

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000060

APPLICANT REQUESTS: retirement due to physical disability.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) summary of benefits letter
- MyHealtheVet Personal Information Report (137 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He is seeking a medical retirement. His supporting documents include his VA findings and his rating of 100% total and permanent disability immediately after discharge. This rating takes into factor several findings, chief among them combat-related post-traumatic stress disorder (PTSD), sleep apnea, and asthma from burn-pit exposure. During his service in the military, he performed his duties with utmost dedication and integrity. However, the challenging nature of his combat assignments while in the United States Marine Corps (USMC) led to the development of PTSD, a condition that significantly impacted his ability to continue serving as it deteriorated while unrecognized and untreated.

b. While in the USMC, he was a member of Kilo Battery 3rd Battalion, 10th Marine Regiment, 2nd Marine Division which actively participated in the 5-week long siege of Marjah, also known as "Operation Moshtarak" and "The Battle for Marjah." Prior to these events, he witnessed, firsthand, the death of his team leader after he stepped on an

improvised explosive device (IED) that turned him into a quadruple amputee. He died of shock and blood loss. Days before that, he witnessed their battalion sergeant major also stepped on an IED. He lost both of his legs, but his life was saved by the quick actions of his team leader and their combat medic who both received a Bronze Star Medals for valor for this particular action.

c. Truncating a list of further events and fatalities which took place over a sum of 18 months, he would simply like this record to reflect that he carried on living and serving to the best of his abilities. Fast-forwarding to his time in the United States Army and the events that led to his subsequent discharge, the reasoning behind his discharge is factual and accurate, but it is merely a singular, culminating point in a long line that was his struggle with PTSD while still in service. He was discharged as a weight control failure. What the discharge does not reflect is that his psychological state leading up to the administrative process had greatly deteriorated during the year prior. He attended therapy in both 2019 and 2020 on two separate occasions at two separate posts. The guilt, depression and struggle had overtaken him, and therapy was a band-aid at that time. It was the greatest struggle of his days to simply wake up and muster the will to attend formation, physical training, and carry on with the minutiae. Then COVID "isolations" came, and this period punctuated his descent that led to an unreported suicide attempt and his eventual separation.

d. As they were isolated, all reports and accountabilities occurred by text. His circle of support had been greatly stripped. When isolations ended and they were back on duty, he was at the lowest point and still quietly considering suicide while actively attending "virtual" treatment. Physical training while on isolation received only cursory attention and when back on duty it received the most effort he could muster, which was not a significant amount. When height and weight came about and he failed, he had a conversation with his direct master sergeant where he partially revealed his state of mind and the reasoning behind all his "trips" to behavioral therapy. When master sergeant attempted to help him get back on track, he expressed his absolute inability to do so and intention to simply "let the process take me." This absolute inability stemming from his psychological state. A decision which, as he writes this 26-months later, regrets but also recognize that as he was then, he could not have overcome it.

e. He wanted to be a warrant officer. The Security Force Assistant Brigade was his gateway to that, and his Enlisted Record Brief was getting padded with information technology certifications to support his application back then. The VA process which granted his disability rating also established a new pipeline of support which has helped treat and control his conditions. He still waver. He still depress and find sleepless nights. He still finds himself crying on occasion over an old sight or memory that refuses to be forgotten. But greater than all these, he still survive. He kindly and respectfully requests that his statement be reviewed with empathy and understanding. This upgrade would have no consequence on the benefits he currently receives, and in fact, would grant

nothing new. This pursuit and appeal are fully borne out of personal pride. Pride in his service and the brothers that he served alongside. Finally, it would serve as a highlight to proclaim that while he struggles both physically and mentally, he bears these struggles as a lingering memory of a battle fought for the sake of his brothers, in the name of our nation.

3. Following service in USMC and in the Army National Guard, the applicant enlisted in the Regular Army on 16 August 2017. His service in the USMC includes deployments to Afghanistan from 6 November 2009 to 1 June 2010 and from 6 March to 27 December 2011.

4. The applicant's records shows he was counseled on 15 March 2021 for failure to meet the body fat standards set forth in Army Regulation 600-9 (The Army Body Composition Program). He was also informed that he was being enrolled in the Army Body Composition Program. He was further informed that a goal of 3 to 8 pounds of weight loss or 1 percent body fat reduction per month was considered satisfactory progress and that failure to make satisfactory progress would result in a bar to reenlistment or separation from the service.

5. On 23 March 2021, the applicant was provided initial nutrition counseling by a health care provider in accordance with Army Regulation 600-9 and the Army Public Health Center Technical Guide. The initial nutrition counseling included scientific based recommendations on rationale and benefits of slow, steady weight loss and specific methods on how to safely and effectively lose weight and/or body fat.

