ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240004861

APPLICANT REQUESTS:

- correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) by adding post-traumatic stress disorder (PTSD) as unfitting and combat-related
- correction of his retirement orders to show his disability is based on injury received as a direct result of armed conflict

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 638 (Recommendation for Award), dated 22 July 2005
- Headquarters, U.S. Army Garrison Command, Fort Knox, KY Orders 165-0159, dated 14 June 2023
- Enlisted Record Brief
- Department of Veterans Affairs (VA) Disability Evaluation System Proposed Rating, dated 21 April 2023

FACTS:

1. The applicant states he was deployed in support of Operation Iraqi Freedom from 2004 to 2005. During this time, he was on numerous operations and saw many casualties. He has been living with PTSD since the deployment, but he was scared to admit that he had PTSD because he did not want to be discharged from the Army. His behavioral health treatment record and his VA ratings both state that his PTSD is service related, but his PEB findings stated that his PTSD is not service related.

2. The applicant enlisted in the Regular Army on 10 January 2002. His record shows he served in Iraq from 5 August 2004 to 2 August 2005 and in Afghanistan from 20 August 2009 to 26 March 2010.

3. The applicant's Medical Evaluation Board (MEB) is not available.

4. On 23 May 2023, a PEB found the applicant unfit for further military service due to major depressive disorder. The PEB indicated the applicant first sought treatment for this condition on 19 June 2007 after being referred for depressive symptoms. The conditions started insidiously but may have some components from a deeper underlying family issue while growing up.

5. The PEB recommended a 70% disability rating and the applicant's placement on the Temporary Disability Retired List with reexamination during February 2024. The PEB indicated the combined effect was considered in the fitness determination for conditions referred by the MEB and determined the applicant's 15 additional conditions (MEB diagnoses 2 through 16) were not unfitting.

6. The DA Form 199 contains the following entries in Section V (Administrative Determinations):

a. The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

b. The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

7. On 26 May 2023, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case.

8. Orders 165-0159, dated 14 June 2023, issued by Headquarters, U.S. Army Garrison Command, Fort Knox, KY, ordered the applicant's release from assignment and duty because of physical disability and his placement on the TDRL effective 28 August 2023. The orders contain the following entries:

a. Disability is based on injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No

b. Disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104: No

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was retired on 28 August 2023 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, temporary.

9. The applicant provided a VA Disability Evaluation System Proposed Rating, dated 21 April 2023, showing that for purposes of entitlement to VA benefits, the VA proposed to establish service connection for, among other conditions, PTSD with major depressive disorder (also claimed as anxiety, panic attacks, and sleep issue) as directly related to military service with a 70% evaluation.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction to his Physical Evaluation Board (PEB) Proceedings by adding PTSD as an unfitting and combat-related mental health condition. He is also requesting his retirement orders show his disability is based on injury receives as a direct result of armed conflict. 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:

1) The applicant enlisted in the Regular Army on 10 January 2002;

2) The applicant deployed to Iraq from 5 August 2004-2 August 2005 and to Afghanistan from 20 August 2009-26 March 2010;

3) On 23 May 2023, a PEB found the applicant unfit for further military service due to Major Depressive Disorder with a 70% disability rating. The disability disposition is not based on disease or injury incurred in the line of duty in combat and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war, and the disability did not result from a combat-related injury;

4) On 26 May 2023, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case;

5) The applicant was retired on 28 August 2023, chapter 4, by reason of disability, temporary.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant’s available military service and medical records. The VA’s Joint Legacy Viewer (JLV) and military and VA documentation provided by the applicant were also examined.

c. The applicant is requesting a correction to his PEB Proceedings by adding PTSD as an unfitting and combat-related mental health condition. He is also requesting his retirement orders show his disability is based on injury receives as a direct result of armed conflict. The applicant has a lengthy history of behavioral health treatment for Depression starting in 2002 during his first tour to Korea. The applicant reported symptoms of depression and suicidality. However, he discontinued treatment due to feeling it was not helpful. He was seen again at behavioral health services in May 2007 for stress and Depression related to martial, family, and financial problems. The applicant described being depressed most of his life, and he reported a traumatic childhood. He also reported being more significantly impacted by Depression during his teenage years. The applicant was diagnosed with Depression and an Adjustment Disorder with Depressed Mood, recommended for continued outpatient behavioral health treatment, and was referred to a behavioral health prescriber. The applicant continued in regular outpatient therapy, and he was prescribed psychiatric medication in June 2007. He was consistently diagnosed with Depression by his outpatient behavioral health provider and his behavioral health prescriber. The applicant was seen at the Emergency Room (ER) on 07 April 2008 due to increased suicidal ideation as a result of his relationship problems with his girlfriend. He was diagnosed again with Major Depression, and he was released to outpatient behavioral health treatment. Despite one encounter at the ER, the applicant reported improvement and eventually discontinued treatment in November 2008. He was seen again at behavioral health services on 19 October 2010 for a Mental Status Evaluation for Recruiter School.

