

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240000787

APPLICANT REQUESTS: Reconsideration of his previous request to reflect he was medically retired due to post-traumatic stress disorder (PTSD)

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney's Brief
- Exhibit 1 - Applicant's Declaration
- Exhibit 2 - Combat Action Badge Award, 25 June 2006
- Exhibit 3 - Army Board for Correction of Military Records (ABCMR) Record of Proceedings AR20100020556, 14 June 2011
- Exhibit 4 - Medical Documents from Jackson Medical Clinic, 11 November 2006
- Exhibit 5 - Report of Separation and Record of Service, 1 January 2010
- Exhibit 6 - Certificate of Release or Discharge from Active Duty, 18 August 2004
- Exhibit 7 - Certificate of Release or Discharge from Active Duty, 20 February 2006
- Exhibit 8 - Pre-Deployment Health Assessment
- Exhibit 9 - Memorandum Response to Question Concerning Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB), 19 March 2005
- Exhibit 10 - Compensation and Pension Examination, 10 March 2008
- Exhibit 11 - Applicant's Resume
- Exhibit 12 - Memorandum regarding Fitness for Duty Evaluation, 5 March 2008
- Exhibit 13 - Psychiatry Initial Assessment, 30 July 2007
- Exhibit 14 - Tennessee Valley Medical Documents, 15 May 2008
- Exhibit 15 - DD Form 2807-1 (Report of Medical History), 20 February 2008
- Exhibit 16 - Board of Veterans' Appeals Decision, 4 February 2015
- Exhibit 17 - Department of Veterans Affairs (VA) Rating Decision, 11 March 2008
- Exhibit 18 - VA Rating Decision, 20 November 2006
- Exhibit 19 - VA Rating Decision, 8 June 2015
- Exhibit 20 - State Fitness for Duty Evaluation Findings, 1 November 2008
- Exhibit 21 - Nashville Medical Records, 14 January 2010
- Exhibit 22 - State Fitness for Duty Evaluation Findings, 8 November 2009

- Exhibit 23 - Memorandum regarding State Medical Review Board Fitness for Duty Evaluation Findings, 10 November 2009
- Exhibit 24 - DA Form 3349 (Physical Profile), 22 November 2009
- Exhibit 25 - Response to Request for Reconsideration, 2 February 2015
- Exhibit 26 - Response to Request for Reconsideration, 29 July 2016
- Exhibit 27 - VA Form 28-8872 (Rehabilitation Plan), 9 December 2008
- Exhibit 28 - Employment Handicap Serious Employment Handicap Worksheet, 8 December 2008
- Exhibit 29 - VA Form 28-1905 (Special Report of Training), 30 December 2009

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20100020556 on 14 June 2011. On 2 February 2015 and 29 June 2016, no Board action was taken regarding his requests for reconsideration in ABCMR Docket Numbers AR20140020998 and AR20150010695.

2. The applicant's attorney states, on behalf of the applicant, in pertinent part:

a. The applicant developed PTSD as a result of his combat tour for Operation Iraqi Freedom. Despite demonstrative evidence that he incurred PTSD in the line of duty (LOD), he was discharged without referral to a duty-related medical review board for disability processing. Supplemental guidance issued since his last petition for reconsideration requires the Board grant de novo review of and apply liberal consideration to his request. Applying liberal consideration, the Board should medically retire the applicant. His previous request for correction was denied on 14 June 2011. He twice petitioned the Board for reconsideration of this decision. Both requests were returned without review based on a rule that has since been overridden by statute. This petition is supported by new law and new facts not previously considered by the Board.

b. The applicant served honorably in the Army National Guard (ARNG) for over fifteen years. From August 2004 to February 2006, he served on active duty for Operation Iraqi Freedom. During his deployment, he repeatedly survived enemy fire and rocket attacks, saw the immediate aftermath of deadly improvised explosive device (IED) explosions, and suffered the deaths of several Soldiers in his battalion, including a Soldier under his command. He received many awards, including the Combat Action Badge.

