

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240002940

APPLICANT REQUESTS, in effect, reconsideration of his previous request:

- to be retired due to disability and placed on the Temporary Disability Retirement List (TDRL) vice being transferred to the Retired Reserve
- promoted with back pay
- be awarded service-connection for his disabilities and receive compensation
- personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Counsel's Intake/Transmittal Form
- 2 -DD Forms 214, Certificate of Release or Discharge from Active Duty
- Twenty Year Letter
- Army National Guard (ARNG) Retirement Points History Statement
- 20-Year Letter and Survivor Benefits counseling memorandum
- Standard Form 180, Request Pertaining to Military Records
- Audit Trail
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings (ROP) AR20210011864
- Transcript of Applicant's Statement
- Program Objective Memorandum Packet Cover Sheet

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 AR20210011864 on 8 March 2022. The applicant presents new evidence which warrants consideration by the Board.

2. The applicant states, in effect, he was erroneously discharged when he should have been medically retired and placed on the TDRL due to post-traumatic stress disorder (PTSD) and other medical conditions. His discharge was unfair and remains so to this day. He further contends that he should have been promoted and given back pay. The

Department of Veterans Affairs should award him a service-connected designation for his disabilities and grant him disability compensation.

3. The portion of the applicant's request pertaining to being granted a service-connected designation and compensation for his disabilities is not within the purview of this Board. Questions pertaining to VA benefits should be addressed to the VA. Therefore, this issue will not be further discussed in this Record of Proceeding.

4. Having had prior enlisted service in the ARNG, the applicant was appointed as a Warrant Officer One in the ARNG effective 8 December 1992. He had enlisted in the ARNG on 25 April 1988, and he was honorably discharged from the ARNG on 7 December 1992 to accept appointment as a warrant or commissioned officer.

5. He entered active duty on 8 December 1992 and completed the Initial Entry Rotary Wing Training. He was awarded military occupational specialty 153B (UH-1 Helicopter Pilot). He was promoted to chief warrant officer three (CW3) on 16 December 2003.

6. He entered active duty on 6 September 2004 and served in Iraq from 1 January 2005 to 20 November 2005. He was honorably released from active duty to the control of his State ARNG on 4 March 2006.

7. His record contains a DA Form 2173, Statement of Medical Examination and Duty Status, 4 March 2004, which shows that while in an active duty for training status, the applicant twisted his back while unloading supplies. He was treated with muscle relaxers for acute muscle spasms and returned to duty. This injury was found to be in the Line of Duty.

8. On 13 April 2006, the MTARNG issued the applicant a Notification of Eligibility or Retired Pay at Age 60 (20-Year Letter), and on 26 September 2008, he completed the Warrant Officer Staff Course on 26 September 2008.

9. He received an Officer Evaluation Report for the period 15 June 2009 through 14 June 2010, while serving as the Aviation Materials Officer, with Company A, 1st Battalion, 189th General Support Aviation Battalion, Montana. His rater marked his performance and potential for promotion as "Satisfactory Performance, Promote." His senior rater evaluated his promotion potential to the next higher grade as "Fully Qualified."

10. The applicant appeared before a Military Occupational Specialty (MOS)/Medical Retention Board (MMRB) on 12 September 2010 to evaluate his ability to perform the physical requirements of his assigned duties in worldwide field environment. The MMRB Convening Authority, The Adjutant General, approved the MMRB's recommendation to retain the applicant in the MOS 15D, Aircraft Powertrain Repairer.

11. On 12 September 2010, the applicant received a permanent physical profile for hearing loss and lower back pain.

12. On 23 May 2011, MTARNG published orders placing the applicant in the Retired Reserve effective 31 May 2011 and transferred to the Retired Reserve on the next day.

13. The applicant's NGB Form 22, Report of Separation and Record of Service, shows he resigned his commission in accordance with national Guard Regulation 600-100, paragraph 5(a)(3) and transferred to the Retired Reserve. He completed 26 years of total ARNG service for pay. His NGB Form 22 also shows he served on active duty during Operation Iraqi Freedom from 6 September 2004 to 4 March 2006.

