

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240000342

APPLICANT REQUESTS, in effect:

- an honorable discharge due to disability
- award of the Purple Heart
- award of the Bronze Star Medal
- back pay from the time of separation to the present based upon his 80 percent disability rating from the Department of Veterans Affairs (VA)
- personal appearance before the Board via video/telephone

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

- DD Form 149, Application for Correction of Military Record
- Permanent Orders 215-029
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Department of Veterans Affairs Disability Claims decisions and ratings
- Standard Form 180, Request Pertaining to Military Records

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, in effect:

a. He was in the process of completing a medical board when his ex-spouse made horrible allegations against him. These allegations were determined not to be true. Unfortunately, the allegations caused his medical board processing to be terminated. After being cleared from the allegations he was given the option to be discharged with an under honorable conditions, general characterization of service for physical reasons or restart the medical board process. He was told that his ex-spouse could continue doing what she had already done, and it would take forever to finish the medical board process. He chose to be discharged from the military.

b. He contends that he deserves an honorable characterization of service and an 80% disability rating from the Army as well as the back pay from the time of his separation to the present.

c. He contends that he sustained two combat injuries in Iraq and should be awarded the Purple Heart. The VA has awarded him disability compensation for these injuries. These injuries have caused him great issues to this day. He earned everything he is requesting.

3. Regarding the Purple Heart and Bronze Star Medal, the applicant's request is premature. The applicant's request for award of the Purple Heart and the Bronze Star Medal will not be considered by the Board as the applicant has failed to provide evidence that he has exhausted all his administrative remedies. The applicant may apply for award of the Purple Heart with supporting evidence in accordance with Army Regulation 600-8-22 to the Awards and Decorations Branch at the U.S. Army Human Resources Command. The applicant may also apply for award of the Bronze Star Medal in accordance with Title 10, U.S. Code, section 1130 to the Commanding General, U.S. Army Human Resources Command, Fort Knox, KY.

4. The Board will only address the reason for separation (from failing physical standards to disability).

5. The applicant enlisted in the Regular Army on 29 December 2004 and was awarded primary military occupational specialty (MOS) 13B, cannon crewmember. He reenlisted on 8 February 2007, and again on 8 February 2008. His Enlisted Record Brief shows he completed foreign service in:

- Iraq, 12 September 2005 -13 September 2006
- Afghanistan, 11 June 2010 – 7 May 2011

6. The record shows the applicant failed his record Army Physical Fitness Test (APFT) on 23 May 2012, and for a second time 16 July 2012. He received a performance counseling on 27 August 2012 informing him of his commander's intent to initiate chapter proceedings to separate him from the military.

7. As part of his separation processing, he completed a medical assessment on 21 August 2012 wherein he reported being in the same overall health. He did not indicate that he had any injuries or illnesses.

8. He underwent a separation physical on 21 August 2021. During his separation physical the applicant reported:

- being prescribed an inhaler
- having arthritis in his back and wrist
- daily heartburn
- having had yellow jaundice
- having a hernia during his first deployment
- having a skin rash during his first deployment
- having migraines, a hard time remembering things, bad anxiety, being forgetful, having a hard time falling asleep and managing his anger

9. The military physician found the applicant was qualified for service and for separation processing.

10. The applicant underwent a mental status evaluation on 19 September 2012, which found that he could understand and participate in administrative proceedings, could appreciate the difference between right and wrong, and that he met the medical retention requirements (does not qualify for a Medical Evaluation Board (MEB)). He received a diagnoses of anxiety disorder not otherwise specified. He was screened for Post-Traumatic Stress Disorder and Mild Traumatic Brain Injury. Both were negative. The Behavioral Health Supervisor further stated the applicant's current risk for imminent self or other harm appeared minimal. He cleared the applicant from a psychological perspective for any administrative action deemed appropriate, specifically for Army Regulation (AR) 635-200, Personnel Separations–Active Duty Enlisted Administrative Separations, Chapter 13, for unsatisfactory performance.

11. The applicant's immediate commander notified the applicant on 23 October 2012 of his intent to initiate separation actions against him under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. The specific reasons cited were the applicant's failure to pass the APFT on two occasions, having multiple failed attempts to pass his MOS certification tests, and several disciplinary issues, such as failure to keep accountability of government equipment and failure to obey a lawful order. The commander recommended he receive an under honorable conditions, general characterization of service. The applicant acknowledged receipt of this notification of intent to initiate separation.

12. The applicant consulted with counsel on the same day. After consulting with counsel, the applicant waived his right to consideration of his case by a board of officers, personal appearance before a board of officers, and to submit statements in his own behalf.

13. The applicant's commander formally recommended his separation from service under the provisions of AR 635-200, Chapter 13. The separation authority approved the recommended discharge on 25 October 2012 and directed that the applicant receive an under honorable conditions (general) discharge.

14. The applicant was discharged on 9 November 2012. His DD Form 214 confirms he was discharged under the provisions of AR 635-200, Chapter 13-2e, by reason of physical standards. His service was characterized as under honorable conditions (general), Separation Code JFT and Reentry Code 3.