c. He developed PTSD because of his combat experience. His medical records document, extensively, his service-connected PTSD symptoms - including war-related nightmares, poor concentration, irritability, social withdrawal, anger, anhedonia, and an inability to tolerate crowds - that interfered with his daily functioning and destroyed his

ability to maintain employment and family relationships. The Deputy State Surgeon's office should have referred him to the Disability Evaluation System (DES) and deemed him medically retired for his duty-related PTSD. Instead, they failed to refer him to the DES and improperly discharged him with the narrative "discharge and transferred to the Retired Reserve".

d. The applicant petitioned the Board who incorrectly denied his petition inexplicably finding (1) "no evidence to show the applicant's depression was a service connected condition" and (2) "no evidence to show the applicant's PTSD was medically unfitting or his depression aggravated by military service." The Board provided no substantive explanation for its disregard of the record evidence and an advisory opinion from National Guard Bureau (NGB) stated, "[the applicant's] VA medical treatment records indicate he incurred PTSD in the line of duty" and recommended referral to the DES for disability processing.

e. Had the Army properly referred the applicant to the DES, prior to his discharge, he would have been medically retired for being unfit because of duty-related PTSD. As a result of this error, he has been erroneously and unjustly deprived of the medical retirement associated benefits that he should have received for over 13 years.

f. The attorney gives a background of the applicant's family's service and his training for the Army. The applicant experienced traumatic stressors, during his combat tour in Iraq. The attorney explains those stressors in his brief. The frequent violence and death the applicant confronted, during his tour of duty in Iraq, exacted a significant toll on his mental health.

g. He developed PTSD upon returning from deployment. He began struggling with poor sleep and feelings of depression, which he did not experience prior to deployment. He was screened for PTSD and depression by a VA examiner a few months after his return and both screenings were positive. His primary care physician recommended a psychiatry consultation "for depression, anger, sleep disturbance." The provider found his symptoms were "consistent with PTSD" and recommended "counseling and medication monitoring.

h. Following his diagnosis, his PTSD symptoms continued to interfere with his daily functioning. In October 2006, he left his job at UPS after nearly ten years due to "very significant workplace difficulties, including verbally abusive and aggressive behavior toward his coworkers." He lost a second job just ten months later. He was incarcerated for the very first time on charges of aggravated assault and kidnapping, he became estranged from his ex-wife and child, and he began drinking excessively. At a psychology assessment in July 2007, his provider noted he suffered from "persistent low mood, anxiety, passive suicidal ideation, feeling overwhelmed, increasing feelings of personal inadequacy, anergia, episodic tearfulness, mood instability (anger and

irritability), and insomnia. He underwent another psychiatric examination in February 2008 and was diagnosed with major depressive episode, report of PTSD.

i. On 20 February 2008, he had his periodic medical exam for the ARNG. In the self-assessment portion, he reported frequent trouble sleeping, receiving counseling, depression or excessive worry, and having been evaluated or treated for a mental condition. The examiner summary portion noted that he was receiving treatment from the VA and had been prescribed an antidepressant. As a result of this examination, on 5 March 2008, the Deputy State Surgeon determined the applicant needed to undergo a Fitness for Duty Examination for hypertension, knee pain, and depression.

j. On 10 March 2008, he received a VA Compensation and Pension Exam for PTSD and was diagnosed with 'moderately severe' PTSD. The VA examiner found he had been exposed to "traumatic stressors," while serving in Iraq, noting "he was in close proximity to rocket attacks" and "lost friend[s] of his in his company to death, including several Soldiers who died in one episode." He had a history of vocational stability and success, prior to deployment, but began to experience "clinically meaningful functioning difficulties" upon his return, including legal difficulties and employment problems "stemming in part of [sic] problems with anger management, verbally aggressive behavior, [and] extreme reactivity of a quality that was markedly different from what he had previously displayed." On 11 March 2008, the VA granted him service connection for PTSD at 30 percent.

