

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240000228

APPLICANT REQUESTS: reconsideration of his two previous requests for placement on the Permanent Disability Retired List (PDRL) with a combined disability rating of 100%; or in the alternative referral to the Disability Evaluation System (DES).

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief, Counsel, 8-pages
- Enclosure 1 - Power of Attorney
- Enclosure 2 - ABCMR Docket Number AR20190008649, 28 September 2020
- Enclosure 3 - Consultation Reply, 24 April 1998
- Enclosure 4 - Medical Records, [REDACTED], 12-pages
- Enclosure 5 -
 - applicant's letter to attorney, 6 August 2022
 - letter from Dr. [REDACTED] to Dr. [REDACTED] 12 April 2011
- Enclosure 6 - Medical Records, Mayo Clinic, 8-pages
- Enclosure 7 - Board of Veterans Appeal decision, 7 March 2018

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20060000813 on 17 October 2006 and in Docket Number AR20190008649 on 28 September 2020.

2. Counsel provides an 8-page legal brief, available to the Board to review in full, and wherein counsel states, in part -

a. The applicant was misdiagnosed with a Personality Disorder in service, which was later amended to Dysthymia. His condition was of sufficient severity to warrant his

separation and, had he been accurately diagnosed in-service, he would have been referred to the DES and medically retired.

b. Further, the applicant injured his back in 1986/1987 after falling into a ravine while conducting nighttime field training exercises. He was placed on light duty following this accident and attempted conservative treatment methods for eight (8) months prior to his separation. His condition failed to resolve despite these attempts and was of sufficient severity to preclude him from performing his military duties. The applicant should have been referred to the DES due to his chronic low back pain, which he still suffers from today.

c. The regulations surrounding medical retention require DES referral whenever a service member has a potentially unfitting medical condition. Unfortunately, these regulations and mandates were ignored, and the applicant was separated from service in August 1987 after he was misdiagnosed.

d. This is the applicant's third attempt at correcting the errors that occurred in 1987. His two prior attempts did not include the new evidence and arguments that are now being presented to this honorable Board.

3. After serving in the [REDACTED] ARNG for 1 year and 25 days, the applicant enlisted into the Regular Army for a -year term on 19 February 1986. Following the completion of advanced individual training, orders transferred the applicant to Fort Story, and he arrived on 9 April 1986. Effective 1 September 1986, the applicant's chain of command promoted him to private first class (PFC)/E-3.

4. On 18 September 1986, the applicant's supervisor (SSG [REDACTED]) wrote a statement in which he described the applicant's behavior during the unit's preparation for a readiness exercise.

a. SSG [REDACTED] noted, each time the workload got demanding, the applicant would disappear. At one point, the applicant had asked for time off to purchase an insurance policy, and SSG [REDACTED] agreed; when, on the next day, the applicant again asked to be released (claiming he had been unable to complete the insurance transaction due to missing paperwork), SSG [REDACTED] told him no. The SSG later learned, after he (SSG [REDACTED]) had left the area, the applicant made the same request to Sergeant First Class (SFC) [REDACTED] and, not knowing the background, SFC [REDACTED] granted the applicant's request.

b. On 18 September 1986, the applicant's section had to move files and equipment to a remote site as part of the readiness exercise; shortly after arriving at the remote site, the applicant asked to go to the latrine. After waiting an extended period for the applicant's return, SSG [REDACTED] found the applicant in the latrine reading a newspaper; after acting flustered, the applicant returned to work. Later, when the alert began, the

applicant started "running at the mouth" about "being a man"; complaining about military (expletive); and stating, "he didn't need this (expletive)." SSG [REDACTED] let the applicant complain because he thought the applicant was just venting, but when the applicant stopped working, SSG [REDACTED] became frustrated and told him to "shut up" and get back to work. When SFC [REDACTED] returned to the area, SFC [REDACTED] gave the applicant a "very sound, professional chewing out."

