

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240006340

APPLICANT REQUESTS: in effect, physical disability discharge vice administrative discharge under other than honorable conditions for the good of the service in lieu of trial by court-martial

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states:
 - a. His discharge should be administratively corrected to reflect disability discharge due to multiple medical conditions.
 - b. His medical conditions include his mental health (his mind wanders off), post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), pulmonary embolisms, deep vein thrombosis (DVT), he needs a continuous positive airway pressure (CPAP) machine, and he is homeless. He was on Supplemental Security Income (SSI) from 1991 – 1994 for psychosis.
 - c. He lists various locations where his medical records can be found, to include the Department of Veterans Affairs (VA).
3. A DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows the applicant enlisted in the Army National Guard (ARNG) on 16 January 1980, for a period of 6 years.
4. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U"

(Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

5. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), 25 March 1980, shows:

a. The applicant entered active duty for training on 16 February 1980, at Fort Knox, KY, where an EPSBD was conducted on 25 March 1980.

b. He was diagnosed with exostosis in both feet and was unable to wear combat boots because of the pain from exostosis dorsum in both feet. He stated he had bumps on the top of med-foot for the past 6 years.

c. He was not qualified for enlistment under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), chapter 2.

d. The form is not signed by the medical approving authority, the applicant's commander, the assistant adjutant, the applicant, or the discharge authority.

6. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 26 March 1980, for the purpose of medical discharge due to exostosis of both feet, existed prior to service (EPTS), with a physical profile rating of 3 in factor L.

7. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was honorably discharged from the ARNG on 30 March 1980, due to being absent without leave (AWOL) from initial active duty for training (IADT). He was credited with 2 months and 15 days of service.

8. A DA Form 188 (Extract Copy of Morning Report), 1 April 1980, shows the applicant departed AWOL from his Basic Combat Training (BCT) unit at Fort Knox, KY, on 31 March 1980.

9. A corresponding memorandum from his BCT unit to Headquarters, Fifth U.S. Army, 7 April 1980, advised that the applicant, an ARNG member, was AWOL from his BCT unit since 31 March 1980, and requested information regarding any extenuating circumstances surrounding his absence be provided.

10. Headquarters, Fifth U.S. Army Orders 75-341, 16 April 1980, released the applicant from attachment and assignment to his BCT unit at Fort Knox, KY, effective 31 March 1980, until released from active duty by competent authority. There are no subsequent orders releasing him from active duty.

11. A second DD Form 4 shows the applicant enlisted in the U.S. Army Reserve (USAR) delayed entry program (DEP) on 3 July 1980, with enlistment in the Regular Army on 8 July 1980, for a period of 3 years.

12. Two DA Forms 2627 (Record of Proceedings under Article 15 of the Uniform Code of Military Justice (UCMJ)) show the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on the following occasions for the following misconduct:

- on 5 August 1980, for being AWOL from his unit at Fort Jackson, SC, from 2045 hours to 2230 hours on 2 August 1980
- on 22 September 1980, for failing to go to extra duty on 20 and 21 September 1980

13. A Trainee Discharge Program (TDP) Counseling, 23 September 1980, shows the applicant was counseled by his immediate commander on his poor duty performance. The applicant stated he was very unhappy about being in the Army and his commander informed him he was going to recommend his discharge from the Army due to his inability to conform to the minimum standards of discipline.

14. On 24 September 1980, the applicant was notified by his immediate commander of his initiation of action to honorably separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, under the TDP. The applicant was advised of his right to present any rebuttal statements in his behalf and request a separation physical.

15. On 24 September 1980, the applicant acknowledged notification of his proposed honorable separation under the provisions of the TDP and the rights available to him. He indicated he did not desire to submit a rebuttal statement in his own behalf, but he did request a separation medical examination.

16. A DA Form 2496 (Disposition Form), 25 September 1980, shows the applicant was scheduled for a medical examination on 1 October 1980, pursuant to his TDP discharge.

17. On 25 September 1980, the applicant's battalion commander recommended approval of the applicant's discharge under the TDP, after having interviewed the applicant and determined he demonstrated by his poor performance and disciplinary record that he was not qualified for retention as he could not adapt socially or

emotionally to military life and efforts to change his attitude and behavior, to include NJP, were met with negative results.

