

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240000574

APPLICANT REQUESTS: reconsideration of his previous request:

- To change his discharge to disability retirement
- Narrative reason for separation
- 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)
- Self-authored statement
- Award Certificates
- DD Form 1610 (Request for Authorization for Temporary Duty (TDY) Travel of Department of Defense (DoD) Personnel)
- Central Texas College Associates in General Studies Certificate
- Orders 172-00224 Discharge Orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Upper Iowa University Bachelor of Science Certificate
- Medical Duty Review Board Results
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- Honorable Discharge Certificate
- Orders 309-008 Discharge from the Army National Guard (ARNG)
- Letter from Personnel Management
- Termination of Technician Employment
- Notification of Personnel Action
- Certified Summary of Federal Employment
- Department of Veterans Affairs (VA) Rating Decisions
- Request for Information from the VA
- Request for VA Medical Records
- Medical Records

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 AR20220007071 on 13 January 2023.

2. The applicant states, in effect:

a. He suffers from post traumatic stress disorder (PTSD) and ear injuries with vertigo which are combat related. He has service connected disabilities which were incurred in service and aggravate, during the Persian Gulf War. He now has new medical evidence from the VA as proof that supports his claim for the disabilities.

b. He is 63 years old and served in both components of the U.S. Army. While on active duty, he was an M1 Tank Senior Tank Turret Mechanic and a Tank Commander, during the Persian Gulf War. The reason he is requesting the Board to reconsider his case is because he has new medical evidence that supports his case.

c. He began having anxiety and depression problems, during the Persian Gulf War, after seeing his fellow Soldiers who got hit by an artillery round, during the Battle of the Medina Ridge. Specialist C- was blown into pieces and his tank commander lost his right leg, on 27 February 1991, southwest of Iraq. After the Persian Gulf War, he was transferred to the 3rd Battalion, 37th Armor, 1st Infantry Division.

d. Before he attended the Basic Noncommissioned Officer's Course (BNCOC), at Fort Knox, Kentucky, he was promotable to the rank of staff sergeant. He gave company and battalion level physical fitness training.

e. In 1993, his anxiety along with the unrecognized PTSD symptoms started bothering him. He began experiencing migraine headaches, anxiety, nightmares, and difficulty sleeping, during the entire course of instruction at BNCOC from 21 February 1993 through 29 June 1993. He was also having problems with the recurring chronic urticaria, during that time with welts, swelling of the face and body, and difficulty breathing. The migraine headaches, anxiety, nightmares and recurring chronic urticaria are the main reasons that led to his failure to complete the school. Taking Atarax, an antihistamine medication, for urticaria and the lack of sleep problems due to nightmares made it hard for him to concentrate in school.

f. On 8 March 1994, he was counseled for declining to attend and complete BNCOC. He was notified that a bar to reenlistment was initiated by the commander. On 8 June 1994, he went to see his company first sergeant (1SG) face-to-face and he was counseled about the repercussion of declining attendance of BNCOC. Having already

experienced the everyday migraine headaches, anxiety, and other symptoms of unrecognized PTSD, and recurring urticaria, at that time, he declined the offer.

g. The migraine headaches, anxiety, depression, nightmares, difficulty sleeping, and recurring urticarial were too much for him to bear. His attitude became worse. The thought of having a change of environment/get out of the Army might help him with the problems he was having, during this time, so he informed the company 1SG that he just wanted to pursue his studies so he could have peace of mind and find out what was really going on with him. If they only tried asking him if he needed help, during that time, or if he was given treatment or medication for PTSD, he could have stayed and become an officer of the U.S. Army or he could have completed BNCOB but he did not have any idea that it was PTSD.

h. PTSD in 1991 through 1994 was not a recognized disorder. Nobody knew about it until decades later around 2014. He was really hurting mentally, at the time. On 15 July 1994, he was honorably discharged from the U.S. Army in accordance with Army Regulation 635-200 (Personnel Separation Enlisted Personnel) paragraph 16-5b (Non-Retention on Active Duty). It could have been early separation to further education but since his attitude was getting worse, he was discharged for non-retention on active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 years, 8 months, and 28 days of active Army service.

i. In the fall of August 1994, he attended Kansas State University Graduate School to pursue his studies in Public Policy/Administration. The thought of the change of environment idea was wrong. In October 1994, he quit graduate school because of the frequent migraine headaches, anxiety, depression, and nightmares. Then he moved his family to San Diego, California to find a new job and start a new life.

