

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20240004285

APPLICANT REQUESTS: physical disability discharge in lieu of honorable administrative discharge due to alcohol rehabilitation failure

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- self-authored statement
- four DA Forms 1059 (Service School Academic Evaluation Report), November 2011 – May 2017
- Medical Record, 8 March 2017
- four letters of recommendation, 10 – 14 March 2017
- DA Form 8003 (Command Referral for a Substance Use Disorder (SUD) Evaluation), 1 November 2021
- 11 total DA Forms 2166-8 (Noncommissioned Officer Evaluation Report (NCOER) and DA Forms 2166-9-2 (NCOER (Staff Sergeant (SSG)-First Sergeant (1SG)/Master Sergeant (MSG)), December 2012 – January 2022
- partial Office Clinic Note, 25 March 2022
- DA Form 3340 (Request for Continued Service in the Regular Army), 6 June 2022
- DD Form 4 (Enlistment/Reenlistment document), 6 June 2022
- DD Form 2216E (Hearing Conservation Data), 25 August 2022
- Enlisted Record Brief (ERB), 25 November 2022
- Office and Clinic Notes, 29 November 2022
- Memorandum of Agreement: Substance Use Disorder Clinical Care (SUDCC) Rehabilitation Team Meeting (RTM), 14 December 2022
- Army Substance Abuse Programs (ASAP)/SUDCC Patient Services History, 14 December 2022
- DA Form 3822 (Report of Mental Status Evaluation), 14 December 2022
- partial DA Form 4856 (Developmental Counseling Form), 9 February 2023
- Joint Readiness Training Center Operations Group memorandum for record, 19 March 2023
- DD Form 2697 (Report of Medical Assessment), 22 March 2023

- DD Form 2807-1 (Report of Medical History), 22 March 2023
- DD Form 2808 (Report of Medical Examination), 22 March 2023
- Standard Form 600 (Chronological Record of Medical Care), 22 March 2023
- Clinician's letter, 14 April 2023
- two Headquarters and Service Company, 100th Brigade Support Battalion memoranda, 15 May 2023
- Headquarters and Service Company, 100th Brigade Support Battalion memorandum, 17 May 2023
- Headquarters and Service Company, 100th Brigade Support Battalion memorandum, 28 May 2023
- 100th Brigade Support Battalion memorandum, 30 May 2023
- DA Form 4856, 8 June 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 4 July 2023
- partial Department of Veterans Affairs (VA) letter, 20 December 2023

**FACTS:**

1. The applicant states:
  - a. He requests to have his records thoroughly reviewed and a Medical Evaluation Board (MEB) convened on his behalf and correction of his discharge narrative reason for separation. Per his primary care provider, an MEB was suggested, but there was no follow-up for a medical discharge. The attention of his command and medical personnel at his gaining command at Fort Sill, OK, were fixated on the ambiguity associated with his SUDCC treatment. Administrative errors were committed during his enrollment in the SUDCC program and medical personnel did not follow through with an MEB, resulting in an inaccurate portrayal of his service on his DD Form 214. Note that his VA disability decision letter is dated 5 July 2023, which is the day following his Army discharge on 4 July 2023.
  - b. He was enrolled in the SUDCC program as a self-referral while at Fort Cavazos, TX [formerly Fort Hood, TX] on 1 November 2021. Per the DA Form 8003 (the Command referral for SUD evaluation), the classification of his enrollment was self-referral under mandatory treatment. However, due to a permanent change of station (PCS) move to Fort Sill, OK, he was instructed by SUDCC counselors at Fort Cavazos that he would be doing a PCS transfer, continuing treatment at his gaining unit under the initial characterization of self-referral.
  - c. On 29 November 2022, upon completion of his in processing at Fort Sill, he reported to behavioral health/SUDCC and did as instructed. On 30 November 2022, he was notified by Captain (CPT) Z\_\_\_\_ (his company commander) that he (his company

commander) was informed by Fort Sill's counselors that he was command-referred for SUDCC treatment and had not cleared Fort Cavazos. He stated that information he received was inaccurate and contacted his prior command telephonically, on the speaker, who verified the clearing of Fort Cavazos was completed successfully as well as the entry in SUDCC being self-referral.

d. Despite providing documentation and communication with his prior command, on 6 December 2022, during his SUDCC appointment with Fort Sill counselors, he was denied treatment into the program unless he would be admitted as command-referred. He informed both his command and counselors that he would still like to continue his treatment, but not under the characterization of command-referred, which per Army Regulation 600-85 (The Army Substance Abuse Program), was not warranted as he did not conduct himself in the manner that warranted a command referral.

