

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240007650

APPLICANT REQUESTS:

- reconsideration of his prior requests for a physical disability retirement
- promotion to the rank and grade of staff sergeant (SSG)/E-6 with back pay

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's 10-page Brief in Support of Application for Correction of Records
- Exhibit 1-Army Board for Correction of Military Records (ABCMR) Record of Proceedings Docket Number AR201900008437, 11 August 2022
- Exhibit 2-ABCMR Record of Proceedings Docket Number AR20160001311, 12 October 2017
- Exhibit 3-DD Form 214 (Certificate of Release of Discharge from Active Duty)
- Exhibit 4-DD Form 2808 (Report of Medical Examination, 4 October 2005
- Exhibits 5 through 13-47 pages of medical records
- Exhibit 14-DA Form 3340-R (Request for Reenlistment or Extension in the Regular Army), 12 September 2009
- Exhibit 15-(Physical Profile), 18 February 2010
- Exhibit 16-medical statement (Dr. W), 2 October 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the ABCMR in Docket Number AR20160001311 on 12 October 2017 and ABCMR Docket Number AR201900008437 on 11 August 2022.
2. The applicant states he now has new and material evidence he wishes to present to the honorable Board. His request is made on the basis of material error and material injustice.
3. In a 10-page brief, the applicant's counsel states:

a. The applicant was injured in Iraq after a vehicle accident. Specifically, he was injured from an explosion of an improvised explosive device, which caused him to hit his head on a gun turret while the vehicle was in motion. He spent a year in a hospital in a Wounded Warrior Transition Unit being treated for broken bones to his face, nose, and jaw. He had three surgeries on his face and has since suffered from traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). He was supposed to be medically discharged, but he wanted to continue to serve his country regardless of the injuries he suffered in Iraq.

b. The applicant was assigned to Fort Meade, MD, where he developed renal failure and uncontrollable blood pressure. Despite his exceptionally long history of anxiety, he did well his last 2.5 years working at Fort Meade as a Department of Defense courier, where he was responsible for transportation of highly classified time-sensitive materials in support of senior military and civilian leadership. On 25 August 2008, he met for his Medical Evaluation Board (MEB). He listed his ailments, which included vision issues, headaches, insomnia, head trauma, depression, and hypertension among other issues. Later, he was evaluated by a physical therapist for persistent costochondral/xiphoid pain. The physical therapist concluded that the "MEB process may be warranted in this case."

c. In December 2008, the applicant was notified that his MEB process was put on hold for 90 days. His Physical Evaluation Board (PEB) liaison officer reached out to Dr. P, a therapist, to understand why the delay took place. Dr. P stated that 90 days of outpatient treatment of his condition may make him "medically acceptable," which is why the hold was ordered. A further 90-day delay was ordered on or around 4 March 2009 by Dr. P so he could "continue with his therapy." On 12 September 2009, the applicant requested reenlistment since his expiration term of service had expired while pending the MEB. As a condition, he was required to reenlist to continue receiving treatment. On or around 13 October 2009, he was found fit for duty by the MEB, and cleared for a permanent change of station.

d. The applicant's condition worsened as his service went on. On 18 February 2010, he was placed on a temporary profile and determined non-deployable for H-pylori. On 14 July 2010, he reported to Dr. V that his condition is "getting worse." He reported increased pain in his lower back with left sided neck pain. He indicated that his left mid c-spine as a source of pain. He served in the Regular Army from 12 July 2005 to 11 September 2012.

e. Public Law 115-91 (12/12/2017) Sec. 520. Consideration of additional medical evidence by boards for the correction of military records and liberal consideration of evidence relating to PTSD or TBI requires, as amended of Section 1552(h)(1) of title 10, United States Code, (h)(1). This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in

whole or in part on matters relating to PTSD or TBI as supporting rationale, or as justification for priority consideration, and whose PTSD or TBI is related to combat or military sexual trauma, as determined by the Secretary concerned. In the case of a claimant described in paragraph (1), a board established under subsection (a)(I) shall review medical evidence of the Secretary of the Department of Veterans Affairs or a civilian health care provider that is presented by the claimant; and review the claim with liberal consideration to the claimant that PTSD or TBI potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

f. Reconsideration: When deciding if a service member should be medically separated, the desires of the service member are not superior to the needs of the Army nor the expertise of the medical evaluation personnel. In addition, the medical personnel are required to assess a service member's disability properly and to listen to the service member regarding his symptoms and suffering. While the applicant was deployed to Iraq, he was injured so seriously as to require facial reconstruction and a healing period of approximately one year. Because of the injuries he sustained, he suffered TBI exposure, PTSD, deviated nasal septum, vitreous floaters, headache syndromes, concussion, post-concussion syndrome, migraine headache, cognitive disorder, fatigue, and cervicalgia. Yet he was deemed able to be responsible for the transportation of highly classified time-sensitive materials. It is understandable that the applicant wanted to continue to serve the United States. It is also understandable that the Army wanted to retain a noncommissioned officer with deployment experience; however, how is it possible that a person injured to the extent of the applicant was deemed fit for duty? In short, the Army's approach to finding him fit for duty is not supported by the medical evidence and should be rectified through a medical board.

