IN THE CASE OF: [redacted]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240001553

APPLICANT REQUESTS:

- physical disability retirement in lieu of physical disability separation with severance pay
- award of the Purple Heart
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Privacy Act Release
- email correspondence from the Office of a Member of Congress
- Task Force Duke, 3rd Brigade Combat Team, 1st Infantry Division Permanent Orders 032-001, 2 February 2009
- Department of Veterans Affairs (VA) Rating Decision, 31 January 2020
- Progress Notes, 3 August 2022
- VA letter, 31 July 2023
- Evaluation of Neurocognitive, Emotional, and Psychosocial Well Being, 28 August 2023
- Magnetic Resonance Imaging (MRI) report, 25 January 2024
- Sleep Study report, 30 June 2024
- Discharge Instructions, 30 June 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He should have received a medical retirement instead of a medical discharge due to injuries he sustained in combat.

b. He was in multiple improvised explosive device (IED) incidents between 2008 - 2009. He has marked the blocks on his application to the Board indicating post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) are conditions related to his request.

c. He also indicates, on his Privacy Act Release form to his Member of Congress, he was requesting assistance with upgrading his medical discharge to a medical retirement and was seeking assistance with obtaining a Purple Heart due to combat-related injuries he sustained in Afghanistan.

3. The applicant enlisted in the Regular Army on 4 October 2006, and was awarded the Military Occupational Specialty (MOS) 13F (Fire Support Specialist).

4. The applicant deployed to Afghanistan from 26 June 2008 through 10 June 2009.

5. Permanent Orders 032-001, published by Task Force Duke, 3rd Brigade Combat Team, 1st Infantry Division, Afghanistan, on 2 February 2009, awarded the applicant the Combat Action Badge for being engaged by or engaging the enemy on 29 October 2008.

6. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in his available records for review and have not been provided by the applicant.

7. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 22 December 2009, where the applicant was found physically unfit with a combined rating of 20 percent and that his disposition be separation with severance pay.

b. His unfitting condition is thoracolumbar strain secondary to scoliosis (MEB diagnosis (Dx) 1). This is unfitting because when performing his duties, his pain becomes constant. His lifting requirements as a Fire Support Specialist are significant, and his back pain precludes this; 20 percent.

c. MEB Dx 2-5 (Hay fever, herpes simplex genitalis, headaches, and intermittent numbness of arms and legs) meet retention standards per the DA Form 3947 and have been found by the PEB to not be unfitting either independently or in combination with any other conditions as the preponderance of the evidence supports they are not a significant limitation on his ability to perform his MOS.

d. On 11 January 2010, the applicant signed the form indicating he concurred with the findings and recommendations of the PEB and waived a formal hearing of his case.

8. 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).

9. An Enlisted Record Brief (ERB), 24 January 2010, shows the applicant's PULHES as of that brief date was 131111, with a 3 rating in factor U and a 1 rating in all other factors.

10. Orders 026-0119, published by Headquarters III Corps and Fort Hood , on 26 January 2010, discharged the applicant effective 27 March 2010, with a disability rating of 20 percent and authorization to disability severance pay. The orders also show:

a. His disability is not based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

b. His disability did not result from a combat-related injury as defined in Title 26 U.S. Code section 104.

c. His disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

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

a. He was honorably discharged on 27 March 2010, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to disability with severance pay, combat-related, with corresponding separation code JFI.

b. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) includes award of the Combat Action Badge, but not the Purple Heart.

c. Item 18 (Remarks) shows the applicant was authorized disability severance pay in the amount of $23,076.00.

12. A DD Form 215 (Correction to DD Form 214), issued on 15 June 2010, corrected item 18 to reflect the applicant's disability severance pay in the amount of $25,128.00 in lieu of $23,076.00.

