

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006134

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to medical retirement and honorable conditions discharge.

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)
- DD Form 149 (Application for Correction of Military Record)
- Two (2) Certificate of Achievement
- DA Form 638 (Recommendation for Award)
- Army Commendation Medal (ARCOM) Certificate
- Army Achievement Medal (AAM) Certificate
- Order 089-009, Award: Driver and Mechanic Badge
- Good Conduct Medal Roster AAA-199
- Orders 353-0012
- Promotion Point Worksheet (PPW)
- DA Form 4187 (Personnel Action)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
"WORKSHEET"
- Memorandum for Record (MFR): Command Interference with SPC [REDACTED]
Medical Separation
- Email: Request to Withdraw Active-Duty Separation (ADSEP) for Legal Errors -
SPC [REDACTED]
- MFR requesting information from Fort Carson Trial Defense Services (TDS) to
2nd Stryker Brigade Legal Office regarding SPC [REDACTED] Article 15
- Copy of Text messages
- MFR: Unlawful Commander Interference and Article 15 Targeting of Medical
Separation for SPC [REDACTED]
- Memo for Commander
- List of Priority II Actions
- Extract: Army Regulation (AR) 600-8-2 (Suspension of Favorable Personnel
Actions (FLAG)
- Extract: AR 27-10 (Military Justice)

- Extract: AR 600-20 (Army Command Policy)
- 2 Letters from The Department of Veteran Affairs (VA)

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 to correct his involuntary separation to medical retirement and honorable discharge because his separation process was unfair and filled with improprieties. He believes his medical separation was interfered with. He was erroneously flagged and never punished, and the unlawful flag prevented him from getting medical retirement/separated. Additionally, several military regulations, standard operating procedures and his rights were violated in separating him involuntarily. He knows he served honorably and should have separated under the correct category with all due entitlements.

a. The applicant states the unit circumvented AR 635-200 and AR 635-40 in the requirements to "voluntarily" extend him for Army Disability Evaluation System (DES) reasons that did not exist. He did not have the required language under Annex A of his enlistment contract to extend him purely for administrative separation. He was not under any criminal investigation or pending court martial action. Thus, he could have expiration term of service (ETS'd) with honorable conditions, but he was tricked to extend his contract two months before his separation just to be involuntarily separated.

b. The applicant further states under AR 600-8-2 the Battalion (BN) Commander (CDR) must validate and provide additional context to a soldier's flag if it exceeds six (6) months in duration. His AA flag which Trial Defense Services (TDS) contested as unlawful exceeded this timeline with no additional information and was never closed eight (8) months later until he was finally chaptered on 08 August 2023. Without this unlawful flag and the circumvention of AR 635-200 and AR 635-40 he would have separated either honorably at the end of his initial contract on 21 April 2023 or medically separated as his narrative summary (NARSUM) was already completed. His regular DD-Form 214 Worksheet and ETS orders shows is his initial contract date of separation.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- Promotion Point Worksheet (PPW), 11 March 2023

- DA Form 4187 (Personnel Action), 24 March 2023
- Memorandum for Record (MFR): Command Interference with SPC [REDACTED] Med Separation, 4 May 2023
- Email: Request to Withdraw ADSEP for Legal Errors - SPC [REDACTED], 5 May 2023
- Copy of Text messages, 1 June 2023
- MFR: Unlawful Commander Interference and Article 15 Targeting of Medical Separation for SPC [REDACTED] 28 June 2023
- Memo for Commander, 2SBR, 4ID, 18 July 2023
- List of Priority II Actions
- Extract: Army Regulation (AR) 600-8-2 (Suspension of Favorable Personnel Actions (FLAG))
- Extract: AR 27-10 (Military Justice)
- Extract: AR 600-20 (Army Command Policy)
- MFR: Information Request from Fort Carson (TDS) to 2nd Stryker Brigade Legal Office: SPC [REDACTED] Article 15, 1 June 23

b. The applicant provided the following copies of decorations, medals, badges, citations, and achievements to show his dedication to duty, professionalism, and attention to detail:

- Certificate of Achievement, 19 June 2020
- Certificate of Achievement, 8 April 2021
- Army Commendation Medal (ARCOM) Certificate, 16 December 2021
- Army Achievement Medal (AAM) Certificate, 28 January 2022
- Order 089-009, Award: Driver and Mechanic Badge, 31 March 2022
- Good Conduct Medal Roster AAA-199, 15 October 2022

c. On 19 December 2022, shows the initial orders 353-0012 of the applicants' release from active duty and army transition point report date 21 April 2023.

d. A draft copy of a DD Form 214 (Certificate of Release or Discharge from Active Duty) "WORKSHEET", period ending 21 April 2023 (initial end date of the applicant's contract date) shows the following information:

- Block# 23 Type of separation: Release from Active Duty
- Block# 24 Character of Service: Honorable
- Block# 25 Separation Authority: AR 635-200
- Block# 26 Separation code: MBK
- Block# 27 Reentry Code 1
- Block# 28 Narrative Reason for Separation: Completion of Required Active Service
- Block# 29 Dates of Time Lost during this Period: None

- Block# 30 Member Requests Copy 4: LEA

e. On 18 July 2023, the applicant submitted an appeal regarding an article 15.

f. A letter from The Department of Veteran Affairs (VA) dated 1 April 2024 shows the applicant's combined service-connected evaluation VA rating 100%. The effective date the applicant became totally and permanently disabled due to his service-connected disabilities were effective 18 January 2024.

g. A letter from the VA dated 2 April 2024 shows an increase in the applicant's combined rating evaluation and effective date as follows:

- combined rating evaluation 90% effective date 9 August 2023
- combined rating evaluation 100% effective date 18 January 2024

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 22 October 2019.

b. On 8 November 2022, the applicant signed a leave determination MFR for Integrated Disability Evaluation System (IDES), for leave dates 17 December 2022 to 2 January 2023.

c. On 21 November 2022, the commander validated and signed the DA Form 7652 (Disability Evaluation System (DES)) Commander's Performance and Functional Statement on behalf of the applicant. The purpose of this form is to provide information to the Physical Evaluation Board (PEB) on the impact of a medical impairment on the applicant's ability to perform duties and to provide administrative information that impacts disability adjudication and/or benefits if the applicant was determined unfit.

d. On 15 December 2022, DA Form 22 (Transmittal Record) was received at the 704th Brigade Support Battalion (BSB) S1, by PFC Mc___. In block# 18 (Remarks) of the form indicates the Executive Officer (XO) and the First Sergeant was in receipt of the applicant's leave documents from medical readiness- medical evaluation board (MEB) command.

e. On 16 December 2022, the Physical Evaluation Board Liaison Officer (PEBLO) sent a memo to the applicants' unit noting the applicant's leave was approved and was conditional upon being reachable at all times via cell phone and email.

f. On 20 December 2022, a DA Form 4187 documented the applicant's duty status changed from present to absent without leave on 19 December 2022. In section IV (Remarks) states the applicant was verbally counseled by the Company Commander.

on 16 December 2022 that he was not allowed to take holiday block leave (HBL). The applicant was made aware that he was required to be present for duty starting 19 December 2022 at fist formation 0630. On that date he was not present for accountability at Physical Training (PT) formation 0620 at which time SGT T___ called the applicant. The applicant informed SGT T___ that he had left the state by commercial flight and was in Tennessee (TN). The Company chain of command and Brigade Rear Delta (D) were notified, A DA 268 flag for adverse action was immediately initialed against him.

g. A copy of the unit's 704th BSB, 2SBCT, 4ID Personnel Register form showing the date twelve (12) soldiers to include the applicant checked in from leave. The personnel register shows the applicant checked in on 1 January 2023.

h. On 4 January 2023, received an event-oriented counseling from the company commander for flag initiation, being absent without leave (AWOL), lying to a commissioned officer, and field-grade article 15. The applicant disagreed with the information noted in the counseling and added he believed he had approved leave.

i. On 5 January 2023, a DA Form 4187 documented the applicant's duty status changed from AWOL to present for duty on 3 January 2023.

j. On 10 January 2023, the applicant provided a very detailed account of matters surrounding events that happened prior to his company commander documenting him AWOL.

k. The available service record includes the applicant's medical evaluations, dated 1 March 2023, for the purpose of separation and medical board. The applicant detailed all medical problems/condition.

