

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006519

APPLICANT REQUESTS: in effect, correction to his record to show he was discharged due to a disability.

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

- DD Form 293, Application for the Review of Discharge
- Medical records (5 pages)
- DD Form 214, Certificate of Release or Discharge from Active Duty
- NGB Form 22, Report of Separation and Record of Service
- Department of Veterans Affairs (VA) Combined Rating

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 indicates that his request is related to his participation in Operation Iraqi Freedom, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health conditions. He states, in effect, that he should have been separated or retired due to a disability because the VA has granted him a combined disability rating of 100% for his service-connected conditions.
3. The applicant served in the Regular Army (RA) as an infantryman from 4 September 2008 to 24 December 2011 [sic]. The highest grade held during his RA period of service was specialist/E-4. He served in Iraq from 13 September 2009 to 1 September 2010.
4. On 2 November 2011, he enlisted in the California Army National Guard (CAARNG). He continued to serve as an infantryman.

5. The record is void of a line of duty investigation for an illness or an injury pertaining to the applicant.
6. On 18 June 2013, the applicant replied to the CAARNG's notification of Medical Separation. He elected to be discharged from the ARNG due to his medical disqualification for retention in accordance with Army Regulation 40-501, Medical Service-Standards of Medical Fitness.
7. His record contains a memorandum, Subject: Medical Discharges, 21 June 2013. This document shows that the State Surgeon determined the applicant would be medically discharged, effective 5 July 2013.
8. The applicant was discharged accordingly on 5 July 2013. The narrative reason for discharge being medically unfit for retention standards in accordance with National Guard Regulation (NGR) 600-200, Personnel-General-Enlisted Personnel Management, paragraph 6-35l(8).
9. The NGB Form 22 issued at the time of discharge shows he completed 1 year, 6 months, and 11 days of net service for the period.
10. The applicant provided:
  - a. His medical records for the period 2011-2012. These records show the applicant was diagnosed and treated osteophytosis formation, disk disease, chronic back pain, acute pancreatitis, fatty liver, and obesity.
  - b. One page of his VA Rating Decision, which show he was initially granted a combined disability rating of 60% on 25 December 2011, which later increased to 100% effective 3 January 2014. He did not provide a list of his service-connected medical conditions.
11. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.
12. By regulation:
  - 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 service.
  - b. 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.

c. 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.

### 13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting to change his "Medical Separation Honorable to Medical Retire Honorable" based on "medical evidence enclosed confirms it 60% on 25DEC 2011 and 100% on 3 JAN 2014".

c. The applicant's medical evidence to support his request are as follows:

(1) MRI report of lumbar spine without contrast, dated: 1 MAR 2011:

"The bone marrow signal demonstrates no suspicious lesions. There are no compression deformities. The alignment is normal. The conus terminates at the appropriate level. The visualized distal cord demonstrates normal caliber and signal. Evaluation of the visualized paraspinal soft tissues and abdominal organs demonstrates no abnormalities. L4 - L5: Circumferential disk bulge with mild diskogenic endplate changes. The posterior aspect of the bulge mildly displaces the traversing LS nerve roots. There is overall mild canal narrowing. Mild bilateral foraminal stenosis is present. L5-S1: Broad-based disk protrusion without significant canal narrowing. There is no significant foraminal stenosis. Mild facet arthropathy is present."

(2) X-ray result of the Lumbar spine, dated: 16 NOV 2010:

“Loss of the normal lumbar lordosis which may be projectional or represents spasm.

Disk disease and osteophytosis of L4-L5 and L5-S1.”

d. These radiology reports were obtained during his active duty time, and they revealed that applicant did not have a career terminating condition at that time.

e. Other supporting documents that the applicant had submitted were:

(1) Page 2 of his Functional Activity report dated: 30 AUG 2012, which showed that the applicant had a residual pancreatic inflammation (Acute Pancreatitis) secondary to elevated triglycerides. The record showed a list of his medications, his diet and his activity restriction as well as his anticipated full recovery time.

(2) A copy of his hospital discharge on 22 JUN 2012 indicated that the Applicant was admitted to the hospital for: 1. Acute pancreatitis, likely secondary to elevated triglycerides; 2. Fatty liver, and 3. Obesity.

f. Based on the above records, the diagnoses were made during his National Guard time, and were not career terminating. No line of duty determination for above conditions was noted in records submitted.

g. The State Surgeon memorandum did not state which medical condition(s) that cause the applicant to be discharged under medical separation.

h. Based on the information submitted, there is insufficient evidence to support the applicant's request.

i. The applicant must provide supporting documents that showed the applicant had a career terminating medical condition with a line of duty determination if these conditions occurred during his National Guard time.

j. The VA rating that the Applicant submitted was his combined rating and did not list specific medical conditions.