13. A VA Rating Decision, 31 January 2020, shows the applicant was awarded a service-connected disability rating of 100 percent for the following conditions:

- PTSD, 50 percent from 13 July 2011, increased to 70 percent from 7 March 2019, and 100 percent from 14 January 2020
- TBI, 70 percent from 13 July 2011 to 7 March 2019
- migraine headaches associated with TBI, 50 percent from 13 July 2011
- bilateral tinnitus, 10 percent from 13 July 2011
- sciatic neuropathy of right lower extremity,10 percent from 13 July 2011
- sciatic neuropathy of left lower extremity, 10 percent from 13 July 2011
- degenerative arthritis with intervertebral disc syndrome, lumbar spine, 10 percent from 13 July 2011
- facial scar, 0 percent from 13 July 2011
- ulnar neuropathy, right upper extremity, 0 percent from 13 July 2011
- ulnar neuropathy, left lower extremity, 0 percent from 13 July 2011
- degenerative arthritis, bilateral hips, 0 percent from 5 February 2017

14. Progress Notes, 3 August 2022, show the applicant was assessed with cerebellar cyst, tonsillar displacement, thoracolumbar scoliosis. Referral to community care for skull base neurosurgery was recommended.

15. A VA letter, 31 July 2023, verifies the applicant's service-connected disability rating of 100 percent for the following conditions:

- migraine headaches, 50 percent
- PTSD with unspecified depressive disorder and TBI, 100 percent
- degenerative arthritis with intervertebral disc syndrome, lumbar spine, 10 percent
- bilateral tinnitus, 10 percent
- sciatic neuropathy of left lower extremity, 10 percent
- sciatic neuropathy of right lower extremity, 10 percent
- facial scar, 0 percent
- ulnar neuropathy of left upper extremity, 0 percent
- ulnar neuropathy of right upper extremity, 0 percent
- degenerative arthritis, bilateral hips, 0 percent

16. An Evaluation of Neurocognitive, Emotional, and Psychosocial Well Being, 28 August 2023, has been provided in full to the Board for review, and in pertinent part shows the recommendations for the applicant include:

a. He should follow-up with his neurologist and neurosurgeon to integrate the results of this assessment into his care.

b. More intensive, more frequent, and alternate modalities of psychological intervention were recommended as critical to reduce his symptoms and improve his psychological functioning.

c. A consultation with a sleep physician was strongly recommended to treat his obstructive sleep apnea (OSA).

d. He should employ compensatory strategies to support his daily functioning, including multimodal input, external memory devices, active listening, verbal mediation, to-do lists, break down tasks, plan breaks, routine, limit distractions.

e. He would likely benefit from speech therapy to build his language capacities and develop strategies to compensate for observed cognitive difficulties.

f. Engage in healthy habits, including sleep hygiene, physical activity, cognitive and social stimulation, healthy eating habits, limit alcohol intake.

17. An MRI report, 25 January 2024, shows in findings that the ventricles and sulci are normal in caliber. There is no significant change in size compared to the previous MRI. There is no midline shift. The basilar cisterns are patent. The cerebellar tonsils are normal position. A retrocerebellar arachnoid cyst is again demonstrated on the right, not significantly changed in size compared to the previous MRI. Mass effect on the right cerebellar hemisphere and cerebellar vermis appears similar.

18. A Sleep Study report, 30 June 2024, shows a polysomnogram was performed on the applicant due to a cerebellar cyst with concern about possible central sleep apnea. The impression shows reduced sleep efficiency and mild rapid eye movement (REM) related OSA and central sleep apnea.

19. 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.

20. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). This case involves physical and mental health conditions. The mental health condition(s) were reviewed under separate cover by an ARBA Medical Reviewer trained in mental health. The applicant was separated from military service and given severance pay and he believes that he should have received medical retirement from injuries sustained in combat. He also requests Purple Heart Award. PTSD and TBI conditions are related to his request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active duty 04Oct2005. His MOS was 13F, Joint Fire Support Specialist. He deployed in Afghanistan from 20080626 to 20090610. He received a Combat Action Badge award for being engaged by or engaging the enemy on 29Oct2008. He was discharged 27Mar2010 under provisions of AR 635-40 chapter 4 for disability with severance pay dispensed.