j. On 30 April 1995, he was hired by the Department of Justice U.S. Immigration Services as an immigration officer. On 2 December 1995, he was terminated from the service for drawing his service weapon and aiming it at a fellow officer, who made a bad joke to him. It was raining hard, it was cold, and it was dark, and he had the flashback. He thought he was still in Kuwait, during that time, all wet and cold. Due to the flashback, migraine headaches, and anxiety, he lost his job with the Immigration Service. The only thing good that happened that night is he did not fire his service weapon at the fellow officer.

k. On 4 December 1995, he joined the California ARNG. Both of his ears were still okay, at that time. He had no dizziness, no vertigo, and no fainting spells, when he enlisted in the ARNG, the vertigo came later after he had ear surgery. It was the result of his recurring ear infections, hearing loss, and constant tinnitus.

l. While in the ARNG, the unrecognized PTSD and his ear injuries were getting worse. He kept having recurring ear infections, due to his bilateral perforated eardrums, allergic rhinitis and chronic sinusitis. He decided to get treatment from the VA Medical Center in West Los Angeles from 21 July 1997 to 25 March 1998 and the VA Medical Center in St. Barbara from 3 August 1998 to 26 March 1999 for his PTSD. Since the ARNG does not have their own hospital, all of his treatment records are with the VA hospitals.

m. On 10 October 1998, the unrecognized PTSD was confirmed by Dr. R- O- of Atascadero, affiliate doctor for the VA Medical Center of St. Barbara. Due to the recurring ear infections, he decided to go for ear surgery at the VA Medical Center in West Los Angeles on 29 December 1998. He was granted 100 percent for bilateral chronic otitis media, until 1 March 1999. Then the bilateral chronic otitis media became 10 percent disabling, he received 10 percent for hearing loss, and 10 percent for tinnitus for a total of 30 percent disability for his ear injuries.

n. On 26 August 1999, he was found medically unfit for duty due to unexplained vertigo refractory to surgery. Eight months after ear surgery, he began to have vertigo. Due to the vertigo, he failed to complete the annual physical fitness test. He believes the vertigo was the result of having been through tympanoplasty and mastoidectomy procedures done at the same time, it could be the result or the complication of the ear surgery. Because of the vertigo, he was separated from the ARNG without disability retirement or severance pay for the service-connected disabilities he has because he did not have the medical documents, diagnosis, or rate of disability with him to show the medical officer and arrange for disability retirement or to extend his time of service if needed, at the time. He was allowed to stay at work until 15 February 2000. A VA rating was not received. He filed his claim for bilateral chronic otitis media, bilateral hearing loss, bilateral perforation of tympanic membrane, and tinnitus on 29 July 1997. He also filed his claim for PTSD on 2 September 1998. The VA Regional Office West Los Angeles sat on his claims.

o. On 23 August 2000, after he was separated from the ARNG, he went to seek help at the VA West Los Angeles Medical Center. There he was accepted as inpatient to the domiciliary and was accepted as an outpatient to undergo PTSD readjustment therapy. It took almost two years for him to complete the course. He also had to ask for help from Senator D- F- to expedite his claim because it was taking the VA too long to make the rating decision. Finally, on 9 February 2001, after four years of waiting, the rating decision came from the VA Regional Office of San Diego.

p. On 8 October 1999, before he was separated from the ARNG, his first wife and his eight year old daughter left him. His wife filed for divorce. Due to the pain of divorce, loss of his membership in the ARNG, loss of his federal technician job, and the frequent migraine headaches, anxiety, depression, and nightmares, his mind went into a deep

depression with anxiety. He became paranoid and started drinking alcohol. He just did not want to feel the pain of the divorce and losing his job for the second time.

q. If the VA rating decision came earlier, he could have done a rebuttal to show the medical evaluating officer that he is rated at 30 percent disability for ear injuries and 70 percent disability for PTSD with unemployability effective 29 July 1997. On 25 January 2006, he became 100 percent disabled permanent and total for PTSD.