- DD Form 2808 (Report of Medical Examination)
- DD Form 2807 (Report of Medical History)

l. On 11 March 2023, the PPW shows the total points accumulated for the applicant towards promotions as 461 points.

m. On 15 March 2023, the applicant underwent a mental status evaluation. Sections III (Pertinent Findings on Mental Status Evaluation) shows the applicant met the medical retention determination point (MRDP) and has been referred to IDES. The applicant does fall below medical retention standards in accordance with (IAW) AR 40-501(Standards of Medical Fitness). Additionally, Section VI (Recommendations and Comment for Commander) Block titled Further Comments indicates from a psychological perspective, the applicant does not meet medical retention standards (AR 40-501, CHAP 3). The applicant has been diagnosed with psychological disorders and

does require disposition through medical channels and a referral to IDES has already occurred at the time of this evaluation.

n. A MFR from the Director of IDES dated 16 March 2023, states the applicant was in IDES with an approaching ETS date which does not allow adequate time to complete the Board process. The request to extend the applicant ETS date from 21 April 2023 to 17 October 2023. The applicant completed the MEB Phase. Their case is pending Chapter action decision. However, per AR 635-200, 1-25f, 28 June 2021, retention should be approved "in the absence of substantial evidence that such retention prejudices good order and discipline. The applicant may be eligible for Veterans Administration healthcare and disability compensation are inappropriate reasons to deny the applicant's request for extension." The IDES Director recommended approval of the extension barring any substantial evidence. Per previous agreement with Command, all requests for extension are made for 180 days. The applicant would not be retained for additional time based on the extension request Per Army Policy, the applicant will be separated from the Army expeditiously when the IDES process was completed. 180 days was agreed upon to decrease the administrative burden of performing additional Medical Extensions for the applicant in the future.

o. On 24 March 2023, the immediate commander approved (DA Form 4187) the extension of the applicant's ETS from 21 April 2023 to 17 October 2023 for the purpose of continuing medical care and completion of IDES.

p. The applicant's immediate commander notified the applicant of her intent to separate the applicant under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b, Pattern of Misconduct. The specific reasons for his proposed recommendation were based upon the following:

- Failure to report your appointed place of duty on or about 24 March 2022
- Failure to report your appointed place of duty on or about 13 April 2022
- Failure to report your appointed place of duty on or about 4 August 2022
- AWOL on or about 3 January 2023

q. The available service record is void counseling or any personnel actions surrounding the applicants' failure to report to his appointed place of duty.

r. On 17 April 2023, the applicant acknowledged receipt of separation notice.

s. A MFR from the TDS Paralegal NCO dated 18 April 2023, indicates the applicant was notified of separation on 17 April 2023 and needed consultation in conjunction with his administrative separation. He attended the administrative separation brief and elected to submit matters. However, he had documents of a "medical extension" that conflicted with his ETS date that needed legal review. The TDS Paralegal NCO

requested the applicant return to TDS on 25 April 2023 pursuant to AR 635-200 and the circumstances of their case.

t. A MFR from the TDS Paralegal NCO dated 25 April 2023 indicates the applicant was notified of separation on 17 April 2023 and afforded 7 duty days to consult and respond to the separation proceedings. The original suspense date for matters was 26 April 2023. The Senior Defense Counsel was unavailable due to leave. The TDS Paralegal NCO requested the applicant to call TDS on 2 May 2023 to arrange an appoint with the Senior Defense Counsel pursuant to AR 635-200 and the circumstances of their case.

u. On 4 May 2023, the Defense Counsel provided a MFR regarding Command Interference with the applicant's Medical Separation. The Defense Counsel identified in detail the unlawfully interfered of the applicant's medical retirement process, and the violation of AR 635-200, AR 635-40, and AR 600-8-2. Recommended the administrative separation should be withdrawn and the applicant should be allowed to medically retire IAW AR 635-40.

v. On 4 May 2023, the immediate commander initiated separation action against the applicant for patterns of misconduct. She recommended the applicants' period of service be characterized as general, under honorable conditions. The applicant acknowledged the same day.