e. The counselor then provided him with a point of contact for a facility off-post to continue his treatment. His treatment for SUDCC continued at an off-post facility up until his discharge. Falsified changes to his medical records were made on 14 December 2022, in which Fort Cavazos and Fort Sill counselors made notations in his medical records to reflect a treatment failure. Upon realization of the changes, he met with the director of the Fort Sill SUDCC program, who verified these changes effective 14 December 2022, as well as verifying this behavior as unethical and not their traditional procedures.

f. A request for his MEB was submitted prior to his PCS move. Unfortunately, the attention of his command and the medical personnel at Fort Sill were fixated on the ambiguity associated with his SUDCC treatment. Fort Cavazos counselor miscommunication and administrative negligence resulted in his medical records not being updated at the time of his PCS move to Fort Sill to reflect his PCS transfer. His treatment status was subsequently miscommunicated by the counselors at Fort Cavazos, incorrectly documenting him as command-referred for SUDCC.

g. Despite Fort Cavazos counselors rendering clear instructions on his continued treatment, they failed to update their records to correctly reflect a PCS transfer and upholding his commitment to the treatment process. Erroneous updates to his records after his PCS suggested a command-referral, contradicting his self-referral status. This led to a denial of treatment and his subsequent discharge, characterized as a rehabilitative failure, which is a misrepresentation of his medical history and adherence to treatment.

h. He seeks to have his records thoroughly reviewed and an MEB convened on his behalf. He has included supporting documentation that corroborates his account and substantiates his request for correction.

2. The applicant enlisted in the Regular Army on 1 November 2007 and was awarded the Military Occupational Specialty (MOS) 92G (Culinary Specialist).

3. The applicant deployed to Iraq during the following periods:

- from 12 June 2008 through 3 June 2009
- from 15 September 2010 through 29 August 2011

4. The applicant provided four Service School Academic Evaluation Reports, reflective of his performance at four Army schools during the period from November 2011 – May 2017, all of which show he either exceeded or achieved course standards, passed the Army Physical Fitness Test (APFT) where administered, and demonstrated the academic potential for selection to higher level schooling/training.

5. A Medical Record, 8 March 2017, shows:

- a. The applicant was seen as a follow-up for his labs. He was not pending MEB, administrative “chapter” separation, or Uniform Code of Military Justice (UCMJ) action.
- b. This was his third enrollment in SUDCC. His first enrollment in 2009 was a self-referral. His second enrollment in 2015 was due to Driving Under the Influence (DUI) and was a command referral. This enrollment in 2017 was a self-referral. He deployed twice for a total of 24 months and felt he had lost more than he had gained, planning to separate at his expiration term of service (ETS) in 2022.
- c. On 8 March 2017, he was released from the program as a treatment success.

6. The applicant provided four letters of recommendation, 10 – 14 March 2017, recommending him for acceptance in the Army Executive Dining Facility program and other positions. They attest to his strong leadership abilities, culinary skills, attention to detail, and high level of initiative.

7. A DA Form 8003 (Command Referral for an SUD Evaluation), 1 November 2021, shows:

- a. The applicant's company commander signed the form indicating the reason for referral was drug/alcohol-related incident, listed as self-enrollment in SUDDC/alcohol. His performance/efficiency and behavior/conduct were deemed excellent.
- b. The provider's assessment shows the applicant had an alcohol and/or other substance use disorder and was required to be enrolled in mandatory SUD treatment. His first appointment was scheduled for 29 November 2021. He was required to participate in treatment in accordance with Army Regulation 635-200 (Active Duty

Enlisted Administrative Separations) or be subject to administrative separation under chapter 9 for rehabilitation failure. The form is signed by the provider, a Licensed Clinical Social Worker in the SUDCC, at the Rehabilitation Team Meeting on 1 November 2021,

8. The applicant provided 11 NCOERs, covering the years from December 2012 – January 2022, all of which show he was rated “Excellence” or “Success” in all portions of Part IV (Rater) (Values/NCO Responsibilities) and “Far Exceeded Standard,” “Exceeded Standard,” or “Met Standard” in all portions of Part IV Performance Evaluation, Professionalism, Attributes, and Competencies) (Rater).

