

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240002305

APPLICANT REQUESTS: in effect, physical disability discharge from the U.S. Army Reserve (USAR).

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

- DD Form 149 (Application for Correction of Military Record)
- multiple self-authored statements
- Privacy Act Release
- birth certificate
- Social Security Card
- DD Form 4 (Enlistment/Reenlistment Document), dated 6 December 1993
- Military Entrance Processing Station Orders 235-025, dated 6 December 1993
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 29 July 1994
- Headquarters, 807th Medical Brigade Orders 100-31, dated 10 April 1995
- Charter Behavioral Health System Discharge Summary, dated 19 July 1995
- Charter Behavioral Health System letter, dated 21 July 1995
- Pine Bluff Newspaper article, dated 29 August 1995
- Headquarters, 81st U.S. Army Reserve Command Orders 101-024, 20 September 1995
- Arkansas (AR) Department of Human Services, Nursing Admission Assessment, dated 16 October 1995
- AR Department of Human Services, Psychosocial History/Assessment, dated 17 and 19 October 1995
- AR Department of Human Services, Forensic Reevaluation, dated 3 May 1996
- attorney's letter, dated 17 May 1996
- AR Department of Human Services, Discharge Summary, dated 12 June 1996
- U.S. Army Reserve Personnel Center Orders D-02-621570, dated 21 February 1996
- applicant letter to Clark University, dated 1 May 2015
- Substance Use Disorder Ambulatory Detox Program enrollment document, dated 12 March 2019
- Court Order for Detention, Examination and Hearing, dated 27 February 2020

- psychiatrist's letter to court, dated 4 March 2020
- numerous screenshots of texts and emails
- mother's statement, dated 16 April 2021
- numerous Jefferson County Sheriff receipts, dated September 2020 – May 2021
- numerous AR Division of Behavioral Services petitions, dated December 2019 – September 2023
- Southeast AR Behavioral Healthcare appointment records, dated August 2021 – September 2023
- Court Order of Involuntary Admission, dated 27 March 2023
- Department of Veterans Affairs (VA) Form 21-4142a (General Release for Medical Provider Information to the Department of Veterans Affairs (VA)), dated 6 September 2023
- VA Form 21-4138 (Statement in Support of Claim), dated 6 September 2023
- Petition to Involuntarily Admit Person with Mental Illness, dated 15 September 2023
- Numerous prescription orders, dated 9 November 2023
- Patient Education Sheet, dated 9 November 2023
- Patient Leaving Against Medical Advice form, dated 9 November 2023
- Jefferson Regional Medical Center Discharge Instructions, dated 9 November 2023
- VA Form 21-0781 (Statement in Support of Claim for Service-Connection for Post-Traumatic Stress Disorder (PTSD)), dated 10 December 2023
- VA Form 21-4142a, dated 10 December 2023
- AR Department of Human Services, Independent Assessment, dated 5 February 2024
- VA Form 20-0995 (Decision Review Request: Supplemental Claim), dated 17 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 was not appropriately dismissed from the U.S. Army Reserve (USAR). He needed military hospital care and instead they sent his father an Honorable Discharge Certificate. He and his mother have been searching for over 20 years to help his depression and anxiety that was incurred while he was in the military.

b. They did offer him free humanitarian support, but no financial help. As of 2 years ago, he can no longer receive that help. His depression has worsened and they felt like he was using their mental health facilities too much, telling him he is no longer eligible for this service. His mother has to provide food, shelter, and clothing for him. He did qualify for Medicaid, Medicare, and Social Security benefits based on being a disabled child.

c. He has marked the boxes on his application form indicating that post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), other mental health, and sexual assault/harassment are all conditions related to his request. His discharge should be corrected because he served his country and when he became sick in the military, his country refused to help him. He was not able to reap any of the benefits that are offered to an honorably discharged Soldier, such as housing, treatment at mental health facilities, monetary and educational benefits, and his dignity as a Soldier and human being.