k. Title 38, United States Code, Sections 1110 and 1131, permits 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.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a correction to his record to show he was discharged due to a disability. On his application, the applicant indicated that Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant served in the Regular Army (RA) from 04 September 2008 to 24 December 2011. He served in Iraq from 13 September 2009 to 01 September 2010, 2) on 02 November 2011, he enlisted in the California Army National Guard (CAARNG), 3) the record is void of a line of duty investigation for an illness or injury pertaining to the applicant, 4) on 18 June 2013, the applicant replied to the CAARNG's notification of Medical Separation. He elected to be discharged from the ARNG due to his medical disqualification for retention in accordance with AR 40-501. The applicant was discharged on 5 July 2013, with the narrative reason noted as medically unfit for retention standards in accordance with National Guard Regulation (NGR) 600-200, Personnel-General-Enlisted Personnel Management, paragraph 6-35I(8).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant included some in-service medical records as part of his application which pertain to his physical health and will be addressed in the medical opine. In-service medical records through Military Treatment Facilities (MTF) were available for review from 08 September 2008 through 23 April 2012. A post-deployment health assessment dated 26 January 2011 shows the applicant reported he was interested in counseling for issues related to his marriage, increased irritability, anxiety, and depressed mood which were noted as mild/moderate. It was documented that his mood was related to his medical problems and frustrations with unit. He was diagnosed with Adjustment Disorder with Disturbance of Emotions and was released without limitations. During a pre-Soldier Readiness Processing (SRP) visit on 13 June 2011, a psychologist documented that the applicant reported feeling depressed, lack of motivation, and fearful. It was documented that the applicant reported feeling distressed by being told by the Physician's Assistant (PA) who has provided medical care to him that he was going to refer him for an Article 15 and that the applicant was going to get a dishonorable discharge. His mental status was documented to be within normal limits (WNL), except with mildly anxious and depressed mood, without suicidal ideation. He was diagnosed with Occupational Problem and Other Interpersonal Problem. After transferring to the National Guard, the applicant presented to the Family Medicine clinic on 23 April 2012

for paperwork as it was documented that the applicant was found to have a diagnosis of PTSD through the VA which he was under treatment for and had been diagnosed with the condition since January 2012. It was noted that the paperwork was needed to determine the status of his condition, whether he was stable, and if he was able to perform the functions of a National Guardsman. The provider documented his diagnosis as PTSD and indicated that the condition appeared to be unstable and that he did not respond well to Celexa. The provider documented that the applicant would follow-up with his psychiatrist for an evaluation.

d. A review of JLV shows the applicant is 100% service-connected through the VA for several medical conditions, to include 30% for PTSD. Review of his VA records shows the applicant sought BH treatment through the VA while serving in the National Guard. A VA note dated 20 January 2012 shows that the applicant reported exposure to numerous combat situations during deployment (e.g., rocket/mortar fire, seeing dead bodies, handling human remains, clearing and searching buildings, and someone being killed nearby). Regarding BH symptoms, he endorsed experiencing anxiety, sleeplessness, irritability, feeling on guard, and had thoughts of IED's exploding when driving his car. He denied experiencing suicidal ideation and reported no history of suicidal ideation, plan, intent, or previous attempts. His TBI screen was negative. On 06 March 2012, the applicant completed an intake through the PTSD Clinical Team (PCT) and reported experiencing symptoms related to PTSD since returning from his deployment and reported additional traumatic events that occurred (e.g., a friend from basic training dying in Afghanistan, medic got hit and was paralyzed, responding to calls from other units, and recovering vehicles). The provider diagnosed the applicant with PTSD and prescribed Citalopram (antidepressant) and Trazodone (sleep) though he declined a referral for psychotherapy. A psychiatry note dated 23 April 2012, shows his sleep improved with Trazodone, and he agreed to a trial of Mirtazapine (antidepressant). He also requested completion of a form for medical determination regarding medically non-deployable status [*Advisor's Note: It is unclear if this paperwork was completed or submitted*]. On 08 June 2012, the applicant reported he discontinued Mirtazapine due to daytime somnolence. He also reported continued depression at times sometimes, anger, and crying over little things. His medication was changed to Sertraline, and he was continued on Trazodone. On 28 August 2012, he discontinued Sertraline and all psychotropic medications due to acute pancreatitis although he had been feeling "better" on the medication. It was documented that he was experiencing an increase in symptoms due to his unit being deployed and reminders of his Sergeant Major dying in Afghanistan. He declined psychotherapy due to his work and school schedule. A Social Work note dated 30 October 2012 shows the applicant reported increased symptoms of PTSD since moving due to environmental reminders. A psychiatry note dated 04 December 2012 shows the applicant had been taking Paxil (antidepressant) for one week in addition to Ambien (which he had not yet tried). He reported an increase in his nightmares, anxiety, irritability, and anger. His antidepressant medication was changed to Sertraline, and he was started on