w. On 5 May 2023, the TDS NCO emailed the 2SBCT Team/applicant's unit requesting to withdraw the Active-Duty Separation (ADSEP) for legal errors.

x. On 19 May 2023, the Inspector General (IG) emailed the XO, CPT B__ requesting the applicants' separation Interference memorandum and to call him.

y. On 25 May 2023, the 2SBCT, 4ID Brigade Judge Advocate provided an email response to Defense Counsel, CPT B__ and others copied on the email; indicating the General Court-Martial Convening Authority (GCMCA) will decide whether to give precedence to the MEB or to give precedence to the involuntary separation action.

z. On 1 June 2023, a MFR requesting information from Fort Carson Trial Defense Services (TDS) to 2nd Stryker Brigade Legal Office regarding the applicant's Article 15. The information was communicated through text message between Sergeant (SGT) A__ P__, Paralegal Non-Commission Officer (NCO) and SGT A__ H__, Trial Defense Services Paralegal NCO. Details of when the Field Grade Article 15 for the applicant had been submitted by the unit to the legal office. SGT P__ said he was not aware of any Article 15 on the applicant, only an administrative separation, but would return to him with more information later. Later, the same date SGT P__ responded texting the

Article 15 action had been opened and drafted by SGT A____, the Paralegal NCO for the unit. The action was opened and drafted on 9 May 2023, one week after TDS submitted the rebuttal matters for the applicant's administrative separation.

aa. On 28 June 2023, the Senior Defense Counsel documented a MFR regarding detail matter of Unlawful Commander Interference and Article 15 Targeting of Medical Separation for the applicant, HFSC, 704th BSB, 2SBCT.

bb. The available service record is void the decision from General Court-Martial Convening Authority (GCMCA) as to whether to give precedence to the MEB or to give precedence to the involuntary separation as noted in the email on 25 May 2023, from the 2SBCT, 4ID Brigade Judge Advocate.

cc. A list of priority II actions shows the total number article 15s and the unit associated with.

dd. The following Extracts of Army Regulations were provided as support/reference to the case on behalf of the applicant.

- Extract: AR 600-20 (Army Command Policy) 4-6 Exercising military authority
 - Military authority is exercised promptly, firmly, courteously and fairly. Commanders should consider nonpunitive corrective measures before deciding to impose nonjudicial punishment.
- Extract: AR 27-10 (Military Justice) 3-13
 - Commanders must impose NJP in an absolutely fair and judicious manner (see MCM, 2019).
- Extract: Army Regulation (AR) 600-8-2 (Suspension of Favorable Personnel Actions (FLAG))
 - Rules for removing a Flag are as follows:
 - Charges, restraint, confinement, court-martial, nonjudicial punishment and absent without leave (including alcohol related incidents). Remove the Flag when the Soldier is acquitted at court-martial or civilian trial and no other adverse action arising from the incident or charges is contemplated, when UCMJ action is closed or dropped without action; or when punishment from court-martial, civilian trial, or nonjudicial punishment is completed.
- Extract: AR 20-1 (Inspector General Activities and Procedures)

ee. The available service record is void chain of command recommendations and the separation authority approval or inspector general disposition.

ff. The following shows the initiation of discharge orders the applicant from active duty:

- orders 353-0012 dated 19 December 2022 with effective discharge date of 21 April 2023
- orders 086-0073 dated 27 March 2023 with effective discharge date of 21 October 2023
- orders 213-0030 dated 1 August 2023 with effective discharge date of 8 August 2023
- orders 215-0015 dated 3 August 2023 corrected the home of record.

gg. On 8 August 2023, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 9 months, and 17 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Pattern of Misconduct." It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Armed Forces Service Medal
- Army Service Ribbon
- Driver and Mechanic Badge-Mechanic
- Certificate of achievement (3rd Award)

5. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests change in discharge from General Under Honorable Conditions to Honorable; and change in narrative reason for separation to 'Medical Retirement'. He indicated that TBI, Other Mental Health and Reprisal/Whistleblower were related to his claim. The applicant stated that "The unit improperly flagged me in violation of AR 600-8-2, which interfered with my medical separation process and violated my rights".