9. A partial Office Clinic Note, 25 March 2022, shows:

a. Assessment/plan shows the applicant was in no acute distress or danger to self or others at this time. His case would be discussed for possible MEB versus “chapter” with long history of behavioral health issues throughout his career. It was suspected he reached his medical retention decision point (MRDP) with his extensive history.

b. History of present illness shows he had complaints of chronic behavioral health concerns. No homicidal or suicidal ideations of acute issues at that time but had been inpatient twice and was on medications and in therapy. He reported he thinks he cannot continue military service with his mental health.

10. A DA Form 3340 shows on 6 June 2022, the applicant requested that he be authorized to reenlist. IN lieu of his immediate commander, First Lieutenant G \_\_\_\_\_ signed the form on the same date indicating the applicant was fully qualified and his request was approved.

11. A DD Form 4 shows the applicant reenlisted at Fort Hood, TX, on 6 June 2022, for an indefinite period.

12. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

13. The applicant's ERB, 25 November 2022, shows:

- his PULHES was 111111
- his MRCC (Medical readiness classification code) was 3 (medically non-deployable) temporary (TP), due to physical health assessment not current (HA) and immunizations not current (IM)

14. Office and Clinic Notes, 29 November 2022, show:

- a. The applicant was seen at Reynolds Army Health Clinic, Fort Sill, OK, on the date of the form.
- b. Assessment and treatment plan shows the applicant stated he hated his job. He was just burned out. Every once in a while, there was a Soldier he felt he had been able to help and that made the job better for a short time. He minimized his involvement with SUDCC in the past. He was reluctant to share his current cannabis use but was honest about his lack of sobriety with alcohol. He was reluctant to provide much detail about his behaviors.
- c. Diagnosis shows alcohol dependence, uncomplicated. He had been involved with SUDCC since 2011. He acknowledged he has a drinking problem and attributed his lack of sobriety to inconsistency in treatment.
- d. SUD diagnostic shows he was command directed for SUDCC at Fort Hood; transfer of service was not put in place prior to his PCS to Fort Sill.
- e. Prognosis shows fair.
- f. General treatment planning shows continue current psychotherapy; target symptoms were anxiety, depression, and substance use; goals of treatment were to improve overall functioning.

15. A Memorandum of Agreement SUDCC Rehabilitation Team Meeting shows a rehabilitation team meeting was conducted on 14 December 2022, to determine the recommendation of the treatment team for the applicant.

a. The recommendation was:

- for him to be a mandatory outpatient in the program
- to abstain from all mood-altering chemicals and high-risk environments to include raves, casinos, bars, and pool halls
- minimum length of treatment 3 months
- rehabilitation urinalysis testing 1-4 times per month
- intoximeter testing 1-4 times per month
- two day ADPT course, already completed January 2022

- individual counseling weekly or bi-monthly
- medical evaluation/SUDCC labs and physical
- demonstrate personal motivation to participate in the rehabilitation efforts

b. The consequences of failure show possible chapter 9 (Rehabilitation Failure) or chapter 14 (Patterns of Misconduct).

c. The document is signed by the applicant's immediate commander and the SUDCC counselor on 14 December 2022. The form shows the applicant refused treatment, detox, and care, and refused to sign.

16. An ASAP/SUDCC Patient Services History shows numerous treatment and progress updates dating back to 2009, and includes:

- the applicant was enrolled as a self-referral at Fort Hood, on 1 November 2021
- he PCSd to Fort Sill on 15 November 2022 and was entered into the Fort Sill program on 6 December 2022
- he was released from the program at Fort Sill on 14 December as a treatment failure due to refusing treatment

17. A DA Form 3822 shows:

a. The applicant underwent a mental status evaluation on 14 December 2022 for due to alcohol or other drug rehabilitation failure under the provisions of Army Regulation 635-200, chapter 9.

b. Behavioral health disposition determination shows the applicant was on profile with an expiration date of 7 March 2023.

c. Pertinent findings on mental status evaluation show substance misuse; cognition and perceptions not impaired; behavior and impulsivity abnormal.

d. His behavioral health diagnoses were alcohol use disorder, severe and cannabis abuse, uncomplicated.

e. No safety precautions were indicated; he could understand and participate in administrative proceedings and appreciate the difference between right and wrong; his behavioral health condition was likely a mitigating factor in the alleged behavior leading to administrative separation use of alcohol should be prohibited; and he had a condition that was likely to impair his judgment or reliability to protect classified information.

