

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240005736

APPLICANT REQUESTS:

- physical disability discharge in lieu of honorable administrative discharge due to completion of required active service
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 is requesting a change to his discharge to reflect a medical discharge. He was discharged under false pretenses and feels as if he is entitled to Department of Defense pay. He has marked the box on his application indicating his request is related to post-traumatic stress disorder (PTSD).
3. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant enlisted in the U.S. Marine Corps (USMC) on 10 July 2000. He was honorably released from active duty on 9 July 2004, after 4 years of active service, due to completion of required active service, and transferred to the Marine Corps Reserve.
4. The applicant enlisted in the Regular Army on 13 June 2006, and he was awarded the Military Occupational Specialty (MOS) 13F (Fire Support Specialist).
5. The applicant deployed to the following locations during the following time periods:
 - Iraq, from 12 May 2007 through 7 July 2008

- Afghanistan, from 1 July 2010 through 20 April 2011
- Afghanistan, from 19 June 2014 through 15 March 2015

6. Headquarters, III Corps and Fort Hood Orders 037-0110, 6 February 2016, discharged the applicant effective 14 June 2016, with entitlement to full separation pay in accordance with Title 10, U.S. Code, section 1174.

7. The applicant's DA Form 2166-9-1 (Noncommissioned Officer Evaluation Report (NCOER) (Sergeant (SGT))), covering the period from 29 October 2015 through 21 April 2016, shows:

a. The applicant passed his Army Physical Fitness Test (APFT) on 16 November 2015.

b. He received a rating of "Met Standard" in all portions of Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies).

8. The applicant's second DD Form 214 shows:

a. He was honorably discharged in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200, due to completion of required active service on 14 June 2016, with corresponding separation code JBK, and a reentry code of 3.

b. He was not transferred to a U.S. Army Reserve (USAR) unit, which is a prerequisite to receiving involuntary separation pay due to discharge resulting from completion of required active service after reaching retention control point.

c. He was credited with 10 years and 2 days of net active service this period; 4 years of total prior active service (amounting to 14 years and 2 days of net active service); and 1 year, 11 months, and 3 days of total prior inactive service.

d. The remarks show he completed his first full term of service but failed to fulfill Reserve Component enlistment prior to transition from active duty in order to receive separation pay.

9. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a

severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

10. The applicant's Enlisted Record Brief (ERB), 15 June 2016, shows his PULHES was 111111.

11. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

12. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to his honorable administrative discharge to a physical disability discharge. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his discharge.

b. 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:

- The applicant enlisted into the Regular Army on 13 June 2006 after four years of active service in the Marine Corp. He deployed to Iraq from 12 May 2007 to 7 July 2008 and to Afghanistan from 1 July 2010 to 20 April 2011 and again from 19 June 2014 to 15 March 2015.
- The applicant was honorably discharged in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200, due to completion of required active service on 14 June 2016, with corresponding separation code JBK, and a reentry code of 3.
- He was credited with 10 years and 2 days of net active service this period; 4 years of total prior active service (amounting to 14 years and 2 days of net active service); and 1 year, 11 months, and 3 days of total prior inactive service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he believes he should have had a medical discharge and that he was discharged under false presumption. He expressed feeling as though he is entitled to "DoD pay." The application did not include any medical or mental health records. There

was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed that the applicant is 100% service connected through the VA for a variety of conditions, and he is considered 70% disabled for PTSD. DoD documentation on 8 January 2009 indicated that the applicant reported symptoms of anxiety, sleep difficulty, and hypervigilance, and his primary care provider (PCP) ordered an antidepressant medication and a referral to behavioral health. He engaged with a RESPECT.MIL provider and reported symptoms of PTSD; however he was dropped from the roster in September 2009 due to lack of follow up. In October 2014 while deployed to Afghanistan, he self-referred to behavioral health and reported panic attacks, depression, nightmares, feelings of guilt, and sleep difficulty, and after a clinical interview and psychological testing, he was diagnosed with Combat and Operational Stress Reaction. He was seen for follow up care in November 2014 and was restarted on an antidepressant medication, but the following day he reported suicidal ideation and was evacuated out of theater. Initially he was evaluated at Landstuhl and reported he thought he had PTSD, but he did not endorse the requisite number of symptoms to constitute the diagnosis and was diagnosed with Major Depressive Disorder. Through December 2014, he was seen for outpatient treatment, prescribed medication, and attended group therapy, but on 7 January 2015, he presented to the ER reporting suicidal ideation and requesting anxiolytic medication to treat anxiety. He was admitted to an inpatient facility where he reported using alcohol excessively to self-medicate anxiety. After discharge he was referred to a substance abuse program and continued in group and individual therapy. He was evaluated by several different providers, and he continued to express a belief that he had PTSD. Documentation stated that he did not meet criteria, and he was diagnosed with Anxiety Disorder not otherwise specified (NOS) and Alcohol Dependence, which was later improved to Alcohol Use Disorder. He was responsive to treatment, and his condition improved. Documentation from February to May showed that the applicant had a temporary S2 profile, and he expressed intent to be moved to a Warrior Transition Unit prior to his ETS in June 2016. He continued to discuss his belief that he had PTSD and an indication for an MEB, but his providers did not pursue this because his report of social and occupational functioning was not significantly impaired. His symptoms continued to improve per his psychologist's documentation, and he started with biofeedback and was transitioned to the Warrior Resiliency Program in September 2015. Documentation noted that he was not on a profile due to stability on medications for mood and sleep, and his diagnosis remained Anxiety Disorder NOS and Alcohol Dependence in early full remission. At his final mental health visit on 6 January 2016, the applicant reported feeling "relaxed" despite some mild anxiety about returning to work following an extended holiday leave. He denied any significant symptoms and expressed looking forward to terminal leave starting in April 2016, and his psychotherapy treatment was terminated.

