

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240000410

APPLICANT REQUESTS: in effect,

- an upgrade of his under honorable conditions (General) discharge
- a medical retirement

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

- DD Form 293 (Application for the Review of Discharge)
- DA Form 4187 (Personnel Action)
- Memorandum Chapter Clearance
- Department of Veterans Affairs (VA) Rating Decision
- Medical 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 he is requesting an upgrade of his discharge for the amount of service he has given and based on the issues stemming from his mental health problems throughout his service. He is also requesting retired status. His medical treatment took place long before his separation.

3. The applicant provides:

a. DA Form 4187 (Personnel Action), 10 July 2008, requesting award of the Combat Action Badge.

b. Memorandum from a doctor at the mild Traumatic Brain Injury (mTBI) Clinic, 18 February 2014, which states:

(1) The applicant received a complete TBI evaluation on 18 February 2014. As a civilian physician, the doctor is able to confirm whether or not the symptoms described to him by the applicant met the criteria for a mTBI/concussion. On some occasions there is documentation in the medical record of the event that caused the TBI. However for many servicemembers this documentation is not available in the medical record.

(2) In the applicant's case, the injuries he described to the doctor did meet diagnostic criteria for mTBI/concussion. During his 2004 through 2005 deployment, he reported a motor vehicle accident resulting in the loss of consciousness for less than 30 minutes. During his 2007 deployment to Iraq, he was within 50 meters from a mortar blast explosion, which caused alteration of consciousness. There is documentation in the Armed Forces Health Longitudinal Technology Application (AHLTA) to support the event. He also reported a fall with head trauma on the same deployment that caused alteration of consciousness. There is no documentation in AHLTA for the motor vehicle accident or fall injuries.

(3) His current cognitive complaints include memory loss and decreased concentration. They are not due to the mTBI based on the following rationale. 1) Onset of the symptoms began after 2009 redeployment which is two years after the injuries. 2) The symptoms he described do not follow the typical path of recovery expected after mTBI. A mTBI generally follows a predictable course with symptoms gradually recovering within three to six months. When recovery does not occur, non-neurological factors (insomnia, anxiety, post-traumatic stress disorder (PTSD)) typically account for exposure. The development of his insomnia coincides with onset of anxiety and depression. Again, it began two years after the injuries.

c. VA rating decision, 19 June 2018, shows the records reflect the applicant is a veteran of the Gulf War Era. He served in the Army from 12 September 2000 to 9 April 2002, from 17 June 2004 to 2 May 2005, and from 28 March 2006 to 4 June 2014. The decision was:

(1) Entitlement to an earlier effective date for increase evaluation of PTSD is granted because a clear and unmistakable error was made; therefore, a 100 percent evaluation is assigned effective 30 March 2015.

(2) Entitlement to an earlier effective date for increased evaluation of degenerative disc disease thoracolumbar spine is granted because a clear and unmistakable error was made; therefore, a 10 percent evaluation is assigned effective 30 March 2015.

d. Medical records, which are available for the Board's review and will be reviewed by the Army Review Boards Agency (ARBA) Medical Section who will provide an advisory opinion.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Army National Guard (ARNG) on 23 December 1998.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty as a member of the ARNG on 19 March 1999 and was honorably released on 16 July 1999. He had completed 3 months and 28 days of active duty service.

c. NGB Form 22 (Report of Separation and Record of Service) shows he was a member of the ARNG from 23 December 1998 through 11 September 2000. He was honorably discharged for enlistment, reenlistment, or immediate reenlistment in a component of the Armed Forces. He had completed 1 year, 8 months, and 19 days of net service this period.

d. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 12 September 2000.

e. DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) shows he accepted nonjudicial punishment for making a false official statement. His punishment included 14 days of extra duty. He did not appeal his punishment.

f. DA Forms 4187 (Personnel Action) show his duty status was changed from present for duty (PDY) to absent without leave (AWOL) on 7 May 200. He went AWOL from the Joint Readiness Training Center (JRTC) after guard duty. His duty status was changed from AWOL to PDY on 8 May 2001. He reported to Fort Monmouth, New Jersey to request a compassionate reassignment to Fort Drum, New York.

g. DA Forms 4856 (Developmental Counseling Form) show he was counseled on:

(1) 5 June 2001, to outline his actions (failure to obey an order or regulation and AWOL) while on deployment to JRTC and inform him of possible consequences of the actions. He agreed with the counseling and signed the form.