r. He feels sad because after serving 10 years and 8 months in the active Army with the best divisions in the U.S. Army in war and in peace, he was separated for non-retention on active duty. He was one of the best Soldiers in the unit who had managed to go to school at night and earn a bachelor's degree, while on active duty. He could have been an officer but then again he fell and became a victim of unrecognized PTSD. He served 3 years and 10 months in the ARNG and all he did every day he was off was run to the VA hospital to take care of his disabilities, his ears and unrecognized PTSD and then was medically discharged from the ARNG. He then became homeless.

s. After almost two years of undergoing PTSD readjustment treatment therapy, in September 2003, he decided to move back to the Philippines to start a new life.

t. He believes the injustice occurred because he was unaware of the PTSD or the symptoms of PTSD before he was separated from active duty. If he was aware of it, he could have sought treatment from the Army doctors about the PTSD that is the reason he had no PTSD treatment write ups from an Army psychiatrist when he left active duty. The Board did not consider the year (1994) when he left active duty. The Soldiers and the medical community were not aware of PTSD or its symptoms, during the 1990s. It was not a recognized disorder, at the time. It only became known to the Soldiers decades after the Persian Gulf War. He was not aware of it in the 1990s before he was separated from active duty, that is why he had been through the hardship of having the disorder itself and not knowing what it was and it ruined his Army career.

u. Second, the Board should have also considered the chapter under which he was separated from the Army. He was given a checklist to go through, during his out-processing. There was not a medical officer with him, at the time, just a medic at the Battalion Troop Medical Clinic. There was not a question or questions about PTSD.

v. Third, his time with the ARNG were the hardest. It is where he discovered he suffered from severe PTSD and it also where his ears were having the most problems of recurring infections due to rhinitis, chronic sinusitis, perforated ear drums, and recurring chronic urticaria. All of the traumatic events filled up in his mind and made him feel deeply depressed and he did not know what to do.

w. His argument, at this point, is because the VA rated his ear injuries at 30 percent effective 29 July 1997 and his PTSD at 70 percent, which makes him unemployable effective 2 September 1998, while he was still serving in the ARNG he should be able to apply for disability retirement. Yes, he was medically separated from the ARNG. If the VA rating decision had come earlier, he could have arranged for disability retirement from the ARNG; however, he did not receive the VA rating before he was separated on 24 October 1999.

x. He is filing his claim for reconsideration of his ear injuries with vertigo and PTSD under the three year rule. He does not have the treatment records for it in his Army medical record, but he has all of his VA treatment records from 1997 to 1999, while he was still in the ARNG.

y. He is still taking medication for PTSD and his vertigo. He is still having nightmares. The Department of Defense (DOD) changed their policy in 2014 and gave precedents to the VA scheduled rating decision on special medical cases like PTSD, traumatic brain injury and sexual harassment. He hopes the change of policy will help his case.

z. He thanks the Board for their time hearing his side of the story and the truth about what really happened and why he was fighting for these disabilities. It was like he was in the wrong place at the wrong time. That was his luck, at that period, no luck and it was really hard. Also the hardest part is going through the migraine headaches, anxiety, depression, nightmares, flashbacks, ear infections, vertigo, and constant ringing in his ears from tinnitus. He lost his self-confidence, during those time, and he became homeless.

3. The applicant's full service record was not available for the Board's consideration; however, the available service records and documents provided by the applicant are sufficient for the Board to make a determination in his case.

4. The applicant provides the following documents:

a. Memorandum Medical Duty Review Board Findings, 26 August 1999, states the Medical Duty Review Board found the applicant unfit for retention in the California ARNG. He had been placed in a non-deployable status. He would only perform drills until 26 October 1999. He may rebut the findings of the board. The rebuttal must contain medical documents or information not previously considered by the board. He would not drill past 24 October 1999.

b. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably transferred from the ARNG to the U.S. Army Reserve Control Group (Reinforcement) on 24 October 1999. He had completed 3 years, 10 months, and 21

days of net service in the ARNG. He had 14 years, 10 months, and 24 days of total service for pay and for retired pay. He was discharged for being medically unfit for retention standards.

c. A letter from Personnel Management, Department of the Army and Airforce, 22 December 1999 stated they had received the applicant's application for disability retirement. Although they were unable to approve the request for disability under the regular provisions of the Federal Employees Retirement System, Office of Personnel Management had approved a disability retirement under the special National Guard technician provision. The entire letter is available for the Board's review.