f. Further comments show on 6 December 2022, a DA Form 8003 was initiated for the applicant as a PCS transfer from Fort Hood to be reevaluated. While at Fort Hood,

he was in mandatory SUD treatment due to having a severe alcohol disorder. He experienced a rehabilitative/treatment failure while enrolled in the SUDCC program. Command deemed further rehabilitative efforts were not practical. SUDCC provider would provide documentation for administrative separation in accordance with Army Regulation 635-200, chapter 9. The applicant's failure is evidenced by not successfully completing mandatory substance abuse treatment at Fort hood, refusion follow-up appointments, continued use of alcohol and substances, inability, and refusal to participate in, cooperate in, attend detox, and follow treatment plan. He will be discharged from the SUDCC program on 14 December 2022, due to failure to rehabilitate. He was given plenty of opportunities to be successful. He enrolled after completing detox in 2009 and 2021, enrolled for DWI in 2015, and had been enrolled in SUDCC treatment four times.

18. A partial DA Form 4856 shows the applicant was counseled by his company commander on 9 February 2023, to inform him that a flag was being initiated on his records for involuntary separation

19. A Joint Readiness Training Center Operations Group, Fort Polk, LA, memorandum for record, 19 March 2023, signed by the applicant's former company commander, shows on 1 November 2021, the applicant self-referred to SUDCC. The applicant informed his former company commander that he felt he had an issue with alcohol consumption and would like to be admitted into the program. Upon completion of initial assessment, because of the severity of his case, medical personnel deemed it mandatory treatment, under self-referral.

20. A DD Form 2697 shows:

a. The applicant provided his medical assessment on 13 March 2023, for the purpose of separation, indicating his mental health/physical condition was worse since his last assessment. He had chest pain, skin rash, and headaches. He took sleep medication and attention deficit hyperactivity disorder (ADHD) medication. His behavioral health condition currently limited his ability to work in his MOS. A prior physician's assistant mentioned he had met his MRDP and an MEB, but there was no follow-up. He would seek VA disability for behavioral health, joint pain, and skin conditions.

b. On 22 March 2023, the health care provider signed the form indicating the applicant has been seen by behavioral health and evaluated and treated for his additional listed conditions. His medical record was reviewed and no record of MEB referral was found. He was not referred for further evaluation.

21. A DD Form 2807-1 shows the applicant provided his medical history on 22 March 2023, for the purpose of Army separation/ medical board, indicating the following conditions:

- breathing problems
- possible concerns for hyper thyroid
- throat issues
- glasses
- wrist and knee pain
- arthritis
- lower back issues
- tips of fingers and toes issues
- foot pain
- hand concerns
- swollen finger joints
- frequent indigestion and heartburn
- psoriasis
- gonorrhea in the past
- behavioral health issues
- dizziness

22. A Standard Form 600, 22 March 2023, provides a continuation page to the applicant's DD Form 28027-1, and includes reference to medication for ADHD and sleep, meningitis, heart trouble, counseling, severe anger, severe anxiety, depression, post-traumatic stress disorder, ASAP.

23. DD Form 2808 shows the applicant underwent medical examination on 22 March 2023, for the purpose of Army separation. He was found medically qualified with a PULHES of 111111 and no disqualifying conditions identified.

24. A Clinician's letter, 14 April 2023, shows:

- a. The applicant was receiving clinical services through the Steven A. Cohen Military Family clinic at Red Rock, based in Lawton, OK. He was scheduled for a telehealth session on 28 April 2023 and previously attended sessions on 9 February, 21 February, 23 March, and 14 April 2023.
- b. His treatment plan states he will attend sessions for approximately 8 – 12 sessions for his current diagnosis of alcohol problem drinking and post trauma response.

25. On 15 May 2023, the applicant was notified by his immediate commander of his initiation of action to separate him with a general characterization of service under the

provisions of Army Regulation 635-200, chapter 9, for a substance use disorder. The reason for his proposed action was on 6 December 2022, a DA Form 8003 was initiated for him as a PCS transfer from Fort Hood to be reevaluated. While at Fort Hood, he was in mandatory SUD treatment due to having a severe alcohol disorder and experienced a rehabilitative/treatment failure while enrolled in the SUDCC program. The command deemed further rehabilitative efforts were not practical. His failure was evidenced by not successfully completing mandatory substance abusee treatment, refusing follow-up appointments, continued use of alcohol and substances, refusal to participate in, cooperate in, attend detox, and follow a treatment plan. He was given plenty of opportunities to be successfully enrolled after completing detox in 2009 and 2021, and enrollment for DWI in 2015. He had been enrolled in SUDCC treatment four times and had the burden to present evidence to refute this presumption, should he so desire. He was advised of his right to consult with counsel, request a hearing before an administrative board, submit a conditional waiver, and submit statements in his own behalf.

