

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240001221

APPLICANT REQUESTS:

- reconsideration of his prior request for physical disability discharge vice administrative discharge in lieu of trial by court-martial
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- White House Inquiry Form, dated 5 July 2024

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 AR20190011332 on 8 September 2022.

2. The applicant states:

a. He completed his initial contract. Everything afterward was commuted by the General Court Martial Convening Authority. All charges were dropped in 2014. Before he went absent without leave (AWOL), his platoon sergeant charged his weapon on him and told him he was going to kill him.

b. His kill statistics are 1 woman and 2 children with an AT4. The commander advised the next day, he got the right house, but the bad guy ran due to the back blast area from the rocket-propelled grenade (RPG) he fired at them. This was during the beginning of the war in 2003 -2004. There were no rules of engagement (ROE). He had to run as he was going to be killed by his leadership through no fault of his own.

c. It has been 20 years now since then and he has 3 kids, all almost adults. He did what was right by the Army. Everything that happened was to teach him military bearing and that he messed up. 20 years of reliving 1 year of his life should have been bad enough. He still figuratively would elect to kill people that do him or his family wrong. He

wants to be honest and means nothing by saying that. He's going to be honest and say he doesn't know what the Board sees, so please, if you cannot find something you are looking for, go to your boss. It should be cut and dry.

d. He never realized what was hurting him and causing him so much sorry and grief to the point he had to leave a place of employment to get out of a bad situation. He has had combat-incurred post-traumatic stress disorder (PTSD) for 20 years and has been learning about himself. He knows this is his crutch and was not advised this might happen downrange.

e. A White House Inquiry Form, dated 5 July 2024, included with is application, shows the applicant was asking for help with the Department of Defense. He requested someone look into his discharge. It is very messed up. He was in the Army from 2000-2004 then from 2010 to 2012. Right now, he has an honorable discharge with a reason for discharge of minor problems. He got PTSD and broke his shoulder in 2004. He is due a medical discharge. The Army had been looking into him now for 7 months. He also submitted a complaint to the Department of Veterans Affairs (VA). He went AWOL in 2004 due to a reason that is classified. Please look into it and also his shoulder that got broken in Germany when he "got smoked" in Germany for 2 hours.

3. A DD Form 4 (Enlistment Reenlistment Documents) shows the applicant enlisted in the Regular Army for a period of 4 years on 17 July 2000. He was awarded the military occupational specialty (MOS) 19D (Cavalry Scout).

4. The applicant deployed to Iraq from 5 February 2003 to 4 January 2004.

5. A second DD Form 4 shows the applicant reenlisted in the Regular Army for a period of 5 years on 4 January 2004.

6. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), dated 19 March 2004, shows the applicant was absent without leave (AWOL) beginning on 12 February 2004, and that the administrative date of his desertion was 14 March 2004.

7. A DD Form 616 (Report of Return of Absentee), dated 27 April 2011, shows the applicant was apprehended by civil authorities in Boise, ID, and transferred from Ada County Jail and returned to military control at Fort Lewis, WA, on the date of the form.

8. A Standard Form 600 (Chronological Record of Medical Care), shows:

a. On 9 June 2011, the applicant was seen at the Behavioral Health Clinic at Fort Hood, TX, for adjustment disorder.

b. An update on the Standard Form 600, dated 10 August 2011, shows the applicant's listed problems included chronic PTSD, adjustment disorder with disturbance of emotion and conduct, insomnia due to stress, alcohol abuse. The assessment and plan shows he was undergoing observation for suspected condition. The disposition shows he was released without limitations.

9. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:

a. On 27 December 2011, his duty status changed from present for duty (PDY) to AWOL.

b. On 28 December 2011, his duty status changed from AWOL to DFR.

10. A second DD Form 553 shows the applicant was again considered a deserter/absentee wanted by the Armed Forces after he was reported AWOL on 27 December 2011, and that he remained absent through 28 December 2011

11. A DD Form 458 (Charge Sheet), dated 9 January 2012, shows:

a. He was charged with violation of the Uniform Code of Military Justice (UCMJ), Article 85 (Desertion), in that on 28 December 2011, without authority and with intent to remain away permanently, absented himself from his unit at Fort Hood, TX, and remained so absent in desertion.

b. He was charged with violation of UCMJ, Article 86 (AWOL), in that he absented himself without authority on 27 December 2011, and remained AWOL until an unknown date.

