

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240007498

APPLICANT REQUESTS: medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) summary of benefits and rated disabilities

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. He was in the U.S. Army from November 1997 to August 2009. He is asking the Board to medically retire him from the U.S. Army due to unforeseeable circumstances and his service-connected disabilities that caused his military career to end unexpectedly. The military had him attending behavioral health treatment at Madigan Army Hospital prior to his separation. He never got a chance to finish with mental health treatment and eventually medically discharged. He is 100% service connected through the VA and he has not been able to work since his separation in 2009.

b. He was honorably discharged by reason of parenthood (family care plan). He was told the process for a medical board was never started because of his family's circumstances, which at the time took priority over his mental health. In July 2006, he was deployed to Iraq, his second deployment. His job, at the time, consisted of many things. The job of a combat engineer and their responsibilities throughout the entire theater of operations, which involves route clearance, along with separating neighborhoods with T walls, jersey barriers and other obstacles to prevent sectarian violence.

c. He can bring up to 100 instances in which their missions were absolutely critical to the mobility, counter mobility and survivability of all coalition forces that operated throughout the region. In performing their mission, he was more concerned about the completion of the mission and the welfare of his men than he was of his own mental health. Day in and day out, his head was on a swivel, and he was always on the lookout for any trace of improvised explosives devices (IED), car bombs, and any other hazardous threat that could harm their forces.

d. As a combat engineer, they saw and dealt with things most Soldiers did not have to deal with because they were always the first ones on the road in the morning and at night. Seeing some of these things messes with your psyche. Every morning, they would go out on a mission. They came across a dead body with hands bound and a bullet to the back of the head. They had to stop and get coordinates and report it back to headquarters for it to be removed. Worst of all was the dog devouring the human corpse. This made their mission more terrifying because at the same time, a sniper was on the loose and picking off their troops one at a time as they were going in and out of the forward operating base (FOB). A few weeks later, a mortar round hit the ammunition supply point on the FOB and set off thousands of rounds. They were hunkered down for three days, and it took another three days for engineers and explosive ordnance disposal to clear the entire FOB for unexploded ordnance.

e. The biggest incident of all was a mission where he was involved in a major accident in which his squad was hit with an IED and was medevac to the green zone. He cannot remember the exact time or date, but it was annotated in his medical records. Besides the head injury that he sustained, he developed the worst kind of paranoia, alertness, lack of sleep. When he had the chance to sleep, it turned into nightmares, that caused him to fear sleep even more. When he left Iraq in 2006, his ex-wife was seven months pregnant, and he missed his son's birthday by 12 days. Along with his mental health issues, he then had a one-year-old to care for and no spouse. Being a single father does not work in the U.S. Army, especially doing the kind of work that he did.

f. He was promoted to staff sergeant in theater and after he got home, he had orders to attend the Basic Noncommissioned Officer Course. He failed that school miserably because he could not focus, concentrate, or sleep. Most of us know that reporting this to the chain of command was a career killer so he drove on and did not see the bigger issues until it was too late. After he got back to Fort Lewis, Washington, he went straight to behavioral health and reported the problems he was having and asked for some kind of treatment. But by this time, his unit was getting ready to deploy again and he had no family care plan; he could not work certain hours. He was only able to work from 6 a.m. to 6 p.m. because that was the time his son attended daycare. His choices became minimum, and he had to separate from the Army without a medical board even though his mental health problems were really worse than they had ever

been. He is asking the Board to consider all of the above. Every day he regrets not finishing his career.

3. The applicant enlisted in the Regular Army on 19 November 1997. His record shows he served in Iraq from 20 March to 29 August 2003 and from 26 June 2006 to 19 September 2007.

4. A DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled on 23 March 2009 for failure to maintain a family care plan. He was given 30 days to reestablish a family care plan. He was also advised that if he could not establish a family care plan within the allotted time, he could be considered for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-8 (Involuntary separation due to parenthood).

5. A second DA Form 4856 shows the applicant was again counseled on 29 April 2009 for failure to provide a family care plan. He was also informed he was being recommended for separation under the provisions of AR 635-200, paragraph 5- 8.

6. On 16 June 2009, the applicant was informed by his commander that he was initiating action to separate him under the provisions of AR 635-200, paragraph 5-8, based on his unavailability for deployment according to the needs of the Army due to lack of a family care plan. He was also advised on his rights to consult with counsel, submit statements in his own behalf, and of his entitlement to have his case heard by an administrative separation board.

7. On 17 June 2009, the applicant consulted with counsel, and he was advised of the basis for the contemplated action to involuntarily separate him due to parenthood under AR 635-200, chapter 5, and its effects, of the rights available to him, and of the effect of any action taken by him in waiving my rights. He waived consideration of his case by an administrative separation board and elected not to submit statements in his own behalf.

8. On 27 July 2009, the separation authority approved the separation action with an honorable character of service.

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 28 August 2009 under the authority of AR 635-200, paragraph 5-8 by reason of parenthood.

10. The applicant provided a VA summary of benefits and rated disabilities showing he was granted service-connected disability compensation for various conditions with a 100% disability rating.

11. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement as a result of a traumatic brain injury (TBI) and mental health conditions including PTSD. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 19 November 1997; 2) He deployed to Iraq from 20 March-29 August 2003 and 26 June 2006-19 September 2007; 3) The applicant was counseled on 23 March 2009 and 29 April 2009 about his failure to maintain a family care plan. On 16 June 2009, the applicant was informed by his commander that action was being initiated to separate him due to his inability to establish a family care plan; 4) On 28 August 2009, the applicant was honorably discharged, Chapter 5-8 by reason of parenthood.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA documentation provided by the applicant were also examined.

c. The applicant states he was discharged for parenthood, and he was not able to start the medical board process for his TBI and other mental health conditions including PTSD. The applicant was first seen for exposure to TBI on 08 January 2008 at a post-deployment TBI screening center. He did not demonstrate immediate gross impairment from traumatic injuries during deployment, but he was diagnosed with concussion with no loss of consciousness and insomnia due to his assessment score on neuropsychological testing and his reported exposure to blast injury. The applicant was recommended to follow up with the TBI clinic. He was seen again on 10 April 2008 and reported improvement with his insomnia, but he did report nightmares. The applicant demonstrated improvement in his overall cognitive performance on measures to a normal level. The applicant was not scheduled for a follow-up appointment at neurology. The applicant began marital therapy in July 2008. On 18 July 2008, the applicant was again seen in marital therapy after being arrested for malicious mischief and breaking and entering into his wife's home. The applicant was currently reporting stress related to the occupational and legal consequences to being arrested and charged with these domestic violence related crimes. In addition, there was an increase in his reported symptoms of PTSD. The applicant was placed on a no contact order with his wife. There is insufficient evidence the applicant continued in marital therapy following

October 2008. The applicant began to reengage in treatment for TBI and was seen for one additional session. He also attended psychiatric medication management appointments and began individual therapy in December 2008. The applicant was diagnosed Anxiety Not otherwise specified (NOS) and depressive symptoms. It was noted in the applicant's medical record that he accepted a plea deal for his criminal charges, and his command chose to separate him for parenthood, instead of administratively separating him for misconduct. The applicant discontinued individual therapy in June 2009. The applicant was never placed on a psychiatric profile, required inpatient psychiatric treatment, or found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant engaged with the VA after his discharge for mental health and physical concerns. He did undergo his first Compensation and Pension Evaluation for mental health conditions on 15 July 2010, and he was diagnosed with service-connected PTSD (50%), and he currently receives VA disability for this condition (70%SC) and traumatic brain disease (10%).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD and TBI by the VA, and he was diagnosed with TBI, Anxiety NOS, and depressive symptoms while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a TBI or mental health condition including PTSD during his active service. Thus, there is insufficient evidence his case warrants a referral to IDES at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected PTSD and TBI by the VA, and he was diagnosed with TBI, Anxiety NOS, and depressive symptoms while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a TBI or mental health condition including PTSD during his

active service. Thus, there is insufficient evidence his case warrants a referral to IDES at this time.

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

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

### BOARD DISCUSSION:

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. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD and TBI by the VA, and he was diagnosed with TBI, Anxiety NOS, and depressive symptoms while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a TBI or mental health condition including PTSD during his active service. Thus, there is insufficient evidence his case warrants a referral to IDES at this time.

### 2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected PTSD and TBI by the VA, and he was diagnosed with TBI, Anxiety NOS, and depressive symptoms while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective.

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

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

3. The Board determined, based on the medical opine, there is insufficient evidence to support referral to the Integrated Disability Evaluation System (IDES) or to grant

medical retirement. The Board acknowledges the applicant’s honorable service, including two combat deployments to Iraq, and recognizes his exposure to traumatic events during combat operations such as route clearance missions, IED incidents, and other psychologically distressing experiences. The applicant’s post-service records from the Department of Veterans Affairs (VA) confirm diagnoses of service-connected PTSD and TBI, with a current 100% disability rating. However, the Army evaluates medical fitness based on conditions that render a Soldier unfit for continued service at the time of separation, not on post-service diagnoses or VA ratings. The Board determined there is no indication that his performance was inadequate due to psychiatric issues during his service.

4. The Board found no evidence the applicant was placed on a psychiatric profile, required inpatient psychiatric treatment, or was found to not meet retention standards under AR 40-501. The applicant was honorably discharged under the provisions of AR 635-200, paragraph 5-8, due to parenthood and lack of a family care plan. Furthermore, the Board noted the applicant’s sincere account of his struggles and sacrifices, including his commitment to mission success and care for his fellow Soldiers. However, the absence of medical documentation indicating unfitness for duty at the time of separation precludes a finding that his case should have been processed through IDES. Therefore, the Board denied relief for medical retirement.

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. AR 600-20 (Army Command Policy), paragraph 5-5 of the regulation in effect at the time, states the Army assists the Soldier in providing for the care of their family members. Mission, readiness, and deployability needs especially affect single parents and dual military couples with family members. Plans must be made to ensure family members are properly and adequately cared for when the Soldier is deployed, on temporary duty, or otherwise not available due to military requirements.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-8 (Involuntary separation due to parenthood) states Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. Specific reasons for separation because of parenthood include inability to perform prescribed duties satisfactorily, repeated absenteeism, repeated tardiness, inability to participate in field training exercises or perform special duties such as charge of quarters, and non-availability for worldwide assignment or deployment according to the needs of the Army. Separation processing may not be initiated under this paragraph until the Soldier has been adequately counseled concerning deficiencies and has been afforded the opportunity to overcome them.

4. AR 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

5. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. The regulation in effect at time states in:

a. Paragraph 3-1, the mere presences of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. Paragraph 3-2, 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. Paragraph 3-2, when a Soldier is being processed for separation or retirement for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, expiration term of service, etc.), continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of their office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

6. Title 38, U.S. Code, 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.

7. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout their lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//