ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240005354

APPLICANT REQUESTS: referral of his medical records to the Army Disability Evaluation System.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states he separated from active duty 2011 and transferred to the U.S. Army Reserve (USAR). He subsequently was issued a 20-Year Letter. He was discharged honorably, and he is awaiting age 60 for non-regular retirement. He had a behavioral health and endocrinology issues while on active duty, which carried over to his USAR service and markedly affected his ability to perform his job to the best of his abilities. He can show evidence that treatment and referral to a Medical Evaluation Board was overlooked during his service to the U.S. Army. He believes that the error was caused by misjudgment in treatment, diagnosis, and follow-up care. Serving in the USAR widened the probability of receiving continuity in care and/or an accurate assessment of job performance.

3. Following over 12 years of active service in the Regular Army, the applicant enlisted in the USAR on 26 January 2011.

4. The applicant's Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) is dated 24 January 2019. This letter notified him that having completed the required years of qualifying Reserve service, he is eligible for retired pay upon application at age 60.

5. The applicant's Noncommissioned Officer Evaluation Report (NCOER) covering the period 1 February 2018 through 31 March 2019, his last NCOER on record, does not indicate he was unable to perform his assigned duties due to a medical disability.

6. Orders published on 25 June 2019 ordered the applicant's honorable discharge from the USAR effective 1 July 2019.

7. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting revocation of his retirement orders for a non-regular retirement and referral to the Disability Evaluation System (DES). He states:

> "I had a behavioral health and endocrinology issues on active duty, which carried over to my USAR service and markedly affected my ability to perform my job to the best of my abilities. I can show evidence that treatment and referral to an MEB was overlooked during my service to the U.S. Army."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant had received his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) on 24 January 2019. Orders published on 25 June 2019 show he was honorable discharge from the USAR effective 1 July 2019.

d. AHLTA shows that between 19 June 2009 and 30 March 2010, the applicant was evaluated and treated with martial counseling for a failing marriage and adjustment disorder with depressed mood. No endocrine disorder was identified

e. MEDCHART shows the applicant was on temporary physical profiles in 2012 for high blood pressure, a history of anxiety, and chest pain. There are no more temporary physical profiles and there is no evidence the applicant was ever placed on a permanent physical profile.

f. His final Periodic Health Assessment was completed 2 November 2018. His behavioral health screening was positive PTSD for which he requested behavioral health assistance, he was not on medications, he had no physical profiles, and he was found fully medically ready.

g. The applicant's final NCO Evaluation Report covered 1 February 2018 thru 31 January 2019 and shows he was a successful Soldier. He passed his Army Physical Fitness Test and maintained Army height and weight standards. He met standard for all attributes and competencies with his rater stating "consistently operated at a high tempo to accomplish the tasks given. His senior rater opined "SGT [Applicant] has strong potential. He will continue to succeed and will make an excellent squad leader. SGT [Applicant] should be sent to his next level NCOES when eligible. Promote to SSG with peers."

h. There is insufficient probative medical evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary retirement. Thus, there was no cause for referral to the Disability Evaluation System.

i. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, chronic maxillary sinusitis, and diabetes mellitus. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

j. It is the opinion of the ARBA Medical Advisor that referral to the DES is not warranted.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a referral to DES as a result of physical and mental health conditions. This opine will focus only on the mental health conditions, including PTSD, which the applicant asserts are related to his request. 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) Following over 12 years of active service in the Regular Army, the applicant enlisted in the USAR on 26

January 2011; 2) Orders published on 25 June 2019 ordered the applicant's honorable discharge from the USAR effective 1 July 2019.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided

c. The applicant is requesting a referral to DES in part for mental health conditions including PTSD. There is evidence the applicant attended treatment at the Family Advocacy Program (FAP) starting in 2009 due to an unrestricted report of domestic violence where the applicant was identified as the perpetrator. The applicant attended marital, individual, group therapy, and psychiatric medication management appointments. He was reported to have deployed to Kuwait, but he denied exposure to combat or experiencing PTSD symptoms. The applicant remained in treatment at FAP for a year focused on his stress and anger management. Later, the applicant was also diagnosed with an Adjustment Disorder with Depressed Mood. In 2012, the applicant self-referred himself to anger management treatment at the VA due to the applicant's concern that he noticed an increase in previously addressed behavior. He attended one group session before discontinuing. He was provided psychological testing by the VA for assistance in differential diagnosis, and he was again diagnosed with an Adjustment Disorder. In 2014, the applicant again was found to be engaged in domestic violence with a different intimate partner, and he was referred again to FAP for group therapy. The applicant was not diagnosed with a mental health condition beyond intimate partner violence. There was insufficient evidence the applicant was placed on a permanent psychiatric profile, required inpatient psychiatric treatment, or found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant was treated at the VA after his discharge for reported behavioral health symptoms predominantly through psychiatric medication. He underwent a Compensation and Pension Evaluation for mental health conditions in 2019, and he was diagnosed with service-connected PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD by the VA, and he was diagnosed with an Adjustment Disorder while on active service. However, there is insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence he was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected PTSD by the VA, and he was diagnosed with an Adjustment Disorder while on active service. However, there is insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence he was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition 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:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in both medical reviews, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

//SIGNED//
X _____

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

3. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes the Army Disability Evaluation System (DES) 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 objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of AR 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the Department of Defense for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of AR 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per AR 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

g. The Chief, Army Reserve will ensure eligible Soldiers of the USAR Ready Reserve are referred for evaluation by MAR2 and DES, as applicable, in a timely manner, and in accordance with this regulation.

h. Unit commanders will ensure medical profiles containing a P3/P4 or temporary (T) 3/T4 in one of the serial profile factors are reviewed according to the standards of AR 40-501. Among the duties required, a unit commander will provide a non-medical assessment by completing DA Form 7652 (DES Commander's Performance and Functional Statement).

4. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//