12. A second DD Form 616, dated 23 January 2012, shows the applicant shows was apprehended by civil authorities in Caldwell, ID, and transferred from Canyon County Jail and returned to military control at Fort Hood, TX, on the date of the form.

13. Headquarters, III Corps and Fort Hood General Court-Martial Order Number 11, dated 8 March 2012, shows:

a. The applicant was arraigned and tried at Fort Hood, TX, where he was charged with violation of UCMJ, Article 85 (Desertion), after permanently absenting himself from his unit without authority and with intent to remain therefrom permanently on 12 February 2004 and remaining so absent in desertion until his apprehension on 27 April 2011.

b. The applicant initially pled guilty and during providency changed his plea to not guilty. No finding was entered. The applicant having been arraigned, the proceedings were terminated on 9 November 2011. The charge and its specification were withdrawn and dismissed without prejudice on 5 January 2012. All rights, privileges, and property of which the applicant had been deprived by virtue of these proceedings would be restored.

14. Headquarters, III Corps and Fort Hood General Court-Martial Order Number 6, dated 12 March 2014, shows the applicant was arraigned and tried at Fort Hood, TX, where he was charged with and found guilty of:

a. Two specifications of desertion, in that he absented himself from his unit without authority from 12 February 2004 until on or about 16 October 2008 and again from 27 December 2011 through 23 January 2012.

b. AWOL, in that he absented himself without authority from his unit from 15 August 2011 and remained so absent until 19 August 2011.

c. Wrongfully using marijuana between on or about 28 October 2011 and 28 November 2011.

d. On 11 July 2013, he was sentenced to reduction in rank/grade to private/E-1 and a bad-conduct discharge.

e. The action shows the findings of guilty and the sentence were disapproved. The applicant's request for discharge pursuant to the provisions of Chapter 10, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) was approved for the issuance of a discharge under other than honorable conditions. The charges and their specifications were dismissed. All rights, privileges, and property of which the applicant had been deprived by virtue of these proceedings were thereby ordered restored.

15. U.S. Army Installation Management Command Orders 077-1316, dated 18 March 2014, discharged the applicant under the provisions of Army Regulation 635-200, effective 19 March 2014.

16. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. On 18 March 2014, he was discharged under other than honorable conditions under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with corresponding separation code KFS and Reentry Code 4.

b. He completed his first full term of service.

c. He was credited with 6 years, 2 months, and 2 days of net active service with lost time from 12 February 2004 through 27 April 2011; 15 August 2011 through 18 August 2011; and 27 December 2011 through 6 September 2012.

17. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

18. The applicant's Enlisted Record Brief (ERB), dated 28 April 2014, shows his PULHES was 111111.

19. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) or show:

- he was issued a permanent physical profile rating
- he was diagnosed with a condition that failed retention standards and/or was unfitting

20. A VA letter, dated 17 November 2014, shows:

a. The applicant completed an honorable period of active duty service from 17 July 2000 through 3 January 2004.

b. He had one or more service-connected disabilities.

c. His combined service-connected evaluation was 50 percent.

21. In November 2014, the applicant applied to the Army Discharge Review Board (ADRB), requesting an upgrade of his characterization of service to honorable and in effect a medical discharge. An ADRB Case Report and Directive in Docket Number AR20140019848 shows in March 2016, the ADRB upgraded the characterization of the applicant's service to general, under honorable conditions.

22. Pursuant to the ADRB determination, on 30 March 2016, the applicant's original DD Form 214 was voided and he was issued a new DD Form 214, reflecting his character of service as under honorable conditions (general). No other changes were made to his DD Form 214.

23. The applicant then applied to the ABCMR, requesting correction of his DD Form 214 to reflect disability retirement. An ABCMR Record of Proceedings in Docket Number AR20190011332, shows on 8 September 2022, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

24. In April 2021, the applicant again applied to the ADRB, requesting an upgrade of his service from general (under honorable conditions) to honorable. An ADRB Case Report and Directive in Docket Number AR20210001111, shows on 25 April 2024, the ADRB approved the applicant's request and directed his DD Form 214 be amended to show his characterization of service as honorable, his reason for discharge as misconduct (Minor Infractions) with corresponding separation code JKN, vice in lieu of court-martial, and his reentry code upgraded to 3 from 4.

