ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240005157

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions characterization of service to fully honorable or change his narrative reason for separation from misconduct (serious offense) to a medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 22012-447, Headquarters, United States (US) Army Maneuver Center of Excellence, Fort Benning, GA
- Three DA Forms 31 (Request and Authorization for Leave)
- Four Medical Record Problem Lists
- Six Display Patient Appointments
- Four Department of Veterans Affairs (VA) Medical Records-Progress Notes
- Vista Electronic Medical Documentation
- One Problem List
- One Allergies Record
- Nine Laboratory Results
- One hundred thirty-five, Progress Notes
- Four Suicide Prevention Safety Plans
- Three DD Forms 689 (Individual Sick Slips) (Marked Confidential for medical reasons)
- Twenty-Five [redacted] (Treatment Records)
- Five Army Community Hospital (Laboratory Inquiries)
- Twenty-Four [redacted] (Treatment Records)
- Seven [redacted] (Treatment Records)
- Nine Analysis Reports, CMT Group Corporation
- Gmail
- Amended Orders 22165-36, Headquarters U.S. Army Maneuver Center of Excellence
- Twenty five [redacted] Partial Hospitalization (Treatment Records)
- Physical Profile
- DA 4856 (Developmental Counseling Form)

- Letter to Commander, [Company B, 2nd Battalion, 2nd Infantry Regiment, 3rd Brigade, 10th Mountain Division, Fort Polk, LA]
- Four Intake Notes from Doctor (DR) [redacted], Fort Buchanan, PR
- Twenty-one Emails written between the Applicant/Interpreter/Commander
- Five Emails, various
- Twenty Text Messages (Spanish with a translation)
- Certification of Birth (Son)
- Dr. R's Texts, Fort Buchannan, PR (Spanish)
- Memorandum for Commander, 3rd Brigade Combat Team, 10th Mountain Division, subject: Request for Retention
- Memorandum for Record (MFR), subject: Conversation/Interaction with the Applicant and Captain (CPT) "O"
- Orders 297-0311, Headquarters, Joint Readiness Training Center, Fort Polk, LA
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Brochure for [redacted]

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 provided his spouses medical records to include a DD Form 2870 (Authorization for Disclosure of Medical or Dental Information) which are acknowledged; however, they will not be included in this Record of Proceedings nor attached to this case.

3. The applicant states his general discharge, for misconduct, commission of a serious offense for being absent without leave (AWOL) should be upgraded to an honorable or a medical discharge, because he was never AWOL.

a. His company commander ordered him to remain in Puerto Rico during the time he was carried in an AWOL status behind his back. He was on a military installation at Fort Buchanan, Puerto Rico, throughout that time receiving medical treatment. This is a clear injustice against him that must be corrected.

b. He believes Article 86(c) (10)(a) of the Uniform Code of Military Justice (UCMJ) was violated. This article states, "A surrender occurs when a person presents himself to any military authority, whether or not a member of that armed forces, and notifies that authority of his unauthorized absence status, and submits or demonstrates willingness to submit to military control. Such a surrender terminates the unauthorized absence."

c. He wants the Board to know he has never been AWOL. He was always in the control of the US Army during the alleged AWOL period. He has always been willing to carry out and follow orders. He followed his commander's orders and stayed in Puerto Rico for mental treatment, and his commander maliciously, and purposely waited more than 30 days to issue a warrant against him. On 24 July [2022], when he arrived at the Fort Buchanan Gate, the Military Police arrested him. This was done so that he could not re-enter the US Army Base. He was allegedly AWOL from 22 June to 28 July 2022, which is more than 30 days.