c. SSG [REDACTED] then took the applicant outside, along with another PFC who was senior to the applicant by time-in-grade; SSG [REDACTED] directed the applicant to report to the first sergeant (1SG) and declare, word-for-word, that he (the applicant) was a worthless Soldier," who, while other Soldiers were working, chose to shirk his responsibilities by reading a newspaper in the latrine. Later in the afternoon, the applicant's team returned to the off-site location, but after only an hour of work, the applicant asked to leave so he could call his mother, stating she was in the hospital.

d. SSG [REDACTED] recommended the applicant's referral for a psychiatric evaluation, opining the applicant might be suffering from situational stress. SSG [REDACTED] cited the following five factors: the applicant's:

- conflicts with other Soldiers (noting these Soldiers had already written statements about the applicant and provided them to the 1SG)
- frequent expressions of concern about his mother's health (SSG [REDACTED] had recommended compassionate reassignment, hardship discharge, and/or leave)
- ongoing complaints about threats to his manhood, made whenever the applicant was being required to fulfill his Soldierly responsibilities
- deteriorating attitude, following his promotion to PFC
- (most recently) shirking of his duties

5. On 15 October 1986, a Community Mental Health Service (CMHS) psychiatrist determined the applicant's mental status was within normal limits, and that he showed no sign of mental disease; however, the applicant's work performance had been deteriorating and his fellow Soldiers had also noted a change in the applicant's behavior. The psychiatrist indicated the applicant's leadership should consider the applicant's administrative separation, in view of the psychiatrist's observation that the applicant had a "Personality Disorder of a Mixed type," as manifested by "seclusiveness," intentional inefficiency, an inability to adjust socially or emotionally to military life, and resentment at not being able to further his education.

6. Between December 1986 and April 1987, using DA Forms 4856 (General Counseling Form), the applicant's NCO leadership counseled the applicant three times; the NCOs addressed the applicant's Skill Qualification Test failure, his tardiness to a formation, and his absence from two Physical Training (PT) formations.

7. The medical records provided by the applicant with his initial ABCMR application showed an injury in January 1987 and the issuance of temporary profiles; an entry indicating the applicant's back pain had resolved in February 1987; and two additional back pain entries in April 1987, for which the treatment was a heating pad and pain medication. The medical records included no further entries regarding treatment for back pain.

8. On 1 May 1987, the applicant's unit reported him as absent without leave (AWOL); the applicant returned to military control on 5 May 1987 after having been apprehended at Fort Leonard wood, MO. On 20 May 1987, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for AWOL from 1 until 5 May 1987 (4 days); punishment included reduction from PFC to private (PV2)/E-2. On 25 June 1987, the applicant accepted NJP for failing to be at a PT formation on 16 June 1987 and for willfully disobeying SSG [REDACTED] order to take the company flag to the front of the company on 24 June 1987.

9. On 16 July 1987, the applicant underwent a separation physical. On a Standard Form (SF) 93 (Report of Medical History), the applicant claimed he was in good health, and he did not check "Yes," for any of the medical conditions listed; he also did not report any medical conditions in the comments section of the form on an SF 88 (Report of Medical Examination), the examining physician reflected the applicant's mild Pes Planus and noted the applicant should be evaluated for possible exposure to Hepatitis B; no other medical conditions were identified and the physician affirmed the applicant was qualified for separation.

10. On 21 July 1987, the same CMHS psychiatrist who had previously evaluated the applicant reaffirmed the earlier Personality Disorder diagnosis and reiterated his recommendation for administrative separation.

11. On or about 17 August 1987, the applicant's commander advised him in writing of his intent to separate the applicant under paragraph 5-13 (Separation Because of Personality Disorder), Army Regulation (AR)635-200 (Personnel Separations - Enlisted Personnel); the commander's stated reason was the applicant's personality disorder diagnosis. On 17 August 1987, the applicant signed a written acknowledgement wherein he affirmed he had been afforded the opportunity to consult with counsel, but specifically declined counsel; the applicant further indicated he would not be submitting statements in his own behalf.