25. Pursuant to the ADRB determination, on 13 May 2024, the applicant's DD Form 214 which had been reissued in March 2016, to reflect a general (under honorable conditions) characterization of service was voided. On 13 May 2024, the applicant was issued a new DD Form 214, which reflects his characterization of service as honorable, his reason for discharge as Misconduct (Minor Infractions) with corresponding separation code JKN, vice in lieu of court-martial, and his reentry code upgraded to 3 from 4. The separation authority remains Army Regulation 635-200, with reference to Chapter 10 removed.

26. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

27. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting a medical discharge. He contends his service-connected PTSD should make him eligible for a medical discharge.

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 17 July 2000.
- The applicant served in Iraq from 05 February 2003 to 04 January 2004.
- On 12 February 2004, the applicant went AWOL which changed to Desertion on 14 March 2004.
- On 27 April 2011, he was apprehended by civil authorities and returned to military control.
- On 27 December 2011, the applicant went AWOL and DFR.
- The applicant remained AWOL until an unknown date, but records indicate on 23 January 2012 he was apprehended by civil authorities and returned to military control.
- A 12 March 2014 Court Martial Order indicates the applicant was charged with two counts of Desertion, one count of AWOL, and one count of marijuana use.
- The applicant was discharged on 18 March 2014 under AR 635-200, Chapter 10, In Lieu of Trial by Court Martial, with an Other than Honorable characterization.
- In March 2016, ARBA upgraded the characterization to General.
- In April 2024, ARBA upgraded the characterization to Honorable with Misconduct, Minor Infractions, as the narrative reason for separation.

c. The active-duty electronic medical records were reviewed.

(1) In May 2011, he reported since deployment he'd thought of friends killed leaving him feeling "like I am a prison(er) in my own head." He denied any problems during his AWOL with trauma, TBI, or any psychiatric symptoms. He denied receiving any behavioral health care while AWOL. Rather, he attended college, worked, and did well. However, contended that since his return from AWOL he was having difficulty sleeping, experiencing loss of interest, felt guilty, and had poor concentration with low motivation. He noted his return to military control occurred after he won the lottery and his military status discovered. He was diagnosed with an Adjustment Disorder with Disturbance of Emotions.

(2) In June, he reported he went on hardship leave from deployment due to his grandmother dying, brother diagnosed with cancer, and wife divorcing him. He stated while AWOL, he decided he couldn't "handle going back to Iraq due to all of the stress he was experiencing" so he chose not to return. He reiterated any symptoms started after return from AWOL, specifically stating he had NOT been diagnosed with PTSD. Of note, documentation reflects symptoms were triggered by psychosocial stressors after returning, e.g. trying to support his family on an Army salary versus what he was making prior to his return. The applicant attended some supportive care, coping skill groups, and biofeedback with an Adjustment Disorder diagnosis.

(3) That same month, he attended an ASAP appointment with diagnosis of Alcohol Dependence.

(4) In July, he reported improvement and the focus was on psychosocial stressors. While documentation did not support the diagnosis, the provider listed PTSD. He attended one follow up, terminating after receiving the diagnosis.

(5) In August, he was seen in the ED after reporting homicidal ideation toward Command secondary to his Article 15. He noted some suicidal ideation in reaction to the disciplinary process as well. The applicant reported his homicidal ideation was due to being frustrated and angry "at proceedings and angry at those involved." Out of caution, he was admitted. He was discharged with a diagnosis of Anxiety Disorder, NOS. He attended required aftercare groups, terminating once the requirement was met.

(6) In May 2012, he underwent a 706 Sanity Evaluation. Due to the evaluations being legal in nature, the results and report are not included in the medical record. Accordingly, the outcome and any diagnosis are unknown. However, given the proceedings continued with sentencing dispensed, it is more likely than not the applicant was deemed unimpaired by a psychiatric condition at the time of the misconduct.