(2) 18 July 2001, for missing two straight days of extra duty. He agreed with the counseling and signed the form.

(3) 30 July 2001, monthly counseling for the month of July. He agreed with the counseling and signed the form.

(4) 30 July 2001, for not securing his check book. He agreed with the counseling and signed the form.

(5) 27 August 2001, for failing to obey an order or regulation and for being AWOL for a second time. The applicant did not indicate if he agreed with the counseling; however, he stated he gave notice of the engagement a week ahead of time. Not going to his appointment would have resulted in his wife and children being homeless. He did not get the message in a reasonable time. He signed the form.

(6) 31 August 2001, monthly counseling for the month of August. He agreed with the counseling and signed the form.

(7) 11 September 2001, for writing bad checks. He disagreed with the counseling stating he called and consulted with the clerk at the Army and Air Force Exchange Service (AAFES) and she told him she would handle it and keep eyes out for checks in his name. He signed the form.

(8) 11 September 2001, for failing to report for duty and being disrespectful to a noncommissioned officer (NCO). He agreed with the counseling and signed the form.

(9) 20 September 2001, for failing to report for duty. He disagreed with the counseling and stated while on duty, he and another Soldier were told by an NCO that everyone, including the guards, were going back to the rear. He signed the form.

(10) 17 September 2001, for failing to comply with his Article 15 and for violating a direct order from an NCO. He disagreed with the counseling stating he did not leave the battalion area. His wife passed his belonging to him. The battalion commander told him he is not restricted to the battalion area and his wife could come see him. He called his wife to give him money and personal hygiene products. He had not been to the Schofield Inn since receiving the Article 15. He signed the form.

(11) 6 November 2001, for being late for for first call. He agreed with the counseling and signed the form.

(12) 16 November 2001, for failing to show up for duty on time and being disrespectful to an NCO. He disagreed with the counseling stating that morning at around 0520 his wife and he left the house to go to the company. His front left tire went flat and the car died. He came to the company around 0555 am. His NCO asked where he was and before he could say anything the NCO started yelling at him and they exchanged words. He signed the form.

h. DA Forms 4187 (Personnel Action) show his duty status was changed from PDY to AWOL on 23 August 2001 and from AWOL to PDY on 27 August 2001.

i. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 20 September 2001 shows he accepted nonjudicial punishment for being AWOL from on or about 24 August 2001 to on or about 27 August 2001 and failing to go to his appointed place of duty on two occasions. His punishment included reduction to the rank of private/E1, forfeiture of \$521 per month for two months, and extra duty and restriction for 45 days. He did not appeal his punishment.

j. SF Form 93 (Report of Medical History) shows his health was fair. There are a number of issues he complained about to include frequent trouble sleeping, depression and excessive worry. SF Form 88 (Report of Medical Examination) shows he was qualified for separation. Both forms are available for the Board's review and will be reviewed by the ARBA medical section.

k. DA Forms 3822 (Report of Mental Status Evaluation), 29 November 2001 and 21 December 2001, show he has the mental capacity to understand and participate in the procedures, is mentally responsible, and meets retention requirements.

l. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), shows he was flagged for elimination on 14 January 2002.

m. An undated memorandum shows his commander was initiating separation of the applicant under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) paragraph 14-12b for patterns of misconduct. The reasons for the commander's proposed action are he was AWOL on two different occasions, failed to report to his appointed place of duty six times, failed to comply with Army regulations, wrote checks to AAFES with insufficient funds, broke restriction, was disrespectful to an NCO, and made a false official statement. His commander was recommending he receive an under honorable conditions (general) discharge but the intermediate commander and approval authority were not bound by his recommendation. On 13 March 2002, the applicant acknowledged receipt.

n. In an undated memorandum, the applicant stated he had been afforded the opportunity to consult with counsel. He had been advised, by his counsel, of the basis of the contemplated action to separate him for patterns of misconduct, its effects, the rights available to him, and the effect of any action taken by waiving his rights. He declined to submit statements on his own behalf.

o. The applicant's chain of command recommended approval of the separation with issuance of an under honorable conditions (General) discharge. On 18 March 2002, the separation packet was found to be legally sufficient. In an undated memorandum, the appropriate approval authority approved the applicant's separation with an issuance of an under honorable conditions (General) discharge.