k. On 1 November 2008, he received his State Fitness for Duty Evaluation Findings from the ARNG. He was given six months of trial duty with no deployment, due to his PTSD. He was instructed to submit further documentation of his PTSD, during the trial period. His PTSD worsened, during the trial period. He received inpatient psychiatric care from the VA in April 2009 following a significant decline in functioning and reported symptoms of derealization. He was hospitalized several days for his own safety and for further assessment of his diagnosis. The examiner noted possible exacerbation of PTSD, given his derealization symptoms. At a follow-up appointment, he reported intrusive thoughts and nightmares about his service in Iraq. He had lost interest in doing things, was more withdrawn, and felt guilty about losing Soldiers, during his deployment. He was "almost catatonic in his speech," hesitating to answer questions, and tearful at times. He reported seeing dead bodies all the time. He was diagnosed with severe PTSD with possible psychosis.

l. In September 2009, he returned to the VA for another psychiatry consultation. He reported "nightmares a few times per week, sleep disturbance, difficulty modulating anger, intrusive thoughts about Iraq, survivor's guilt, blunting of emotions, generalized anxiety, and hypervigilance." The provider continued a diagnosis of PTSD.

m. He remains highly sensitive to sounds. He fears the sound a car makes when it veers to the side of a highway lane because it sounds like the gunfire he heard in Iraq. He similarly avoids construction zones, which can trigger memory flashbacks of war. He struggles to drive and maintain a normal work and social schedule because driving and loud noises trigger his PTSD. His PTSD so profoundly affected his daily existence that he moved to a rural area to avoid city and traffic sounds.

n. He was improperly discharged without referral to a duty-related review board. On 8 November 2009, the State Medical Review Board determined he failed medical retention standards for continued service in the Tennessee ARNG. They noted he had not submitted new documentation regarding PTSD symptoms, during the trial period, but they did not mention the worsening PTSD symptoms that affected his ability to submit the documentation. On 10 November 2009, he received the State Medical Review Board's findings, which stated he had 30 days to appeal the decision and request referral to a non-duty related PEB. On 22 November 2009, he received an updated physical profile indicating he was unable to carry and fire a weapon and was not able to deploy and incorrectly stated that a non-duty PEB should determine fitness. He was discharged on 1 January 2010 without DES processing and with no mention of his disability. His narrative reason for discharge is listed as "discharge and transfer to Retired Reserve."

o. The ABCMR disregarded demonstrated evidence of his disabling, service-connected PTSD. In his previous case, the ABCMR obtained an advisory opinion from NGB who recommended approving his request to have his records reviewed by "Mandatory Medical Review Board, MEB for disability evaluation processing." The NGB determined his PTSD was more than likely the result of multiple deployments. It was the professional opinion of the advisor, his non-compliance in turning in additional medical documentation, during his trial period, could be attributed to effects of PTSD. The ABCMR disregarded the NGB opinion in denying the applicant's medical retirement on 14 June 2011.

p. Reconsideration of the applicant's request is appropriate because of recent changes in the governing law and new evidence not previously considered by the ABCMR. New law provides that liberal consideration must be given to his medical retirement claim. Reconsideration is required in light of new evidence supporting his entitlement to duty-related disability processing and reconsideration is appropriate to correct injustice. His PTSD was incurred in the LOD. His PTSD would have been found to fail to meet medical retention standards by the MEB and unfitting by the PEB. He should have been permanently medically retired for PTSD at a 30 percent or higher disability rating.

q. He served his country honorably in Operation Iraqi Freedom and for over 15 years in the ARNG, and he developed debilitating PTSD as a result of his service.

Despite demonstrative evidence that his PTSD was incurred in the LOD, the Army failed to give him the proper duty-related processing that was due. When he sought relief from the Board, he was denied relief despite contrary advice from the NGB and without any substantive explanation for the Board's disregard of the record evidence. He has been deprived of his medical retirement benefits for over 13 years. He respectfully requests the Board correct his record and provide him with medical retirement for his service-connected PTSD.