d. Since his inappropriate dismissal in the year 2001, he has been trying to receive monetary benefits from the VA. He has been in and out of hospitals since he was 19 years old and will be turning 48 years old in September. He has not received the help he deserves to make his life successful. He needs help now and the facilities and vocational skills to become a productive citizen.

e. He entered the military in January 1994. During Basic Combat Training (BCT) at Fort Leonard Wood, MO, he experienced his first episode of stress and fear when his drill instructor had his unit in a competition with another unit. It was very cold outside and he did not have his glasses, causing him to miss his target during the competition. Everyone else in the unit passed. The entire unit was angry because he had caused them to lose.

f. His drill instructor called him out in the cold weather without a coat and had him drilling and practicing all day. He had him start with sit ups and push ups and then he made him practice shooting at the target. He did pass when he took the test again. After passing though, the unit continued to laugh and ridicule him. Some even threatened him and he became extremely fearful and felt alone because his friends did not associate with him. He was so humiliated to the point of beginning to cry and shake and he felt he could no longer take it. He was stressed, depressed, and afraid to the point he was unable to eat or sleep. He felt he just could not cope and wanted to end it all, causing him to fail the schooling for his first Military Occupational Specialty (MOS) assignment of Combat Medical and be reassigned to a new MOS, Medical Supply Sergeant, which caused him to remain another month to complete the Advanced Individual Training (AIT) training.

g. He was stationed in Atlanta, GA, for his USAR weekend meetings/drill. He became very confused and paranoid, feeling that everyone around him was laughing at him and wanted to harm him. He was afraid to come out of his room and drill with his unit. This all stems from the ordeal he had in BCT and AIT. He had a part time job and he supervisor became very concerned about him, contacting his mother. His mother then sent him money to fly home after which, she and his sister immediately took him to Charter Behavioral Health Care System in Little Rock, AR, where he was admitted on 14 July 1995.

h. After coming home from the hospital, he had an episode and had to spend time in the State Hospital. He as been a patient at Southeast Arkansas Behavioral Health Care Systems in Pine Bluff, AR, since his release from the State Hospital and has remained on medication since that time. After drilling with his unit, he had a panic attack, shedding tears, on the verge of committing suicide. After he went back to his unit. People were making fun of him and talking behind his back. This is when started having trust issues. His parents came and got him and he went home to Pine Bluff, AR. After his release from the Charter Behavioral Hospital in the Southeast Arkansas Behavioral Health System, they gave him some medicine that didn't agree with him, so he stopped taking it and had a PTSD episode, resulting in spending time at the State Hospital. After many medications and finding out the he did have an illness, he became stable for a few years, but his episodes still trigger every once in a while.

i. He is requesting help to receive the disability benefits he deserves. He became disable on a weekend duty over 20 years ago and instead of the military helping him, he was honorably discharged with no medical or monetary benefits. He is sick with no help.

3. 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).

4. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the USAR on 6 December 1993, for a period of 8 years.

5. Military Entrance Processing Station (MEPS) Orders 235-025, dated 6 December 1993, ordered the applicant to Initial Active Duty for Training (IADT), with reporting to Fort Le Leonard Wood, MO on 6 January 1994, for completion of BCT and follow-on

reporting to Fort Sam Houston, TX on 11 March 1994, for completion of AIT in MOS 91B (Combat Medic).