e. The applicant initially engaged the VA for mental health treatment in April 2019, and he reported relationship difficulty, irritability, and anxiety. He was restarted on medications for mood and sleep, and he was referred to the PTSD clinic. At follow up in July 2019, he reported improvement in sleep and benefit from group therapy for PTSD. He continued with group therapy and utilized the Caregiver Support Program. Documentation from August 2023 showed that he had discontinued the antidepressant medication reporting that he felt "great" without it and that he experienced only minimal PTSD symptoms with use of a sleep medication only. At a visit to his PCP in November 2024, he requested a referral to the PTSD clinic, and an appointment is scheduled for 3 January 2025.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant was diagnosed with a mental health condition while on active service, but this condition does not warrant a referral for a medical disability evaluation. The applicant initiated mental health care while deployed in 2014, and he received inpatient and outpatient treatment for Anxiety Disorder NOS and Alcohol Dependence and Use Disorder. While the applicant was on a temporary psychiatric profile while gaining stability on psychiatric medications, this profile expired in April 2015, and he was not profiled again despite his request. Additionally, the documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). His mental health treatment successfully terminated in January 2016 prior to his terminal leave in April 2016 and his discharge in June 2016.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for disability evaluation

(2) Did the condition exist or experience occur during military service? NA; request is for disability evaluation

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for disability evaluation

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was honorably discharged in the rank/grade of SGT/E-5, under the provisions of Army Regulation 635-200, due to completion of required active service on 14 June 2016. The Board found no error or injustice in his separation. The Board reviewed and agreed with the medical reviewer's finding that there is sufficient evidence to support that the applicant was diagnosed with a mental health condition while on active service, but this condition does not warrant a referral for a medical disability evaluation. Of particular interest, the Board noted that the applicant's mental health treatment successfully terminated in January 2016, prior to taking terminal leave and ultimately discharged in June 2016. Therefore, based on a preponderance of available evidence, the Board determined that the reason for separation the applicant received upon separation was not in error or unjust.

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.

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

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

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

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the

severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

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

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

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

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

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one

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

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Army Regulation 601-280 (Army Retention Program) outlines the policies and procedures for reenlisting and retaining enlisted Soldiers and applies to both active and Reserve components of the U.S. Army. It states a Soldier may not exceed the retention control points shown in Table 3-1 by more than 1 month before expiration of contracted service (reenlistment or extension). Table 3-1 Retention Control Points shows:

<u>Rank</u>	<u>Total active service in years</u>
Private through private first class	5
Corporal/specialist	8
Corporal/specialist (promotable)	8
Sergeant	14
Sergeant (promotable)	14
Staff sergeant	20
Staff sergeant (promotable)	20
Sergeant first class	26
Sergeant first class (promotable)	26
First sergeant/master sergeant	29
First sergeant/master sergeant (promotable)	32
Command sergeant major/sergeant major	32

7. Title 10, U.S. Code, section 1174, provides for separation pay to service members who are involuntarily separated and meet specific requirements.

a. A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed 6 or more, but less than 20 years of active service immediately before that discharge is

entitled to separation pay unless the Secretary concerned determines the conditions under which the member is discharged to not warrant payment of such pay.

b. As a condition for receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a Reserve component for a period of not less than 3 years following the person's discharge or released from active duty.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//