3. The applicant provides the following documents:

a. Applicant's declaration, which states in pertinent part, during his service he was ordered to active duty three times and served two combat tours. He was in Bosnia for six months and in Kuwait and Iraq for 12 months. While in Bosnia, he and his patrol discovered a mass grave site and he was greatly impacted by this experience. During his convoy missions in Iraq, he often experienced gunfire attacks, while driving through enemy territory. He constantly feared death or serious injury resulting from an IED explosion, as several Soldiers were killed. He lost friends in Bosnia and Iraq. In Iraq, he experienced weekly mortar attack on their barracks and he had to seek refuge in a concrete bunker. Shortly after returning from Iraq, in early 2005, he sought medical treatment for symptoms of PTSD. He was diagnosed with adjustment disorder and prescribed an antidepressant. His symptoms affected his personal and professional relationships. He began drinking alcohol excessively to numb the physical and emotional pain. In February 2008, he received another psychiatric evaluation and was diagnosed with depression. He received a compensation and pension examination by the VA for PTSD on 10 March 2008. He was diagnosed with PTSD and given a 30 percent rating. His VA rating for PTSD was increased to 50 percent in February 2015 and finally increased to 70 percent. In 2009, he was notified he failed medical retention standards for continued service in the Tennessee ARNG and was discharged on 1 January 2010. He was not referred to a service-related review board for disability processing. To this day, he avoids loud noises that remind him of mortar attacks and now lives in a rural area to avoid city and traffic sounds.

b. Medical records from several clinics which will be reviewed by the Army Review Boards Agency Medical Section who will provide an advisory opinion.

c. Memorandum from a Heath Systems Specialist, states on 8 November 2009, the State Medical Review Board found the applicant medically unfit for military service with the Tennessee ARNG. He had 30 days to appeal the decision. No record of an appeal request was received. He was diagnosed with PTSD, as a result of his Army Reserve service, by the VA. He can request a claim for LOD or MEB processing from the Board.

d. His VA Board of Veterans' Appeals Decision and rating decisions. The rating decision, 8 June 2015, states, "an evaluation of 50 percent is assigned from

21 February 2006. An evaluation of 70 percent is assigned from 1 January 2011. An evaluation of 100 percent is assigned because of hospitalization of over 21 days from 8 August 2011. An evaluation of 70 percent is restored from 1 October 2011."

4. The applicant's service record shows:

- a. He was on active duty as an enlisted Soldier in the ARNG from 23 June 1994 through 16 December 1994 for Active Duty training. He was enlisted in the ARNG from 25 March 1994 through 24 June 2000.
- b. On 25 June 2000, he took the oath of office in the Mississippi ARNG. On 19 July 2000, he had an approved LOD for a cut lip and a chipped tooth.
- c. He was on active duty as an officer in the ARNG from 23 August 2001 through 15 April 2002 in support of Operation Joint Forge with service in Bosnia from 4 September 2001 through 19 March 2002.
- d. On 13 February 2006, he had an approved LOD for an injury to his knee.
- e. He was on active duty as an officer in the ARNG from 25 August 2004 through 20 February 2006 in support of Operation Iraqi Freedom. He served in Kuwait/Iraq from 27 December 2005 through 26 December 2006. On 8 June 2007, he was honorably discharged from the ARNG as an officer and transferred to U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve.)
- f. On 28 June 2007, he completed an initial Medical Review for enlistment in the ARNG and was found fully fit for duty. On 29 June 2007, he enlisted in the ARNG. He was on active duty as an enlisted Soldier in the ARNG from 15 September 2007 through 29 February 2008. On 1 January 2010, he was honorably transferred to USAR Control Group (Retired Reserve). On 24 February 2010, he received a letter stating he had completed at least 15 years of qualifying service and was eligible to apply for retired pay on attaining age 60.
- g. His service record is void of an MEB or PEB or documentation showing he had medical reviews due to his diagnosed PTSD.

5. On 14 June 2011, the Board made a decision in the applicant's request for medical retirement in ABCMR Docket Number AR20100020556 stating, in pertinent part, the Board recommends denial of the part of the application that pertains to correction of his records to show he was referred for duty related active duty medical retention processing and processing through the DES resulting in receipt of a medical retirement.