(7) That same month, he was seen for medication refills with a diagnosis of Adjustment Disorder with Disturbance of Emotions and Conduct. He had one psychiatric follow up for refills with a diagnosis of Adjustment Disorder.

d. The VA's Joint Legacy Viewer (JLV) medical records were reviewed.

(1) The applicant is 50% service connected for combat related PTSD. However, it is noted that the Compensation and Pension (C&P) exams which conducted objective psychological testing have indicated the applicant's self-report is invalid to the extent he is presenting himself as worse off than those with severe, genuine psychiatric disorders. Nonetheless, due to the VA practices, examiners are compelled to accept self-report at face value and removal of service-connected diagnoses is strongly discouraged. Noteworthy, while the initial date of onset was March 2014, it has been determined this was in error and date of onset has been adjusted to July 2017 which is over three years after discharge.

(2) In March 2010, while AWOL, the applicant reported being hospitalized in 2009 after overdosing due to marital discord while intoxicated. He was referred for medication

management, but did not follow up. He was NOT diagnosed and there is no documentation available for the asserted 2009 hospitalization.

(3) In November 2014, the applicant had his initial VA PTSD Compensation and Pension (C&P) exam. Based on self-report, he was diagnosed with PTSD, Major Depressive Disorder (MDD), and Alcohol Use Disorder. However, even with the diagnosis, any potential impairment was “occasional” and “intermittent” as he was “generally functioning satisfactorily with normal routine behavior, selfcare, and conversation.” So even though this C&P occurred within eight months of separation, the applicant’s level of functioning was determined to be “normal.” To support the level of functioning, during the interview the applicant reported being fully employed as a “senior Team Lead” at Target and was “responsible for store layout and planning.” He reported doing so well he was promoted only two months after hire. Specifically, he reported he was performing well, got along with others, and “gets along really good with his boss.” The applicant noted any symptoms fluctuated as they were due to psychosocial stressors including work performance, finances, and marriage. When asked about hospitalizations, he did not report a 2009 event. Rather, only reported the 2011 in-service hospitalization which was secondary to the disciplinary action. The applicant outlined some of his in-service misconduct and added that he’d also been in trouble for “beating someone up.”

(4) In December, he asserted work impairment. He again only reported the 2011 hospitalization due to his reaction to separation. That same month, he had a TBI evaluation and determined to NOT have a history or current TBI or residuals.

(5) In January 2015, he went to the ER reporting suicidality due to stressors. He was admitted. At discharge, the service-connected PTSD was noted.

(6) Shortly after discharge, he arrived at the ER “yelling and screaming in an extremely loud, threatening fashion in the lobby. He was demanding that everyone respect him, and demanding nursing staff names and identification numbers so he could report them to their superiors for disrespecting him.” The applicant reported drinking to intoxication due to his cousin passing and funeral the following day. He asserted he was suicidal because he was planning on driving drunk to the funeral. However, he had no intent to crash his car or other plans to kill himself. He endorsed homicidally “toward everyone and anyone,” then pointed to a Nurse stating he’d “smash his face in.” He was released to outpatient care as there were no genuine safety issues; intoxication due to stressors led to the behavior versus psychiatric condition.

(7) In March, he reported he continued to drink to intoxication leading to aggression. Additionally, he was using marijuana regularly and noncompliant with psychiatric

medication. Mid-month, he went to the ER again due to intoxication leading to aggression. He and his wife reported while at a party, he became drunk and wanted to wrestle his best friend. When the friend declined, he “became very angry with his best friend. He wanted to fight him and then later had anger directed at various individuals, - police, etc. The patient wanted to kill his friend at one point and the police were called.” He denied suicidality at the ER, but asserted PTSD caused his explosive behavior. The applicant was admitted and discharged with the service-connected PTSD.

(8) In April, he reported intent to stop all VA treatment asserting it had been ineffective. However, in discussion, he was reacting to his anger that the VA had “not deeming him 100% unemployable.” The provider highlighted ineffective response was due to the applicant’s noncompliance with treatment including using alcohol, marijuana, and now unprescribed Norco. He endorsed ongoing homicidality to include toward his wife during arguments. The provider noted his UA was positive for THC, benzodiazepines, and opiates; all “nonprescribed.” He was diagnosed with Polysubstance Use Disorder.