6. A DD Form 214 shows:

- the applicant entered ADT on 6 January 1994
- he was awarded MOS 76J (Medical Supply Specialist)
- he was honorably released from active duty on 29 July 1994, due to the completion of period of ADT, on self-terminating MEPS orders and transferred to his USAR unit, the 810th Field Hospital in AR
- item 26 (Separation Code) shows NA (not applicable)
- he was credited with 6 months and 24 days of active service

7. Headquarters, 807th Medical Brigade Orders 100-31, dated 10 April 1995, reassigned the applicant from the 810th Field Hospital in AR to the 427th Medical Battalion, in GA, due to concurrence of commanders, effective 1 May 1995

8. A Charter Behavioral Health System Discharge Summary, written by the attending psychiatrist and dated 20 July 1995, has been provided in full to the Board for review and in pertinent part shows:

a. The applicant was referred to Adult Psychiatry and admitted on 14 July 1995, due to symptoms of acute psychosis with paranoia, auditory hallucinations as well as severe anxiety and depression.

b. He was brought to assessment by his mother from Pine Bluff, AR on 14 July 1995. At the time of the assessment he was noted to be obviously very paranoid thinking "everyone was talking about me." He complained of severe anxiety almost to the panic level and related he had been totally housebound for the past 3 days with attacks of tremors, sweats, and nausea. The family reported he had been severely dysfunctional recently due to his anxiety and paranoia and totally isolating himself, refusing to even leave his house.

c. His history shows he is a sexual abuse survivor, having been molested by his uncle at age 9 and 10. He joined the USAR in January 1994 and made it through BCT and tech school. He subsequently sent to college in Atlanta in the fall of 1994 and spring of 1995, but began to deteriorate in his overall functioning over the past year and withdrew due to failing performance.

d. His provisional diagnoses were psychotic disorder, not otherwise specified (NOS); schizophreniform disorder, schizophrenia, schizoaffective disorder, psychotic depression and organic mental disorder needed to be ruled out; anxiety disorder NOS needed to be ruled out.

e. He was discharged to the care of his family with prescriptions for Risperdal and Paxil. A great concern of the patient and his family was his military status, as he had been on duty with the USAR. He obviously has a chronic form of mental illness and experienced psychotic symptoms and therefore, he is clearly not fit for military duty. They will forward a copy of this summary and a letter to his command suggesting he be released from military obligations immediately.

9. A Charter Behavioral Health System of Little Rock letter from the applicant's attending psychiatrist addressed to his USAR unit, dated 21 July 1995, shows:

a. This letter was provided at the applicant's request and at the request of his family regarding his non-suitability for continued military service. The applicant's attending psychiatrist served as a staff psychiatrist in the U.S. Air Force for a period of 4 years, from 1991 through 1995, and has a high degree of familiarity with mental health procedures in the military medical evaluation boards.

b. The attending psychiatrist evaluated the applicant as an inpatient at Charter Hospital, from 7 July 1995 through 21 July 1995. He presented with a history of gradual onset over the past 1 1/2 years of severe psychotic symptoms including hearing voices, paranoia, delusions, and ideas of reference. He also suffers from severe anxiety and depression, which came on in the same time period. In this context, he has become almost totally unable to function in terms of employment and education and has had to withdraw from college.

c. Based on his evaluation of the applicant, he believes the applicant's Axis I diagnosis is psychotic disorder NOS. His history is strongly suggestive of schizophrenia or schizoaffective disorder.

d. The disposition and recommendations shows from a military standpoint, the applicant's psychiatric profile should be changed to S4. Due to the fact he has a psychotic illness, he should by no means be considered fit for military duties of any type. He should be promptly released from all military obligations. They are working with the applicant and his family to try to get him eligible for Medicaid, so he can continue his care in the civilian sector. He is likely to require long-term care for chronic mental illness.

10. A Pine Bluff newspaper article, titled, "Teen Charged in Attack on 3 People," dated 29 August 1995, was provided by the applicant. It shows the applicant was arrested after he allegedly attacked an elderly couple and a 7 year old boy. He was charged with attempted capital murder, aggravated assault, and two counts of second degree battery. He was being held at Jefferson Regional Medical Center.

11. Headquarters, 81st U.S. Army Reserve Command Orders 101-024, dated

20 September 1995, released the applicant from assignment to the 427th Logistics (Forward) [427th Medical Battalion] in GA, and reassigned him to the U.S. Army Personnel Training Center Control Group (Annual Training) under the provisions of Army regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions), effective 20 September 1995, due to being an unsatisfactory participant.