p. On 9 April 2002, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 1 year, 6 months, and 22 days of active duty service with 3 months and 28 days of prior active duty service and 1 year, 4 months, and 21 days of prior inactive duty service. He was discharged for patterns of misconduct, his characterization of service was under honorable conditions (General), his separation code was JKA, and his reentry code was 3. He was awarded or authorized the:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar
- Marksman Marksmanship Qualification Badge with Grenade Bar

q. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the ARNG on 13 May 2004.

r. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty, as a member of the ARNG, on 17 June 2004 and was honorably released on 2 May 2005. He had completed 10 months and 16 days of active duty service. He was ordered to active duty in support of Operation Enduring Freedom and had service in Cuba from 14 June 2004 through 12 April 2005.

s. NGB Form 22 (National Guard Report of Separation and Record of Service) shows he was a member of the ARNG from 13 May 2004 through 1 March 2006. He had completed 1 year, 9 months, and 17 days of net service this period with 1 year, 8 months, and 20 days of prior inactive service, and 1 year, 6 months, and 23 days of prior active service. He was honorably separated for expiration of active service commitment in the Selected Reserve.

t. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 26 March 2006. He remained in the Army through immediate reenlistments.

u. DA Form 4856 (Developmental Counseling Form) shows he was counseled on 9 January 2013 for alleged inappropriate conduct. He agreed with the counseling and signed the form.

v. DA Form 268, (Report to Suspend Favorable Personnel Actions (Flag)) shows he was flagged on 9 January 2013 for adverse action.

w. DA Form 1574 (Report of Proceedings by Investigation Officer (IO) /Board of Officer) shows an AR 15-6 investigation was conducted on 17 January 2013 into the applicant's alleged inappropriate conduct. The IO found:

(1) His text messages to Mrs. ■ show he was attempting to commit adultery.

(2) The most serious offense occurred when he received a no contact order for Mrs. B- on 9 January 2013. It was signed and dated by the applicant on the same day. The applicant contacted Mrs. ■ on 9 January 2013 telling her to "erase all our texts and numbers now." This is in violation of Article 92, failure to obey an order or regulation; Article 90, willfully disobeying a commissioned officer; and Article 96, obstructing justice.

(3) The IO recommended he receive a company grade Article 15. The entire AR 15-6 investigation is available for the Board's review.

x. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 8 April 2013, shows he accepted nonjudicial punishment for wrongfully endeavoring to impede an investigation and failing to obey a lawful command of a superior commissioned officer. His punishment included forfeiture of \$714, suspended, and extra duty for 14 days. He did not appeal his punishment.

y. DA Forms 4187 (Personnel Action) shows his duty performance was changed from PDY to confined by civilian authorities on 4 May 2013 and from confined by civilian authorities to PDY on 14 May 2013.

z. The applicant's separation packet is not available for the Board's review. His DD Form 214 shows he was discharged on 4 June 2014. He completed 8 years, 2 months and 7 days of active service. He had continuous honorable service from 28 March 2006 to 14 December 2008. He had service in Afghanistan from 18 August 2013 through 25 November 2013 and 15 November 2008 through 1 June 2009. He had service in Iraq from 17 January 2007 through 25 July 2007. He was discharged for patterns of misconduct, his characterization of service was under honorable conditions (General), his separation code was JKA, and his reentry code was 3. He was awarded or authorized the:

- Afghanistan Campaign Medal with Campaign Star
- Meritorious Service Medal
- Army Commendation Medal (2nd Award)
- Army Achievement Medal (3rd Award)
- Joint Meritorious Unit Award
- Meritorious Unit Commendation (3rd Award)
- Army Good Conduct Medal
- Manchu Mile Belt Buckle Medal (2nd Award)
- Army Reserve Component Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

- Korean Defense Service Medal
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Armed Forces Reserve Medal with M Device
- NATO Medal
- Expert Infantryman Badge
- Combat Action Badge
- Driver and Mechanic Badge with Driver - Tracked Vehicle(s) Clasp
- Driver and Mechanic Badge with Driver-

aa. There is no documentation in his service record to show he underwent a medical evaluation board or physical evaluation board.