18. A DA Form 4187 (Personnel Action), 2 October 1980, shows the applicant's duty status was changed from present for duty (PDY) to AWOL on 1 October 1980.

19. A memorandum from the applicant's immediate commander, Company L (Student Enlisted), Second Battalion, U.S. Army Quartermaster Brigade, 8 October 1980, shows the applicant was notified he was being recommended for discharge and he indicated he desired a separation medical exam, which was subsequently scheduled for 1 October 1980. The applicant was AWOL effective 1 October 1980, thereby missing his medical examination and was still AWOL as of the date of the memorandum.

20. On 9 October 1980, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-33, the TDP.

21. Headquarters, U.S. Army Quartermaster Center and Fort Lee Orders 199-55, 10 October 1980 reassigned him to the U.S. Army Separation Transfer Point, Fort Lee, VA, effective 14 October 1980 for the purpose of discharge on 14 October 1980.

22. Headquarters, U.S. Army Personnel Control Facility, U.S. Armor Center and Fort Knox, KY, Orders 9-3, 15 January 1981, assigned the applicant to the Special Processing Company, U.S. Army Personnel Control Facility effective 27 December 1980. The additional instructions show he had been apprehended by civilian authorities on 27 December 1980, in south Bend, IN, and joined the Special Processing Company at Fort Knox on 31 December 1980.

23. A third DA Form 2627 shows the applicant again accepted NJP under Article 15 of the UCMJ on 10 February 1981, for failing to go to his appointed place of duty at the time prescribed at 2100 hours and 2200 hours on 9 February 1981.

24. A second DA Form 4187, 7 May 1981, shows the applicant's duty status was changed from dropped from the rolls (DFR) to attached effective 30 April 1981. The remarks show he was apprehended by civilian authorities on 18 April 1981, for civilian charges of possession of marijuana, traffic violations, failure to appear, and hitting a police car. He was confined in a county detention center pending court appearance on 30 April 1981, where the civilian charges were dropped, and he was returned to military control on that date.

25. A third and final DA Form 4187, 15 May 1981, shows the applicant's duty status was changed from confined by civilian authorities to PDY effective 30 April 1981, and that he was joined to the Special Processing Company on 6 May 1981.

26. On 6 May 1981, the applicant acknowledged having been counseled on the requirements for completion of a medical examination and that he understood if he were requesting discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service, that he was not required to undergo a medical examination but may request one. He indicated he did not desire to undergo a medical examination and understood that a mental status evaluation was required.

27. A DD Form 458 (Charge Sheet), 6 May 1981, shows the applicant was charged with:

- absenting himself without authority from his unit at Fort Knox, KY, from 31 March 1980 through 28 December 1980
- absenting himself without authority from his unit at Fort Knox, KY, from 13 February 1981 through 30 April 1981

28. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation on 8 May 1981, where he was found to have the mental capacity to understand and participate in the proceedings, found to be mentally responsible, and was found to meet the retention requirements of Army Regulation 40-501, chapter 3.

29. On 8 May 1981, the applicant voluntarily requested discharge for the good of the service under the provisions of chapter 10, Army Regulation 635-200. He understood he may request discharge for the good of the service because charges were preferred against him under the UCMJ, which authorize the imposition of a bad conduct or dishonorable discharge. Prior to making this request, he consulted with counsel who advised him on his rights, he acknowledged understanding the possible effects of an under other than honorable conditions discharge, and he submitted statements in his own behalf.

30. The applicant's self-authored statement, 8 May 1981, shows:

a. He indicated he quit school after 11th grade because he couldn't put up with it and decided to join the ARNG. When he got to BCT and started wearing boots, his feet began to bother him. He was sent to the hospital and was given many appointments, where the doctor told him, the problem with his feet would interfere with his training and it would be best that he got out of the service.

b. He asked if he could change his Military Occupational Specialty (MOS) from 94B (Food Service), but all he could do was request it. This problem has affected him since March 1979. The reason he joined the Army was to better his education and to stop depending on his parents so much. He is just asking that he be discharged to take care of his problem on his own.