6. Based on the applicant being diagnosed with PTSD, the ARBA Medical Section provided a medical review for the Board's consideration

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of his previous request to reflect he was medically retired due to post-traumatic stress disorder (PTSD).

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 was on active duty as an enlisted Soldier in the ARNG from 23 June 1994 through 16 December 1994 for Active Duty training. He was enlisted in the ARNG from 25 March 1994 through 24 June 2000. On 25 June 2000, he took the oath of office in the Mississippi ARNG and was on active duty as an officer in the ARNG from 23 August 2001 through 15 April 2002 in support of Operation Joint Forge with service in Bosnia from 4 September 2001 through 19 March 2002.
- He was on active duty as an officer in the ARNG from 25 August 2004 through 20 February 2006 in support of Operation Iraqi Freedom. He served in Kuwait/Iraq from 27 December 2005 through 26 December 2006. On 8 June 2007, he was honorably discharged from the ARNG as an officer and transferred to U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve).
- On 28 June 2007, he completed an initial Medical Review for enlistment in the ARNG and was found fully fit for duty. On 29 June 2007, he enlisted in the ARNG. He was on active duty as an enlisted Soldier in the ARNG from 15 September 2007 through 29 February 2008. On 1 January 2010, he was honorably transferred to USAR Control Group (Retired Reserve).
- On 24 February 2010, he received a letter stating he had completed at least 15 years of qualifying service and was eligible to apply for retired pay on attaining age 60.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that he incurred PTSD in the line of duty (LOD), and he was discharged without referral to a duty-related medical review board for disability processing. He indicated PTSD as an issue or condition related to his request. The application contained roughly 170 pages of VA treatment notes, which will be summarized in the section below. A Periodic Health Assessment (PHA) dated 2 March 2008 showed the applicant reported symptoms of depression and indicated he was seeing mental health at the VA. A Report of Medical History dated 20 February 2008 showed the applicant endorsed sleep difficulty, depression/excessive worry, and having

receiving counseling or treatment for a mental health condition. A VA Rating Decision letter dated 11 March 2008 showed a service connection rating for PTSD at 30 percent. Another VA Rating Decision letter dated 8 June 2015 showed a rating of 70% for PTSD. A document with the subject "State Fitness for Duty Evaluation (FFDE) Findings" dated 1 November 2008 had a finding of "six-month trial of duty but not in a deployed status for PTSD" as well as need for additional letter regarding PTSD/Depression/alcohol abuse. Another State FFDE was completed on 8 November 2009 and showed that the applicant was considered "not fit for duty (request separation action)" and the findings/recommendations stated, "no new documentation regarding alcohol and PTSD symptoms.15 years service. Suspense for information (illegible) March 2008." A Memorandum to the applicant dated 10 November 2009 provided notification of recommendation for involuntary separation due to his medical condition. It also informed him that he had thirty days to appeal and submit a request for a non-duty related PEB. A permanent profile for knee pain and depression, which indicated non-duty related PEB, was signed on 22 November 2009. There was sufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. Included in the application was the previous ABCMR findings, case number AR20100020556, which included a six page medical opinion (see pages 363-369). This opinion provided an extensive review of records as well as review of the NGB advisory opinion, indicating the applicant should have been referred to an MEB. However, the Advisor concluded "the applicant's unfitting condition was not duty related. Deny the applicant's request for a duty related PEB."

e. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant initiated mental health (MH) care through the VA on 18 May 2006, and he reported depression, anger, and sleep problems since returning from deployment in December 2005. He was diagnosed with Adjustment Disorder, started on a medication to help with mood and sleep, and referred to the Trauma Recovery Program (TRP), although documentation from the TRP showed he did not meet criteria for PTSD. He was next seen on 30 July 2007 and reported symptoms of anxiety and depression with increased alcohol use to cope with family and work-related stressors. He was referred to substance abuse treatment and individual psychotherapy, but records showed he did not fully engage in treatment. Another initial evaluation was completed on 2 February 2008, and he reported similar symptoms as previously discussed as well as continued alcohol use. He was diagnosed with Major Depressive Episode and started on an antidepressant. A Compensation and Pension (C&P) exam was conducted on 10 March 2008, and he reported combat-related trauma exposure from deployment, and he endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD. He was also diagnosed with Alcohol Dependence. He was seen for one follow up medication management visit, and then "no showed" several appointments. A psychological