26. On 15 May 2023, the applicant acknowledged receipt of notice from his commander informing him of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, chapter 9, for a substance use disorder and the rights available to him.

27. On 17 May 2023, the applicant acknowledged having been advised by his consulting counsel of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, chapter 9, for a substance use disorder, its effects, and the rights available to him. He indicated he requested consideration of his case by an administrative separation board, personal appearance before an administrative separation board, and consulting counsel representation. He acknowledged understanding that if his character of service at discharge is less than honorable, he may be ineligible for certain benefits as a veteran and may encounter substantial prejudice in civilian life.

28. On 17 May 2023, the applicant acknowledged having consulted with counsel, he understood he was entitled to have his case considered by an administrative separation board, and voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a characterization of no less than an honorable discharge. He did not submit statements in his own behalf.

29. On 30 May 2023, the applicant's battalion commander recommended approval of the applicant's discharge under the provisions of Army Regulation 635-200, chapter 9, for a substance use disorder with a service characterization of general (under honorable conditions).

30. On 30 May 2023, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, chapter 9, for a substance use disorder.

31. A second DA Form 4856 shows the applicant was again counseled on 8 June 2023, regarding the removal of the involuntary separation code on his records to allow for his out-processing.

32. The applicant's DD Form 214 shows he was honorably discharged on 4 July 2023, under the provisions of Army Regulation 635-200, due to alcohol rehabilitation failure, with corresponding separation code JPD. He was credited with 15 years, 8 months, and 4 days of net active service.

33. A partial VA letter, 20 December 2023, shows the applicant was granted a 100 percent service-connected disability rating effective 5 July 2023, for the following conditions:

- post-traumatic stress disorder (PTSD), 70 percent
- obstructive sleep apnea, 50 percent
- chronic iritis with macular edema, 20 percent
- left knee strain, 10 percent
- lumbosacral strain, 10 percent
- left lower extremity radiculopathy, 10 percent
- right knee strain, 10 percent
- tachycardia and chest pain unspecified, 10 percent
- acne, 0 percent
- areata alopecia, 0 percent
- cluster headaches, 0 percent
- erectile dysfunction, 0 percent
- hypertension, 0 percent
- nummular dermatitis, 0 percent

34. 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.

35. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

36. 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, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ADRB in essence requesting a referral to the Disability Evaluation System (DES). He states:

“Request for MEB [medical evaluation board] Evaluation was put in prior to PCS [permanent change of station]; unfortunately, the attention of command and medical personnel at Fort Sill were fixated on the ambiguity associated with my SUDCC [Substance Use Disorder Clinical Care] treatment.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 1 November 2007 and was honorably discharged on 4 July 2023 under authority provided in chapter 9 of AR 635-200, Personnel Separations – Enlisted Personnel (28 June 2021): Separation for a Substance Use Disorder.

d. The recent record show the applicant was again referred for treatment of alcohol abuse in November 2021.

e. In a 29 November 2022 clinical encounter, the applicant notes his use of cannabis and abuse of alcohol:

“... “SM minimized his involvement with SUDCC in the past. He was reluctant to share his current cannabis use but was honest about his lack of sobriety with alcohol. SM was reluctant to provide much detail about his behaviors. Alcohol dependence, uncomplicated. Audit C Score 10, SM [service member] drinks daily in excess of 7-9 drinks.

f. A rehabilitation team meeting on 14 December 2022 included the applicant, his commander, and a counselor. A memorandum of agreement completed after this

meeting states “SM [service member] refused treatment, refused to sign, detox, and care.”

g. A Report of Mental Status Evaluation completed on 14 December 2022 shows the applicant's behavioral health diagnoses as “Alcohol Use Disorder, Severe; and “Cannabis abuse, uncomplicated.” The provider stated the applicant could understand and participate in administrative proceedings and appreciated the difference between right and wrong, and no follow-up was needed. The provider went on to note the applicant's multiple treatment failures and refusal of further treatment:

“SFC [Applicant] has experienced a rehabilitative/treatment failure while enrolled in the SUDCC program. Command has deemed further rehabilitative efforts are not practical. SUDCC provider will provide documentation for Chapter 9, IAW 635-200, an Administrative Separation.