- He completed 7 years, 10 months, and 11 days of active service.
- The Remarks Block listed his immediate reenlistment bit did not list his continuous honorable service

15. There is no indication the applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge.

16. The Board should consider the applicant's overall record and the statement he provided in accordance with the published equity, injustice, or clemency determination guidance.

17. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. However, a case file may be referred in this way if the General Court-Martial Convening Authority finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

18. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

19. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 with multiple requests. The Record of Proceedings states his requests for a Purple Heart and a discharge upgrade will not be addressed by the ABCMR. Thus, "The Board will only address the reason for separation (from failing physical standards to disability," i.e., the potential referral of his case to the Disability Evaluation System. He states:

"I was in the process of a medical board my ex-wife made horrible allegations against me that were founded to not be true. Due to the allegations, my medical board was stopped. After being cleared 100% from the allegations, I was given an option I could get discharged on a UNDER HONORABLE CONDITIONS (GENERAL) for Physical Reasons or restart the process of the medical board.

It was explained to me that she could continue doing what she had already done and it would take forever to finish the medical board process. I chose to be separated from the military with the discharge I currently have. I deserve an Honorable Discharge and 80% disability rating from the Army as well as the back pay from time of separation to present."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period under consideration shows he entered the regular Army on 29 December 2004 and was discharged on 9 November 2012 under the provisions in paragraph 13-2e of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009) for having failed two consecutive Army physical fitness tests (APFT).

d. The applicant did not identify the condition(s) he believes failed medical retention standards and for which he was or should have been referred to the DES.

e. On 27 August 2012, the applicant's company commander counseled him on his intent to initiate action to separate him under provisions in chapter 13 of AR 635-200:

"SGT [Applicant], this counseling is to inform you of the Battery's intent to initiate Chapter 13 proceedings against you. Due to your failure to maintain MOS [military occupational specialty] skill level certification (gunners test) twice, failure to pass multiple APFT's, inability to properly maintain accountability of government property coupled with your obvious disinterest in continuing military service it has been determined that any further continued service on your part would not be in the best interest of the unit, the Army, or you.

You have already completed your phase 1 and phase II physicals. You will now be scheduled for a required mental exam. This is a requirement of the chapter and not a negative connotation against you.

This packet will be forwarded through the command and to the approval authority. You will be notified of any further requirements or appointments as the command is made aware of them.”

f. The applicant acknowledged and agreed with the counseling without comment.

g. The applicant had completed his pre-separation medical evaluation on 21 August 2012. The provider noted the applicant was overweight, pre-hypertensive, a rash (vitiligo vs. tinea, both benign conditions), hearing loss, and neck/back pains. He found the applicant to be without duty limiting medical conditions warranting referral to the DES and qualified for chapter 13 separation.

h. The applicant underwent his mental status evaluation on 19 September 2012. The provider documented a normal examination with negative PTSD and TBI screens. He opined the applicant was fit for full duty including deployment, could understand and participate in administrative proceedings, could appreciate the difference between right and wrong, and “Meets medical retention requirements (i.e., does not qualify for a Medical Evaluation Board).”

i. No evidence of the referral to the DES mentioned by the applicant was found in the supporting documentation, the EMR, iPERMS, or ePEB.

j. There is insufficient probative evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented him from passing the APFT. Thus, there was no cause for referral to the Disability Evaluation System. 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.

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, chronic maxillary sinusitis, eczema, and migraine headaches. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

I. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the evidence of two APFT failures, a failure by the applicant of MOS certification exams and several disciplinary issues during his period of military service, the Board concluded there was insufficient evidence warranting a discharge upgrade.

Additionally, based upon the findings in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

3/17/2025

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. 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 (AR) 635-5, Personnel Separations-Separation Documents, 15 August 1979, in effect at the time did not provide for adding an entry for continuous honorable active service, when a Soldier who had previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service that was not honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.
3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation governs the evaluation for physical fitness for Soldiers who may be unfit to perform their military duties because of physical disability.
  - a. The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.
  - b. 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

d. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

e. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions. However, a case file may be referred in this way if the General Court-Martial Convening Authority finds the disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

#### 4. AR 635-200, Personnel Separations-Enlisted Separations, provides:

a. 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.

b. Chapter 13 provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

5. Title 38, U.S. Code section 1110, General - Basic Entitlement: 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

4dishonorable 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.

6. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

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.

9. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

10. 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 will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR.

a. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

b. The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice. The applicant may submit a request to the AHRC Awards and Decorations Branch (ADB) in letter format to the following address. Commander, AHRC, ATTN: AHRC-PDP-A (ADB), 1600 Spearhead Division Ave, Fort Knox, KY 40122-5408 or Email: [usarmy.knox.hrc.mbx.tagd-awards@mail.mil](mailto:usarmy.knox.hrc.mbx.tagd-awards@mail.mil).

//NOTHING FOLLOWS//