evaluation to initiate individual therapy was completed on 27 August 2008, and the applicant discussed anger management problems that were interfering with employment and relationships, and he noted he was "going through a med board" as related to his knee condition. He was scheduled to start anger management but cancelled the appointment, and he was next seen by Vocational Rehabilitation on 16 October 2008. He reported being 40% service connected for PTSD, but he was determined to be ineligible for the program. At a follow up medication management visit on 21 February 2009, he reported continued difficulty with relationships, using alcohol and marijuana to reduce pain, and experiencing memory difficulties. He was continued on a medication for sleep and an antidepressant was started. On 1 April 2009, he presented to MH and reported "feeling as though things are not real around him" (derealization), which began after possibly being drugged while attending a wedding one week prior. He was involuntarily admitted for observation and a medical work up, but he discharged the following day. On 23 April 2009, his psychiatric provider referred him to substance abuse treatment and continued medications, but documentation showed that the applicant was able to cut down on his alcohol use on his own and declined treatment. At a follow up with his psychiatry provider on 17 July 2009, he reported abstinence from alcohol for five weeks, improvement in his MH symptoms, and having started a job with the IRS. However, on 11 September 2009, he presented as a walk-in to the MH clinic with worsening symptoms of PTSD, and he was referred to the TRP and completed an intake on 25 September 2009. In October 2009, he started an outpatient group therapy for PTSD and reported improvement in occupational and relational functioning. Documentation on 22 February 2010 showed he was employed full-time with some challenges in the work environment, but he reported a supportive relationship with his spouse. His PTSD symptoms had increased some since his last session in December 2009, but he also related he had consumed some alcohol, which created some feelings of guilt. He was continued on an antidepressant and started on medications for sleep and nightmares. His diagnoses were PTSD, Depressive Disorder, and Alcohol Dependence. Documentation showed he started individual therapy for PTSD treatment in March 2010, and he continued with medication management and psychotherapy through 2011.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that although the applicant's MH condition was as likely as not to be a result of his military service, there is insufficient evidence to support that the applicant had a condition of such severity, IAW AR 40-501, that warranted a referral to the Disability Evaluation System (DES) while on active service. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military

career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD at the time of his discharge and should have been referred to the DES. VA records showed he was initially diagnosed with an Adjustment Disorder in 2006, and his treating provider diagnosed Major Depressive Episode in February 2008. A C&P exam was conducted in March 2008, which resulted in diagnoses of PTSD and Alcohol Dependence, and the applicant was initially determined to be 30% service-connected due to these conditions.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and records showed he had mental health diagnoses. Service records indicate he deployed to Bosnia in 2001-2002 and to Kuwait/Iraq from December 2005 to December 2006. VA records indicate that the applicant initiated mental health services in 2006 and reported symptoms of PTSD but was diagnosed with Adjustment Disorder. He was referred to the Trauma Recovery Program, and it was determined that he did not meet criteria for PTSD. Enlistment documents from 28 June 2007 showed that the applicant denied any medical or mental health symptoms and was found to be qualified for service. However, he presented to the VA again in July 2007 with worsening MH symptoms and excessive alcohol use, but he did not follow through with treatment recommendations. He next presented for treatment in February 2008 and was diagnosed with a Major Depressive Episode, and a C&P exam in March 2008 resulted in a diagnosis of PTSD. VA records showed he intermittently engaged in treatment between March and November 2008 and had some waxing and waning of MH symptoms. In November 2008 a FFDE was conducted, which resulted in a recommendation of trial of continued service for six months, but the applicant was not considered worldwide qualified/deployable. There was evidence of continued MH treatment and a brief (48 hour) hospitalization secondary to a possible drug-induced derealization episode. Through 2009 VA records showed the applicant had some improvement in symptoms and engaged in the Vocational Rehabilitation program resulting in employment with the IRS.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. While the applicant did display some symptoms of PTSD and was determined to be service connected at 30% by the VA in 2008, there is insufficient evidence to demonstrate that the applicant was psychiatrically unfit at the time of discharge in accordance with AR 40-501, Chapter 3. Additionally, because the applicant failed to provide the necessary documentation and records for review, there was no way for the TNARNG to appropriately assess his condition in order to make any determinations