12. On 24 August 1987, the separation authority approved the commander's recommendation and directed the applicant's honorable discharge; on 26 August 1987, the applicant was discharged accordingly. The applicant's DD Form 214 shows he completed 1 year,6 months, and 4 days of his 4-year enlistment contract, with 4 days of lost time; he was awarded or authorized the Army service Ribbon and two

marksmanship qualification badges, The DD Form 214 additionally reflected the separation authority as AR 635-200, paragraph 5-13, the narrative reason for separation was personality disorder; and the reenlistment code indicated the applicant required a waiver to reenlist.

13. On or about 31 December 2005, the applicant petitioned the ABCMR, requesting a disability retirement. The applicant argued his discharge was wrongful because he had not been afforded proper medical care for his Dysthymia, chronic depression, aggravated schizoid disorder, Hepatitis B, and back injury. As a result of these conditions, the applicant had been unable to hold a job following his separation and was homeless; in addition, he claimed he had been denied reentry into the Army. He noted the VA later awarded him a 100 percent disability rating. On 17 October 2006, the Board considered ABCMR Docket number AR20060000813 and denied the applicant's request. The Board determined:

- The applicant's separation physical showed the applicant affirmed he was in good health; there was no indication he had either psychiatric or orthopedic issues
- The applicant underwent a psychiatric evaluation while still on active duty; the Army psychiatrist confirmed the applicant exhibited a personality disorder
- There was no evidence the applicant had suffered discrimination or harassment while at Fort Story; on the contrary, the applicant's record showed he had been rapidly promoted; his self-destructive behaviors started after his promotion to PFC
- The applicant filed his ABCMR petition after the expiration of the 3-year statutory time limit

14. On 7 March 2018, the Board of Veterans Appeals, Department of Veterans Affairs found the applicant's low back disability, to include lumbar spine degenerative disc disease, is related to military service and his cervical spine disability, to include cervical spondylosis is related to his military service and/or his low back disability; the Board awarded him service connection for both conditions.

15. On 28 September 2020, in ABCMR Docket Number AR20190008649, the Board reconsidered the applicant's request for a medical retirement. The applicant contends his narrative reason for separation should be changed from personality disorder to a permanent disability retirement; he maintains he never had a personality disorder and, instead, incurred the behavioral health condition of Dysthymia because of the neck and upper/lower back injuries he sustained while he was on active duty. He asserts the onset of his orthopedic injuries occurred during FTXs conducted at Fort Story in 1986, and he reinjured himself after complying with a SSG's illegal order to carry a flag. The applicant maintains that VA linked his Dysthymia to his orthopedic injuries and awarded him a 100 percent disability rating.

a. After review of the application and all evidence, including the medical advisory opinion, the Board found insufficient evidence to grant relief.

b. The Board agreed that the applicant's medical service records do not indicate that the applicant was suffering from militarily unfitting conditions during his active service or at the time of discharge. There is insufficient evidence that the applicant's VA rated service-connected conditions were severe enough during the applicant's military service to receive a permanent 3 Profile or higher that would have required medical boarding. The applicant's medical service records indicate that the applicant met medical retention standards IAW AR 40-501. Therefore, at the time of discharge, he had no unfitting, medically boardable conditions evident. The Board found insufficient evidence in the applicant's medical and service records of a medical disability or condition that would support a change in narrative reason to "disability retirement". The VA properly provided him support and benefits for service-connected medical concerns post-service.

c. The Board agreed with the correction as stated in the Administrative Notes, that the applicant's narrative reason for separation should reflect the updated, current wording of "Condition, Not a Disability", vice "Personality Disorder."