14. There is no evidence the applicant was recommended for promotion by the State Army National Guard or that he was selected for promotion to a higher grade by a Department of the Army Promotion Selection Board.

15. The applicant provides:

a. Counsel's intake/transmittal form wherein the applicant indicates that he had nine surgeries and was diagnosed with PTSD.

b. Several DD Forms 214 showing he completed four periods of active duty between 1986 and 2006.

c. Notification of Eligibility for Retired Pay at Age 60, and Survivor Benefit counseling memorandum.

d. ARNG Retirement Points History Statement showing the completion of 20 years of creditable service for retired pay.

e. Request for his active duty and ARNG military records.

f. A time stamped statement wherein he indicates that he had multiple surgeries including having part of his stomach removed, both knees replaced, sinus surgery twice, and hand surgery. He further states that he was diagnosed with PTSD while on active duty and that his command was not willing to help him get to a medical board so he just gave up. He is currently seeing a psychiatrist and a psychologist. He further indicates that he should have been promoted to Chief Warrant Officer Four in 2009.

16. On 8 March 2022, in response to his petition for medical retirement for post-traumatic stress disorder (PTSD) and other medical condition and retroactive promotion with back pay and placement on the TDRL:

a. The Board first received an advisory opinion from the NGB that recommended disapproval. An advisory official stated (1) The Soldier requested to be retired on 20110305 and was retired from the MTARNG effective 20110531. (2) The Soldier claims he should have been medically retired due to Post Traumatic Stress Disorder (PTSD) however the Soldier did not provide or could the MTARNG find any documents related to PTSD. The Soldier states that the VA compensated him for service connected disability for PTSD, however the VA does not determine a Soldier's fitness status. (3) Additionally, there are no records that show that the Soldier should be promoted or receive back pay per the MTARNG.

b. The Board then requested the Army Review Boards Agency (ARBA) Medical Advisor review this case. The ARBA medical advisor found no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary request to resign from the Army. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The ARBA medical advisor noted that referral of his case to the DES is unwarranted.

c. After reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the findings and recommendations outlined in the NGB advisory opinion, the lack of rebuttal submitted by the applicant of those findings and recommendation, and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change in the applicant's rank and/or narrative reason for separation.

17. The mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

18. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of a previous request to be retired due to a disability and placed on the Temporary Disability Retirement List (TDRL), promoted with back pay, and not (sic?) be awarded service connection for his disabilities and receive compensation.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant was prior enlisted in the Army National Guard and was appointed as a Warrant Officer One on 8 December 1992 when he also entered active duty to complete training. He entered active duty again on 6 September 2004 and served in Iraq from 1 January 2005 to 20 November 2005. He was honorably released from active duty to the control of his State ARNG on 4 March 2006.
- The applicant's NGB Form 22, Report of Separation and Record of Service, shows he resigned his commission in accordance with national Guard Regulation 600-100, paragraph 5(a)(3) and transferred to the Retired Reserve. He completed 26 years of total ARNG service for pay, and he was transferred to the Retired Reserve effective 1 June 2011.

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 erroneously discharged without being medically retired for PTSD and other medical conditions, and he indicated he should have been promoted with back pay and placed on the TDRL. He also stated he "should not (sic?) be awarded a service connected disability and receive compensation back to the time of this separation." The application included a Statement of Medical Examination and Duty Status dated 7 December 2003, which showed that the applicant was mentally sound. There was insufficient evidence that the applicant was diagnosed with PTSD or another 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 the applicant is 100% service connected through the VA for multiple physical health problems, and he is 50% service connected for PTSD. An initial mental health evaluation was conducted on 2 December 2009, and the applicant reported sleep difficulty, exaggerated startle response, tearfulness, feelings of depression, and anxiety, and he was diagnosed with Depression not otherwise specified (NOS) and Anxiety NOS. He declined referral for medication and opted for outpatient therapy, and at follow up in January 2010, he completed a PTSD screener where he scored within the range indicative of PTSD. He was evaluated by a psychiatrist on 4 March 2010 and was diagnosed with Depression NOS and PTSD, and antidepressant and sleep medications were prescribed. During his fourth therapy session, it was noted that he was not taking the antidepressant and only taking the sleep medication due to his concerns about possible side effects, and he reported continued depression, irritability, and hyperarousal symptoms. At follow up with his psychiatrist in October 2010, he reported he was not taking the antidepressant and agreed to another trial at a lower dose, and he continued on the sleep medication. Documentation in December 2010 noted the addition of an anxiolytic by his PCP, and the applicant continued in therapy. Through 2011, the applicant continued in therapy,