regarding referral to the DES. As to the assertion that the applicant's PTSD symptoms prohibited him from following through with providing records, the documentation of his MH symptoms and VA treatment does not support this assertion. There is insufficient evidence in his records that demonstrated significant impairment in his functioning, and his 24 to 36 hour hospitalization did not render him incapable of providing the necessary documentation.

g. However, the applicant contends he was experiencing a mental health condition or an experience that warranted a medical discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official based on the available information, it is the opinion of the Agency Behavioral Health Advisor that although the applicant's MH condition was as likely as not to be a result of his military service, there is insufficient evidence to support that the applicant had a condition of such severity, IAW AR 40-501, that warranted a referral to the Disability Evaluation System (DES) while on active service.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD at the time of his discharge and should have been referred to the DES. VA records showed he was initially diagnosed with an Adjustment Disorder in 2006, and his treating provider diagnosed Major Depressive Episode in February 2008. A C&P exam was conducted in March 2008, which resulted in diagnoses of PTSD and Alcohol Dependence, and the applicant was initially determined to be 30% service-connected due to these conditions.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and records showed he had mental health diagnoses. Service records indicate he deployed to Bosnia in 2001-2002 and to Kuwait/Iraq from December 2005 to December 2006. VA records indicate that the applicant initiated mental health services in 2006 and reported symptoms of PTSD but was diagnosed with Adjustment Disorder. He was referred to the Trauma Recovery Program, and it was determined that he did not meet

criteria for PTSD. Enlistment documents from 28 June 2007 showed that the applicant denied any medical or mental health symptoms and was found to be qualified for service. However, he presented to the VA again in July 2007 with worsening MH symptoms and excessive alcohol use, but he did not follow through with treatment recommendations. He next presented for treatment in February 2008 and was diagnosed with a Major Depressive Episode, and a C&P exam in March 2008 resulted in a diagnosis of PTSD. VA records showed he intermittently engaged in treatment between March and November 2008 and had some waxing and waning of MH symptoms. In November 2008 a FFDE was conducted, which resulted in a recommendation of trial of continued service for six months, but the applicant was not considered worldwide qualified/deployable. There was evidence of continued MH treatment and a brief (48 hour) hospitalization secondary to a possible drug-induced derealization episode. Through 2009 VA records showed the applicant had some improvement in symptoms and engaged in the Vocational Rehabilitation program resulting in employment with the IRS.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. While the applicant did display some symptoms of PTSD and was determined to be service connected at 30% by the VA in 2008, there is insufficient evidence to demonstrate that the applicant was psychiatrically unfit at the time of discharge in accordance with AR 40-501, Chapter 3. Additionally, because the applicant failed to provide the necessary documentation and records for review, there was no way for the TNARNG to appropriately assess his condition in order to make any determinations regarding referral to the DES. As to the assertion that the applicant's PTSD symptoms prohibited him from following through with providing records, the documentation of his MH symptoms and VA treatment does not support this assertion. There is insufficient evidence in his records that demonstrated significant impairment in his functioning, and his 24 to 36 hour hospitalization did not render him incapable of providing the necessary documentation.

2. The Board determined there is insufficient evidence to support the applicant's contentions for reconsideration of his previous request to reflect he was medically retired due to post-traumatic stress disorder (PTSD). Based on the preponderance of evidence and the opine, the Board determined reversal of the previous Board determination is without merit and therefore, relief is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF
: : : GRANT PARTIAL RELIEF
: : : GRANT FORMAL HEARING
[REDACTED] [REDACTED] [REDACTED] DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20140020998 and AR20150010695.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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. 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 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 a medical evaluation board (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.

6. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

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. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health

conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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. 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 based on 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. 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. 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//