4. Additionally, he states he was in a leave status from 30 March to 8 April 2022 (10 days). His leave was extended until 18 April 2022, per a conversation he had with Staff Sergeant (SSG) JW, due to a situation related to his wife's pregnancy. While on leave, he had two partial hospitalizations and two full hospitalizations. He was hospitalized in the Behavior Health Clinic at the Veterans Hospital, San Juan, PR, and in Capestrano Behavior Health Hospital, San Juan, PR.

a. On 6 and 7 April 2022, he received counseling from Chaplain Colonel "WA" and Chaplain Colonel "O." He was seeking help for himself and his wife due to the situation they were in.

b. His wife was hospitalized at the Veterans Hospital, San Juan, PR from 10 to 13 April 2022.

c. On 14 April 2022, he went to an appointment at Rodriguez Army Behavior Health Clinic, Fort Buchanan, PR. The Phycologist, Dr. "H," saw him and referred him for partial hospitalization at Capestrano Behavior Health Hospital, San Juan, PR. He was partially hospitalized from 20 April to 5 May 2022, and the hospitalization was extended until 12 May 2022 by Dr. H.

d. On 13 May 2022, Captain "S" sent him a text via the "Signal App" indicating he needed to report to Fort Polk, LA, on 17 May 2022. On 16 May 2022, he was taken by ambulance from the Rodriguez Army Behavior Health Clinic to Capestrano Behavior Health Hospital, which was authorized by Dr. "H." He was hospitalized again until 26 May 2022.

e. On 26 May, Dr. "H" ordered another partial hospitalization from 31 May to 13 June 2022 and the hospitalization was extended to 15 June 2022.

f. On 8 June 2022, at the Human Recourses Office, Fort Buchanan, PR, he submitted a request for a compassionate reassignment to his Battalion Commander, Major "MM," who, never replied to his request.

g. On 16 June 2022, he had an appointment with Dr. “H” and after the appointment he went to the Fort Buchanan Welcome Center and had a conversation with the Director of Human Resources, Fort Buchanan, Mr. “UM,” who informed him to contact his company commander immediately. His commander instructed him to contact him daily via text to inform him of his whereabouts and about his wife's pregnancy progress and he complied. At the time his wife was approximately 38 weeks pregnant.

h. On 16 June 2022, he received a permanent profile from Dr. “H” and Dr. MS, referring him to the medical board process and a disability process evaluation.

i. On 17 June 2022, he was counseled via phone by his Commander, Captain (CPT) “O” and Mr. “UM” who served as his translator, his commander instructed him to stay in Puerto Rico. After that meeting, he reported via text to CPT “O” on a daily basis. On the same date CPT “O” sent him a Counseling Form by email stating he could be processed for separation under Army Regulation (AR) 635-200, chapter 5-14, [Other Designated Physical or Mental Conditions] or through medical channels due to his medical situation.

j. On 20 June 2022, CPT “O” notified him via text that he was reported AWOL by the Fort Polk, LA, Installation.

k. On 21 June 2022, he stopped at Mr. “UM’s” office (Fort Buchanan) for assistance signed the counseling form and translated his notes. Mr. “UM” helped him translate a statement from Spanish to English and he sent it to CPT “O,” via email. This statement was sent along with the digitally signed counseling statement that CPT “O” sent to him.

l. On that same date, he and Mr. “UM” called CPT “O” by phone, and the CPT ordered him to stay in Puerto Rico until he met with his staff and the medical team at Fort Polk, LA, to determine if he could be left in Puerto Rico while going through the medical process to which he was referred on 17 June 2022. According to his permanent profile, which was given to him at Fort Buchanan. He volunteered to return to Fort Polk, LA, but CPT “O” told him not to return until he communicated with him again. CPT “O” never contacted him again even though he texted CPT “O” almost every day. He was hospitalized more than 50 days until 17 June 2022, the day he received the permanent profile and the referral to a medical board.

m. His wife gave birth to their baby on 6 July 2022. On 24 July 2022, he was stopped by military police and arrested for being AWOL while attempting to enter the commissary at Fort Bucannon, PR. On 28 July 2022, he was unnecessarily escorted to Fort Polk, LA, by four Soldiers. He continued his psychological and psychiatric treatment. He was hospitalized at Behavior Health Brentwood Hospital in Shreveport, LA, from 12 to 30 August 2022.

n. On 14 October 2022, he and his lawyer summited a request to the Brigade Commander, 3d Brigade Combat Team, 10th Mountain Division, Fort Polk, LA, requesting he be retained in the military. His request was denied without reason.

o. On 9 November 2022, he was involuntarily discharge from the US Army with an under honorable conditions discharge, due to misconduct, commission of a serious offense; for being AWOL. He humbly requests a medical discharge or an honorable discharge.

