

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240004175

APPLICANT REQUESTS: in effect -

- award of the Purple Heart
- a medical discharge
- personal appearance via video/telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149, Application for Correction of Military Record.

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 indicates that his request is related to post-traumatic stress disorder (PTSD), and traumatic brain injury (TBI). He states, in effect, that he sustained a severe head trauma and PTSD from an Improvised Explosive Device blast while serving in Iraq for which he was hospitalized. His medical records will confirm his injuries. The Department of Veterans Affairs (VA) has informed him that the Army is awarding retroactive Purple Hearts.
3. The applicant's request for award of the Purple Heart is premature and will not be further discussed in this Record of Proceedings. The applicant has not exhausted all his administrative remedies.
 - a. 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. This regulation provides, the Board will not consider an application until the applicant has exhausted all available administrative remedies to correct the alleged error or injustice.

b. Any member of the Army who believes that they are eligible for the Purple Heart but, through unusual circumstances no award was made, may submit an application directly to the Commander, U.S. Army Human Resources Command.

Commander, Army Human Resources Command
ATTN: AHRC-PDP-A (ADB)
1600 Spearhead Division Ave
Fort Knox, KY 40122-5408
Email: usarmy.knox.hrc.mbx.tagd-awards@mail.mil

4. The record shows that on 22 July 1997, the applicant enlisted in the Regular Army.

5. He was awarded the Combat Action Badge, for the period 6 August 2004, for being personally present and actively engaged by enemy fire to liberate Iraq in support of Operation Iraqi Freedom.

6. His record contains a DA Form 2166-8, Noncommissioned Officer Evaluation Report, for the period 1 June 2007 to 30 September 2007 which shows he performed the duties of a squad leader while assigned to Company E, 1st Battalion, 5th Cavalry Regiment, 2nd Armored Brigade, Iraq. This report shows the applicant met the standard in performing his duties and was rated "among the best" by his senior rater.

7. His Enlisted Record Brief (ERB) lists his Military Physical Profile classification shows he was deployable (111111). His ERB further shows he completed foreign service in:

- Korea from 21 May 1999 to 21 May 2000
- Kuwait from 10 November 2001 to 15 April 2002
- Iraq from 21 January 2004 to 21 March 2005

8. The applicant was honorably discharged on 21 April 2008 upon completion of his required active service.

9. By regulation –

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

b. 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. Additionally, applicants may be represented by counsel at their own expense.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a Purple Heart and, in essence, a referral to the Disability Evaluation System (DES). On his DD form 149, he has indicated that PTSD and TBI (traumatic brain injury) are conditions related to his requests. He states:

"I was hospitalized while deployed supporting OIF [Operation Iraqi Freedom] (10152006-10082008) for several days in Balad Airbase Iraq due to IED [improvised explosive device] explosion injury caused severe head trauma and PTSD as a result of explosion. Medical records will reflect event."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 22 July 1997 and was honorably discharged on 21 April 2008 under chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (6 June 2005) at the completion of his required active service. It shows he Served in Iraq from 12 January 2004 thru 21 February 2005 and again from 15 October 2006 thru 8 January 2008. His reentry code of "1" denotes he was fully qualified to reenlist in the Army.

d. There was no medical documentation submitted with the application. The EMR shows he was first seen for behavioral related symptoms during his last tour on 23 October 2007:

"Referral from combat stress control, pt [patient] states he is sleeping only 3-4 hours a night. Pt is able to fall asleep but cannot stay asleep, usually waking up several times during the night, pt also has ruminating thoughts about his day and replays traumatic events that he has experienced from last tour."

e. The applicant was diagnosed with chronic PTSD at his follow-up appointment on 1 November and medication was reinitiated. He was seen three more times before he completed this tour. From a psychology encounter at Darnall Army Community Hospital (DACH) following his redeployment:

“SM [service member] is AD [active duty] Army for 10 years with ETS 8 Mar. E-5, MOS 21B (combat engineer), deployed 3 times, last redeployment 11 Jan 08. Exposed to multiple IED's, RPG's, direct and indirect fire. In July 2007, he had 1–2-minute LOC following an IED blast and about 3 weeks later began having headaches which still persist, now occurring about 4 times a week. He has also had ringing in his since the prior deployment. He also notes memory problems since the previous deployment ...