31. On 19 May 1981, both the applicant's immediate commander and battalion commander recommended approval of his discharge under other than honorable conditions for the good of the service under the provisions of chapter 10, Army Regulation 635-200, based on his previous record.

32. On 1 June 1981, the applicant's discharge under other than honorable conditions, under the provisions of Army Regulation 635-200, chapter 10, for the good of the service was approved.

33. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given an under other than honorable conditions discharge on 23 June 1981, under the provisions of Army Regulation 635-200, chapter 10, for conduct triable by court-martial, with corresponding Separation Code JFS. He was credited with 4 months and 14 days of net active service beginning on 26 February 1980, to include two periods of lost time from 31 March 1980 through 27 December 1980 and 13 February 1981 through 29 April 1981. He was also credited with 1 month and 10 days of prior inactive service.

34. The applicant previously applied to the Army Discharge Review Board (ADRB) in 1984, requesting a change to the type and nature of his discharge. The ADRB denied his request, determining he was properly discharged, but discovered discrepancies in his discharge documents pertaining to his service time and corrected them.

35. A DD Form 215 (Correction to DD Form 214), 2 July 1984, corrected his net active service time to reflect 4 months and 10 days and his prior inactive service time to reflect 1 month and 15 days.

36. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

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). In essence, the applicant requests change in discharge from Under Other Than Honorable Conditions to medical discharge. He stated that PTSD, TBI and Other Mental Health conditions were related to his request. He also mentioned psychosis (on SSI from 1991-1994), DVT, pulmonary embolism and use of CPAP.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army National Guard 16Jan1980. He entered active duty 26Feb1980. His MOS was 94B Food Service. His DD 214 showed no foreign service. He underwent EPSBD on 25Mar1980. Five days later, he was discharged Army National Guard on 30Mar1980 due to being AWOL from IADT. He then enlisted in the US Army Reserve 03Jul1980 and then in the Regular Army 08Jul1980. On 24Sep1980, command-initiated separation provisions under AR 635-200 paragraph 5-33 (Trainee Discharge Program) for inability to meet minimum standards of discipline and failure to adapt to military life. However, on 01Oct1980, he went AWOL. He was confined by civilian authorities 19Apr1981 for various charges (possession of marijuana, traffic violations, failure to appear and hitting a police car) that were all dropped. He was returned to military control on 30Apr1981. He was ultimately discharged from service on 23Jun1981 under provisions of AR 635-200 chapter 10 due to conduct triable by court-martial. The charge sheet included that he was AWOL from 31Mar1980 until 28Dec1980 and AWOL from 13Feb1981 to 30Apr1981. His service was characterized as Under Other Than Honorable Conditions.

3. There were no in-service treatment records. The record did contain the following evaluations and other related evidence:

a. 25Mar1980 Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707). The applicant was unable to wear combat boots due to pain from exostosis dorsum on both feet. They were present on top of mid-foot for 6 years. *Exostosis dorsum is a condition where there are bony growths on top of the foot and often cause pain.* The condition was confirmed by x-ray which showed exostosis of tarsal metatarsal of both feet. The Exostosis Both Feet condition did not meet procurement standards of AR 40-501, chapter 2, 2-11b. He was given an L3 for no crawling, stooping, running, jumping, marching or standing. No strenuous physical activity was advised. *This form had several incomplete sections.*

b. 26Mar1980 Report of Medical Examination (SF 88). The separation exam listed

in the Summary of Defects section, the following: Exostosis of Both Feet, EPTS (existed prior to service). The physical profile was PULHES 113111.

c. 01Oct1980 Chapter Physical Exam was not completed because he was AWOL.

d. 06May1981, the applicant deferred undergoing a separation medical exam.

4. Records related to CPAP (or APAP in this case), DVT and pulmonary embolism were dated decades after discharge from service.

a. 07Aug2019 Pulmonary Consult. He had a positive sleep study and was advised to use body pillows with APAP (automatic positive airway pressure) for all napping and sleeping.

b. 30Jul2024 Urgent Care Note. The applicant was relocating and needed refills on medication. Included in the medication list was Eliquis, an anticoagulant. *DVT (deep venous thrombosis) and embolism conditions are treated with anticoagulants.*

c. 17Mar2025 CTA Chest. The study was completed for left-side chest pain to rule out pulmonary embolism. He was on anticoagulation medication due to history of pulmonary embolism. Test result: There was chronic-appearing pulmonary thromboembolism in the proximal right lower lobe pulmonary artery.