g. Army Regulation (AR) 40-51 (Standards of Medical Fitness) states the mere presence of a medical impairment does not in and of itself justify a finding of unfitness. 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. In the instant case, the determination of fitness is unsound. First, the applicant suffered not from one physical injury but multiple bodily injuries. The physical injuries sustained even after three surgeries and a year of healing continued through the rest of his enlistment and today. Second, just because he had the desire and intestinal fortitude to carry on with his duties is not a presumption of physical fitness but a presumption of desire, honor, and toughness.

h. The logic is akin to a boxer being beaten in the ring and not wanting the fight stopped because of his internal desire and determination to succeed. It is the referee's job to look out for the best interest of the boxer and not allow undue damage to occur. In this case, the referee is the Army. For whatever reason, be it to maximize the available

use of manpower or try to appease the applicant, the Army failed to protect him. As a result, he continued to suffer through another enlistment and continues to suffer today. Furthermore, the requirement for him to reenlist to continue to receive medical care, especially after multiple delays at the hands of Dr. P, only adds to the errors committed by the Army. As such, this Honorable Board should rectify these wrongs and allow the applicant the ability to go through a full MEB/PEB process.

i. AR 40-501 provides causes for referral to the Disability Evaluation System (DES) for the following reasons: (1) 3-6 eyes; (d) glaucoma and (h) unilateral detachment of the retina. The applicant's medical records indicate he suffered from glaucoma and hypertensive retinopathy. (2) 3-7 vision; the applicant's medical records indicate he suffered from vitreous floaters, migraine headaches characterized as consistent level 5 pain out of 10, and vertigo with dizziness. (3) 3-8 Hearing; the applicant's records indicate a hearing impairment. (4) 3-10 nose, sinuses, mouth, and larynx; the applicant's medical records indicate he suffered from deviated nasal septum and gastroesophageal reflux disease. (5) 3-12 neck; the applicant's medical records indicate he suffered from cervicalgia. (6) 3-13 lungs, chest wall, pleura, and mediastinum, asthma; the applicant's medical records indicated he had asthma and dyspnea. (7) 3-14 heart, (n) miscellaneous cardiovascular conditions; the applicant's medical records indicate he suffered from mitral valve regurgitation. (8) 3-16 abdominal organs and gastrointestinal system, esophagus, H. pylori infection, irritable bowel syndrome; the applicant's medical records indicate he suffered from chronic esophagitis reflux, H. pylori infection, irritable bowel syndrome, neurogenic bowel, anal fissures, and chronic abdominal pain rated a 7 of 10. (9) 5-7; and 3-20(h) nonradicular pain involving the cervical, thoracic, lumbosacral, or coccygeal spine; the applicant's medical records indicate he suffered from lumbago and cervicalgia. (1) 3-32(a) chronic insomnia disorder; the applicant's medical records indicate that he suffered from insomnia and fatigue. (11) 3-33 Learning, psychiatric, and behavior health, anxiety, chronic adjustment disorder; the applicant's medical records indicate he suffered from adjustment disorder with anxiety and anxiety disorder.

j. The applicant suffered physical injury or illness under eleven (11) headings, including mental illness. He entered the Army with only non-disqualifying pes planus. His other injuries are traceable back to the accident in Iraq. He was physically and mentally damaged, and his injuries became exacerbated by trying to continue serving in the Army. A person suffering from TBI, post-concussion syndrome, migraine headaches, vertigo, visual acuity, and anxiety who underwent three facial surgeries and a year of recovery is not fit for duty, especially as a courier of highly classified time-sensitive material. He, like the boxer, did not want to quit. Still, the Army failed when it did not stop his fight and medically separated him.