d. Memorandum Termination of Technician Employment, 14 January 2000, states a National Guard technician in the excepted federal civil service is required to maintain military membership. The applicant was honorably discharged from the ARNG on 24 October 1999, therefore he must be separated from his technician employment. The entire memorandum is available for the Board's review.

e. VA Rating Decision, 9 February 2001, shows he is a peacetime and Gulf War Veteran. He received a 70 percent rating for service connected PTSD effective 2 September 1998. Entitlement to special monthly compensation based on housebound criteria was met and granted from 29 December 1998 to 1 March 1999.

f. VA Rating Decision, 25 January 2006, shows he received a 10 percent rating for service connected tinnitus effective 27 April 2005, his PTSD disability was increased to 100 percent effective 27 April 2005, and his evaluation of bilateral hearing loss rated at 10 percent, bilateral perforation of the tympanic membrane rated at 10 percent, and bilateral otitis media with vertigo rated at 10 percent were continued.

g. VA Rating Decision, 13 October 2021, shows service connection for allergic rhinitis was granted at 10 percent effective 5 August 2021 and service connection for sinusitis was granted at 50 percent effective 5 August 2021.

h. VA Rating Decision, 15 December 2022, shows service connection for asthma was granted at 60 percent effective 16 June 2022 and service connection for headaches was granted at 50 percent effective 16 June 2022. Service connection for anxiety disorder was granted effective 16 June 2022. It was evaluated together with the service-connected PTSD with secondary depression and substance use disorder. The current evaluation, which was 100 percent disability, was continued.

i. His medical records are available for the Board's review and will be reviewed by the Army Review Board's Agency medical advisor who will provide an advisory for the Board in the medical review section.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army (RA) and entered active duty on 18 October 1983. He remained in the RA through immediate reenlistments.

b. DA Form 2-1 (Personnel Qualification Record) shows he had service in Saudi Arabia from 30 December 1990 through 3 April 1991.

c. DA Form 2146-R (Bar to Reenlistment Certificate), 11 April 1994 shows his commander was recommending he be barred from reenlistment due to declining attendance at BNCOC. He had been furnished a copy of his commander's recommendation and did not desire to submit a statement on his own behalf. However he submitted a statement stating he was writing to state why he declined to go to BNCOC, he did not feel his job was secure with the reduction of forces and was concerned he might be out of a job. He was not planning on staying in the Army and it would be a waste of money to send him to BNCOC for him to just get out of the Army. He had lost his motivation, he was tired, and he was always in the field. He did not have enough time to spend with his family. He was pursuing a degree and could not afford the time away to attend BNCOC. The bar to reenlistment was approved.

d. DA Form 4187 (Personnel Action), 13 June 1994, shows he was requesting early separation from the Army. The commander recommended approval of his request.

e. DD Form 214 shows he was honorably discharged on 15 July 1994. He had completed 10 years, 8 months, and 28 days of active duty service. He received a separation code of "KGH" and a narrative reason for separation for non-retention on active duty, with a reentry code of "3".

f. The available service records did not contain a DA Form 199 (Physical Evaluation Board Proceedings) or medical records.

6. In a prior ABCMR Docket Number AR20220007071, 13 January 2023, the Board made a determination regarding the applicant's request for physical disability retirement. The Board stated:

a. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found 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 and standard review based on law, policy, and regulation.

b. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official's finding that a referral of his case to the Disability Evaluation System (DES) was not warranted. The Board noted the advising official review that there was insufficient evidence his vertigo was incurred during or permanently aggravated by his military service, he is not eligible for duty-related DES processing. The Board found based on the medical review, relief was not warranted.

7. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

8. Based on the applicant's medical documents showing the applicant's medical issues and diagnosis of PTSD, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

9. 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 requesting reconsideration of their prior denial of his request for, in essence, a referral to the Disability Evaluation System. He states:

“Correct the discharge to disability (medical) retirement. Post-traumatic stress disorder and ear injuries with vertigo were combat related/ service-connected disabilities incurred / aggravated during the Persian Gulf War.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 18 October 1983 and received an honorable discharge on 15 July 1994 under provisions provided in chapter 16-5b or AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Locally imposed bar to reenlistment.