5. Behavioral health conditions with approximate date of onset in parenthesis: Alcohol Use Disorder (high school); Cannabis Use Disorder (high school to 1978); Cocaine Use Disorder (1989); Unspecified Anxiety Disorder (Jul2017); Unspecified Depressive Disorder (endorsed "my whole life", diagnosed Jul2017); and Bipolar Disorder (Jan2019). *The applicant's substance use disorders are severe.*

a. 08May1981 Report of Mental Status Evaluation (DA Form 3822). The applicant's behavior was normal; his thinking was process was clear and content was normal. His memory was good. He had the mental capacity to understand and participate in administrative proceedings. He was deemed mentally responsible. He met retention standards of AR 40-5018 chapter 3. A mental health condition was not noted.

b. August 2004 was his first documented engagement with BH services and this was related to addiction services support.

c. 19Jul2017 MH Star Diagnostic Assessment Outpatient Consult. The applicant reported that he began drinking alcohol on weekends in high school. He drank more heavily at his duty station due to boredom; but it became a more serious problem after he left college (after 2 years) in 1983 due to isolation and loneliness. He began

smoking crack cocaine in 1989. Stressors were personal (deaths of all other nuclear family members and pregnant girlfriend); financial (homeless, unable to afford to buy food); occupational (unemployed, late to work when employed); and other addiction (primarily alcohol and cocaine) related consequences (legal, relationships etc.). He also noted that his alcohol use negatively impacted his mood (multiple psychiatric hospitalizations due to alcohol intoxication with/without suicide ideation), increased isolation and impacted his health. He denied military trauma including sexual/combat.

d. 30Jan2018 MH Consult. The applicant denied any regular psychiatric care or medications. He also denied psychiatric symptoms aside from substance use and resulting “stress and frustration”.

e. 08May2019 Mental Health Biopsychosocial Assessment. The applicant reported the following trauma history: “I witnessed all of my brothers dying”. In July 2017 at age 55, he recounted the deaths of his nuclear family: Younger brother died of cocaine overdose in 1994; middle brother died of brain aneurism; oldest brother died of AIDS; mother died of breast cancer; and father died of heart attack. In addition, his pregnant girlfriend died as a result of a diabetic coma in the late 1980’s.

6. Summary/Opinion

a. Concerning mitigation of the offences for discharge upgrade, Liberal Consideration guidance policy was reviewed. It was noted that the applicant was not diagnosed with a mental health condition or TBI or treated for symptoms related to such while in military service. He stated that he received SSI for psychosis in the early 90’s; however, his JLV records date from 2004 to the present. He reported hearing voices frequently, but currently this appeared to be in the context of alcohol intoxication or withdrawal (20Oct2024 Inpatient Psychiatric History and Physical Note and 03Nov2024 Psychiatry History and Physical). During multiple BH visits/evaluations, he denied military trauma (19Jul2017 MH Star Diagnostic Assessment Outpatient Consult, 31Jan2018 MH Initial Evaluation Note, etc.). He did not deploy. He also denied history of childhood abuse or neglect. He began drinking alcohol on weekends in high school (19Jul2017 MH Star Diagnostic Assessment Outpatient Consult). He was also diagnosed with mood disorders and an anxiety disorder decades after discharge from service without mention of military service stressors. It should be noted that the applicant self-reported traumatic brain injury, but a TBI diagnosis was not found in the available record. Based on available evidence his Bipolar Disorder, Unspecified Depressive Disorder, Unspecified Anxiety Disorder and Substance Use Disorders were not service incurred or worsened by his service. In addition, evidence was insufficient

to support that the applicant had a mental health or TBI condition that failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

b. In his 08May1981 personal statement, the applicant indicated that his bilateral foot condition with onset March 1979 (prior to service) interfered with wearing of his military boots and was a significant factor in his reason for wanting to leave service. He was reportedly advised concerning the foot condition including that treatment would interfere with training. Based on available evidence, the applicant's bilateral foot condition existed prior to service and failed procurement standards of AR 40-501, chapter 2. There was no history of trauma/injury while in service. There was no evidence submitted or in the electronic medical record that showed the condition required immediate and ongoing care after discharge; therefore, service aggravation is not supported. Treatment options were not exhausted. Based on available records, evidence was insufficient to support that the bilateral foot condition failed medical retention standards of AR 40-501 chapter 3.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. As per Liberal Consideration, the applicant self asserts PTSD. The applicant also self-reported TBI.

