

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240000042

APPLICANT REQUESTS: physical disability retirement in lieu of honorable release from active duty and subsequent honorable discharge due to expiration term of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 14 May 2011
- Department of Veterans Affairs (VA) letter, 5 November 2023

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:

a. He served in Afghanistan in support of Operation Enduring Freedom (OEF) in 2010 – 2011. He went on over 100 missions and experienced life changing traumatic events that caused him to experience mood swings, severe depression, and anxiety while in service and dealing with post-traumatic stress disorder (PTSD).

b. He filed a disability claim while still in the U.S. Army Reserve (USAR), shortly after coming off active duty orders, because his conditions were getting progressively worse. Upon evaluation, he was given a VA rating of 60 percent with a PTSD rating of 50 percent.

c. Shortly after he left the USAR, he was reexamined and given a rating of 100 percent with PTSD alone being rated at 100 percent. His discharge from active duty and the USAR were honorable. Because of the worsening of his conditions, he was not able to reenlist to return to active duty or the USAR. For those reasons, he is requesting his discharges be changed from honorable to medical retirement.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, 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 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 7 November 2008, for the purpose of USAR enlistment and was found qualified for enlistment with a PULHES of 111121, with a 2 rating in factor E for eyesight/vision.

5. The applicant enlisted in the USAR on 7 November 2008, and was awarded the Military Occupational Specialty (MOS) 88M (Motor Transport Operator).

6. The applicant's DD Form 214 shows he was ordered to active duty in support of OEF on 5 April 2010, with service in Afghanistan from 16 May 2010 through 1 April 2011.

7. Camp Atterbury Joint Maneuver Training Center Orders 096-1006, dated 6 April 2011, released the applicant from active duty, not by reason of physical disability effective 14 May 2011, and reassigned him to his USAR Troop Program Unit (TPU) immediately following his release from active duty.

8. The applicant's DD Form 214 further shows:

a. He was honorably released from active duty on 14 May 2011, in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service with corresponding separation code MBK. He was transferred back to his USAR Troop Program Unit (TPU).

b. He was credited with 1 year, 1 month, and 10 days of net active service this period.

9. A review of the U.S. Army Human Resources Command (AHRC), Soldier Management System (SMS) shows:

a. The applicant's last physical was conducted on 27 October 2015, and he was given a PULHES of 111111, with no limitations in any factors.

b. His medical readiness classification code (MRCC) was 2 (partially medically ready); Soldier deficient for items that can be corrected in less than 72 hours).

c. He failed his Army Physical Fitness Test in October 2014 and his record was flagged.

10. Headquarters, 81st Regional Support Command Orders 15-345-0031, dated 11 December 2015, reassigned the applicant from his USAR TPU to the USAR Control Group (Reinforcement), due to expiration of USAR service obligation, effective 15 December 2015.

11. ARHC Orders D-11-626614, dated 8 November 2016, honorably discharged the applicant from the USAR effective the date of the orders without listing the reason for discharge.

12. A further review of SMS shows the applicant's discharge from the USAR and the archival of his record on 8 November 2016, was due to expiration of USAR service obligation.

13. The applicant's available service records do not 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 MOS 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

14. A VA letter, dated 5 November 2023, shows the applicant has one or more service-connected disabilities, with a combined service-connected evaluation of 100 percent effective 1 December 2022, and that he is considered to be totally and permanently disabled effective 17 November 2020, solely due to his service-connected disabilities.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting physical disability retirement for PTSD in lieu of honorable release from active duty due to expiration term of service. 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 USAR on 7 November 2008; 2) The applicant deployed to Afghanistan from 16 May 2010-1 April 2011; 3) On 11 December 2015, the applicant was reassigned from his USAR TPU to the USAR Control Group (Reinforcement), due to expiration of USAR service obligation, effective 15 December 2015; 4) On 8 November 2016, the applicant was honorably discharged from the USAR effective the date of the orders without listing the reason for discharge.

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) and additional VA documentation provided by the applicant were also examined.

c. The applicant states he incurred PTSD while serving on USAR as a result of his combat deployment, and he is requesting a referral to IDES to be assessed for a physical disability retirement in lieu of his honorable discharge due to expiration of term of service. There is sufficient evidence the applicant completed a Compensation and Pension (C&P) Evaluation for PTSD following his deployment, and he was awarded disability in 2014 for service-connected PTSD. There is insufficient evidence during the applicant's active service that he ever engaged in repeated behavioral health treatment for PTSD, 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. The applicant's last physical was conducted on 27 October 2015, and he was given a PULHES of 111111, with no limitations in any factors.

d. A review of JLV provided evidence the applicant has been actively engaged with the VA after his discharge from the USAR starting on 25 November 2016 for behavioral health care for PTSD. He has completed further (C&P) evaluations, and he is currently found to be 100% disabled as a result of service-connected PTSD 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 from a psychiatric perspective while on active service. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment consistently, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit

as a result of PTSD during his active service. Thus, there is insufficient evidence his case warrants a referral to IDES 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 from a psychiatric perspective while on active service. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment consistently, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of PTSD during his active service. Thus, there is insufficient evidence his case warrants a referral to IDES 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:

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. The evidence of record shows the applicant served in the USAR from 7 November 2008 until his honorable discharge on 8 November 2016 due to expiration of USAR service obligation. The Board did not find evidence the applicant was issued a permanent physical profile rating, suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service, or was diagnosed with a condition that failed retention standards and/or was unfitting. 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 insufficient evidence the applicant was medically unfit during his active service. Thus, the Board determined there is insufficient evidence his case warrants a referral to the disability evaluation system.

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.

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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.

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. 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 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 (Disability 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; 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 their 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 their 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.

3. 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.

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

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.



c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

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//