#### 5. MEDICAL REIVEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant received discharge characterized as Under Honorable Conditions, General. He requests change in characterization of service and separation code. He also requested (medical) retirement status. He stated that PTSD, TBI and Other Mental Health conditions were related to his claim. The review concerning these conditions was completed under separate cover by a mental health specialist. The review below is focused on the other medical conditions for which the applicant has been service-connected.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in service 23Dec1998. His initial MOS was 11B10 Infantryman. He had several periods of active service from which he was honorably released. In particular, he had one prior period of service for which he was separated (on 09Apr2002) under provisions of AR 635-200 chapter 14, para 14-12b for patterns of misconduct due to the following: AWOL (07May2001 and 24Aug2001), failed to report to appointed duty six times (16 and 17Jul2001, 18Sep2001); wrote check with insufficient funds to cover (counseled 11Sep2001?); broke restriction; disrespected a noncommissioned officer (16Nov2001); made a false statement (25Oct2000). His service was characterized as Under Honorable Conditions, General. He enlisted ARNG on 13May2004, served in Cuba 20040614 to 20050412 and had multiple periods of service for which he was honorably released from active service. And finally, he enlisted in the Regular Army 26Mar2006. During this time, he had 3 combat deployments which included Afghanistan 20130818 to 20130925 and 20081115 to

20090601; and Iraq 20070117 to 20070725. His MOS was Mortuary Affairs Specialist. He was separated 04Jun2014 under provisions of AR 635-200 chapter 14, para 14-12b for patterns of misconduct. The separation package was not available for review. However, available records showed the following: He was flagged for adverse action 09Jan2013. The complete report of an AR 15-6 investigation conducted on 17Jan2013 was made available to the Board. The applicant accepted nonjudicial punishment for wrongfully endeavoring to impede an investigation and failing to obey a lawful command. He was confined by civilian authorities from 04May2013 to 14May2013.

3. JLV search showed that the applicant had been service connected for the following conditions (excluding PTSD and TBI condition): Sleep Apnea 50%; Diabetes Mellitus 20%; Degenerative Arthritis of the Spine 10%; Allergic Rhinitis 10%; Tinnitus 10%; Flat Foot Condition 10%; Knee Condition 0%; Tendon Inflammation 0%; and Migraines 0%. These conditions will be reviewed briefly below.

a. Sleep Apnea. The applicant was seen for sleep problems in February 2012. During the 09Feb2014 polysomnogram (Z Sleep Diagnostics), Obstructive Sleep Apnea; Snoring; and Obesity (BMI between 30.0 and 38.9) was diagnosed. During 18Jul2014 Sleep Apnea DBQ exam, the applicant endorsed that CPAP was helping his symptoms.

b. Diabetes Mellitus. While in service, an elevated blood sugar was noted on 03Mar2014. The hemoglobin A1c at 6.4% (normal range 4.0-6.0%) was slightly above normal at the time. At the time of discharge, the applicant was not participating in any treatment for this condition. He participated exercise and diet instruction a few years after service (28Nov2017 Nutritional Consult VAMC).

c. Degenerative Arthritis of the Spine. During the 13Jan2014 Report of Medical History (DD Form 2807-1), the applicant reported recurring back pain; however, there was no previous exam or documentation of injury. The 31Jan2014 lumbar spine MRI revealed minimal degenerative changes. In the 10Feb2014 Custer Hill Health Clinic (Fort Riley note), the applicant requested a profile for lower back pain and bilateral knee pain as well; however, he had not optimized conservative therapy yet (no trial of physical therapy etc.). The applicant began chiropractor services three times/week for two months, and this was very helpful. He also used TENs unit in the past. Physical therapy, acupuncture, dry needling had not been attempted yet. He was to enroll in the Functional Restoration Program. He was issued a 4-month temporary profile (no run, sit-ups, or push-ups) with expiration in June 2014. The 18Jul2014 Back Conditions DBQ exam showed back forward flexion to 90 degrees (normal) and extension to 30 degrees (normal). There was no objective evidence of painful motion. There were no radicular symptoms. Straight leg testing was negative bilaterally (normal, not consistent with radiculopathy).

d. Allergic Rhinitis. During the 18Jul2014 Sinusitis, Rhinitis and Other Condition DBQ exam, the applicant reported that he initially had symptoms when he was downrange. His symptoms were currently intermittent. When he had symptoms his treatment included antihistamines, nasal saline spray and Flonase nasal spray. His condition had not required antibiotics or surgery and records did not show treatment by an allergist or by and ENT (ear nose and throat specialist).

e. Tinnitus. The applicant sought treatment for constant bilateral ringing in his ears on 04Jun2007 while in theatre after being near a blast from mortar/rocket. Per 03Jul2014 Hearing Loss and Tinnitus DBQ, blast exposure was thought to be the cause of the tinnitus. He was not participating in any ongoing therapy/treatment for this condition.