6. The applicant's record shows he was counseled on 14 April, 14 May, and 14 June 2021 due to his continued noncompliance with the Army Weight Control Program.

7. On 14 June 2021, the applicant was informed by his commander that he was being separated from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 18, for weight control failure.

8. On 23 August 2021, the applicant underwent a medical examination for the purpose of separation. He was found medically qualified for separation. He was also assigned a physical profile serial system (PULHES) code of "111111" (deployable).

9. The applicant's DD Form 214 shows he was discharge on 17 September 2021 under the provisions of Army Regulation 635-200, chapter 18, by reason of weight control failure.

10. The applicant provided a VA summary of benefits letter showing he was granted service-connected disability compensation for undisclosed conditions with a 100%

disability rating. The letter also shows the effective date he became totally and permanently disabled due to his service-connected disability as 18 September 2021.

11. 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.

12. 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, and/or 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 requesting a change in his separation authority and, in essence, a referral to the Disability Evaluation System because he has a 100% permanent and total combined disability rating from the VA.

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 he entered the regular Army on 16 August 2017 and was honorably discharged on 17 September 2021 under provisions in chapter 18 of AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Failure to Meet Weight Control Standards.

d. On 15 March 2021, the applicant was counseled by his brigade commander on exceeding his authorized weight by 30 pounds and authorized body fat percentage by 5% and he was to be entered into the Army Body Composition Program (ABCP). The applicant concurred with the counseling without comment and declined a medical examination.

e. When counseled on 14 April 2021, it was shown he had gained 10 pounds and 2% body fat in the preceding month. He was informed:

“Satisfactory progress in the ABCP is defined as a monthly weight loss of either 3 to 8 pounds or 1 percent body fat.

If you continue to fail to show progress within the next two months you will be considered to be failing the program and the commander will initiate separation action, bar to reenlistment, or involuntary transfer to the IRR in accordance with AR 140-1.”

f. The applicant agreed with the counseling without comment.

g. Successive monthly counseling statements shows he gained 3 pounds over the next month and then remained at this new weight of 232 the following month. On 14 June 2021, the brigade commander counseled him that he was being separated under chapter 18 of AR 635-200. The applicant agreed with this counseling without comment.

h. The applicant underwent a pre-separation medical examination on which the only abnormality noted by the provider was “Depressed mood” and he was found qualified for separation.

i. Paragraphs 18-2a and 18-2b of AR 635-200:

“(1) Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter.

(2) If there is no underlying medical condition and a Soldier enrolled in the Army Weight Control Program fails to make satisfactory progress in accordance with AR 600–9, separation proceedings will be considered.”

j. Review of the EMR found no evidence the applicant had such a condition. It shows he had been diagnosed with and had been treated for PTSD with bupropion, trazodone, and sertraline. While some antidepressants may cause weight gain, paragraph 3-2d(4) of AR 600-9, The Army Weight Control Program:

“The use of certain medications to treat an underlying medical disorder or the inability to perform all aerobic events may contribute to weight gain but are not considered sufficient justification for noncompliance with this regulation.”

k. There is no evidence the applicant had an injury or any other condition failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness prior

to his discharge. 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.

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

m. It is the opinion of the ARBA Medical Advisor that neither a change in his separation authority nor a referral of his case to the DES is 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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) 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 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 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 18 provides that Soldiers who fail to meet the body fat standards set forth in Army Regulation 600-9 (The Army Body Composition Program) are subject to involuntary separation per this chapter when such condition is the sole basis for separation. Separation proceedings may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to meet the body fat standards, as reflected in counseling or personnel records.

a. Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter.

b. If there is no underlying medical condition and a Soldier enrolled in the Army Weight Control Program fails to make satisfactory progress in accordance with Army Regulation 600-9, separation proceedings will be considered.

c. Initiation of separation proceedings is required for Soldiers who fail to meet body fat standards during the 12-month period following removal from the program, provided no medical condition exists.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. DA Pamphlet 40-502 (Medical Readiness Procedures) describes the processes and procedures for assessing, documenting, reporting, and administering medical readiness. Paragraph 4-3 (Physical Profile Serial System) states the basis for the physical profile serial system is the function of body systems and their relation to military duties. Profiling providers will use permanent profiles to describe and rate the function of the extremities, sensory organs, physical capacity, and mental health. The permanent physical profile has six functional areas "P-U-L-H-E-S" with four numerical designations used to reflect different levels of functional capacity. The determination of the numerical designation 1, 2, 3, or 4 evaluates the functional capacity of a particular organ or system of the body. The functional areas for consideration are P – physical

capacity or stamina, U – upper extremities, L– lower extremities, H – hearing and ears, E – eyes, S – psychiatric. An individual having a numerical designation of “1” describes a high level of medical fitness, deployable.

5. 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.

6. 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 their lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

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//