but the notes were not viewable in JLV. The applicant has continued to engage the VA for mental health treatment post-discharge from the military, and his most recent contact was on 17 October 2024 related to medication needs.

e. A review of MedChart and HRR showed that the applicant had case management (CM) related to physical health conditions following his deployment, but there was no indication of any CM related to mental health. HRR showed a post-deployment health re-assessment (PDHRA) dated 15 August 2008 where the applicant indicated symptoms of depression and PTSD and was referred to the VA. Another PDHRA on 13 June 2008 showed a similar report of symptoms. However, multiple profiles were reviewed and none of them indicated any behavioral health conditions. Medical Recommendation for Flying Duty documentation dated 9 March 2008 and 2 November 2008 showed that the applicant was DNIF due to knee pain, but he was returned to flying status on 3 May 2009. Documentation dated 11 November 2009 and 17 December 2010 showed that the applicant was considered fit for flying duty.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition that warranted retirement due to a disability or placement on the TDRL. There is documentation from his time in service showing he was diagnosed with Depression NOS, Anxiety NOS, and PTSD, and there is evidence that the applicant endorsed associated symptoms on his PDHRA in June and August 2008. The applicant's flying status was revoked due to knee pain during this timeframe, but there are no profiles or DNIF documentation related to any mental health conditions. Additionally, the applicant as returned to full duty in 2009. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit for any boardable mental health condition as he did not 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).

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical retirement, placement on TDRL, promotion, and back pay

(2) Did the condition exist or experience occur during military service? NA; request is for medical retirement, placement on TDRL, promotion, and back pay

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical retirement, placement on TDRL, promotion, and back p

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 request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a mental health condition that warranted retirement due to a disability or placement on the TDRL. The Board found the documentation during the applicant's time in service does not support that he was psychiatrically unfit for any boardable mental health condition as he did not have persistent or reoccurring symptoms.

2. The Board agreed, there is insufficient evidence to support the applicant's contentions to be retired due to disability and placed on the Temporary Disability Retirement List (TDRL) vice being transferred to the Retired Reserve, promoted with back pay or be awarded service-connection for his disabilities and receive compensation. Based on the advising opine and evidence in the applicant's record the Board determined reversal of the previous Board decision is without merit. Therefore, the Board denied relief.

3. 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 Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210011864 on 8 March 2022.

[REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 135-133, Army National Guard and Reserve-Promotion of Commissioned Officers and Warrant Officers, prescribes the promotion eligibility and qualification requirements in Table 2-3 for promotion to Chief Warrant Officer Four.

- Position Vacancy Board- minimum of five years in lower grade
- Mandatory board-maximum of six years in lower grade
- Minimum education-Senior Warrant Officer Training/Warrant Officer Advance Course

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the

Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

c. The temporary disability retired list (TDRL) is used in the nature of a “pending list”. It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

d. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his or her office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service computed under Title 10, United States Code, Section 1208, (10 USC 1208). In addition, the condition must be determined to be temporary or unstable.

e. Soldier who is determined to be physically fit will not be placed on the TDRL regardless of the severity of the physical defects or the fact that they might become unfitting were the Soldier to remain on active duty for a period of time.

4. Title 38, U.S. Code section 1110, General - Basic Entitlement: 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

b. 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.

7. 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.

8. AR 15-, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//