5. The applicant provides, in part:

a. Three DA Forms 31 (Request and Authority for Leave) showing he had leave approved on the following dates for the following periods:

- on 16 March 2022, for the period 30 March to 8 April 2022 (10 days), for travel to Puerto Rico to pick up partial household goods
- on 12 April 2022, for the period 9-18 April 2022 (10 days)
- on 8 November 2022, for the period 30 March to 18 April 2022 (20 days)

b. Four Medical Record-Problem Lists, showing he was diagnosed:

- on 23 March 2022, for Pseudofolliculitis Disorder [Razor Bumps]
- 13 April 2022, for major depressive disorder, single episode, severe without psychotic features
- on 19 April 2022, for primary insomnia
- on 17 May 2022, for major depressive disorder, single episode, severe without psychotic features

c. Six pages of Display Patient Appointments, showing he had seven pending appointments between March and July 2022, two appointments are clearly identified as mental health appointments.

d. Four Medical Records-Progress Notes, showing he was admitted into the VA Caribbean Healthcare System from 10 to 13 April 2022. His admission diagnosis was major depressive disorder, single episode, severe without psychotic features.

e. One hundred forty-six Vista Electronic Medical Documents that includes one problem list, one allergies record, nine laboratory results, and 135 Progress Notes, dated between 10 and 13 April 2022, showing he was diagnosed with major depressive disorder.

f. Four Suicide Prevention Safety Plan documents, dated 13 April 2022, advising the applicant of triggers, risk factors, warning signs, and how to cope and prevent a crisis.

g. Three DA Forms 689 (Individual Sick Slips) confirming:

(1) On 19 April 2022, he was evaluated for a Behavioral Health (BH) condition. He reported significant behavioral health symptoms for which he was referred to the Partial Hospitalization Program (PHP**)** for stabilization. The PHP was to be his place of duty from 20 April to *5* May 2022. After the partial program discharge, he would be evaluated by his provider at "RAHC" [Rodriguez Army Hospital Clinic, Fort Buchanan, PR], for further recommendations.

(2) On 5 May 2022, he was advised to continue attending the PHP, at San Juan Capestrano, San Juan Clinic, his provider requested a 5-day extension until 12 May 2022. After PHP discharge, he would be evaluated by Dr "H," Clinical Psychologist for further recommendations.

(3) On 26 May 2022, he was evaluated after inpatient psychiatric treatment discharge. He was referred to the PHP for continuity of care. The PHP would be his place of duty from 31 May to13 June 2022. He would be on rest until he started the PHP. After partial program discharge, he would be evaluated at the RAHC for further recommendations.

h. Twenty-five San Juan Capestrano (Treatment Records), showing he was hospitalized between 20 April and 12 May 2022, and he was treated for major depressive disorder.

i. Five Rodriguez Army Community Hospital, Patient Lab Inquiries, dated Between 22 April and 21 June 2022.

j. Thirty-one San Juan Capestrano (Treatment Records), showing he was hospitalized between 16 and 25 May 2022, and he was treated for major depressive disorder.

k. Nine Analysis Reports, "CMT" Group Corporation, Clemson University, dated 17 May 2022.

l Twenty-five San Juan Capestrano-Partial Hospitalization Program Records, showing he was hospitalized between 1 and 15 June 2022, and he was diagnosed as suffering from major depressive disorder and post-traumatic stress disorder (PTSD).

m. Gmail, dated 8 June 2022, from the applicant to Major M, stating his intent was to remain in Puerto Rico to take care of his medical needs and his family. He was trying to submit a DA Form 3739 (Application for Compassionate Actions) [not provided]. Attached was a DA Form 689.

n. Page 1 only of a Permanent Physical Profile, dated 17 June 2022, with the following P U L H E S of 1 1 1 1 1 3 for Depressive Disorder showing in:

(1) Block 22 (Total Days on Temporary Profile in the Last:
12 months 170 24 months 170.

(2) Block 24 "A Soldier must be referred to the Disability Evaluation System (DES) if there is at least one permanent (P) "3" in the PULHES and limitations noted in the functional activities. Temporary (T) limitations do not cause referral to the DES.

