He was diagnosed with PTSD, adjustment disorder with mixed anxiety and depression, insomnia, and recent passive suicidal ideation. He was unable to perform his duties in theater and required further evaluation and treatment.

(6) Tab L contains a memorandum, from Secretary of Defense, Chuck Hagel, dated 3 September 2014, which provides guidance to Military Discharge Review Boards (DRB) and Boards for the Correction of Military Records (BCM/NR) on liberal consideration and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and traumatic brain injury.

17. Regulatory guidance states Secretarial plenary separation authority is exercised sparingly and used when no other provision of AR 635-200 applies. Separation under Chapter 15 is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Specific voluntary and involuntary individual cases that may be submitted to Headquarters, Department of the Army (HQDA) for consideration of

separation under Secretarial plenary authority include substantial and substantiated misconduct where separation is in the best interest of the Army.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced PTSD that mitigates his misconduct.

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 18 May 2004 and reenlisted on 23 January 2014.
- The applicant deployed to Iraq from 19 June 2008 to 15 July 2009 and in Afghanistan from 14 September 2011 to 7 September 2012. He was deployed to Afghanistan, a second time, from 12 September 2014 to 6 May 2015.
- On 7 June 2021, an Investigating Officer (IO) was appointed to investigate the facts and circumstances surrounding allegations of fraternization and inappropriate relationships, and the applicant accepted NJP on 3 October 2021, for violating a lawful general regulation, between on or about 1 May 2021 and 5 June 2021, by wrongfully engaging in an intimate relationship with a subordinate.
- A memorandum, from the Office of the Assistant Secretary, Manpower and Reserve Affairs, Washington D.C., shows the separation authority approved the applicant's involuntary separation from service, under the provisions of Army Regulation (AR) 635-200, Chapter 15 (Secretarial Plenary Authority).
- The applicant was discharged on 23 December 2022 and was credited with 18 years, 7 months, and 6 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was suffering from behavioral health conditions at the time of his misconduct. Medical documentation showed he was diagnosed with PTSD, Insomnia, and Passive Suicidal Ideation and evacuated out of theater in May 2022. Additionally, ABCMR case AR20220010632 dated 22 August 2023 included a thorough medical review of mental health history of the applicant. There was sufficient evidence that the applicant was diagnosed with PTSD while on active service.

d. The Joint Legacy Viewer (JLV), which includes documentation from the military medical record (AHLTA), was reviewed and showed that the applicant initiated mental health treatment on 27 June 2021, and he reported depressive symptoms associated with a helicopter crash, which occurred in November 2020, and being relieved from command due to an investigation related to sexual relations with a junior enlisted soldier. He was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood, and he had two follow up sessions before being prescribed two antihistamine medications to aid with sleep and anxiety. Documentation from a therapy session on 13 September 2021 showed improvement in symptoms of anxiety, depression, and PTSD relative to screening questionnaires that were given during his initial session in June, and he reported better sleep with the medication. He engaged in five more therapy sessions prior to being transferred from Egypt to Kuwait due to pending charges. Documentation on 3 December 2021 showed he endorsed PTSD symptoms and received a recommendation by his psychologist for trauma-focused treatment, and he was diagnosed with PTSD. Individual therapy was discontinued at the end of December due to the provider rotating out of theater, and the applicant continued with medication management only through the beginning of February 2022. Medications were changed to include a sleep medication and an antidepressant, and on 8 February 2022 he had initial visit with his new therapist where he reported continued anxiety and frustration related to his separation board and potential outcome. He continued in therapy and medication management, and documentation from 5 May 2022 showed increased depression and anxiety symptoms, including passive suicidal ideation, related to continued deployment for 22 months, separation proceedings, and not being allowed to take leave to deal with household goods being auctioned. It was noted that he continued to have no duty restrictions necessitating a profile and that he meets retention standards. Prior to evacuation on 30 May 2022, documentation showed increased symptoms of PTSD and anxiety related to his work environment, and it was noted that his primary diagnosis was Adjustment Disorder with anxiety and depressed mood with a secondary diagnosis of PTSD. While in Landstuhl, from 31 May 2022 to 5 August 2022, he engaged in individual and group therapy as well as medication management. The applicant completed an intake at Shaw AFB behavioral health on 12 August 2022, and he engaged in weekly therapy until being referred to a residential treatment program for PTSD where he received intensive PTSD treatment. He was discharged on 27 September 2022, and his mental health care was managed on an outpatient basis until his discharge from the military. There is no documentation indicating he has engaged mental health treatment through the VA.