12. An AR Department of Human Services, Division of Mental Health Services, Nursing Admission Assessment, dated 16 October 1995, shows the applicant was admitted to the forensic Unit of the AR State Hospital on the date of the form after having been charged with capital murder, aggravated assault and battery. He had prior admissions to Jefferson Regional Medical Center and Charter Hospital, all for psychiatric treatment.

13. A lengthy AR Department of Human Services, Division of Mental Health Services, Psychosocial History Assessment of the applicant, conducted on 17 and 19 October 1995, shows the applicant was admitted to the Forensic Unit of the AR State Hospital on a Circuit Court Order from Jefferson County, with pending charges of criminal attempted capital murder, aggravated assault, and two counts of battery in the second degree. When asked about the events leading up to the charges, the applicant describes his state of mind, and that while watching TV and reading The Book of Wisdom, he thought the TV was sending him a message from God, and he details how the events unfolded from there. The applicant was to remain hospitalized for up to 30 days for completion of a Forensic Evaluation after which his competency and responsibility issues for the court would be determined. If found not competent, he would be retained for treatment with the court's permission.

14. U.S. Army Reserve Personnel Center Orders D-02-621570, dated 21 February 1996, honorably discharged the applicant from the USAR Control Group (Annual Training) under the provisions of Army Regulation 135-178 (Army National Guard and Reserve Enlisted Administrative Separations) effective 21 February 1996.

15. A lengthy AR Department of Human Services, Division of Mental Health Services, Forensic Reevaluation, dated 3 May 1996, shows after an initial 30 day evaluation period at the Forensic Unit of AR State Hospital, an additional evaluation period of 30 days was requested. It was ultimately determined the applicant was not competent to stand trial and a treatment order was requested from the court and received on 19 January 1996. The results of the evaluation concluded he was psychotic at the time of the alleged crimes, but not presently psychotic. He was diagnosed with brief psychotic disorder (resolved).

16. An AR Department of Human Services, Division of Mental Health Services, Discharge Summary, dated 12 June 1996, shows the applicant was discharged on

11 June 1996. He was acquitted of the criminal charges by reason of mental disease or defect, as he was assessed at the time of the alleged offenses as being psychotic and not capable of conforming his behavior to the standards of the law. Upon discharge, he showed no evidence of a serious psychiatric illness.

17. Numerous additional medical and court documents have been provided, covering the time period from May 2015 through June 2024, all of which have been provided to the Board in full to review. Among them are multiple court orders for involuntary admission, petitions for involuntary admission of an individual with a mental illness, substance abuse disorder enrollment, criminal charges, and behavioral health medical records and assessments, reflective of the applicant's state of mental health and treatment during that period of time.

18. The following VA documents have been provided:

a. A VA Form 21-4138, dated 6 September 2023, shows the applicant provided a statement in support of his VA claim, indicating he was requesting eligibility for disability benefits. He served his country in the USAR and when he could no longer meet his weekend duty requirements due to his mental health issues, no one reported him missing to attempted to help him. They sent him an honorable discharge certificate, without any benefits. His DD Form 214 is incorrect. There is no separation code and it does not show whether or not he passed ADT. The VA turned its back on him when he became ill.

b. A VA Form 21-0781, dated 10 December 2023, shows the applicant provided a statement in support of his VA claim for PTSD. He indicated at Fort Leonard Wood, during a drill with a gas mask on, he had to go in and pull out a Soldier whose gas mask did not function properly in the hole. This was highly stressful and caused him PTSD.

c. A VA Form 20-0995, dated 17 June 2024, shows the applicant provided a supplement to his VA claim, adding dates of USAR service, dates of various hospitalizations, and requested medical records due to having developed Keloids from head to toe that was treated at Fort Roots Veteran Hospital in North Little Rock, AR, since his time in the USAR.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a physical disability discharge from the U.S. Army Reserve (USAR) in lieu of administrative reassignment to the USAR Control Group (Annual Training) as an unsatisfactory participant with subsequent honorable discharge from the USAR Control Group (Annual Training).