The applicant was reported to be married to his second wife, and he denied any mental health symptoms or taking any psychiatric medication at that time. His prior history of Depression was noted, and his symptoms of depression were attributed to his previous marital and financial problems with his previous wife. He was cleared from a behavioral health perspective to complete Recruiter School. The applicant reengaged in behavioral health treatment on 20 June 2022 again for symptoms of depression and marital problems shortly after starting Recruiter School. He was diagnosed with an Adjustment Disorder with Depressed Mood and a marital problem, but he did not continue in behavioral health treatment. The applicant was seen in behavioral health services in March 2017 for symptoms of depression and increased stress. He was diagnosed with recurrent Depression, but again, he did not continue in regular therapy, but he was later prescribed psychiatric medication for Dysthymia in 2019, and he was again diagnosed by a psychiatrist with Recurrent Depressive Disorder in March 2021. The applicant was seen regularly for individual therapy for Depression related to marital, family, and occupational problems. The applicant began treatment with a new team after moving to a new duty location in October 2022. He was again initially seen for Depression and anxiety symptoms. He reported an increase in depressive symptoms and ongoing marital problems. He was recommended for individual therapy and referred to a behavioral health prescriber. In late October 2022, it was recommended by the applicant’s individual therapist that the applicant examine potentially traumatic events

during his first deployment to Iraq. The applicant was diagnosed with PTSD. The next session, on 04 November 2022, the applicant's provider discussed the possibility of a recommending medical retirement for the applicant and more intense behavioral health treatment. The applicant declined a more intensive treatment option, but he did agree to additional stress management therapy. The applicant was diagnosed with Major Depressive Disorder, Severe and PTSD. In the continued sessions, the applicant reported worsening suicidal ideation, but he declined an increased level of care. Due to the applicant's increased suicidality and worsening Depression, the applicant was placed on a permeant psychiatric profile on 28 November 2022 and recommended for a MEB for Depression. The applicant continued in behavioral health treatment predominately focused on Depression and management of his suicidal ideation till his discharge.

d. A review of JLV provided evidence the applicant began to engage with the VA for treatment for mental health conditions after his discharge, and he is currently involved in behavioral health treatment. He has been diagnosed with service-connected PTSD, with Major Depressive Disorder (70%SC). While the applicant has been engaged in evidence-based care for PTSD, the focus of his treatment has been his depressive symptoms and suicidal thoughts.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant did deploy twice and was likely exposed to traumatic events. However, there is overwhelming evidence the applicant was likely experiencing depression prior to his military service and his first deployment. The applicant had a lengthy history of behavioral health treatment specifically focused on his depressive symptoms including suicidal ideation. These symptoms were often exasperated by relationship and occupational stressors. Despite ongoing therapy and psychiatric medication, the applicant continued to experience depressive symptoms and increasing suicidal ideation, which impacted his ability to perform his military duties. He was diagnosed with PTSD shortly prior to being referred to an MEB. However, the focus of his therapy was consistently directed at addressing his depressive and suicidal ideation, not symptoms of PTSD. The applicant's pre-existing Depression was likely negatively impacted by his deployments, but they were not the direct cause of the applicant's Depression. While the applicant was diagnosed with PTSD near his end of service, his symptoms of Major Depressive Disorder were the focus of his therapy and the predominate reason of his inability to maintain his military duties; and they have continued to be the focus of his treatment even after his discharge. Therefore, at this time, there is insufficient evidence to warrant a change to the applicant's PEB Proceedings by adding PTSD as an unfitting and combat-related mental health condition or changing retirement orders show his disability is based on injury receives as a direct result of armed conflict.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed after his discharge with service-connected PTSD. Previously, the applicant's request for mitigation of his misconduct was approved, and his discharge was upgraded as a result of his diagnosis of service-connected PTSD. However, there is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 request, available military records and medical review, the Board concurred with the advising opinion finding at this time, there is insufficient evidence to warrant a change to the applicant's PEB Proceedings by adding PTSD as an unfitting and combat-related mental health condition or changing retirement orders show his disability is based on injury receives as a direct result of armed conflict.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was diagnosed after his discharge with service-connected PTSD. Previously, the applicant's request for mitigation of his misconduct was approved, and his discharge was upgraded as a result of his diagnosis of service-connected PTSD. However, there is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permeant

psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

3. The Board determined there is insufficient evidence to support correction of the applicant's DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) by adding post-traumatic stress disorder (PTSD) as unfitting and combat-related or correction of his retirement orders to show his disability is based on injury received as a direct result of armed conflict. The Board noted, a Physical Evaluation Board (PEB) found him unfit for continued military service due to major depressive disorder and recommended a 70% disability rating with placement on the Temporary Disability Retired List (TDRL). The PEB noted that the applicant first sought treatment for depressive symptoms in June 2007, and that the condition developed insidiously, with contributing factors rooted in personal and familial stressors. Further, the PEB determined that 15 additional conditions, including PTSD, were not unfitting and did not contribute to the applicant's inability to perform military duties.

4. The Board found Section V of the DA Form 199 clearly states that the disability disposition is not based on disease or injury incurred in combat or caused by an instrumentality of war, and that the disability did not result from a combat-related injury under Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216. The Board agreed the applicant concurred with the PEB's findings and waived his right to a formal hearing. Retirement orders dated 14 June 2023 reaffirmed these determinations and directed his placement on the TDRL effective 28 August 2023. Based on the evidence, the Board denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	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.

X //SIGNED//

CHAIRPERSON

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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether 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.

b. 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 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 his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

c. 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.

d. Paragraph 5-24 (Determination for Purposes of Federal Civil Service Employment) states the physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war. These determinations impact the eligibility of certain military retirees for certain benefits when employed under the Federal Civil Service System.

(1) The determinations will be recorded on the record of proceedings of the Soldier's adjudication.

(2) Armed Conflict: The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations, is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

e. Paragraph 5-25 (Determination for Federal Tax Benefits) states physical disability evaluation will include a determination and supporting documentation on whether the Soldiers disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

f. Combat related: This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat-related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result of armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

2. Title 26, U.S. Code, section 104, states that for the purpose of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

3. Title 38, U.S. Code, 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.

4. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Section 1556 of Title 10, U.S. 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//