15. The applicant provides a consultation reply from a medical provider, dated 24 August 1998; a letter from a Board-Certified Physical Medicine and Rehabilitation Dr. to another provider, dated 12 April 2011; 12 pages of medical records from Washington University in St. Louis, and 8-pages of medical records from the Mayo clinic, which will be addressed in the Medical Advisory portion of this case. These documents are provided to the Board in full.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his two previous requests for placement on the Permanent Disability Retired List (PDRL) with a combined disability rating of 100% or a referral to the Disability Evaluation System (DES). The applicant asserts mental health conditions are in part related to his request. 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) After serving in the MOARNG for 1 year and 25 days, the applicant enlisted into the Regular Army for a - year term on 19 February 1986; 2) On 26 August 1987, the applicant was honorably discharged, Chapter 5-13, Personality Disorder. He completed 1 year, 6 months, and 4 days of his 4-year enlistment contract, with 4 days of lost time; 3) On 17 October 2006, the ABCMR reviewed and denied the applicant's request for a disability retirement; 4) Again on 28 September 2020, the ABCMR reviewed and denied the applicant's request for a medical retirement.

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 civilian and VA medical documentation provided by the applicant were also examined.

c. The applicant asserts he should have received a discharge for disability related to Dysthymia, instead of being administratively separated for a Personality Disorder. There is evidence the applicant was experiencing occupational problems which resulted being referred to behavioral health services to be evaluated by a psychiatrist. The applicant was evaluated on 15 October 1986, and he was diagnosed with a Personality Disorder of mixed type and recommended for an administrative separation. The applicant was evaluated again on 21 July 1987, and he was again diagnosed with a Personality Disorder and recommended for an administrative separation. There was insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, placed on a permanent psychiatric profile, required inpatient psychiatric treatment, or was ever found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant underwent a Compensation and Pension evaluation and was diagnosed with service-connected Dysthymia secondary to orthopedic injuries.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence provided the applicant met full criteria for a mental health condition determined to not meet medical retention standards, attended six months of consistent mental health treatment, required two inpatient psychiatric admissions, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence provided the applicant met full criteria for a mental health condition determined to not meet medical retention standards, attended six months of consistent mental health treatment, required two inpatient psychiatric admissions, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical discharge.

(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 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. Based on this, the Board determined an increase in the applicant's rating decision at the time of separation was not appropriate and referral of his case to the Disability Evaluation System (DES) is not warranted.

2. The Board considered the following Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence provided the applicant met full criteria for a mental health condition determined to not meet medical retention standards, attended six months of consistent mental health treatment, required two inpatient psychiatric admissions, or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical discharge.

b. Did the condition exist or experience occur during military service? N/A.

c. Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 to overturn the decision rendered by the Board in ABCMR Docket Number AR20060000813 and AR20190008649.

4/15/2025

X

CHAIRPERSON

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. AR 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Paragraph 5-13, set forth the policy and prescribed procedures for separating members with a personality disorder.

a. A Soldier could be separated under this provision for having a personality disorder, which did not amount to disability, when his/she displayed a deeply-ingrained maladaptive pattern of behavior of long duration that interfered with his/her ability to perform duty.

b. The diagnosis of personality disorder had to have been established by a psychiatrist; personality disorders were described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM III). Separation was only authorized if the diagnosis showed the personality disorder was so severe, the Soldier's ability to function effectively in the military environment was significantly impaired.

c. The regulation further stated commanders were not to initiate separation until the Soldier had been formally counseled as to his/her deficiencies and given ample time to overcome those deficiencies. Once the decision was made to proceed with the separation action, commanders were to use the notification procedure. The Soldier's character of service was to be honorable, unless he/she was in an entry-level status.

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, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES 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, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either 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 retirement payments 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 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.

4. Army Regulation 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 their office, grade, rank, or rating. It provides that an MEB 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. 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 their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they 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. Paragraph 4-10 provides that MEBs are 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 qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

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, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Section 1556 of Title 10, United States Code, 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//