(3) Indicate Those Activities that the Soldier Cannot Perform by Placing an "N" in the appropriate column(s): P T

- Physically and/or mentally able to carry and fire an individually assigned weapon? N
- Live and function, without restrictions in any geographic or climatic area without worsening condition? N

(4) Block 27 (To Support Soldier Safety, Recommend the Following):

The Soldier needs the disability evaluation process. Ensure Soldier has access to all BH appointments. Commanders/leaders notify profiling officer immediately if there are significant changes in performance or behavior. No permanent change of station (PCS) until final fitness for duty determination.

Additional duty limitations include the following profiling officer to include only duty limitations that apply to this Soldier: No deployment to an austere environment. No PCS, temporary duty (TDY), or expiration term of service (ETS) until final fitness for duty determination; the Soldier should remain stationed near a Medical Treatment Facility where definitive behavioral healthcare is available; Soldier requires 8 hours of sleep in every 24-hour period.

(5) Block 28 Army Physical Fitness Test (APFT) Event Yes No

- 2 Mile Run X
- Sit-Ups X
- Push-Ups X

o. A DA 4856 (Developmental Counseling Form), dated 17 June 2022, showing in:

(1) PART II, Background Information – Purpose of Counseling: "This counseling is meant to serve as a formal discussion of your current duty limitations and notification of potential administrative separation."

(2) PART III, Summary of Counseling – Key Points of Discussion: “The U.S. Army is a physically and mentally demanding profession. The Army is expected to be expeditionary so we can close with and destroy any enemy when called. We must remain ready to fight at all times. We achieve and maintain readiness through tough and realistic training. Since you have been in Company B, you have missed “EIB” training and testing, deploying to the CENTCOM “AOR,” and additional duties in the rear detachment due to your psychiatric condition.”

(3) “Your current S3 permanent profile prevents you from living in an austere environment and carrying a weapon. These limitations make you non-deployable and unable to conduct routine infantry training with the company. It is not possible to continue service indefinitely with these limitations.”

(4) “You have been away from your place of duty since 30 March 2022 due to an initial approved leave of ten days in Puerto Rico to gather household goods. You have been away from your place of duty for a total of 79 days as of this counseling. On 19 April 2022 when you were informed you would be FTR (failure to report) and eventually would be considered AWOL, and on 20 April 2022 you were hospitalized in a Partial Hospitalization Program at Fort Buchanan, Puerto Rico. You have been in the Partial Hospitalization Program twice and in inpatient care once as of this counseling. Taken together, this means you have been absent for 75% of the time you have been assigned to Company B.”

(5) “During your time in Company B, your condition, absence from duty, and subsequent hospitalizations have required (number of man-hours, full time or part time escort, etc.) members of your chain of command to focus on ensuring your safety, removing them from valuable training and block leave with the company.”

(6) “Pursuant to Chapter 1-6, Army Regulation (AR) 635-200, this constitutes a formal counseling session concerning your noted deficiencies. You will be given 30 days to correct these deficiencies and rehabilitate to become a productive, satisfactory Soldier. Your conduct will be monitored during this time, and you will be given an opportunity to prove yourself. If your performance and conduct continue to be unsatisfactory, you could be processed for separation under AR 635-200, chapter 5-14, (Other Designated Physical or Mental Conditions), or through medical channels. If you are processed for separation under these chapters, you could receive a general discharge, which could have serious consequences affecting veteran's benefits or future service.”

(7) Plan of Action:

- Your chain of command and your provider will continue to monitor your progress

- You will continue to attend all counseling sessions to help you overcome your issues
- You will meet all standards outlined in battalion policy memos and appropriate regulations
- You will follow the orders and instructions of your supervisors
- You will demonstrate an attitude that indicates motivation and desire to continue serving in the Army

(8) Session Closing: Shows he annotated this form to show he disagrees with the information above.