3. Summary of records for the Thoracolumbar Strain Secondary to Scoliosis Condition

a. 15Apr2003 Report of Medical Prescreen of Medical History Report (for USMC). The applicant disclosed that he had been temporarily disqualified for service for a mild case of scoliosis.

b. 14Jul2009 Monroe Health Clinic; 25Sep2009 and 11Aug2009 Physical Therapy Darnall AMC visits. The applicant completed basic and AIT with reported occasional complaints of low back pain. One month after he returned from Afghanistan deployment, he sought treatment for complaint of back pain while running.

c. The 23Sep2009 MEB NARSUM (narrative summary) and 16Oct2009 MEB Proceedings (DA Form 3947) indicated that Scoliosis with Chronic Back Pain was the only condition which failed medical retention standards (in accordance with AR40-501, chapter 3, paragraph 39(g)). The condition was designated as EPTS (existed prior to service) but was permanently aggravated by military service beyond the natural course of the disease. He was diagnosed with scoliosis at age 16. His back pain was intermittent prior to deployment and became more constant afterward. The back pain radiated to the right hip. He engaged in the Lumbar Stabilization Program and aquatics therapy under physical therapy services. He was issued a permanent U3 and L3 for the condition— he had not been able to perform APFT activities; carry and fire an individual assigned weapon; move with a fighting load; or deploy. The exam showed average forward flexion to 60 degrees (normal 90 degrees); and extension to 20

degrees (normal is 30 degrees). Painful motion was present and paraspinal muscles were tender; however, no spasm was noted. Gait was normal. Straight leg raises were negative (normal). The neurological exam was normal.

d. 22Dec2009 PEB (DA Form 199) found Thoracolumbar Strain Secondary to Scoliosis unfitting for continued service. The condition was unfitting because when he was performing duties, the pain became constant and precluded lifting. The PEB applied a 20% rating under code 5299-5237. The PEB determined that the thoracolumbar injury was not the direct result of armed conflict or caused by an instrumentality of war or incurred during the performance of duty in combat-related operations. The PEB endorsed that strenuous activities and weight bearing responsibilities of his Afghanistan deployment caused permanent service aggravation of the back condition. The applicant concurred with the PEB findings and waived a formal hearing of his case. The thoracolumbar condition was rated at 20% for forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees. For comparison, the VA rated the condition at 10% under code 5242 degenerative arthritis of the spine effective 13Jul2011.

4. As the applicant is in pursuit of medical retirement, the other conditions that were evaluated during the MEB/PEB process were relooked to determine if evidence suggested that they may have failed retention standards:

a. Hay Fever. In the 23Sep2009 Report of Medical History (DD Form 2807-1), the applicant stated that this condition was present since childhood. There were no duty limitations attributable to this condition. There were no visits with hay fever/seasonal allergies as the primary complaint during active service per JLV search.

b. Herpes Simplex Genitalis. This condition was diagnosed in April 2008. The condition was responsive to medication.

c. Headaches. Reviewed below.

d. Intermittent Numbness in the Arms and Legs. Reviewed below.

5. The applicant submitted a VA Rating Decision dated 31Jan2020 which showed that he had a total 100% rating effective 13Jul2011. The VA rating decision showed the following ratings: PTSD 100%; TBI 70%; Migraine Headaches 50%; Bilateral Tinnitus 10% Sciatic Neuropathy of Right Lower Extremity 10%, Sciatic Neuropathy of Left Lower Extremity 10%; Degenerative Arthritis with Intervertebral Disc Syndrome, Lumbar Spine 10%; Facial Scar 10%; Ulnar Neuropathy, Right Upper Extremity 0%; Ulnar Neuropathy, Left Upper Extremity 0%; and Degenerative Arthritis, Bilateral Hips 0%. A summary of the more pertinent conditions is below. Again, the PTSD condition is reviewed by an ARBA Medical Reviewer BH specialist under separate cover.

a. Traumatic Brain Injury TBI.

(1) 17Dec2010 Neuropsychology Evaluation (results reported 07Feb2011). He was seen for complaints of significant problems with memory and concentration and a history of alleged mild TBI. Diagnoses: Dysthymic Disorder; Rule Out PTSD; and Alcohol Abuse, in partial remission. With regard to verbal memory, most of the performance was invalid and could not be interpreted. Visual learning and memory were also likely invalid. It was opinioned that it was likely that emotional issues were contributing to his cognitive complaints.

(2) 23Dec2010 Addendum to TBI 14 Day Follow-up Assessment VAMC. The applicant reported that while deployed to Afghanistan, an IED exploded in close proximity to his vehicle. The impact of the blast caused him to hit his head on the driver's window. There was associated loss of consciousness for 5-10 minutes and emesis. He was observed by the physician's assistant overnight then returned to duty. Since that time, he endorses short-term memory problems, headaches, irritability, and sleep difficulties.