k. Despite the applicant's exceedingly long history of anxiety, he did well his last 2.5 years working at Fort Mead. The Army acknowledges he has chronic anxiety, but

because he suffered internally, the Army looked the other way. The Army failed to respond to a Soldier suffering from invisible wounds and is lucky he did not become a statistic of military suicide. It is precisely this ignorance that gave rise to the Kurta memorandum in 2017. The applicant's medical team failed to diagnose PTSD and instead labeled it adjustment disorder. An adjustment disorder is an excessive response to an event or changes in the last three months. His event happened well before three months in Iraq. He had PTSD, as is now correctly recognized by the Veterans Association. The Army also minimized his TBI ignoring apparent symptoms, including fatigue, loss of sleep, anxiousness, frustration, and irritability.

l. The Army postponed the MEB proceedings every 90 days. The applicant's medical records indicate a period from 20 November 2008 thru 26 February 2009 of postponed MEBs. For over a year, his mental health team played wait-and see while he suffered. Instead of recognizing his mental illness was worsening, they again looked the other way. He also offers the newest medical evidence for this Honorable Board's consideration. Dr. W writes a medical opinion in support of service connection for his service-connected chronic kidney disease. "[The applicant] was actively treated for hypertension through his military career. He took medications... with minimal improvement." Dr. W furthers his medical opinion by stating that the applicant's medical condition stemmed from his service, due to the fact that he had a service-connected disability for hypertension. This Honorable Board should allow the applicant to seek a medical retirement due to the evidence at play.

m. Conclusion: The applicant's medical team ignored obvious signs of physical and mental suffering he endured. Because he appeared capable of fulfilling his duties, the Army ignored his body's physical pain and the invisible wounds his mind endured. When he asked for help from his medical team, he was placed in a cycle of coming back in 90 days for reevaluation; however, there was never any improvement. It is unjust that the Army keeps a medically disabled service member enlisted. Because of his intestinal fortitude, he did his job while unreasonably suffering. His medical team and the Army failed to throw in the towel and give this honorable applicant the benefits he earned in Iraq and the United States. In light of the facts and matters presented herein, the applicant respectfully requests that his military records be corrected from "completion of required active service" to reflect "honorably retired by reason of physical disability."

4. Following service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 3 November 2005. He was promoted to the rank and grade of sergeant (SGT)/E-5 effective 1 May 2007. His record shows he served in Iraq from 17 September 2007 to 21 August 2008.

5. Orders issued by Landstuhl Regional Medical Center, Germany, on 21 August 2008 directed the applicant's reassignment to Brooke Army Medical Center (BAMC), Fort Sam Houston, TX for the purpose of continued medical care.

6. Orders issued by BAMC on 28 August 2008 directed the applicant's attachment to a Warrior Transition Unit for an indefinite period for the purpose of medical treatment.

7. The applicant was found fit for duty on 14 July 2009. On 12 September 2009, he reenlisted for a period of three years. His Enlisted Record Brief shows he was reassigned to Fort George G. Mead, MD with duties as a courier.

8. The applicant's Noncommissioned Officer Evaluation Report (NCOER) covering the period 25 November 2010 through 34 November 2011, his last NCOER on record, shows he passed the Army Physical Fitness Test on 15 July 2011. The NCOER also shows his overall potential for promotion and/or service in positions of greater responsibility was rated as "fully capable."

9. Orders issued on 12 July 2012 directed the applicant's discharge from the Regular Army effective 11 September 2012.

10. The applicant's Enlisted Record Brief does not show he was in a promotable status to the rank and grade of SSG/E-6.

11. The applicant's DD Form 214 shows he was discharged on 11 September 2012 in the rank of SGT under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, by reason of completion of required active service. The DD Form 214 also shows he was assigned a reentry code of "1" (eligible for reenlistment).

12. During the processing of the applicant's previous cases, the Army Review Boards Agency's (ARBA) medical staff provided medical advisory opinions addressing his physical and behavioral health conditions. The ARBA's medical staff indicated there is no evidence he had any medical conditions which would have failed the medical retention standards in accordance with AR 40-501. Therefore, a referral of his record to the Army Disability Evaluation System was not warranted. *The complete medical advisory opinions were provided to the Board for their review and consideration.*

13. 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 Department of Veterans Affairs (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.