(9) The applicant authenticated this form with his signature on 21 June 2022.

p. Applicant's statement written to his Company Commander (CPT "O"), dated 21 June 2022 giving a detailed description of his partial hospitalizations, full hospitalizations, his leave, the conversations he had with his chain of command, and his wife's pregnancy. He indicated on 16 June 2022, he received a permanent profile recommending that he go to a medical board. On 17 June 2022, he was counseled via phone by CPT "O" with Mr. "M" serving as a translator for him. After that date, he reported via text to CPT "O" daily. On 20 June 2022, CPT "O" notified him via text that he was reported in an AWOL status by Fort Polk installation. Since leaving Fort Polk on 30 March 2022, he was hospitalized more than 50 days.

q. Four Notes from Dr. "R," Fort Buchanan, PR, dated between 24 June and 21 July 2022.

r. Twenty-six emails dated between April and June 2022.

s. Nineteen text messages the applicant wrote to the commander acknowledging he, his wife, and unborn child were fine and another text that he wrote on 7 June 2020 announcing the birth of his son on 6 July 2020. On 16 June 2022, CPT "O" texted the applicant at 11:40 stating he would call the applicant in 2 hours to conduct a verbal counseling. This appears to have occurred, the applicant was counseled on 17 June 2022. The applicant was also asked to provide an e mail address and he complied. On 20 June 2022, CPT "O" advised the applicant he was informed Fort Polk had changed his duty status to AWOL.

t. Son's Certification of Birth, showing he was born on 6 July 2022.

u. Texts, which includes four pages written in Spanish, from Dr. [redacted] stating, "Greetings: This is your link for tomorrow's telemedicine session. Please make a test call and verify that your device is set up correctly. Answer yes to confirm the appointment."

v. Memorandum for Commander, 3d Brigade Combat Team, 10th Mountain Division, subject: Request for Retention, dated 14 October 2022, wherein the applicant requests, in part, to be retained on active duty due to the fact he was not AWOL. He stated that he was ordered by his Commander, CPT "O" to remain in Puerto Rico when his AWOL status began. He was also within the control of a military personnel and on a military installation throughout the time he was carried in an AWOL status.

w. Memorandum for Record written by Mr. "UM," the applicant's translator on 17 June 2022 states he and the applicant called CPT "O" on this date. During the conversation, CPT "O" read a counseling statement to the applicant reference chapter 5-14. As part of the counseling session, CPT "O" directed the applicant to continue following up with his medical providers in Puerto Rico and to communicate via text daily with him indicating the status of his whereabouts and his well-being. The applicant indicated that he understood the guidance provided by CPT "O," but disagreed with the sequence of events mentioned on the counseling statement because it was missing previous hospitalizations. Additionally, Mr. UM acknowledges:

(1) On 21 June 2022, the applicant did not concur with the aforementioned counseling statement, but he signed the DA 4856 (Developmental Counseling Form). Mr. "UM" also acknowledges that he emailed the applicant's DA Form 4856 and chronological statement of events to CPT "O," because the applicant did not have access to his email account.

(2) The applicant continued to stop by his office and asked if there was a response/further guidance from CPT "O," but CPT "O" did not communicate with the applicant [through him] after he sent CPT "O" the applicant's signed counseling statement.

6. The applicant's record is void of the complete facts and circumstances that led to his discharge processing on 9 July 2022. His record contains:

a. DD Form 4 (Enlistment Contract), confirming the applicant entered the delayed entry program from 24 June to 26 July 2021, he was discharged from the delayed entry program and on 27 July 2021, he entered the Regular Army in pay grade E-4.

b. Orders 297-0311 from Headquarters, Joint Readiness Training Center, Fort Polk, LA, dated 24 October 2022, confirming he was reassigned to the U.S. Army Transition Point on 9 November 2022, for separation processing, effective the same date.

c. A DD Form 214 (Certificate of Release or Discharge from Active Duty) showing he was discharged from active duty under the provisions of chapter 14-12c, Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), due to misconduct commission of a serious offense. He completed 1 year, 2 months, and

6 days of net active service during this period. His awards are listed as the Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, and Army Service Ribbon. His DD Form 214 also reflects in:

- Character of Service – Under Honorable Conditions (General)
- Separation Authority – AR 635-200, Paragraph 14-12c
- Separation Code, "JKQ"
- Reentry Code, "3"
- Narrative Reason for Separation – Misconduct (Serious Offense)
- Dates of Time Lost During This Period, "20220622-20220728"

7. AR 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation program designator (SPD) codes to be entered on the DD Form 214. The SPD code of "JKQ" is the appropriate code to assign Soldiers separated under the provisions of AR 635-200, paragraph 14-12c, by reason of "Misconduct, Serious Offense."