(3) 03Jan2011 Physical Medicine Rehab Consult VAMC. It was noted that the applicant had Severe PTSD and was currently in PRRP (PTSD Residential Recovery Program) treatment in Waco. His cognitive dysfunction in the form of short-term memory problems and concentration, was assessed to be more likely related to his PTSD.

(4) 31Jan2012 with 01Feb2012 Addendum to TBI PMR Consult Result VAMC. The applicant reported this account: In January 2009 he was the gunner and an IED blast caused him to be ejected from the truck. He reported being medevacked by helicopter to the hospital where he stayed 4 days. He remained at Kandahar a few weeks on light duty. He endorsed headaches and slight balance issues. He reported exposure to 9-10 other direct hits on his vehicles before the January 2009 event. Approximately 4 fatalities resulted from 2 of those blast. He endorsed an altered level of consciousness with each blast exposure.

(5) 29Jan2018 Review of Residuals of TBI DBQ. The applicant reported that he was the gunner in a military vehicle hit by an IED. He reported LOC for 1 hour and hospitalization for 1 week. He reported ongoing headaches, severe tinnitus, significant issues with memory and concentration. The applicant endorsed worsening symptoms since the last DBQ exam. The VA neurologist examiner wrote: “Thorough review of STRS (service treatment records) related to the claimed TBI for which he was service connected, appears to have been completed solely on the basis of self-report from the veteran without consideration of STRs and lack of documentation of any TBI”. The VA neurologist examiner explained that the headache description is not typical of

posttraumatic headaches: Headaches are worse within the first 7-10 days, symptoms are improved at one month, with most recovering by 3 months. The VA neurologist examiner endorsed that there was no clinic or neuropsychological evidence to support a TBI diagnosis.

a. Migraine Headaches. The applicant reported frequent headaches during the 23Sep2009 Report of Medical History (DD Form 2807-1). The Post Deployment survey was reportedly negative. The examiner indicated that the headaches were not duty limiting. There were no visits with headaches as the primary complaint during active service per JLV search.

b. Bilateral Tinnitus. There were no visits with tinnitus or hearing loss as the primary complaint during active service per JLV search.

c. Sciatic Neuropathy of Right Lower Extremity 10%; Sciatic Neuropathy of Left Lower Extremity; Ulnar Neuropathy, Right Upper Extremity 0%; and Ulnar Neuropathy, Left Upper Extremity. The applicant reported numbness and tingling in the arms and legs during the 23Sep2009 Report of Medical History. Symptoms started during deployment. There were no visits with numbness and tingling in the arms or legs as the primary complaint during active service per JLV search.

d. Degenerative Arthritis, Bilateral Hips. 13Nov2009 Physical Therapy Darnall AMC. The applicant was seen for hip pain. He reported insidious onset of hip pain prior to deployment in June 2008. He stated that both hip and back pain had increased after deployment. The exam showed hip ROM was within normal range all motions. Gait was non-antalgic (normal). The right hip pain was considered to be due to the scoliosis condition.

6. The applicant also submitted medical records for Obstructive Sleep Apnea and Cerebellar Cyst.

a. Sleep Apnea. A 30Jun2024 Sleep Study Baseline Polysomnography (AdventHealth Tampa Sleep Center) revealed diagnoses Reduced Sleep Efficiency and Mild Obstructive Sleep Apnea (REM-related as well as central apnea). These conditions were not diagnosed or treated while the applicant was in active service. Therefore, these conditions generally would not be considered eligible to be added to the applicant's Army disability rating.

b. Cerebellar Cyst arachnoid cyst. The 29Apr2013 Brain MRI at the VA did not show a cerebellar cyst. The brain MRI completed at an outside facility on 02Dec2021 (SimonMed) revealed an arachnoid cyst that was stable when compared to the 19Aug2019 study. The 25Jan2024 brain MRI again showed a retrocerebellar arachnoid cyst that was essentially unchanged. There was mass effect on the right cerebellar hemisphere and cerebellar vermis but no midline shift.

During the 03Aug2022 Neurosurgery Consult (VAMC) visit, the applicant was seen reporting complaints of left side symptoms (decreased hearing and visual changes). As a result, the attending neurologist considered "Given his left-sided cranial nerve symptoms, I believe it is not unreasonable that he is symptomatic from these findings". They recommended consultation with community care-based neurosurgery. The applicant stated that he (with his wife) had contacted four different neurosurgeons in the community, and all reportedly did not think surgery was warranted.