e. An Initial PTSD Disability Benefits Questionnaire dated 24 October 2023 was reviewed, which showed diagnoses of PTSD and Major Depressive Disorder. The applicant indicated he was attending college at the time, but his anxiety symptoms were impacting his performance. He endorsed the requisite number of symptoms to meet criteria for a diagnosis of PTSD as associated with the helicopter crash, and he reported social isolation, depressed mood, and insomnia. He provided a history of his mental

health treatment, which was consistent with the summary provided above. He indicated he was not currently in mental health treatment at the time, but he reported having seen a private provider “for several months.” He also stated he had stopped taking the antidepressant medication due to side effects.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a behavioral health condition or experience during active service. However, the condition does not mitigate his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes. Documentation from his time in service shows that he was diagnosed with Adjustment Disorder with anxiety and depressed mood and PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed he was diagnosed with and treated for Adjustment Disorder and PTSD while on active service. He is also 100% service connected through the VA for PTSD, but he has not engaged in mental health treatment at VA. In regard to his mental health condition and mitigation of his misconduct, there is no nexus between his mental health condition, including PTSD, and his misconduct related to engaging in a sexual relationship with a junior enlisted soldier: 1) this type of misconduct is not part of the natural history or sequelae of PTSD; 2) PTSD does not affect one’s ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board’s consideration.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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. Reconsideration of his previous request to be reinstated on active duty, in the rank of MSG with backpay: Deny.

(1) The evidence shows the applicant's chain of command determine that as the unit first sergeant, the applicant created and fostered a permissive environment with alcohol and standards, and environment emboldened aircrews to perform dangerous and risky maneuvers, and resulted in a fatal aircraft crash; by his own admission, he engaged in an intimate relationship with a married junior enlisted Soldier; he discouraged her from reporting a sexual assault as he believed it would uncover their illicit relationship; he lied to CID agents; [SPC M.S.] was medically evacuated from theater for BH reasons; he created an "us versus them" mentality due to the number of investigations and disciplinary actions from higher headquarters; the evidence presented to the board from the company was highly skewed and [SPC M.S.] was victim blamed. As a result, his chain of command initiated separation action against him. He was separated with a general, under honorable conditions discharge. The Board found no error or injustice, or reason to reinstate him considering his multiple failures as a leader.

(2) The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding no nexus between his mental health condition, including PTSD, and his misconduct related to engaging in a sexual relationship with a junior enlisted Soldier: First, this type of misconduct is not part of the natural history or sequelae of PTSD; and second, PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation was not in error or unjust.

b. Retirement with an honorable characterization of service, with his narrative reason, separation code, and reentry code changed to reflect "Secretarial Authority." Deny.

(1) Retirement: Deny. The applicant did not qualify for retirement. By law and regulation, an enlisted member qualifies for length of service retirement when completing 20 or more active duty years. The Board noted the applicant did not meet this requirement.

(2) The Narrative Reason and corresponding codes: Deny. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. In the applicant's case, the Board noted that the

applicant's narrative reason for separation was assigned based on the fact that he committed a series of substantiated and substantial misconduct. His chain of command determined his separation under chapter 15 of AR 635-200 is clearly in the best interest of the Army. Absent this substantiated and substantial misconduct, there was no reason to initiate separation action against him. The underlying reason for his discharge was his substantiated and substantial misconduct. The only valid narrative reason for separation permitted under chapter 15 is "Secretarial Authority" and the appropriate separation code associated with this specific discharge is JFF which in a case such as the applicant's, has a corresponding RE Code of 4. The Board found no error or injustice.

c. Referral to the Integrated Disability Evaluation System (IDES) for medical retirement, with at least 30 percent (%) disability; and backpay. Deny. A review of military medical and mental health records revealed he was diagnosed with and treated for Adjustment Disorder and PTSD while on active service. He is also 100% service connected through the VA for PTSD. However, the Board reviewed and agreed with the medical reviewer's determination that there is no nexus between his mental health condition, including PTSD, and his misconduct related to engaging in a sexual relationship with a junior enlisted soldier as this type of misconduct is not part of the natural history or sequelae of PTSD and PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

d. Removal of all adverse administrative separation proceedings from his service record. Deny.

(1) The evidence shows the applicant received NJP on 3 October 2021 for wrongfully violation an order by engaging in an intimate relationship with a junior Soldier. He declined trial by a court-martial and requested a closed hearing. The imposing officer ordered this NJP filed in the performance section of the applicant's AMHRR. This is where his NJP (and allied documents) is filed, and he has not provided a convincing argument that this NJP should be removed.

(2) The evidence also shows separation action was initiated against the applicant for a series of substantiated and substantial misconduct. The separation authority approved his discharge. The separation packet, together with allied documents, is not only correctly filed in his AMHRR as required by the governing regulation but also as part of maintaining the integrity of the Army's records. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. The Board note that the applicant has not

provided evidence of an error or a convincing argument to support removal of his separation packet from his AMHRR.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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 to amend the decision of the ABCMR set forth in Docket Number AR20220010632 on 22 August 2023.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 23 December 2022 is missing an important entry that affects his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks), CONTINUOUS HONORABLE SERVICE FROM 20040518 UNTIL 20140122.