(9) In July, he asserted a non-VA hospitalization after police responded to a call for “volent ideation” while intoxicated. He indicated the police had to use pepper spray to subdue him. He reported the trigger was being turned down for jobs and inability to complete his college classwork; psychosocial stressors drove the misconduct not PTSD.

(10) The applicant requested an increase in his PTSD service connection resulting in a C&P. He reported taking a leave of absence from work in November/December 2014 due to “work-related stress.” Subsequently, while at a work social in March 2015, he “beat up his store manager’s husband.” Although his employer offered him an option for a two-year extended leave, he decided to quit. He blamed the organization for his actions, asserting they “screwed him over.” However, he did not indicate any specific wrongdoing on their part. The applicant later acknowledged part of the reason he quit was because he wasn’t sure how he could “look everyone in the face” when he returned. The provider conducted objective psychological testing which indicated the applicant was over-reporting symptoms, asserting “considerably larger than average number of symptoms” to the extent he was presenting himself as equal to or worse off than individuals with “genuine, severe pathology.” Another objective measure was conducted which was also invalid as he purposefully tried to present with his desired diagnosis. The provider, as required by the VA, maintained the service-connected PTSD diagnosis but due to the unreliability of his self-report indicated they could not speak to whether impairment and symptoms had authentically worsened for an increase.

(11) In January 2016, the applicant requested assistance from the Veteran's Justice Outreach (VJO) program due to a DUI. In February, he received additional citations for disorderly conduct and resisting arrest while intoxicated. He was jailed but released.

(12) In May, he was in the ER reporting "I want to kill some people." He requested admission to prevent himself from hurting someone else. He reiterated multiple admissions for intoxication with resulting homicidal or suicidal ideation. He was admitted and discharged with the service-connected PTSD and various substance disorders. He did not follow up with recommended substance treatment.

(13) In June, he went to the ER intoxicated. He indicated he started drinking in reaction to his family leaving him, not PTSD. He reported he "could kill everyone with his bare hands." The provider noted he "spends most of his time in the ER insulting the VA Police, and yelling loudly, aggressively toward all within ear shot." He indicated "He's had a lot to drink tonight, so you're all gonna have some fun." When he learned the Sheriff was enroute, he indicated it didn't bother him as he'd "been in county (jail) for being drunk and threatening to kill people before." The psychiatrist outlined personality disordered behavior addressing his pattern of drinking to intoxication, secondary to stressors, leading to violence and ER visits. He was again encouraged to get treatment given he was professing a desire. He agreed to follow up with residential treatment. However, when contacted indicated he was employed and couldn't get time off and declined care.

(14) In August, he returned to the ER reporting medication noncompliance with trauma symptoms. He requested admittance to prevent himself from drinking and becoming violent. He was admitted and discharged with service-connected PTSD. He did not follow up.

(15) In December, he was working full time but decided to quit to attend school.

(16) In June 2017, the applicant returned for medication as he didn't follow up and ran out. He noted a month prior, he held a knife to his boss's neck. He asserted his boss owed him \$250, but decided not to press the issue to prevent his boss from filing criminal charges.

(17) In July, he had a C&P requesting an increase. He reported he'd been working until "my boss pissed me off and I pulled a knife on him." Specifically, "it happened again" and he "grabbed his bosses head and held a knife to his jugular." The provider conducted objective psychological testing which was invalid again due to overreporting to the extent he presented himself as worse off than an individual with a severe, genuine psychiatric condition. The provider indicated they could not speak to whether

symptoms or impairment supported an increase due to the invalidity of self-report. The provider was asked to opine whether his substance use was secondary to service conditions. The provider clearly stated any substance use and related impairment was NOT connected to service or a service-related condition.

(18) In August, he asked psychiatry about a TBI evaluation. Psychiatry discussed the need for neuropsychological assessment to make a determination. The applicant did not follow up with the needed testing to confirm his assertion; he was not diagnosed with TBI.

(19) In October, he reported family took him to a casino for his birthday. He ended up drinking and “pulled a knife on someone, the police were called.” He indicated his 12-year-old was responsible for keeping track of his alcohol intake to prevent intoxication.