Hydroxyzine for anxiety. The applicant completed Cognitive Processing Therapy (CPT) for treatment of PTSD from 14 February 2012 through 10 May 2013 and noted some symptom reduction and slightly reduced functional impairment following completion of treatment. A psychiatry note dated 07 March 2013 shows he was diagnosed with PTSD and Alcohol Abuse, In remission. It was documented that he had ongoing symptoms of PTSD and was recently prescribed Alprazolam (anxiolytic) by an outside physician, which the provider noted is contraindicated for treatment of PTSD. The applicant underwent a Compensation and Pension (C&P) examination on 20 May 2013 and was diagnosed with PTSD. The stressor(s) associated with his diagnosis of PTSD were documented as various combat-related exposures during his deployment to Iraq (e.g., mortar fire, body recovery, and recovery of bodies and vehicles after IED explosions). Prior to the applicant's discharge from the National Guard, a psychiatry note dated 02 July 2013 shows that the applicant reported he anticipated being discharged due to Pancreatitis. At the time of the visit, it was documented that he reported a worsening of his PTSD-related symptoms. His Sertraline was increased to address PTSD symptoms, his sleep medication was changed from Ambien to Trazodone, and he was continued on Hydroxyzine. A Review PTSD Disability Benefits Questionnaire (DBQ) and two VA Rating Decision letters were available for review via VBMS. The review DBQ (13 June 2014) and rating decision letters (28 August 2013 and 20 October 2014) confirm his diagnosis and service-connection of PTSD (30%). A TBI evaluation on 27 December 2013 shows he did not meet criteria for concussion or TBI.

e. Review of the applicant's medical records show in-service diagnoses of Adjustment Disorder with Disturbance of Emotions, Occupational Problem, and Interpersonal Problem while on active duty. Of note, psychosocial issues such as occupational and interpersonal problems and Adjustment Disorders lasting less than 6 months do not fall under the purview of AR 40-501. Review of his active-duty DD Form 214 shows he was discharged due to completion of required active service, indicating that he was not medically discharged. While in the ARNG, the applicant was diagnosed and treated for PTSD, which he has been subsequently service-connected for through the VA. It is of note that VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards or that a different diagnosis rendered on active duty is inaccurate. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. There was no BH-related LOD available for review and no documentation that the applicant necessitated duty limitations due to PTSD or Other Mental Health Issues (i.e., BH profile and/or hospitalization). As such, there is insufficient evidence that the applicant's diagnosis of PTSD fell below medical retention standards and a referral to DES is not warranted.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

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

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

**BOARD DETERMINATION/RECOMMENDATION:**

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X                    //SIGNED//  
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CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

**REFERENCES:**

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness, governs medical fitness standards for enlistment, induction, and appointment. Soldier's pending separation for failing to meet medical retention standards.

a. Not in the Line of Duty (NILOD). Department of Defense Instruction 1332.38 states that members with non-duty related impairments are eligible to be referred to the Physical Evaluation Board (PEB) solely for a fitness determination, but not a determination of eligibility for disability benefits. Determination of whether a non-duty case is forwarded to the PEB is at the request of the Soldier. The Soldier will have a completed LOD or memorandum that notifies him/her of non-duty related findings (Not In the Line of Duty -NILOD). The Soldier may not challenge the PEB findings in person.

b. In the Line of Duty (ILOD). Soldiers pending separation for ILOD injuries or illnesses will be processed in accordance with AR 40-400, Medical Services-Patient Administration, and AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the PDES and sets forth the 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 states that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting disability. The Veterans Affairs Schedule of Rating Disabilities (VASRD), as modified in the regulation, is used to establish this rating. This regulation states:

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 service.

b. 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.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. Under the laws governing the Army PDES, Soldiers who sustain or aggravate physically unfitting disabilities must meet the following LD 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 (IDT).

(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.

d. 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.

e. Permits for permanent retirement when the disability is rated at 30 percent or more under VASRD, or the Soldier has at least 20 years of active Federal service.

4. National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management establishes standards, policies, and procedures for the management of

the ARNG and the ARNG of the United States enlisted Soldiers in various functional areas including enlisted separations. It states:

a. Paragraph 6-35l(8), Medically unfit for retention per AR 40-501, Medical Services-Standards of Fitness. Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501.

b. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4, Personnel-General-Line of Duty Policy, Procedures, and Investigations, will apply. Discharge will not be ordered while the case is pending final disposition.

5. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

6. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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

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. AR 15-185, Army Board for Correction of Military Records, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//