8. The SPD/Reenlistment Eligibility (RE) Code Cross Reference Table stipulates the RE code of "3" was to be assigned to members separated with the SPD code of "JKQ."

9. The applicant made several contentions and allegations involving his discharge to include that: He was never AWOL, he maintained constant contact with his commander, and he was undergoing treatment when he was considered in an AWOL status. He also contends he had a profile, and he went before a medical evaluation board. However, his Interactive Personnel Electronic Records Management System record does not contain any medical board results.

10. The applicant provided in excess of 346 documents which were provided to the Board in their entirety.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service to fully honorable or change his narrative reason for separation from misconduct (serious offense) to a medical retirement. He contends he experienced mental health conditions that mitigate his misconduct or warrants a medical discharge. 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 27 July 2021; 2) The applicant's record is void of the complete facts and circumstances that led to his discharge processing on 9 July 2022; 3) The applicant was discharged from active duty, Chapter 14-12c, due to misconduct commission of a serious offense. His

character of service was under honorable conditions (general). He completed 1 year, 2 months, and 6 days of net active service.

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

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct or warrants a medical discharge or retirement. The applicant was first seen at behavioral health services at Fort Polk on 14 March 2022. He reported his primary concern was increased stress, worry, and depressive symptoms associated with his wife's current mental status, pregnancy, and her problems adjusting to the military. She was currently 7 months pregnant. The applicant was seen for one additional session, and he and his wife were seen for a couple's therapy session. He denied any suicidal ideation during these appointments, and he was consistent in his report of his symptomology and the situation resulting in his increased stress. He was not diagnosed with a mental health condition, he and his wife were provided resources and materials in Spanish, and they were provided culturally/language appropriate resources in the community. The applicant and his wife, who was reported to be 8 months pregnant, travelled to Puerto Rico shortly after their couple's session, and he self-referred himself behavioral health services at the VA in San Juan on 10 April 2022. He reported similar concerns and behavioral health symptoms, but the applicant then began to report suicidal ideation without a plan or intent to harm himself. He was voluntarily admitted into the VA inpatient psychiatric facility for 4 days of treatment. He was diagnosed with Major Depression, single episode, and he was recommended for follow-up outpatient care and was prescribed psychiatric medication.

The applicant was seen for outpatient therapy after his discharge, but he reported increased stress due to his Command at Fort Polk needing him to return. The applicant was seen intermittently between the VA at San Juan and a civilian behavioral health provider at Fort Buchannan. There is evidence of the applicant began to report different patterns of symptoms and increased severity of symptoms when his Command at Fort Polk would request that he return to his duty station and his AWOL status. Consequently, the applicant's civilian provider would recommend/admit the applicant to increased levels of psychiatric care when the applicant's Command requested the applicant's return. This occurred repeatdly over several weeks. There was evidence, on 16 May 2022, the applicant was noted, by the civilian provider at Fort Buchannan, to be on a temporary "BH profile till 10 June", but the profile was not available for review in the electronic military medical record systems. Then, on 16 June, the same civilian provider noted the applicant "has a BH Permanent profile for MEB process." However, again there was no profile available, and there was insufficient evidence the applicant

was referred to an MEB. In addition, there is insufficient evidence the applicant was recommended for an MEB by his prescribing provider. The applicant was seen by behavioral health services again after returning to Fort Polk, on 01 August 2022. He requested to “check on the status of his Med board.” It was noted that no MEB was initiated for the applicant, and he reported to the Emergency Department the same day with vague suicidal ideation. He was admitted into a civilian inpatient psychiatric program, and he was diagnosed with an Adjustment Disorder. The applicant was seen for follow-up, and he was repeatedly insistent to have “his MEB started”, but the applicant did not actively engage in a therapeutic process with his providers and was often seen as argumentative. He was seen for a Mental Status Evaluation on 29 September 2022 as part of his administrative separation proceedings.