f. Flat Foot Condition. Congenital Pes Planus (flat feet) was noted during and exam in 2012. During the 09Dec2013 Post deployment Health Assessment, the applicant endorsed intermittent 6/10 pain in both feet from increased walking on rocks and prolonged standing during deployment. He also endorsed chronic intermittent bilateral foot pain and achy joints from heavy lifting/wearing combat gear for many hours. The physical profile was PULHES: 111111. On 11Dec2013 (Irwin ACH), he was issued bilateral arch supports for boots and 2 pair of PT shoes. During the 23Jan2014 Physical Exams Irwin ACH exam, he reported improvement since he started wearing inserts in December. New inserts were issued 03Mar2014. 27May2014 bilateral foot films confirmed pronounced pes planus deformity. During the 18Jul2014 Foot Conditions DBQ exam, the applicant reported that sometimes he was pain free. During the physical exam, there was pain on use of his feet, and tenderness to palpation of both mid arches. In addition to Bilateral Pes Planus, he was diagnosed with Bilateral Plantar Fasciitis. His pain was mild, he was able to continue to do what he needed to do. He had a permanent P2 physical profile for foot pain, numbness, tingling.

g. Knee, Right Condition. The applicant was evaluated for bilateral knee pain in 2007. There was no reported injury. On 16Feb2011, the applicant was seen after hyper extending his right knee. The right knee film was normal. The 23Jan2014 note indicated improvement since he started wearing shoe inserts in December. He was also evaluated by physical therapy on 19Feb2014 and given a home exercise program. On 03Feb2014, bilateral knee weight bearing series was normal. He was seen by pain management in April 2014 for diagnosis Knee Sprain Lateral Collateral Ligament. During the chapter physical (in May 2014) and the 18Jul2014 Knee and Lower Leg Conditions DBQ exam, the applicant reported bilateral knee pain (right worse than left). There was right knee flexion to 95 degrees (normal is to 140 degrees). Left knee flexion was to 110 degrees. Bilateral strength was 5/5 (normal), there was no objective painful motion and there was no joint instability bilaterally.

h. Tendon Inflammation, Shoulder, Left. The applicant was diagnosed with Rotator

Tendonitis during the 18Jul2014 Shoulder DBQ exam. The left shoulder film was unremarkable. The applicant reported having been treated by a chiropractor which helped a lot (in February 2014). There was localized tenderness or pain on palpation of joints/soft tissue/biceps tendon of the left shoulder. Muscle strength was equal bilaterally. The left shoulder exam showed flexion to 155 degrees (normal 0 to 180 degrees); and abduction to 180 degrees (normal). There was no objective painful motion.

i. Migraines. During the 18Jul2014 Headaches DBQ exam, the applicant stated that he had headaches about four times a week which began in 2007 after a motor attack. The headaches lasted about 10-15 minutes for which he took ibuprofen. He did not have characteristic prostrating attacks of migraine/non migraine headache pain. He was not taking prescribed medication for the condition (not prescribed abortive or preventive medication).

#### 4. Summary/Opinion

The 23May2014 Report of Medical Examination (DD Form 2808) for chapter separation showed sole defect Bilateral Pes Planus, Moderate, Symptomatic. He used inserts with improvement in symptoms. He had a permanent P2 physical profile (24Jan2014) for the condition. None of the conditions reviewed above were issued a level 3 permanent physical profile. The ROMs for the joint conditions documented above in the VA DBQs, met retention standards of AR 40-501. Based on records available for review there was insufficient medical evidence to support that any of the conditions reviewed above failed medical retention standards of AR 40-501. In addition, there was no evidence to suggest that any of the conditions reviewed above substantively contributed to the reason that the applicant was separated from service.

#### BEHAVIORAL HEALTH REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge and is requesting medical retirement. On his DD Form 293, he indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are 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) the applicant enlisted in the army National Guard (ARNG) on 23 December 1998, 2) NGB Form 22 shows he was a member of the ARNG from 23 December 1998 through 11 September 2000. He enlisted in the Regular Army (RA) on 12 September 2000, 3) he received nonjudicial punishment (NJP) for making a false official statement, 4) he was counseled on 12 occasions from 05 June 2001 through 16 November 2001 for various reasons to include: failure to obey an order or regulation and AWOL while on deployment to JRTC, missing two straight days of extra duty, routine monthly counselings, for not securing his check book, for failing to obey an order or regulation and for being AWOL for a second