REFERENCES:

1. Title 10, U.S. Code (USC), 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%.
2. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.
3. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.
5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).
 - a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable

of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component and ARNG/ARNGUS members, these standards are applicant during the enlistee's first period of active duty for training (ADT).

6. AR 635-8 (Separation Processing and Documents), explains separation document preparation, distribution, correction, and transition processing, to include the preparation and distribution of the DD Form 214.

a. The regulation states the DD Form 214 is a summary of the soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and inactive duty service at the time of release from active duty, retirement, or discharge.

b. The regulation provides for an additional entry on the DD Form 214 for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

7. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JFF" is the appropriate code to assign to Soldiers involuntarily separated under the provisions of AR 635-200, Chapter 15, by reason of "Secretarial authority."

8. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 for a medical evaluation board that 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 (Standards of Medical Fitness), Chapter 3. 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.

a. Paragraph 2-1 provides that 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.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. The DES consists of three systems:

(1) Legacy DES for cases referred under the duty-related process, the PEB determines fitness and determines the disability rating percentages using the VA Schedule for Rating Disabilities (VARSD).

(2) Integrated DES (IDES), effective 1 October 2011, features a single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit. A single set of disability ratings provided by the VA for use by both departments. The DES applies these ratings to the conditions it determines to

be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

(3) Expedited DES is a voluntary process for Soldiers unfit for catastrophic injuries or diseases in which the U.S. Army Physical Disability Agency may permanently retire the Soldier without referral to the PEB based on the medical treatment facility (MTF) narrative summary.

9. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Specifically, Chapter 15 outlines the Secretarial Plenary Authority.

a. Paragraph 15–1a. Separation under this chapter is the prerogative of SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

b. Paragraph 15-1b. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to commanders with GCMCA for the class of Soldiers concerned.

c. Paragraph 15-1c. Specific voluntary and involuntary individual cases that may be submitted to HQDA for consideration of separation under Secretarial plenary authority include, but are not limited to:

- Those processed under paragraph 1–18b(4) (involuntary)
- Human immunodeficiency virus infection (see AR 600–110) (voluntary or involuntary)
- Refusal to submit to medical care after referral to a medical board (see AR 600–20) (involuntary)
- When religious practices cannot be accommodated (see AR 600–20) (voluntary)
- Soldiers with a qualifying conviction triggering the Domestic Violence Amendment to the Gun Control Act of 1968, the Lautenberg Amendment (voluntary or involuntary) (see 18 USC 922)
- Soldiers convicted of sexual assault in foreign, civilian, or military courts who are not adjudicated a bad conduct or dishonorable discharge (involuntary)

- Substantial and substantiated misconduct where separation is in the best interest of the Army, subject to the limitations in paragraph 15–1d (involuntary).

d. Paragraph 15-1d. It is the policy of HQDA to only direct separation, when not otherwise required by law or regulation, after a duly constituted board has recommended retention under chapter 14 when sufficient justification is provided to warrant separation to SECARMY or the Secretary's approved designee. This justification is based on all the circumstances, as being in the best interest of the Army. When an administrative separation board has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge will be forwarded through CG, HRC per paragraph 1– 15i(1) and include the following:

(1) Personally signed memorandum to HQDA from the separation authority setting forth specific reasons justifying the Soldier's discharge as being in the Army's best interest (see fig 15–1).

(2) The record of the board proceedings will be attached to the separation authority's memorandum to HQDA. The separation authority will neither approve nor disapprove the findings and recommendations of the board, since forwarding the case to HQDA under this chapter constitutes the separation authority's initial action on the case.

(3) No further action will be taken on the findings or recommendations of the administrative separation board unless directed by HQDA. As a minimum, enclosures to the transmittal memorandum should include:

- notification memorandum to the Soldier under this chapter
- acknowledgment of notification and any response
- report of board proceedings (and summarized transcript)
- any documents which admitted in the board of proceedings or contained in the original notification of separation.

e. Paragraph 15–2a. Separation under this chapter may be voluntary or involuntary. For both voluntary and involuntary separation proceedings, the notification procedure (see chap 2, sec I) will be used; however, the provision for requesting an administrative board is not applicable (see para 2–2d). Medical examinations are only required for Soldiers being processed for involuntary separation (see para 1–33a).

f. Paragraph 15–3 states. the service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records (see paras 3–5 and 3–7) unless an entry-level status

separation (uncharacterized) is warranted. No Soldier will be awarded a character of service under honorable conditions in accordance with this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure.

g. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

h. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

10. On 3 September 2014, the Secretary of Defense directed the Service DRBs and Service 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.

11. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

12. 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, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

13. On 4 April 2024, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related PTSD or traumatic brain injury potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//