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 U.S. Army Reserves on 6 December 1993 and entered initial active duty for training on 6 January 1994.
- The applicant completed basic training at Fort Leonard Wood, Missouri, and AIT at Fort Sam Houston, Texas.
- The applicant was honorably released from active duty on 29 July 1994 and was credited with 6 months and 24 days of net active service.
- He was initially assigned to a unit in Arkansas but was reassigned to the 427th Medical Battalion in Georgia effective 1 May 1995. On 20 September 1995, he was released and reassigned to the U.S. Army Personnel Training Center Control Group (Annual Training) under the provisions of Army regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions) due to being an unsatisfactory participant.
- U.S. Army Reserve Personnel Center Orders D-02-621570, dated 21 February 1996, honorably discharged the applicant from the USAR Control Group (Annual Training) under the provisions of Army Regulation 135–178 (Army National Guard and Reserve Enlisted Administrative Separations) effective 21 February 1996.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was not appropriately dismissed from the USAR and that his mental health symptoms began in basic training. He discussed typical stressors of a training environment and how this was overwhelming to him, resulting in depression, fear, loss of appetite, sleep difficulty, and suicidal thoughts. On the application he indicated PTSD, traumatic brain injury (TBI), sexual harassment/assault (MST), and other mental health as factors contributing to his discharge. The application included documentation from Charter Behavioral Health System with an inpatient admission date of 14 July 1995, and it showed that the applicant self-referred as a 19-year-old due to symptoms of acute psychosis, paranoia, auditory hallucinations, anxiety, and depression. The applicant reported successfully graduating from high school in 1993 and attending basic training and AIT in the first half of 1994, but his college performance began to deteriorate in the fall of 1994 and spring of 1995, resulting in withdrawal due to failing performance. During his inpatient stay, he was started on an antipsychotic, anxiolytic, and an antidepressant, and he responded to the medications. His diagnosis was Psychotic Disorder, not otherwise specified (NOS) and there was discussion of possible schizophrenia or schizoaffective disorder given the onset of symptoms being about six months prior as well as the applicant's behavioral history. There is a letter from the attending psychiatrist dated 21 July 1995, which cites the doctor's familiarity with military mental health procedures and military medical evaluation boards and makes a recommendation of discharge from the military due to the severity of the

applicant's symptoms. He noted that the symptoms had a gradual onset over the previous one and one half years, and he stated, "this individual's psychiatric profile should be changed to S-4. Due to the fact that he has a psychotic illness, he should by no means be considered fit for military duties of any type. He should promptly be released from all military obligations." A newspaper article dated 29 August 1995 reported that the applicant was charged with attempted capital murder, aggravated assault, and two counts of second degree battery. An assessment document from the Arkansas Department of Human Services (ADHS) Division of Mental Health dated 16 October 1995 showed that the applicant reported hearing voices over the previous six months, and a full psychiatric/forensic evaluation by the Arkansas State Hospital outlined the applicant's childhood history and course of mental health treatment. A second forensic evaluation dated 29 April 1996 noted that the applicant had been deemed not competent to stand trial and had remained in the state hospital for treatment. This evaluation concluded a diagnosis of Brief Psychotic Disorder, which was resolved, and concluded that the applicant was not responsible for his behavior at the time of the alleged crimes. A discharge summary from the state hospital dated 11 June 1996 showed the applicant discharged without medications and the symptoms had remitted. An application for petition of guardianship dated 26 December 2019 and a petition to involuntarily admit the application dated 8 November 2022 showed the applicant's continued history of mental health treatment through a community based hospital and the VA, and both noted diagnoses of schizophrenia, substance abuse, and the use of antipsychotic medications. Another petition for involuntary admission dated 15 September 2023 discussed the applicant's erratic behavior and need for hospitalization against his will. Medical documentation from Southeast Behavioral Healthcare showed appointment history from 2021 through 2023 for medication management, and the application also included medication prescription history dated 9 November 2023 showing antipsychotic and mood stabilizing medications. An application for VA Benefits dated 10 December 2023 showed that the applicant reported being sexually assaulted during a weekend duty in the spring of 1995, and he attributed this event, as well as a "gas mask drill," to "me having PTSD." There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant initiated care with the VA on 4 May 2015 reporting homelessness, substance abuse (cocaine and alcohol), and need of treatment for schizophrenia. He was admitted to a dual diagnosis (severe mental illness and substance abuse) with diagnoses of Schizophrenia, Cocaine Use Disorder, Cannabis Use Disorder, Benzodiazapine Use Disorder, and MDMA Use Disorder. After two months, he discharged and began receiving homeless services, but his medication management was through Southeast Behavioral Healthcare. In December 2018 he transferred his medication management to the VA, and in February 2019 he reengaged with substance abuse treatment following a charge related to possession of cocaine. He did not engage treatment, and in July 2020, he presented to