7. The 23June2009 PDHA (post deployment health assessment). This document was not available for direct review. It was summarized in the 29Jan2018 Review Residuals TBI DBQ. The following was noted.

a. He answered 'no' to the question: Did you have to spend one of more nights in a hospital during this deployment?

b. He answered 'no' to the question: Were you wounded, injured, assaulted, or otherwise hurt during this deployment?

c. He answered 'no' to the question: During this deployment did you experience blast or explosion; fall; vehicle accident/crash; fragment wound, or bullet wound above your shoulders; or other event (sports injury to you head)?

8. Summary/Opinion

a. The Thoracolumbar Strain Secondary to Scoliosis condition was determined to not meet retention standards by the MEB and was found unfitting for continued service by the PEB. The 24Jan2010 Enlisted Record Brief showed PULHES 113111. There were no other permanent level 3 physical profiles for other conditions. Based on records available for review, at the time of discharge, there was insufficient evidence to suggest that the applicant had other conditions which failed medical retention standards of AR 40-501 chapter 3.

b. Concerning combat designation, according to records, the applicant had back pain prior to deployment. Records do not show that he was seen for back pain while in theatre. Approximately one month after he returned stateside, the applicant was seen complaining of back pain while running. There was no report of back trauma while in service, to include while deployed. The PEB endorsed that the applicant's Afghanistan deployment permanently worsened the back condition—the back condition was aggravated in a combat zone, not due to a specific event. The record did not indicate that the back condition was incurred as a direct result of armed conflict or was caused by an instrumentality of war; or that it resulted from a combat related injury. It was noted that the applicant is a CAB recipient. There was no evidence submitted or present in the record, that an injury resulting in a physical disability was tied to the date

of the CAB award event. In addition, in the 23June2009 PDHA for the Afghanistan deployment June 2008-June 2009, the applicant denied injury during the deployment. Based on evidence available for review, in the ARBA Medical Reviewer's opinion, eligibility for the Purple Heart was not established.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting physical disability retirement in lieu of physical disability separation with severance pay and award of the Purple Heart. He contends PTSD and TBI as related to his request. This opine will narrowly focus on the applicant's contention of PTSD with his physical medical issues covered by the ARBA Medical Advisor.

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:

- Applicant enlisted in the Regular Army on 4 October 2006.
- Applicant deployed to Afghanistan from 26 June 2008 through 10 June 2009.
- Permanent Orders 032-001, published by Task Force Duke, 3rd Brigade Combat Team, 1st Infantry Division, Afghanistan, on 2 February 2009, awarded the applicant the Combat Action Badge for being engaged by or engaging the enemy on 29 October 2008.
- Applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in his available records for review and have not been provided by the applicant.
- A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows a PEB convened on 22 December 2009, where the applicant was found physically unfit with a combined rating of 20 percent and his disposition was separation with severance pay. None of the conditions indicated in the PEB were mental health related.
- An Enlisted Record Brief (ERB), 24 January 2010, shows the applicant's PULHES as of that brief date was 131111, with a 3 rating in factor U and a 1 rating in all other factors.
- Orders 026-0119, published by Headquarters III Corps and Fort Hood, on 26 January 2010, discharged the applicant effective 27 March 2010, with a disability rating of 20 percent and authorization to disability severance pay.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 27 March 2010, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or

Separation), due to disability with severance pay, combat-related, with corresponding separation code JFI.

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 states he should have received a medical retirement instead of a medical discharge due to injuries he sustained in combat. He was in multiple improvised explosive device (IED) incidents between 2008 -2009. He also indicates, on his Privacy Act Release form to his Member of Congress, he was requesting assistance with upgrading his medical discharge to a medical retirement and was seeking assistance with obtaining a Purple Heart due to combat-related injuries he sustained in Afghanistan.

