

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240005662

APPLICANT REQUESTS: in effect, a medical retirement vice medical separation.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 3349 (Physical Profile Record)
- Memorandum for Record, Subject: Notification of Pending Separation for Medical Disqualification
- Army National Guard (ARNG) Retirement Points History Statement
- NGB Form 22 (Report of Separation and Record of Service), for the periods ending 30 June 2023
- Indiana Army National Guard Orders 0005969578.00, 12 September 2023 (Separation)

FACTS:

1. The applicant states her records show she was discharged but not retired. She has paperwork that shows she is retired with retirement points. She requests her status be changed to retired with points. Her documents and file need to be updated. The file was never updated, or paperwork was processed wrong.

2. The applicant provides:

a. DA Form 3349, 13 March 2023 shows a reason for the profile as post-traumatic stress disorder (PTSD) and a "3" in her physical profile for psychiatric. Further it shows the applicant was referred to the Disability Evaluation System (DES); ensure the applicant has access to all Behavioral Health appointments. Commanders/leaders satisfy profiling officer immediately there are significant changes in performance or behavior. No permanent change of station until final fitness for duty determinations.

b. Memorandum for Record, Subject: Notification of Pending Separation for Medical Disqualification, 15 June 2023 shows a review of the applicant's medical records by the Indiana ARNG State Surgeon found her not medically qualified for retention in the U.S.

Army in accordance with Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3-21b. her physical profile reflected a “not in the line of duty” injury, illness, or conditions. “Based on her current medical condition, we are lawfully required to medically discharge you from the ■■■ ARNG. Your discharge date will be 30 June 2023.”

c. ARNG Retirement Points History Statement, 16 June 2023 shows the applicant had 3 years creditable service for retired pay with a 320 Total Career Points.

3. The applicant's service record shows:

a. DA Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Indiana ARNG on 12 February 2020.

b. The applicant entered active duty for training on 15 July 2020. She was honorably released from active duty for training on 2 November 2020. Her DD Form 214 shows she completed 4 months and 6 days of active service. She was awarded or authorized the National Defense Service Medal and the Army Service Ribbon.

c. The applicant was honorably discharged from the ■■■ ARNG on 30 June 2023. Her NGB Form 22 shows she was discharged under the provisions of NGR 600-200 (Enlisted Personnel Management), Chapter 6-35c(6) Other designated physical or mental conditions with reenlistment code 3. She completed 3 years, 4 months, and 19 days of service. She was awarded or authorized the National Defense Service Medal and the Army Service Ribbon.

d. Orders 0005969578.00, 12 September 2023, involuntarily discharged the applicant from the ■■■ ARNG with an effective date of 30 June 2023.

e. ARNG Retirement Points History Statement, 15 September 2023 shows the applicant had 3 years, 4 months, and 19 days of creditable service for retired pay. Total Career Points: 346.

f. The applicant's available record is void of any documentation to show she received a Medical Evaluation Board or Physical Evaluation Board. In addition, her record is void of her separation packet containing the specific facts and circumstances surrounding her separation.

4. In the processing of this case an advisory opinion was obtained, 18 October 2024, from the National Guard Bureau, Chief, Special Actions Branch, who opined in pertinent part:

(1) Recommendation. Denial.

(2) Discussion.

a. The applicant enlisted in [REDACTED] ARNG on 12 February 2020. Soldier was notified she was found medically unfit to continue service in a memorandum dated 15 June 2023 with a pending discharge date of 30 June 2023. The applicant is requesting documentation (NGB22 and separation order) be updated to reflect she was retired. The applicant states she has retirement points and is eligible to be medically retired.

b. After review of the applicant's submission and records, the evidence shows she was medically separated because she was found medically unfit for duty due to a not in the line of duty medical condition, illness, or injury. Her NGB Form 22, and separation order reflect discharge information IAW Title 10 USC 1203 and 1206. To qualify for medical retirement as a traditional guardsman the injury, condition or illness needs to have occurred or be aggravated in the line of duty, be determined to have at least 30% disability by veterans' affairs disability rating or the applicant served for more than 20 years of service. The applicant does not meet the eligibility to be medically retired.

(3) It is the recommendation of this office that the applicant's request be denied. She is not eligible to be medically retired and documentation is correct in reflecting she was separated not retired IAW title 10 USC 1206 and title 10 USC 1203.

5. On 20 October 2024, the applicant was provided with a copy of the advisory opinion with an opportunity to respond. She did not respond.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement instead of a medical separation for PTSD. 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 Indiana ARNG on 12 February 2020; 2) The applicant entered active duty for training on 15 July 2020. She was honorably released from active duty for training on 2 November 2020. Her DD Form 214 shows she completed 4 months and 6 days of active service; 3) The applicant was honorably discharged from the [REDACTED] ARNG on 30 June 2023. Her NGB Form 22 shows she was discharged under the provisions of NGR 600-200 (Enlisted Personnel Management), Chapter 6-35c(6) Other designated physical or mental conditions with reenlistment code 3. She completed 3 years, 4 months, and 19 days of service.

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), MEDCHART, and military medical documentation provided by the applicant were also examined.

c. The applicant asserts she should have been medically retired instead of medically separated for PTSD. There is evidence in November 2021 the applicant reported to military providers of being diagnosed and treated by civilian providers for Generalized Anxiety. Specifically, she had been prescribed psychiatric medication for this mental health condition. Later in February 2022, the applicant was also diagnosed with Panic Disorder without Agoraphobia and PTSD. There is insufficient evidence these conditions were found to have occurred in the line of duty (LOD). The applicant provided corresponding civilian medication documentation of being prescribed psychiatric medication to address these conditions, which were diagnosed and being treated by civilian providers. On 13 March 2023, it was determined the applicant did not meet retention standards due to her psychiatric conditions, specifically PTSD. She was provided a permanent profile and recommended for medical separation. The applicant was referred to the Disability Evaluation System (DES). On 15 June 2023, a review of the applicant's medical records was conducted by the State Surgeon. It was determined she was not medically qualified for retention. Her physical profile reflected a "not in the line of duty" injury, illness, or conditions.

d. A review of JLV provided insufficient evidence the applicant has engaged with the VA for treatment for mental health conditions. She has not been diagnosed with service-connected mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed and treated for mental health conditions including PTSD while serving in [REDACTED] ARNG by civilian providers. However, these conditions were determined to have occurred not LOD. She was found to not meet medical retention standards as a result of the diagnosis of PTSD. However, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical retirement, because there is insufficient evidence her condition occurred in LOD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, that the applicant was diagnosed and treated for mental health conditions including PTSD while serving in the Indiana ARNG by civilian providers. However, these conditions were determined to have occurred not LOD. She was found to not meet medical retention standards as a result of the diagnosis of PTSD. However, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical retirement, because there is insufficient evidence her condition occurred in LOD.

(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 outlined in the medical review, 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
■	■	■	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.

3/31/2025

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. Section 1556 of Title 10, USC, 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.
2. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
3. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
4. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, USC, 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and 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 either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

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.

6. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.



b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

8. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

9. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

10. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from

scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

11. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

12. 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; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

13. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

//NOTHING FOLLOWS//