time, for writing bad checks, failing to report for duty and being disrespectful to a noncommissioned officer (NCO), failing comply with his Article 15 and for violating a direct order from an NCO, for being late for first call, for failing to show up for duty on time, and being disrespectful to an NCO, 6) he accepted nonjudicial punishment on 20 September 2001 for being AWOL and failing to go to his appointed place of duty on two occasions, 7) SF Form 93 (Report of Medical History) shows his health was fair and he endorsed a number of issues to include frequent trouble sleeping, depression or excessive worry, 8) The applicant's report of Mental Status Evaluation (MSE) dated 29 November 2001 shows that the provider noted he had the mental capacity to understand and participate in the procedures, was mentally responsible, and that he met retention requirements, 9) his commander initiated separation under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b for patterns of misconduct. The reasons for the commander's proposed action are he was AWOL on two different occasions, failed to report to his appointed place of duty six times, failed to comply with Army regulations, wrote checks to AAFES with insufficient funds, broke restriction, was disrespectful to an NCO, and made a false official statement. The applicant was discharged on 09 April 2002 for patterns of misconduct, his character of service was under honorable conditions (general), separation code was JKA, and reentry code was '3.' 10) he enlisted in the ARNG on 13 May 2004. He was ordered to active duty in support of Operation Enduring Freedom (OEF) and had service in Cuba from 14 June 2004 through 12 April 2005, 11) he enlisted in the RA on 26 March 2006. 12) he was counseled on 09 January 2013 for alleged inappropriate conduct and was flagged for adverse action, 13). An AR 15-6 investigation was conducted on 17 January 2013. He received NJP on 08 April 2013 for wrongfully endeavoring to impede an investigation and failing to obey a lawful command of a superior commissioned officer, 14) his duty status was changed to confined by civil authorities on 04 May 2013 until 14 May 2013, 15) the applicant's separation packet was not available for review. His DD Form 214 shows he was discharged on 04 June 2014. He had service in Afghanistan from 18 August 2013 through 25 November 2013 and 15 November 2008 through 1 June 2009. He had service in Iraq from 17 January 2007 through 25 July 2007. He was discharged for patterns of misconduct, his characterization of service was under honorable conditions (general), his separation code was JKA, and his reentry code was 3.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The electronic Physical Evaluation Board (ePEB), MEDCHART, and the VA's Joint Legacy Viewer (JLV) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service BH records provided by the applicant as part of his application and those available in JLV were reviewed. In-service medical records through the DoD were available for review via JLV from 26 July 2004 through 29 May 2014. There were no records in ePEB or MEDCHART.

- An MSE conducted for the purpose of Chapter 13 separation dated 29 November 2001 shows all domains of the MSE were within normal limits (WNL). The provider indicated he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements of Chapter 3, AR 40-501. He completed another MSE on 21 December 2001 noted to be directed by command. All domains of the MSE were WNL. The provider documented that there was no evidence of a psychiatric condition which would prevent the Soldier from participating in any legal or administrative actions, that he met retention requirements of AR 40-501, and was able to understand and participate in any administrative proceedings.
- Regarding BH treatment, the applicant's first encounter in JLV was on 20 November 2007 after being referred by Soldier Readiness Processing (SRP) due to anxiety, increased irritability, frustration due to work environment, and sleep disturbances. It was also documented that he had experienced recent legal problems but had been found not guilty as of 15 October 2007. The applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood and it was noted that since returning from deployment on 26 July 2007 he had difficulty readjusting (e.g., sleep cycles, tempo pace in company, current work assignments, marital concerns, legal issues, and physical health matters). There were no follow-up BH encounters until 05 May 2009 wherein he was seen in the Combat Stress Control (CSC) Clinic due to job stress and sleep problems. It was documented that a trial of Zolpidem for sleep was helpful and he denied experiencing suicidal or homicidal (SI/HI) ideation. He was diagnosed with Adjustment Disorder. He completed a BH intake on 27 July 2009 noting he was reporting symptoms of depression, sleep disturbance, and anxiety. It was documented that he was previously prescribed Paxil (antidepressant) and Ambien (also known as Zolpidem) for about 2 months which was helpful for his sleep and depression. He was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood and his medications were continued. On 16 September 2009, his diagnosis was noted as Adjustment Disorder with Disturbance of Emotions. A separate BH note on 16 September 2009 documented that he was requesting documentation supporting that he be transferred from Virginia to Hawaii. The provider documented that, as he had not been compliant with BH treatment, the provider was unable to substantiate his request without an adequate period of treatment. He was referred to BH in the network and was released without limitations.
- The applicant was seen in the Family Advocacy Program (FAP) clinic on 13 December 2013 and diagnosed with Other Specified Family Circumstances (a note dated 27 March 2014 shows he was substantiated as the victim of moderate partner physical abuse as determined by the case review committee (CRC)).
- The applicant presented for a BH intake on 07 January 2014 after being referred by SRP following brief deployment to Afghanistan. It was noted that he was sent