d. A Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 4 December 1995 and received an honorable discharge from the California Army National Guard (CAARNG) effective 24 October 1999 under authority provided in paragraph 8-26j(1) of NGR 600-200, Enlisted Personnel Management (1 March 1997): Medically unfit for retention per AR 40-501 (Standards of Medical Fitness), chapter 3. It shows 14 years, 10 months, and 24 days of total service for retired pay.

e. A behavioral health advisor will address the applicant's mental health condition(s) in a separate medical advisory.

f. This request was previously denied by the ABCMR on (AR20220007071). The applicant statement in this case is similar to that in the prior case in which he stated:

"I am requesting an upgrade of my discharge to disability retirement for I have a diagnosed combat related PTSD and ear injuries that were discovered not even three years after discharge from the United States Active Army."

g. In his self-authored letter, the applicant states the policies of liberal consideration are applicable to the facts of this case. However, the Liberal Consideration Policies outlined in the Secretary Hagel and Undersecretary Kurta memorandums address a former Service Member's request to modify the discharge characterization of their service based on a pre-discharge service incurred mental health condition and do not apply discharges for preexisting medical conditions or disability processing.

h. There were approximately 350 pages of additional documentation submitted with the application. The vast majority of this documentation is from Veterans Hospital Administration facilities, postdates his discharge from the ARNG in 1999, and/or addresses other medical conditions not under consideration. Thus, most of it is of no significant probative value, especially considering the contemporaneous documentation within the supporting documentation.

i. Military medical documentation shows he was treated for left and right ear problems, apparently due to abnormal eustachian tubes and chronic allergic rhinitis, during his almost 11 years on active duty. A 17 July 1984 clinical encounter shows the applicant was treated for left sided otitis externa (infection of the ear canal). He was treated for left sided otitis media (middle ear infection) in 1986 and again in 1987 at which time he was noted to have a perforated tympanic membrane (ear drum).

j. A 31 July 1990 Ear, Nose, and Throat Clinic note from the 93rd General Hospital shows the applicant was treated for a perforation of the left tympanic membrane which was apparently due to an infection. The applicant was subsequently treated with a pressure equalization tube (PET).

k. In 1991, he began having similar problems with his right ear. On a June 1993 Emergency Care encounter, the applicant was assessed as having a rupture of the right tympanic membrane. An audiogram obtained on 7 June 1994 was essentially normal: Only the 6,000Hz threshold in his right hear was above the normal of 25dB (35dB) and there was no a significant threshold shifts from his 1991 audiogram.

l. In April 1994, the applicant refused to attend the basic noncommissioned officer course (BNCOC), stating:

“First of all, I don't feel that my job is secure. With all of this reduction that is happening, I might be out of a job in a few months. Second, I'm not planning to stay in the Army that long. It's just a waste of money if I go to BNCOC then get out. Third, I lost my motivation; I'm tired; I'm always in the field and don't have enough time to spend with my family. Lastly, I am pursuing a degree at KSU and cannot afford the time away from here.”

m. He was subsequently barred from reenlistment and requested his expiration term of service (ETS) date be changed from the current 17 May 1996 to 15 July 1994. His request was approved and he was discharged on 15 July 1994 with a reentry code of 3: Eligible to reenlist with waiver.

n. No abnormalities or deficiencies were noted on his June 1994 pre-separation Report of Medical Examination and he was found qualified to separate from the Army. The applicant completed a pre-entrance Report of Medical history and Report of Medical Examination in December 1995, prior to enlisting into the ARNG. He documented he had never had and did not currently have dizziness or fainting spells, ear, nose, or throat trouble, or hearing loss. The accompanying Report of Medical Examination was not found for review.

o. Submitted documentation shows the applicant underwent right ear surgery (tympan mastoidectomy) on 29 December 1998. The physician's preoperative evaluation shows the onset of the applicant's vertigo was six months earlier and does not state that it was related to his military service:

“38-year-old male with history of chronic draining ears, ETD [eustachian tube dysfunction], allergic rhinosinusitis, chronic right ear tympanic membrane perforation, audio with large bilateral gap mid-high frequencies.

Also, with 6-month history of vertigo with changes in head and body position lasting 5 minutes with nausea/vomiting ...