d. The active-duty electronic medical record available for review shows on 2 March 2010 the applicant participated in a post deployment rescreening assessment and indicated the following symptoms: increased irritation and startle response, sleep disturbance, nightmares, difficulty with concentration, and increased alcohol use. The applicant was not diagnosed with a condition during this visit but was provided treatment options and was scheduled for an intake session to further assess his symptoms. On 24 March 2010, the applicant participated in a comprehensive intake session and was diagnosed with Adjustment Disorder. Post-discharge, the applicant participated in a Combat Veteran Psychosocial Assessment, he screened negative for PTSD but evidenced some symptoms of depression and problematic alcohol use. He was recommended for treatment. An Enlisted Record Brief (ERB), 24 January 2010, shows the applicant's PULHES as of that brief date was 131111, indicating a high level of fitness in the area of psychiatric functioning. Overall, the applicant's available service record does not contain a DA Form 3349 (Physical Profile), indicating he was diagnosed with a mental health condition that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service. Nor was he diagnosed with a mental condition that failed retention standards and/or was unfitting.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD which also includes service-connection for other medical conditions and 70% for TBI. The record evidences six psychiatric hospital admissions from June 2010 to March 2015. The first hospitalization was triggered by the applicant attending a bonfire and his buddy was burned, the smell caused him to fall to the ground and put his knees to his chest in a fetal position. The applicant later experienced suicidal ideation that led to his inpatient hospitalization from 15 June 2010 to 23 June 2010. He was diagnosed with Major Depressive Disorder and Posttraumatic Stress Disorder (PTSD). His second hospitalization on 18 September 2010 was triggered by the anniversary date of a traumatic event, with the applicant once again experiencing suicidal ideation. He was diagnosed with PTSD. On 11 January 2011, the applicant was admitted to STEP for his Alcohol Dependence. He completed inpatient

PTSD treatment just prior to this admission. The applicant was once again hospitalized from 22 October 2012 to 29 October 2012 due to worsening PTSD symptoms with suicidal ideation. The applicant evidenced some stability, but a discharge summary dated 4 March 2015, shows he was once again hospitalized due to suicidal ideation related to the anniversary of a traumatic event and psychosocial stressors. The record indicates the applicant has received ongoing care via the VA for his symptoms including individual and group therapy as well as medication management. A neuropsychological evaluation submitted by the applicant, dated 28 August 2023, indicates the possibility of a neurodegenerative condition. The evaluation demonstrated several areas of cognition were well within normal limits and his less that optimal participation in the treatment of his symptoms of depression and anxiety were likely having a significant impact on his cognitive functioning. Therefore, more intensive psychological intervention was considered critical to reduce his symptoms and improve his overall psychological functioning. The record shows the applicant is currently participating in Cognitive Processing Therapy, a specialty treatment to address his symptoms of PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process. The applicant's sole in-service behavioral health diagnosis evident in the record is Adjustment Disorder. Although the applicant has been 100% service connected for PTSD, along with other medical conditions and 70% for TBI, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

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

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

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation failing to reflect any medical document reflecting injuries directly related to combat with an armed enemy and the findings of the medical review, the Board concluded the Purple Heart was not warranted.

Additionally, based upon the available documentation and the findings and recommendation of the behavior health review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

3/31/2025

X [redacted]

CHAIRPERSON

[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. 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.

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 their 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 their 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 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States.

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(4) As a result of an act of any such enemy of opposing armed forces.

(5) As a result of an act of any hostile foreign force.

(6) After 23 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack;

(7) After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force; or

(8) Members killed or wounded by friendly fire.

b. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by a medical officer, and the medical treatment must have been made a matter of official record.

c. When contemplating eligibility for the PH, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the PH are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine, or other improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer).

(7) Concussions or mild(m) TBI caused as a result of enemy-generated explosions that result in either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding or im-paired brain function for a period greater than 48 hours from the time of the concussive incident.

d. Some examples of injuries that do not justify eligibility for the PH are as follows:

(1) Frostbite, excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951.

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.

(6) Battle fatigue, neuropsychosis, and post-traumatic stress disorders.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding, not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) First-degree burns.

(11) Airborne (for example, parachute or jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example, ringing in the ears).

(13) mild traumatic brain injury (mTBI) that does not result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

(14) Abrasions or lacerations, unless of a severity requiring treatment by a medical officer.

(15) Bruises or contusions, unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer.

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

e. It is not intended that such a strict interpretation of the requirement for the wound to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must take into consideration the circumstances surrounding a wound.

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//