The applicant was found to be again argumentative, and he insisted on being “Med Boarded.” The applicant was provided an interpreter, and he was provided materials in Spanish. The applicant was appropriately evaluated for Major Depression, PTSD, traumatic brain injury, and military sexual trauma. He was not diagnosed with mental health condition that did not meet medical retention standards. It was noted the applicant’s mental health symptoms were predominately situationally based, and he was likely experiencing short-term mental health symptoms. He was cleared from a behavioral health perspective to participate in administrative proceedings deemed appropriate by Command, and he was not determined to be experiencing a mental health condition that did not met medical retention standards.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition by the VA, and he does not receive any service-connected disability for a mental health condition. The applicant did undergo a Compensation and Pension Evaluation, and he was awarded service-connected disability for physical conditions (50%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct of going AWOL. There is sufficient evidence the applicant was diagnosed with various mental health conditions during his active service. However, he was appropriately evaluated by various behavioral health providers after returning to his duty station from being determined as being AWOL, and there was insufficient evidence of the applicant meeting criteria for a mental health condition that did not meet medical retention standards. Therefore, there is insufficient evidence the applicant’s case warrants a referral to DES. Lastly, there is insufficient evidence surrounding the events which resulted in the applicant’s discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he experienced mental health conditions that mitigate his misconduct or warrants a medical discharge. The applicant was diagnosed while on active service with Major Depression Single Episode and Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions that mitigate his misconduct or warrants a medical discharge. The applicant was diagnosed while on active service with Major Depression Single Episode and Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct of going AWOL. There is evidence the applicant was experiencing distress related to his wife's pregnancy and her difficulty adjusting to the military. He left with her to Puerto Rico when she was in the final stage of her pregnancy, and he did not return when directed by his unit. It appears a civilian provider at a military instillation in Puerto Rico may have attempted to provide a method to continue to avoid returning to his duty station, and she misinformed the applicant to the process of a medical discharge/retirement. However, there is insufficient evidence the applicant was experiencing a mental health condition which would not meet retention standards, as was determined after he returned to his duty station. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES. Lastly, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to grant relief based on the applicant was in constant contact with his chain of command during the entire time. However, upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to

support the applicant had a condition or experience that mitigates his misconduct of going AWOL.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the applicant's contentions that he was never absent without leave (AWOL) and that his commander instructed him to remain in Puerto Rico for medical treatment. However, the official record reflects that he was carried in an AWOL status from 22 June to 28 July 2022, a period exceeding 30 days, and was subsequently discharged for misconduct commission of a serious offense. The Board noted the extensive documentation of his medical treatment and communication with command elements, there is no conclusive evidence that his absence was properly authorized or that he was formally referred through medical channels for separation. Based on the preponderance of evidence and advising opine, the Board agreed the challenges and family circumstances do not negate the misconduct, therefore, the Board denied relief.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he experienced mental health conditions that mitigate his misconduct or warrants a medical discharge. The applicant was diagnosed while on active service with Major Depression Single Episode and Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions that mitigate his misconduct or warrants a medical discharge. The applicant was diagnosed while on active service with Major Depression Single Episode and Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct of going AWOL. There is evidence the applicant was experiencing distress related to his wife's pregnancy and her difficulty adjusting to the military. He left with her to Puerto Rico when she was in the final stage of her pregnancy, and he did not return when directed by his unit. It appears a civilian provider at a military instillation in Puerto Rico may have attempted to provide a method to continue to avoid returning to his duty station, and she misinformed the applicant to the process of a medical discharge/retirement. However, there is insufficient evidence the applicant was experiencing a mental health condition which would not meet retention standards, as was determined after he returned to his duty station. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES. Lastly, there is

insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to

timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity.

3. AR 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active-duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

4. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, prescribes eligibility criteria governing the enlistment of prior service into the Regular Army and the U.S. Army Reserve (USAR). RE codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Paragraph 3-22 lists the following:

a. RE-1 applies to individuals completing their term of active service who are considered qualified to reenter the U.S. Army if all other criteria is met.

b. RE-3 applies to individuals who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE-4 applies to individuals separated from the last period of service with a nonwaivable disqualification. Individuals are ineligible for enlistment.

5. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. An under other than honorable conditions discharge is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

9. 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 his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability 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 his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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

11. 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 his or her 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 his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she 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.

12. 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//