back because 'they could not trust him.' The applicant reported he had been having problems for the past three years noting low energy, crying spells, loss of motivation, not feeling safe, not being good at work, and having lots of problems with irritability and agitation. He also stated he isolates at home, cannot stand to be around people, has problems with sleep, and severe problems with anxiety. The provider diagnosed him with Anxiety Disorder Not Otherwise Specified (NOS) and Insomnia. He was prescribed Sertraline (antidepressant), Clonazepam (anxiolytic), and Trazodone (sleep) and the provider issued a temporary 90-day profile, which was extended on 31 March 2014. During a walk-in visit on 15 January 2014, he reported experiencing trauma symptoms from past deployments to include irritability, difficulty in crowds, hypervigilance, insomnia, difficulty with concentration and memory, and expressed concerns about being chaptered out of the army under Chapter 14 for behavior. It was noted that he had been late to work a few times and received an Article 15 due to losing his ID card. The applicant continued to seek BH treatment, to include individual psychotherapy and psychiatry, until he was discharged from the military. His diagnoses throughout the period of treatment included Anxiety Disorder NOS, Posttraumatic Insomnia, Anxiety Disorder Mixed, PTSD (provisional), Adjustment Disorder with Anxiety and Depressed Mood, Adjustment Disorder with Anxiety, and History of TBI. He completed a VA Compensation and Pension (C&P) examination on 29 May 2014 while in-service and was diagnosed with PTSD, Chronic. In addition to previously noted medications, he was prescribed Zoloft (antidepressant) and Prazosin (nightmares) during his period of treatment in 2014. Records show that he requested a Medical Evaluation Board (MEB) through BH on several occasions in 2014 (26 February, 28 February, and 31 March 2014), to which the available documentation shows his treating psychiatrist refused to submit a permanent profile for the applicant. His psychiatrist noted on 23 April 2014 that the applicant reported his medications were helpful and that he felt better when he took them.

- He presented for a Chapter 14-12b chapter separation evaluation on 14 January 2014. The provider documented that he was fit for full duty, including deployment and all domains of the MSE were WNL. It was documented that he was able to understand and participate in proceedings, could appreciate the difference between right and wrong, and met medical retention standards. It was noted that he did not have a diagnosis; however, he screened positive for PTSD and TBI and was referred for a comprehensive evaluation.
- A memorandum for Chapter clearance dated 18 February 2014 authored by a physician in the mild TBI (mTBI) clinic was reviewed. The provider documented that he received a complete TBI evaluation on 18 February 2014. It was noted that he reported a motor vehicle accident (MVA) during his 2004-2005 deployment that resulted in a loss of consciousness (LOC) for less than 30 minutes. It was also noted that during his 2007 deployment to Iraq he was within 50 meters of a mortar blast exposure which caused an alteration in

consciousness, which the provider noted there was documentation in AHLTA to support this event. He also reported a fall with head trauma on the same deployment that caused an alteration of consciousness. It was noted there was no documentation in AHLTA for the MVA or fall injuries. The provider noted that his current cognitive complaints of memory loss and decreased concentration were not due to mTBI, and that the development of his insomnia coincided with his onset of anxiety and depression. A follow-up note dated 19 May 14 shows he completed neuropsychological testing and the provider documented that there were enough normal range test results to indicate postconcussive cognitive impairment was unlikely.