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service 22Oct2019. His MOS was 92F10, Petroleum Supply Specialist. He did not have combat deployment. He underwent dual processing— chapter separation as well as medical discharge processing due to disability. Ultimately, he was discharged on 08Aug2023 under AR 635-200 chapter 14-12, for patterns of misconduct. The misconduct noted in the record was failure to report to appointed place of duty on 24Mar2022, 04August2022 and 13Apr2022. A fourth instance of failure to report from 19Dec2022 until 03Jan2023 was disputed by the applicant: He had written approval for leave; however, there was disagreement over whether approval was revoked due to the applicant needing to be available for MEB processing. His service was characterized as Under Honorable Conditions, General.

3. Lumbar Spinal Stenosis.

The applicant was referred for a Medical Board on 07Nov2022 for his back condition. He was first seen for back pain (of 2 months duration) in March 2020 without known trauma, and which had started after rucking. Then in May 2021, he fell off a step and heard a pop and he was seen in the emergency room reporting back pain with radiating down the left leg. He underwent physical therapy June-July 2021 without relief. Pain persisted and a 15Feb2022 lumbar spine MRI revealed early degenerative disc disease and herniation at L4-5 impacting the exiting bilateral L4 nerve roots, left worse than right. There was also paraspinal muscle spasm. He was given a permanent L2 at the time. Later, he was given a permanent L3 physical profile which the MEB NARSUM reviewer noted restricted multiple physical profile functional activities. In addition, per Command (DA Form 7652), he was unable to wear gear, ACH, or fuel as a fueler.

4. Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent. While undergoing the MEB for the back condition, the applicant's BH condition was assessed. He reported anxiety, depression, and sleep disturbance. There were no psychiatric hospitalizations or suicide attempts; and there were no manifestations of

psychosis, mania, or violence. In the 13Dec2022 Mental Disorder DBQ, the applicant endorsed that his mental health issues began after enlistment when he started having back pain. He then became highly irritable after the sudden death of his brother in January 2021 (due to a stampede in a soccer stadium in Cameroon). He engaged in BH services to include individual therapy and medication management, since May 2022. His BH diagnoses included but was limited to Anhedonia; Irritability and Anger; Other Sleep Disorders; Problems in Relationship with Spouse or Partner; and Other Specified Problems Related to Psychosocial Circumstances. He was also diagnosed with mild TBI (12Dec2022 Initial Evaluation of Residuals of TBI) due to hitting his head on the gunner hatch in February 2022. The 25Jan2023 MEB NARSUM indicated the Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent condition failed retention standards of AR 40-501 chapter 3 due to persistent symptoms necessitating limitations of duty or requiring work in a protected environment—he required unrestricted access to BH care and he could not live in an austere environment without worsening his condition. In addition, per DA Form 7652: “SM has a historical trend of requesting to be exempt from field training due to civilian schooling course for computer science. SM continuously Failed to Report for formations and details thus straining work relationships. SM is also diagnosed with Depressive Disorder and [is] unable to hold a weapon or drink alcohol. SM admitted to still drinking alcohol to cope with life situations”.

5. Separation procession medical documentation

a. As part of the chapter separation process, the applicant underwent a 01Mar2023 Report of Medical Exam (for separation/Medical Board) which did not show any gross physical abnormalities. Of note, during the accompanying Report of Medical History, the applicant endorsed nervous trouble, trouble sleeping, depression/anxiety, dizziness, and recurrent headaches. He was already in the IDES process at the time.

b. A Report of Mental Status Evaluation (DA Form 3822) completed on 15Mar2023, yielded the following positive screenings: PTSD, Depression, TBI, Substance Misuse and Sexual Trauma. His cognition and perception were not impaired. His behavior and impulsivity were normal. He was deemed capable of understanding and participating in administrative proceedings; and of appreciating the difference between right and wrong. Although it was determined that from a psychological perspective that he did not meet medical retention standards; his behavioral health condition was not considered a mitigating factor for the alleged misconduct. He was deemed cognitively and psychologically responsible for his behavior.