(2) Did the condition exist, or did the experience occur during military service? Yes. As per Liberal Consideration, the applicant's self-report of PTSD due to in-service trauma, is sufficient to affirm its existence while in service. The applicant also self-reported TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was not treated for a mental health condition while in service. The VA diagnosed multiple mental health conditions (Unspecified Anxiety Disorder, Unspecified Depressive Disorder, and Bipolar Disorder) decades after discharge from service. The applicant reported substance abuse while in service; however, substance abuse is not mitigating unless associated with a mitigating disorder. He asserts PTSD and TBI; however, these diagnoses were not found in the available record, and he denied having experienced an in-service stressor. Beyond the applicant's report of PTSD and TBI conditions there was no documentation supporting these diagnoses. Therefore, there is no nexus between PTSD and/or TBI and his AWOL behavior. That notwithstanding, as per Liberal Consideration, the applicant's self-assertion alone is sufficient for consideration for a discharge upgrade by the Board.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability discharge instead of an administrative separation with an under other than honorable conditions characterization of service. In part, the applicant asserts he experienced a traumatic brain injury (TBI) and mental health conditions, including PTSD, which are related to his requests. 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 Army National Guard (ARNG) on 16 January. He entered active duty for training on 16 February 1980, but as a result of a physical medical exam, on 25 March 1980, he was determined not qualified for enlistment; 2) The applicant was honorably discharged from the ARNG on 30 March 1980, due to being AWOL from initial active duty for training; 3) The applicant then enlisted in the U.S. Army Reserve (USAR) delayed entry program on 3 July 1980; 4) The applicant accepted nonjudicial punishments (NJP) on two occasions between August-September 1980 for being AWOL and failing to go to extra duty twice; 5) On 24 September 1980, the applicant was notified by his immediate commander of his initiation to honorably separate him under the provisions of the Trainee Discharge Program; 6) The applicant accepted NJP on 10 February 1981 for failing be at his appointed place of duty on time; 7) On 06 May 1981, the applicant was charged with being AWOL from 31 March-28 December 1980 and again 13 February-30 April 1981; 7) The applicant was discharged 23 June 1981, Chapter 10-for conduct triable by court-martial with an under other than honorable conditions characterization of service. He was credited with 4 months and 14 days of net active service beginning on 26 February 1980, to include two periods of lost time from 31 March 1980 through 27 December 1980 and 13 February 1981 through 29 April 1981. He was also credited with 1 month and 10 days of prior inactive 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) was also examined.

c. The applicant is requesting a physical disability discharge instead of an administrative separation with an under other than honorable conditions characterization of service. In part, the applicant asserts he experienced a TBI and mental health conditions, including PTSD, which are related to his requests. There is insufficient evidence the applicant reported or was diagnosed with a TBI or mental health conditions including PTSD, during his active service. The applicant underwent a mental status evaluation on 8 May 1981, as part of his separation proceedings. He was not diagnosed with a mental health condition, and he was cleared from a psychiatric perspective to participate in the proceedings.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or a TBI, and he does not receive any

service-connected disability for a mental health condition or a TBI. The applicant has received assistance for homelessness and treatment for illegal substance abuse/dependence and non-service-connected mental health conditions, including an Anxiety Disorder, Major Depressive Disorder, and Bipolar Disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability for a mental health condition or a TBI. In addition, there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD, which mitigate his misconduct. He also contends these conditions, in part, warrant a physical discharge. The applicant was diagnosed with non-service-connected mental health conditions by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD while on active service, which mitigates his misconduct. He also contends these conditions, in part, warrant a physical discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or a mental health condition, including PTSD while on active service. The applicant did engage in avoidant behavior, such as repeatedly going AWOL. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI during active service. In addition, there is insufficient evidence the applicant, during his active service; met criteria for mental health condition or a TBI; determined to not meet medical retention standards for a mental health condition or a TBI; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability discharge for a mental health condition or TBI. However, the applicant asserts he was experiencing a mental health condition or an experience that mitigates his misconduct and warrants, in part, a physical discharge, and per Liberal Consideration, his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the opinion of the ARBA medical and behavioral health advisor. Based on available medical records, evidence was insufficient to support that the bilateral foot condition failed medical retention standards of AR 40-501 chapter 3.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. As per Liberal Consideration, the applicant self asserts PTSD. The applicant also self-reported TBI.