(20) In January 2018, the applicant went to the ER asserting suicidality. He was discharged with service-connected PTSD and Polysubstance Use Disorder.

(21) In May, he was assessed by the PTSD program. The applicant reported he quit his job because the boss he assaulted was “overbearing and I couldn’t deal with it.” He indicated he was seeking a service connection increase. The applicant noted he was still drinking and recently the police were called after he got into a fight with his brother-in-law. The provider indicated Anxiety Disorder, not PTSD, with “complex Personality Disorder” and co-occurring ETOH Disorder.

(22) That same month, the applicant had a C&P noting his service connection for PTSD had been decreased and he wanted it increased again. Per VA procedures, the service-connected PTSD was carried. However, any related impairment was again noted to be “occasional” and “intermittent” as he was “generally functioning satisfactorily with normal routine behavior, self-care, and conversation.” The provider did not support an increase.

(23) In August, he was in the ER for symptoms in reaction to legal issues; after being stopped, drugs were discovered in the car and seized. He was admitted and discharged with diagnoses of Depression and Alcohol/Stimulant/Cannabis Use Disorders.

(24) The applicant continued with medication management although variable compliance.

(25) In May 2019, he reported a verbal altercation with someone at a gas station. He was still using marijuana, but indicated absence or minimal alcohol use.

(26) In August, he reported employment and using marijuana in the evening. He reported being upset with the VA when he went to the ER with “violent” ideation toward a neighbor and not admitted. He indicated he goes to the VA ER when he is upset as he needs to the VA to hospitalize him to stop him from hurting someone.

(27) The applicant continued sporadic medication engagement through May 2022.

(28) In January 2024, he returned requesting care. He reported a longstanding history of aggression including assault and intimate partner violence (IPV). He had recently quit his job asserting his boss “crossed” him, but had a new job lined up. Once again, the applicant has been sporadic in compliance.

e. The applicant’s pertinent submissions were reviewed.

(1) A November 2014 VA Rating Decision Letter noted he was 50% service connected; the conditions are not listed.

(2) A June 2011 Problem List reflects diagnoses already noted above.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the applicant did not fail medical retention standards at the time of separation from service. As such, the applicant does not require a referral to the Disability Evaluation System (DES). Per AR 40-501, para 3-33, a condition only fails medical retention standards when there are persistent or reoccurring symptoms requiring extended or recurrent hospitalization or persistent or reoccurring symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. This criteria were not met by the applicant at the time of discharge.

(1) The applicant asserted symptoms presented upon return from AWOL. This indicates symptoms were not present or persist during his AWOL. Further support is found in his 2010 VA visit which did not diagnose a condition and applicant’s report of working and attending school while AWOL reflecting effective functioning.

(2) The applicant only sporadically attended care for a few months with the focus on psychosocial stressors. Accordingly, symptoms were not persistent or reoccurring. Additionally, he was not being treated for trauma.

(3) The applicant did not require extended or recurrent hospitalization. Furthermore, his only in-service hospitalization was due to anger about his separation with related threats and misconduct rather than trauma. Later documentation supports a pattern of

misconduct triggered by psychosocial stressors and driven by personality disorder traits rather than PTSD.

(4) The applicant did not have a psychiatric profile and any limitations imposed were secondary to misconduct, e.g. threats to hurt others, rather than a trauma or related condition.

(5) Eight months after service, the VA determined the applicant was “generally functioning satisfactorily with normal routine behavior, selfcare, and conversation.” Although the date of origin is currently noted to be July 2017, over three years post-discharge, even in acknowledging the initial date of origin in March 2014, the functional statement supports the applicant would not have met criteria for a DES referral.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Advisory is for disability and the case has already been reviewed with relief under Kurta.

(2) Did the condition exist or experience occur during military service? N/A. Advisory is for disability and the case has already been reviewed with relief under Kurta.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A. Advisory is for disability and the case has already been reviewed with relief under Kurta.

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 did not fail medical retention standards at the time of separation from service. The Board concluded referral to the Disability Evaluation System is unwarranted and denied relief.

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. 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.
3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of 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 a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 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. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) or (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, use of illegal drugs, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate for a Soldier discharged under this chapter.

7. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//