6. Conclusion/Opinion

a. The 25Jan2023 MEB NARSUM indicated that the Lumbar Spinal Stenosis and

the Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent conditions, failed medical retention standards of AR 40-501 chapter 3.

b. The applicant submitted the 02Apr2024 VA Rating Decision which revealed that he was granted service connection for Intervertebral Disc Syndrome, Lumbar Spine at 40%; and that Adjustment Disorder with Mixed Anxiety and Depressed Mood (to include Insomnia), currently evaluated at 30%, was increased to 50%. These new ratings were effective on 18Jan2024, just 5 months after the applicant was discharged from military service. The total combined rating more than surpasses the 30% minimum required for medical disability retirement disposition, although it is acknowledged that the lumbar spine condition and the BH condition had not been reviewed by the PEB to evaluate the applicant's fitness for continued service for these conditions.

c. With regard to the applicant's request for discharge upgrade to Honorable, Liberal Consideration guidance was examined. Under Liberal Consideration, the applicant's current diagnoses Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent and TBI are mitigating conditions. Whether the unit improperly flagged the applicant in violation of AR 600-8-2, and interfered with his medical separation process and violated his rights; is outside the purview of the undersigned and will be addressed by the Board.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent and TBI are mitigating conditions under Liberal Consideration.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic/Persistent and TBI conditions while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, in part. The applicant endorsed that his mental health condition began after he developed back pain. The applicant had persistent back pain after injury in May 2021. The applicant began being seen for BH symptoms in May 2022. The first documented misconduct on 24Mar2022 (failure to report to appointed place of duty) occurred prior to onset of BH symptoms; however, at least 2 other instances of failure to report occurred afterward. Command also noted the applicant was studying computer science which had interfered with reporting for field training and that the applicant was self-treating with alcohol. Notwithstanding, the Report of Mental Status Evaluation examiner opinioned that the applicant's BH condition was not considered a mitigating factor for the alleged misconduct, it is noted that failure to report to appointed place of duty (when his computer coursework was not the reason) could be a manifestation of avoidance behavior which is a common sequelae of mood disorders like depression and anxiety (symptoms notably exhibited in his adjustment disorder). In addition, substance misuse

is a common sequela of mental health illness as well as TBI. Moreover, under Liberal Consideration, the applicant's assertion alone that his Other Mental Health and TBI contributed to the reason for his chapter separation, warrants consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the finding of mitigation for such misconduct in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable.

Based upon the VA documents and ratings provided by the applicant related to his Intervertebral Disc Syndrome, Lumbar Spine and that Adjustment Disorder with Mixed Anxiety and Depressed Mood (to include Insomnia), which have not been previously evaluated by the PEB, the Board recommended referring the applicant's record the Disability Evaluation System for further review to determine whether a medical separation is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by

- reissuing the applicant a DD Form 214 showing:
 - Characterization of Service: Honorable
 - Separation Authority: No change
 - Separation Code: No change
 - Reentry Code: No change
 - Narrative Reason for Separation: No change
- directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include Intervertebral Disc Syndrome, Lumbar Spine and that Adjustment Disorder with Mixed Anxiety and Depressed Mood (to include Insomnia) met medical retention standards at the time of service separation.
 - a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.
 - b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

//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 635-200 (Active-Duty Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Honorable Discharge states an honorable discharge is a separation with honor. 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.

b. General Discharge states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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 based on 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.

4. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

5. 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 post-traumatic stress disorder (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.

6. 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, 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.

7. 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.

8. Army Regulation (AR) 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 for a medical evaluation board that 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, chapter 3. 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 Medical Evaluation Boards (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 (Standards of Medical Fitness), Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement). If an 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. In addition, in all informal cases, the PEB Liaison Officer of the medical treatment facility having control of the Soldier will be the counselor for the Soldier. As such, the PEB Liaison Officer is primarily concerned with the Soldier's interests. The Soldier will be made fully aware of the election options available to him or her, the processing procedures, and the benefits to which he or she will be entitled if separated or retired for physical disability.

9. Directive-Type Memorandum (DTM) 11-015 explains the Integrated Disability Evaluation System (IDES). It states, the IDES is the joint Department of Defense (DoD) VA process by which the DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DoD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

//NOTHING FOLLOWS//