the VA after discontinuing his medication, being homeless, and seeking a rehabilitation program. Since then, the applicant has had periods of time where he was medication compliant and other times when he was not, which resulted in multiple calls to the Veterans Crisis Line, visits to the ER, and involuntary hospitalizations. Most recently in May 2024, he presented to the mental health clinic requesting admission to a residential program, but he was too psychotic and high on cocaine for that level of care so he was admitted to the inpatient program. He refused medications and by the next morning, he requested discharge.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition that warranted a referral to IDES prior to discharge. The applicant was hospitalized and diagnosed with a non-retainable severe psychiatric condition, Psychotic Disorder NOS, while in active service, and there is no evidence of an evaluation to determine suitability for continued service by a medical evaluation board.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including PTSD resulting from MST, at the time of discharge. During the applicant's time in service, he was hospitalized due to a Psychotic Disorder, and there is documentation from a psychiatrist, which indicated his condition was so severe that he needed to be discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and there is evidence of a hospitalization for Psychotic Disorder NOS. Additionally, the applicant asserts he was sexually assaulted during a weekend drill, which contributed to his distress level and his hospitalization.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Based on the available records, it appears that the applicant's mental status began deteriorating as a result of the stressors associated with military training, and he was hospitalized for an initial psychotic episode in July 1995 and again in October 1995 following another psychotic episode resulting in legal charges. The documentation during the applicant's time in service does support that the applicant was psychiatrically unfit at the time of discharge for a boardable mental health condition as he did have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Based on the available records, it does not appear that he was evaluated by a military medical

provider as part of the discharge process, and there is sufficient evidence to support that the applicant had a medically disabling condition while on active service. There is sufficient evidence to support a referral to IDES for evaluation of Psychotic Disorder NOS.

BOARD DISCUSSION:

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 determined the applicant's conditions were pre-existing to military service and therefore did not meet standards required for referral to the disability evaluation system. The Board noted the medical advisor's review finding evidence to support a disabling condition while on active service; however, the Board was not convinced beyond the preponderance of the evidence that the condition warranted medical processing.

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. 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 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 (Disability 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; 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.

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

6. 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.

7. Army Regulation 135-178 establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States and USAR. It states a Soldier is subject to discharge for unsatisfactory participation when it is determined the Soldier is unqualified for further military service when he/she is deemed an unsatisfactory participant per Army Regulation 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions). Service may be characterized as under other than honorable conditions when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security violations.

8. Army Regulation 135-91 defines ARNG and USAR service obligations. It states a Soldier is an unsatisfactory participant when 9 or more unexcused absences from scheduled inactive duty training periods occur during a 12-month period.

9. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//