Past medical history - PTSD, heart murmur, allergic rhinosinusitis,

Past surgical history – Left ear PET [pressure equalization tube].”

p. On 7 August 1999, a Medical Duty Review Board found the applicant unfit for further military service for “Unexplained persistent vertigo refractory to surgery, medications.”

q. A 26 August 1999 memorandum from the CAARNG Chief of the Medical Services Branch to the applicant’s detachment commander informed the applicant he was no longer medically qualified to serve in the CAARNG. The applicant was invited to rebut the Board’s finding with a suspense of 24 October 1999. Without an appeal or other Soldier initiated action, he was told he would be discharged from the CARNG effect 24 October 1999.

r. A 14 January 2000 memorandum form the Director of CAARNG Human resources shows the applicant received a technician retirement from the ARNG:

“We have received notice from OPM [Office of Personnel Management that you have been approved for a Disability Retirement under the special National Guard technician provision, Public Law 97-253. • Therefore, your last working day as a technician will be 18 February 2000.”

s. The etiology of his vertigo, the condition for which he was separated, is unknown but there is probative evidence it was related to his service in the ARNG. While he did have some middle ear issues while on active duty, the issue of vertigo was not mentioned until December 1998 with an onset 6 months earlier, and he was boarded for this condition more than three years after entering the ARNG. Because there is insufficient evidence his vertigo was incurred during or permanently aggravated by his military service, he is not eligible for duty-related DES processing.

t. Submitted documentation and review of his records in JLV shows he has been awarded twenty-six (26) VA service-connected disability ratings, including ratings for

chronic sinusitis, ear infection, and perforated ear drum. However, the DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

u. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

“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 his or her office, grade, rank, or rating.”

v. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is not warranted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for a change in his discharge to disability retirement as well as a change in the narrative reason for separation.

b. 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:

- The applicant enlisted into the Regular Army on 18 October 1983. He remained in the RA through immediate reenlistments.
- DA Form 2-1 (Personnel Qualification Record) shows he had service in Saudi Arabia from 30 December 1990 through 3 April 1991.
- DA Form 2146-R (Bar to Reenlistment Certificate), 11 April 1994 shows his commander was recommending he be barred from reenlistment due to declining attendance at BNCO.
- DA Form 4187 (Personnel Action), 13 June 1994, shows he was requesting early separation from the Army. The commander recommended approval of his request.
- DD Form 214 shows he was honorably discharged on 15 July 1994. He had completed 10 years, 8 months, and 28 days of active-duty service. He received a

separation code of "KGH" and a narrative reason for separation for non-retention on active duty, with a reentry code of "3".

- A Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 4 December 1995 and received an honorable discharge from the California Army National Guard (CAARNG) effective 24 October 1999 under authority provided in paragraph 8-26j(1) of NGR 600-200, Enlisted Personnel Management (1 March 1997): Medically unfit for retention per AR 40-501 {Standards of Medical Fitness}, chapter 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. A DA Form 2146-R (Bar to Reenlistment Certificate), dated 11 April 1994, shows his commander was recommending he be barred from reenlistment due to declining attendance to the basis noncommissioned officer course (BNCOC). He had been furnished a copy of his commander's recommendation and initially did not desire to submit a statement on his own behalf. However, he later submitted a statement: "First of all, I don't feel that my job is secure. With all of this reduction that is happening, I might be out of a job in a few months. Second, I'm not planning to stay in the Army that long. It's just a waste of money if I go to BNCOC then get out. Third, I lost my motivation; I'm tired; I'm always in the field and don't have enough time to spend with my family. Lastly, I am pursuing a degree at KSU and cannot afford the time away from here." The bar to reenlistment was approved.

d. Due to the period of service no active-duty electronic medical records were available for review. The available service records did not contain a DA Form 199 (Physical Evaluation Board Proceedings) or medical records. However, the service record does not indicate his military career was shortened due to a medical or mental health condition but evidences the applicant requested early separation from the Army and in fact entered the Army National Guard on 4 December 1995 and received an honorable discharge.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD and multiple medical conditions.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been 100% service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service.

Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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 finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined a referral of his case to the Disability Evaluation System (DES) or amendment to the narrative reason for separation is not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

3. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command referred for a fitness for duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and physical evaluation board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or 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 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 onetime severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military

retirees.

c. The mere presence of 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 his or her 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Title 10, USC, 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, USC, 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.

5. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code KGH (is to be used for RA Soldiers discharged for non-retention on active duty).

7. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was

outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

8. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

9. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

10. 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//