4. The applicant provided a VA Rating Decision letter dated 19 June 2018 showing that his service-connection for PTSD was increased to 100%. Review of JLV shows the applicant is 100% service-connected through the VA, 100% for PTSD and 0% for Traumatic Brain Disease. He is also service-connected for several other medical conditions. He completed an initial BH C&P examination for PTSD on 29 May 2014, while still in service, and was diagnosed with PTSD, Chronic. The provider noted the stressors associated with his diagnosis as witnessing a detainee suicide while deployed to Guantanamo and having an RPG aimed at him and fired over his head while in Iraq. It was also noted that his duties in Mortuary Affairs had been particularly impactful. The provider noted that his sleep disturbances, irritability, memory, and concentration difficulties were more likely than not due to a diagnosis of PTSD rather than residuals of mTBI. He was diagnosed with TBI during a TBI C&P examination. Regarding TBI residuals, it was documented that he had headaches, including migraine headaches. His judgment was noted to be normal. The provider opined that any TBI residuals do not impact him much 'unless bombarded with a lot of details.'

5. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant was diagnosed with several potentially mitigating BH conditions in-service to include Adjustment Disorder (with Anxiety and Depressed Mood, with Disturbance of Emotions), Anxiety Disorder NOS, Anxiety Disorder Mixed, Posttraumatic Insomnia, Insomnia, PTSD, Chronic (via VA C&P exam), and History of mTBI. His Adjustment Disorder, Posttraumatic Insomnia, Insomnia, and Anxiety diagnoses are subsumed by his diagnosis of PTSD. He was also diagnosed with Other Specified Family Circumstances and found to be the victim of moderate partner physical violence. Although the applicant has been diagnosed with several potentially mitigating BH conditions, as the separation packet documenting the circumstances that led to his discharge were not available for review, a nexus cannot be established between his diagnosed BH conditions and the reason for discharge. As such, BH mitigation is unclear.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD and has since been 100% service-connected for this condition through the VA. He was also diagnosed with mTBI in service and 0% service-connected through the VA for Traumatic Brain Disease.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD and has since been 100% service-connected for this condition through the VA. He was also diagnosed with mTBI in service and 0% service-connected through the VA for Traumatic Brain Disease.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant was diagnosed with several potentially mitigating BH conditions in-service to include Adjustment Disorder (with Anxiety and Depressed Mood, with Disturbance of Emotions), Anxiety Disorder NOS, Anxiety Disorder Mixed, Posttraumatic Insomnia, Insomnia, PTSD, Chronic (via VA C&P exam), and History of mTBI. His Adjustment Disorder, Posttraumatic Insomnia, Insomnia, and Anxiety diagnoses are subsumed by his diagnosis of PTSD. He was also diagnosed with Other Specified Family Circumstances and found to be the victim of moderate partner physical violence; however, as his separation packet was not available for review, it is unclear if this event contributed to the misconduct that led to his discharge. Although the applicant has been diagnosed with several potentially mitigating BH conditions, as the separation packet documenting the circumstances that led to his discharge were not available for review, a nexus cannot be established between his diagnosed BH conditions and the reason for discharge. Though it is of note that it is documented in the applicant's medical records he indicated that he had been late to work on a few occasions and received an Article 15 for losing his ID card, it is unclear if these behaviors led to the applicant's recommendation for discharge or if other factors were also considered as part of the recommendation. As there is an association between problems with attention and concentration, being late, and losing items, there is a nexus between his diagnosis of PTSD and potential misconduct that was identified in his medical record and would otherwise support mitigation for these behaviors. However, as his separation packet was unavailable for review, BH mitigation is unclear.

7. Regarding his request for medical retirement, although the applicant was diagnosed with several conditions in-service that fall under the purview of AR 40-501, the records do not indicate that he met the Medical Retention Determination Point (MRDP). Per AR 40-501, a referral to MEB is required if there is a persistence of recurrence of symptoms sufficient to require extended or recurrent hospitalizations or persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. Although he was placed on a temporary BH profile in 2014 due to psychotropic medication use, his treating psychiatrist did not submit a permanent BH profile and documented in April 2014 improvement in the applicant's

symptoms with medication use. Thus, the available documentation does not support that he met MRDP at the time of his discharge. As such, a referral to IDES is not warranted.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for a pattern of misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The 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 although the applicant has been diagnosed with several potentially mitigating conditions, as the separation packet documenting the circumstances that led to his discharge were not available for review, a nexus cannot be established between his diagnosed behavioral health conditions and the reason for discharge. Based on a preponderance of the evidence, the Board denied relief.

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.

3/28/2025

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 15-185 (Army Board for Correction of Military Records (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribed the policy for enlisted separations.

a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier'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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKA is used for discharge for patterns of misconduct.

5. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reenry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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.

9. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states:

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. 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.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

10. Title 38, USC, 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 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.

11. Title 38, USC, 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.

12. 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//