(2) Did the condition exist, or did the experience occur during military service? Yes. As per Liberal Consideration, the applicant's self-report of PTSD due to in-service trauma, is sufficient to affirm its existence while in service. The applicant also self-reported TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was not treated for a mental health condition while in service. The VA diagnosed multiple mental health conditions (Unspecified Anxiety Disorder, Unspecified Depressive Disorder, and Bipolar Disorder) decades after discharge from service. The applicant reported substance abuse while in service; however, substance abuse is not mitigating unless associated with a mitigating disorder. He asserts PTSD and TBI; however, these diagnoses were not found in the available record, and he denied having experienced an in-service stressor. Beyond the applicant's report of PTSD and TBI conditions there was no documentation supporting these diagnoses. Therefore, there is no nexus between PTSD and/or TBI and his AWOL behavior. That notwithstanding, as per Liberal Consideration, the applicant's self-assertion alone is sufficient for consideration for a discharge upgrade by the Board.

3. Additionally, based on the available behavioral health information there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability for a physical condition, a mental health condition, or a TBI. In addition, there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD, which mitigate his misconduct. He also contends these conditions, in part, warrant a physical discharge. The applicant was diagnosed with non-service-connected mental health conditions by the VA.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI and mental health conditions including PTSD while on active service, which mitigates his misconduct. He also contends these conditions, in part, warrant a physical discharge.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a TBI or a mental health condition, including PTSD while on active service. The applicant did engage in avoidant behavior, such as repeatedly going AWOL. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or TBI during active service. In addition, there is insufficient evidence the applicant, during his active service; met criteria for mental health condition or a TBI; determined to not meet medical retention standards for a mental health condition or a TBI; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability discharge for a mental health condition or TBI. However, the applicant asserts he was experiencing a mental health condition or an experience that mitigates his misconduct and warrants, in part, a physical discharge, and per Liberal Consideration, his contention is sufficient for the board's consideration.

4. The Board determined there is insufficient evidence of in-service mitigating factors to outweigh the applicant's multiple periods of absence without leave (AWOL) during his Initial Active Duty for Training (IADT), as well as his apprehension by civilian authorities. The Board carefully considered the applicant's request for a physical disability discharge in lieu of the administrative discharge under other than honorable conditions, which was issued for the good of the service in lieu of trial by court-martial. However, the request was found to be without merit, as the supporting documentation particularly the medical and behavioral health opinions—did not substantiate that the applicant's conditions met the threshold for referral under the Physical Disability Evaluation System (DES).

5. Furthermore, the Board noted the applicant completed only 2 months and 15 days of active-duty service and did not provide any post-service achievements, or character letters of support for the Board to consider in a clemency determination. Based on the preponderance of evidence, the Board found that referral to the DES is not warranted, and the applicant has not demonstrated the existence of error or injustice that would justify modification of the discharge. Therefore, relief is denied.

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.

X [Redacted Signature]

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. 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. 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 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 BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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

4. 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 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. 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 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.

5. 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.

6. 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.

7. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) provides that a member who committed an offense or offenses under the Uniform Code of Military Justice (UCMJ) for which the authorized sentence included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request can be submitted at any time after charges are preferred. Use of this discharge authority is encouraged when the commander determines that the offense is sufficiently serious to warrant separation from the service and that the Soldier has no rehabilitation potential. A medical examination is not required but may be requested by the Soldier. A discharge under other than honorable

conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment.

8. Title 38, U.S. Code, 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.

9. Title 38, U.S. Code, 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.

10. 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.

//NOTHING FOLLOWS//