14. 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/or the Interactive Personnel Electronic Records Management System (IPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying ABCMR requesting a reconsideration of their prior denial to refer him to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 12 July 2005 and was honorably discharged on 11 September 2012 at the completion of his required active service under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It shows Service in Iraq from 17 September 2007 thru 21 August 2008.

d. The applicant's behavioral health conditions will be addressed by an ARBA behavioral health advisor.

e. This request was previously denied by the ABCMR on 12 October 2017 (AR201600001311) and again on 20 January 2023 (AR20190008437). Rather than repeat their findings here, the board is referred to the records of proceedings and medical advisory opinions for those cases. This review will concentrate on the new evidence submitted by the applicant.

f. The issues raised by applicant's counsel were addressed in the previous medical advisory opinions.

g. From the advisory for AR20190008437:

- AHLTA shows the applicant was medically evacuated from Iraq in August 2008 for "Post Concussive Syndrome, Headaches, abdominal pain, Costochondritis and Depression." Applicant symptoms improve over a short period of time: From his 24 September 2008 WTU case management encounter: "No neck pain. No

back pain, no midback pain, and no lower back pain. No depression, not thinking about suicide, and not having a suicide plan.”

- During the next year in the WTU, the applicant was evaluated and/or treated for a several conditions. He was deemed fit for duty on 14 July 2009.
- Review of his AHLTA records for this period of service revealed substantial utilization of the military healthcare system. Review of his visits during his final year of service found multiple visits for a deviated nasal septum which was twice treated with minor surgery by the otolaryngology service.
- He was diagnosed with *Helicobacter pylori* in June 2012 and prescribed an antibiotic and Nexium. At his follow-up appoint later that month, he admitted to not taking the Nexium, the provider order Zantac, and directed the applicant to follow-up in two weeks. There are no further encounters for his issue.
- The applicant was seen several times for his hypertension, twice for a mild respiratory condition, and twice for headaches which resulted in a referral to neurology. No results from this consult were found.
- The applicant underwent his separation history and physical examination (SHPE) in June 2012. The provider documented a normal examination along with the applicant’s history of hypertension, concussion with memory loss, headaches, and shortness of breath. He declared the applicant qualified for service.

h. His final NCO Evaluation Report was an annual thru 24 November 2011 and showed he continued to be a successful Soldier. He passed his Army Physical Fitness Test on 15 July 2011. His rater marked him as success in all NCO Values and Responsibilities and blocked him as fully capable. His senior rater opined:

“o promote with peers
o send to Advance Leader Course when available
o unselfish dedication to duty; continue to groom
o motivated to succeed”

i. There remains insufficient probative medical evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary separation. Thus, there is no cause for referral to the Disability Evaluation System.

j. It is clear the applicant has several duty-related medical conditions. However, paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence 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.”

k. JLV continues to show he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, sleep apnea, and migraine headaches . However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA medical advisor that a referral of the case to the DES remains unwarranted.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for a physical disability retirement as a result of conditions which included 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) Following service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 3 November 2005; 2) The applicant deployed to Iraq from 17 September 2007-21 August 2008 when he was medically evacuated after being injured; 3) The applicant was discharged on 11 September 2012, Chapter 4, by reason of completion of required active service. The DD Form 214 also shows he was assigned a reentry code of "1" (eligible for reenlistment); 4) The applicant's request was previously denied by the ABCMR on 12 October 2017 and on 20 January 2023.

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) and medical documentation provided by the applicant were also examined.

c. The applicant is requesting a physical disability retirement as a result of conditions which included TBI and mental health conditions including PTSD. There is evidence the

applicant began to engage with behavioral health services starting in 2006 prior to his deployment. He reported of being exposed to two motor vehicle accidents the year prior and occupational/ relationship stress. He was diagnosed with an Adjustment Disorder and later Anxiety Disorder Not Otherwise Specified (NOS). He was recommended for individual therapy, group therapy for anger management, and referred for psychiatric medication. The applicant was prescribed psychiatric medication, which he reported some improvement. The applicant discontinued therapy, but he reengaged in August 2007 prior to his deployment due to relationship stress, and he again reengaged during emergency leave as a result of grief and ongoing relationship stress. He was seen by behavioral health services while deployed for symptoms related to bereavement/grief and depression. He was referred to a Restoration Program as part of the Combat Operational Stress Control operations. The applicant was returned to his unit after completion of the program on 16 July 2008. He engaged in case management support while assigned to the WTU, and he completed a neuropsychological evaluation on 23 October 2008. The applicant described a history of motor vehicle accidents, and he reported hitting his head while serving as the gunner due to going over a bump while deployed. He was found to have mild cognitive deficits most likely due to behavioral health symptoms and side effects of medication. The applicant began behavioral therapy and psychiatric medication management appointments in late October 2008. He was diagnosed with an Adjustment Disorder with Anxiety. On 20 November 2008, he underwent an MEB evaluation for behavioral health conditions. He was noted to have a history of behavioral health symptoms, but his symptoms did not have sufficient severity nor had he completed a period of consistent treatment to warrant a recommendation for a medical discharge for a mental health condition at that time. He was recommended to be reevaluated in 90 days. The applicant continued in individual and group therapy predominantly focused on occupational and relationship problems/stressors. He was found fit for duty on 14 July 2009. The applicant continued in various types of individual and group therapy and eventually psychiatric medication management appointments till his discharge. He was predominately treated for interpersonal/relationship/occupational problems, insomnia, depressive, and anxiety symptoms. He was at times diagnosed late onset PTSD or other trauma related conditions, but he consistently was diagnosed with an Adjustment Disorder or Anxiety Disorder NOS. There is insufficient evidence the applicant was recommended by his various behavioral health providers for an MEB for not meeting medical retention standards for a mental health condition or he was determined to be unable to perform his military duties. In addition, there is insufficient evidence he required inpatient psychiatric treatment or was placed on a permanent psychiatric profile.

