ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240007886

APPLICANT REQUESTS: physical disability retirement in lieu of honorable administrative release from active duty due to completion of required active service

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 8 May 2024
- VA letter, 10 May 2024
- VA letter, 14 May 2024
- 84 pages of VA medical records

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 is requesting amendment to his separation to reflect honorable medical retirement based on the VA's findings related to his military service.

b. At the end of his second enlistment, he knew something was wrong with him. He made the decision to separate from the military instead of risking the lives of his fellow Soldiers. At the time, he wasn't sure what was going on inside his head. It took him over 10years, two divorces, and several jobs until a former coworker talked him into speaking with a mental health professional.

c. He was seeking private treatment until the COVID pandemic, when her office closed and never reopened. In 2023, he met another veteran suffering with mental health issues, and he recommended he see someone at the VA. He told him he did not trust the VA after how his father was treated by the VA, but he convinced him the VA has gotten better since the Vietnam war.

d. He started seeing mental health professionals with the VA and started a VA claim for disability. On 9 May 2024, the VA made a decision and granted him a 70 percent disability rating for post-traumatic stress disorder (PTSD). This rating, along with the other ones he received, brough him to a combined rating of 90 percent. His PTSD is related to three tours in Afghanistan and one tour in Iraq.

3. The applicant enlisted in the Regular Army on 3 May 1999.

4. The applicant deployed to the following locations during the following time periods:

- Bosnia, 5 May 2001 through 28 October 2001
- Afghanistan, 8 March 2002 through 3 November 2002
- Afghanistan, 6 March 2003 through 25 October 2003
- Afghanistan, 3 May 2004 through 12 December 2004
- Iraq, 25 August 2005 through 29 October 2005

5. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell Orders 327-0708, 23 November 2005, released the applicant from active duty, not by reason of physical disability on 25 February 2006, and transferred him to the U.S. Army Reserve (USAR) Control Group (Reinforcement).

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 25 February 2006, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, due to completion of required service, with corresponding Separation Code MBK.

7. A VA Rating Decision, 8 May 2024, shows effective 14 November 2023, the applicant was granted a service-connected disability rating for the following conditions:

- PTSD, 70 percent
- tinnitus, 10 percent
- rhinitis, 0 percent

8 A VA letter, 10 May 2024, shows the applicant's combined evaluation was 40 percent effective 17 February 2023 and was increased to 90 percent effective 14 November 2023.

9. The applicant provided an additional 84 pages of VA medical records, which have been provided in full to the Board for review.

10. 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.

11. 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 (EMR – AHLTA and/or MHS Genesis), 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 to the ABCMR requesting, in essence, a referral to the Disability Evaluation System (DES). On his DD 149, he has indicated that PTSD is related to his request. He states:

"I request that my separation be upgraded from honorable to medically retired based upon the VA's findings related to my military service."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 3 May 1999 and was honorably discharged on 25 February 2006 under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005), having completed his required active service. His separation code of KBK denotes "Completion Of Required Active Service" and his reentry code of "1" signifies he was fully qualified for reenlistment.

d. No contemporaneous medical documentation was submitted with the application, and the applicant does not identify which condition(s) he believes to have failed medical retention standards and/or been unfitting for continued military service.

e. The EMR is limited due to his period of service and only contains radiograph results. They show that fractured the distal phalanx of the 5th toe of his right foot and it went on to heal. The remaining studies (chest, right hip, and a right upper quadrant ultrasound) were all normal.

f. It shows that following his discharge 2006 that he was not seen by the VA until June 2023.

g. JLV shows he was first awarded VA service-connected disability ratings in 2023, including ratings for PTSD, migraine headaches, and residual of foot injury. 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.

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

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting physical disability retirement in lieu of honorable administrative release from active duty due to completion of required active service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder is related to his request. More specifically, the applicant asserts that at the end of his second enlistment he knew something was wrong with him and thus made the decision to separate from the military instead of risking the lives of his fellow Soldiers. 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 03 May 1999, 2) he was deployed five times during his military career: Bosnia (05 May 2001-28 October 2001); Afghanistan (08 March 2002-03 November 2002; 06 March 2003-25 October 2003; 03 May 2004-12 December 2004), and Iraq (25 August 2005-29 October 2005), 3) on 23 November 2005, the applicant was released from active duty, not by reason of physical disability on 25 February 2006, and transferred to the U.S. Army Reserve Control Group (Reinforcement), 4) the applicant's DD Form 214 shows he was honorably released from active duty on 25 February 2006, under the provisions of AR 635-200, chapter 4, due to completion of required service, with corresponding Separation Code MBK.

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) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 07 September 1999 through 11 January 2006. Review of the records were void of any BH diagnosis or treatment history.

d. VA medical records included as part of the applicant's application and via JLV were reviewed. A VA Rating Decision Letter dated 08 May 2024 shows he was granted service-connection for PTSD (70%), Tinnitus (10%), and Rhinitis associated with TERA participation (0%), effective 14 November 2023. Review of the VA treatment records show he completed an initial BH triage on 11 August 2023, as referred by his primary care provider (PCP), and was initially diagnosed with Reaction to Severe Stress, Unspecified with a referral to the PTSD clinic. He was evaluated through the PTSD clinic on 19 September 2023 and his diagnosis was updated to PTSD, Chronic and Other-Specified Trauma-and-Stressor-Related Disorder. He reported a history of prior BH treatment through a civilian/non-VA provider before the COVID-19 pandemic. The evaluating provider documented numerous combat-related stressors that the applicant was exposed to during his deployments, to include identifying at least two index traumas that were most bothersome. He started evidence-based treatment for PTSD in October 2023 and attended four sessions prior to terminating treatment on 30 November 2023.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant failed medical retention standards IAW AR 40-501, Chapter 3-33 while in the military. Thus, a referral to the Disability Evaluation System (DES) is not warranted.

f. The applicant cites his VA disability rating as evidence of error in discharge and requests records amendment to show he was discharged due to disability. However, 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 was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of PTSD through the VA is not indicative of a misdiagnosis or other injustice at the time of service. 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. Per AR 40-501, Chapter 3-33, a referral to the DES is required when the condition results in: 1) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, and/or 2) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. The applicant was discharged due to completion of required service and his in-service medical records were void of any BH diagnosis or treatment history. Moreover, there is no documentation available showing that he required a BH profile necessitating duty limitations due to PTSD. As such, there is insufficient medical evidence that the applicant failed medical retention standards due to PTSD IAW AR 40-501, Chapter 3-33.

g. 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:

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and both the medical and behavioral health reviews, the Board concurred with the advising officials. Based on this, the Board determined the applicant's case does not warrant a referral to the Integrated Disability Evaluation System to determine a physical disability retirement.

2. Consideration was given to the 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 VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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. 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. 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.

4. 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.

5. 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.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 4 provides for the honorable discharge or release from active duty of Soldiers upon completion of their required active service.

7. 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.

8. 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.

9. 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//