He currently endorses symptoms of anxiety with panic attacks about 2 times a week (somewhat improved with Zoloft), intrusive thoughts about Iraq, irritability, problems with concentration and memory, initial and middle insomnia, nightmares 3 times a week, racing thoughts at bedtime. There is some decrease in sexual interest which predates starting Zoloft ...

CHRONIC POST-TRAUMATIC STRESS DISORDER: Will increase Zoloft to 100 mg to better address anxiety symptoms. Will try Seroquel for sleep which seemed to be helpful in the past. Will add Prazosin with upwards titration for nightmares.

Follow up: as needed in the DACH COUSENL CNTR PSYCHOLOGY clinic.
Comments: He will ETS on 8 March. He will call be if he has any problems with meds and he will follow-up with VA or civilian facility.”

f. There is no probative evidence the applicant's PTSD failed the medical retention standards of paragraph 3-33 of AR 40-501, Standards of Medical Fitness (14 December 2007):

3–33. Anxiety, somatoform, or dissociative disorders

The causes for referral to an MEB are as follows: ...

a. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or

b. Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or

c. Persistence or recurrence of symptoms resulting in interference with effective military performance.

g. His final NCO Evaluation Report with a thru date of 30 September 2007 shows he had been a successful Solider and NCO during this, his last tour. He had passed his Army Physical Fitness Test earlier that year, met Army height and weight standards, and his rater top-blocked him as "Among the Best." His senior rater marked with 1's on a scale of 1 to 5 for both overall performance and overall potential opining:

“o promote to Sergeant First Class ahead of peers

o send to ANCOC [Advanced Noncommissioned Officer Course] now

o highly capable NCO; able to resource, plan and conduct missions above his level of expertise

o assign to positions of greater responsibility; he will excel”

h. There is no evidence the applicant had a mental health condition, residuals of a TBI, or any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary separation; or which preventing from reenlisting and continuing his military career. 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 voluntary separation.

i. JLV shows he has been awarded several VA service-connected disabilities, including ratings for PTSD, migraine headaches, and tinnitus. However, the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or were permanently aggravated by their military service; or for compensating conditions which did not contribute to career termination. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. Paragraph 2-8 of AR 600-8-22, Military Awards (11 December 2006), lists the criteria for the awarding of the Purple Heart. Paragraph 2b lists the circumstances under which the injury is eligible for a Purple Heart (enemy action, friendly fire, peace keeping, etc.). Paragraph 2e states the wound and medical care requirements for the award:

“A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, however, the wound for which the award is made must have required treatment by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official record ...

k. There is no evidence of any qualify wound(s).

l. Paragraph 2-8h(9) states post-traumatic stress disorder in an example of an injury or wound which clearly does “not justify the awarding of the Purple Heart.”

m. It is the opinion of the ARBA medical advisor that neither the awarding of a Purple Heart nor a referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board concurred with the advising opinion of the ARBA medical advisor that referral of the applicant's case to the Disability Evaluation System (DES) is warranted. The medical opinion found no evidence that the applicant had a mental health condition, residual effects of a traumatic brain injury (TBI), or any medical condition that would have failed medical retention standards. Based on the advising opinion and the evidence in the applicant's records, the Board concluded that there is insufficient justification to support the applicant's request for a medical discharge. Therefore, relief is denied.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XXX	XXX	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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

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

2. Title 10, 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, under the operational control of the Commander, U.S. Army Human Resources

Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES 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, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the 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 are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments 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.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 their office,

grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of 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 member reasonably may be expected to perform because of their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

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. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Section 1556 of Title 10, United States Code, 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//