SFC [Applicant]’s failure is evidenced by not successfully completing mandatory substance abuse treatment at Fort Hood, refusing follow-up appointments, continued use of alcohol and substances, inability, refusal to participate in, cooperate in, attend detox, and follow treatment plan.

SFC [Applicant] will be discharged from the SUDCC program on 14 Dec 2022 due to his failure to rehabilitate. SM was given plenty of opportunities to be successful. Enrolled after completing detox in 2009 & 2021 , enrolled for DWI in 2015, and has been enrolled in SUDCC treatment 4 times.

h. The applicant completed a pre-separation medical examination on 22 March 2023. The provider documented a normal examination and wrote “No disqualifying conditions were identified.”

i. On 15 May 2023, the applicant's commander notified him of the initiation of action to separate him under provisions in chapter 9 of AR 635-200 noting the issues listed on his 14 December 2022 Mental Status Evaluation. He recommended the applicant receive a general (under honorable conditions) characterization of service. On 17 May 2023, the applicant requested a conditional waiver:

“I hereby voluntarily waive consideration of my case by an administrative separation board contingent upon receiving a characterization of no less than an Honorable discharge.”

j. The brigade commander approved his separation on 30 May 2023.

k. Review of the EMR shows the applicant was seen and treated for a variety of issues during his period of service but none other than behavioral health issues were significant during his last 18 months of service. The applicant's encounters during this period were with behavioral health. In addition to his alcohol and cannabis abuse, his medical problem list shows he was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct in February 2017, adjustment disorder in October 2020, and anxiety disorder in February 2014 and again in December 2021

l. The applicant's final NCO Evaluation Report was an extended annual covering 18 December 2020 thru 18 January 2022. It shows that despite his alcohol abuse, he was a successful Soldier. He passed his Army Physical Fitness Test and met the Army height and weight standards. His rater marked him as having "Exceeded Standard" for all attributes and competencies as well as for overall performance. He stated:

"o an extremely competent NCO whose reputation and abilities set him apart from his peers; a steward of resiliency and an absolute team player

o results far surpass expectations, extremely versatile and capable of functioning in any capacity; he influenced the Battalion Food Service program and enriched both garrison and field feeding operations"

m. His senior rater blocked him as highly qualified opining:

"SFC [Applicant] ranks in the top 30% of Sergeant First Class I have worked with in my 20-year career. Demonstrates unlimited potential and is ready to be a MSG now. Promote ahead of peers. Send to MLC [master leader course when available.]"

n. There is insufficient probative evidence the applicant had a medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. 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.

o. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD and sleep apnea. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications

of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

p. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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, available military records and the medical advisory the Board concurred with the advising official finding that a referral of his case to the DES is unwarranted. The opine noted the applicant's record is absent 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.
2. The Board determined there is insufficient evidence to support the applicant's contentions for physical disability discharge in lieu of honorable administrative discharge due to alcohol rehabilitation failure. The Board found the applicant's final NCO Evaluation Report shows that despite his alcohol abuse, he was a successful Soldier. The applicant passed his Army Physical Fitness Test and met the Army height and weight standards. Furthermore, the applicant's rater marked him as having "Exceeded Standard" for all attributes and competencies as well as for overall performance. The Board agreed there is no evidence of an error in the applicant's current discharge, therefore the Board denied relief.

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.

  
  


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

REFERENCES:

1. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. 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.

3. 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.

4. 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.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets for the basic authority for the separation of enlisted personnel. Chapter 9 (Separation for a Substance Use Disorder) provides the authority and outlines the procedures for

discharging Soldiers for whom further rehabilitation are either not practical or will not result in a fully mission capable Soldier.

a. A Soldier who is enrolled in mandatory substance abuse treatment program for alcohol/drug use may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in one of the following circumstances:

(1) There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.

(2) Long-term rehabilitation is necessary, and the Soldier is transferred to a civilian medical facility for rehabilitation.

(3) The chronic treatment required for the Soldier to maintain recovery degrades full mission readiness.

b. Nothing in this chapter prevents a Soldier who has been referred to such a program from being separated under any other provision of this regulation.

c. Initiation of separation proceedings is required for Soldiers:

(1) For whom rehabilitation efforts are considered no longer practical; or

(2) That have another alcohol/drug incident within 12 months following successful completion of enrollment in mandatory substance abuse treatment program or during the 12 months following removal from the program for any reason.

d. The characterization of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in an entry-level status and an uncharacterized description of service is required.

6. 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.

7. 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.
8. 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//