d. A review of JLV provided evidence the applicant has been actively engaged in the VA for care for physical and mental health conditions since his discharge. He has completed multiple Compensation and Pension evaluations for physical and mental health conditions. He is currently diagnosed with service-connected PTSD (70%SC) and Traumatic Brain Disease (40%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed with mental health conditions during his active service and after his discharge to include TBI and Anxiety Disorder NOS, Adjustment Disorder, and PTSD. However, there is insufficient evidence the applicant, at the time of his active service, was found to be experiencing a mental health condition that did not meet medical retention standards, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, 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 was diagnosed with mental health conditions during his active service and after his discharge to include TBI and, Anxiety Disorder NOS, Adjustment Disorder, and PTSD. However, there is insufficient evidence the applicant, at the time of his active service, was found to be experiencing a mental health condition that did not meet medical retention standards, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, 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 records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that the applicant was diagnosed with mental health conditions during his active service and after his discharge to include TBI and Anxiety Disorder NOS, Adjustment Disorder, and PTSD. However, there is insufficient evidence the applicant, at the time of his active service, was found to be experiencing a mental health condition that did not meet medical retention standards, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the

applicant's case warrants a referral to IDES from a behavioral health perspective, 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 was diagnosed with mental health conditions during his active service and after his discharge to include TBI and, Anxiety Disorder NOS, Adjustment Disorder, and PTSD. However, there is insufficient evidence the applicant, at the time of his active service, was found to be experiencing a mental health condition that did not meet medical retention standards, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective, 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

3. The Board acknowledged the applicant's honorable service, including deployment to Iraq and subsequent assignment to a Warrior Transition Unit for medical care and through his counsel, the detailed brief outlining his combat-related injuries, medical history, and service performance, including extensive documentation of traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), and other physical and behavioral health conditions. Despite the compelling narrative and supporting medical documentation, the Board found that the applicant was evaluated through the appropriate medical channels during his service. However, the Board determined there is insufficient evidence the applicant's case warrants a referral to IDES.

4. The Board noted, the applicant's contentions for promotion to SSG/E-6 with back pay. The applicant's Enlisted Record Brief and personnel records do not indicate that he was in a promotable status or had been selected for promotion to E-6 prior to his discharge. His DD Form 214 confirms that he was discharged in the rank of sergeant (SGT)/E-5 under the provisions of AR 635-200, Chapter 4, for completion of required active service. The Board found insufficient evidence to support a retroactive promotion or entitlement to back pay. Furthermore, the Board determined that the applicant has not demonstrated, by a preponderance of the evidence, an error or injustice warranting physical disability retirement or promotion to SSG/E-6. Therefore, relief is denied for both issues.

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//

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. 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.
2. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 their office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a

Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.

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 their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, expiration term of service, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

3. The Army Recovery Care Program (previously known as the Warrior Care and Transition Program) transitions Soldiers back to the force and/or to Veteran status through a comprehensive program of medical care/rehabilitation management, professional development, and achievement of personal goals. The Army Recovery Care Program provides policy oversight to the 14 Soldier Recovery Units (previously known as Warrior Transition Units) located on military installations across the country. Soldier Recovery Units manage the recovery of wounded, ill, and injured Soldiers requiring complex care. The Soldier Recovery Unit is designed to provide complex case management for Soldiers who meet the Army Recovery Care Program single entry criteria. Soldier Recovery Units single entry criteria:

Soldier has, or is anticipated to receive, a profile of more than six months duration, with duty limitations that preclude the Soldier from training or contributing to unit mission accomplishment; the complexity of the Soldier's condition requires clinical case management.

4. 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.

5. 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.

6. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//