

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240009265

APPLICANT REQUESTS:

- Reconsideration of his previous request for correction of his records to show he was separated due to physical disability
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 9 June 2024
- Letter for reconsideration (4 pages) dated 13 May 2024, in support of his claim citing the Army's repeated failures in addressing his health issues which include but are not limited to chronic back pain, mental illness, and substance abuse. He lacked medical care and post-deployment assessments showed multiple medical concerns. Additionally, he suffered a traumatic brain injury (TBI) from an improvised explosive device (IED) explosion and was later diagnosed with post-traumatic stress disorder (PTSD) and adjustment disorder. His medical issues being overlooked and untreated led to legal issues tied to untreated substance abuse
- Court case documentation with a date of offense 26 July 2008 in support of his claim showing his substance abuse
- Memorandum for an unexcused absence showing on 9 November 2010 the applicant was absent from the scheduled unit training assemblies on 1 November 2010 and 2 November 2010
- Three DA Forms 4856 (Developmental Counseling Form) one dated 7 November 2010 showing his counseling for missing drill, not checking into his hotel, and not informing his noncommissioned officer in charge (NCOIC) of his whereabouts, the form was not acknowledged nor signed by the applicant, another dated 3 April 2011 explaining the unit's height and weight program and physical training program and policies, and one dated 3 October 2010 showing his record Army Physical Fitness Test (APFT) failure and flagging action, he agreed to the counseling on 3 October 2010
- DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) showing on 3 October 2010 a flag was initiated due to the applicant's APFT failure

- Five-character reference statements in support of his claim where the authors attest witnessing the applicant's substance abuse and alcohol abuse while deployed
- Two family character reference statements in support of his claim where the authors attest to the applicant's decline of mental and physical health due to his deployments, the authors assert the deployments left their family member with mental and physical health issues including depression and alcoholism
- Medical Documentation (33 pages) in support of his claim showing he received a provider referral for a potential TBI, additional contentions of his medical health issues were responded to which included chronic back and leg pain
- Department of Veterans Affairs (VA) Problem List listing the applicant's health problems which the VA providers are helping him manage which include but not limited to TBI, severe alcohol dependence, depression, psychosocial dysfunction due to chronic pain, chronic post-traumatic stress disorder following military combat, and pain related problems

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170016290 on 14 December 2022.
2. The applicant states he was unable to be medically retired from the Army due to multiple mental and physical disabilities which have prevented him from maintaining gainful employment and earning retirement benefits. He sustained serious physical and psychological injuries during his military service, which he believes were reportedly ignored by his command and medical personnel. As a result of the severity of these conditions, their ability to pursue a stable career and secure retirement was permanently impacted due to his time in combat and his military duties.
3. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 11 March 2004.
 - b. His Enlisted Record Brief (ERB) shows:
 - (1) He served two tours overseas in an imminent danger pay areas, Iraq:
 - from 1 January 2005 to 1 January 2006
 - from 10 March 2007 to 12 May 2008

(2) He had a Physical Profile Serial System, PULHES (Physical Capacity/Stamina, Upper Extremities, Lower Extremities, Hearing and Ears, Eyes and Vision, and Psychiatric) of "11111" no limitations, fully fit.

c. Orders issued on 8 April 2008 directed his release from active duty, not by reason of physical disability. He transferred to the United States Army Reserve (USAR) Control Group, individual ready reserve (IRR).

d. He was honorably released from active duty on 13 August 2008 for completion of required service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 5 months, and 3 days of active service, with 2 years, 2 months, and 4 days of foreign service.

e. Orders 12-004-00028, dated 4 January 2012 show he was honorably discharged from the USAR effective 11 January 2012.

4. In the processing of his previous request, a medical review was received from the Army Review Boards Agency's medical provider.

The applicant has applied to the ABCMR requesting correction of his records to show he was separated due to physical disability. He has a well-established diagnosis of PTSD per his 100% VA service connection and numerous treatment notes over time through the present. There is no evidence that he was formally determined to not meet medical retention standards, was referred for disability processing and found not fit for duty, or initially discharged under a medical/psychiatric disability. Given that he did not engage in care for a psychiatric condition or otherwise have indications of such a condition which might ultimately lead to a medical processing/separation, this would not be considered an error. Furthermore, an adjustment disorder diagnosis, especially in the near-term following trauma exposure, would not necessarily be considered a misdiagnosis. VA standards for service-connected disability and Army fitness for duty standards differ, so a 100% service connection for PTSD would not necessarily reflect a medical disability per Army fitness standards. However, under liberal consideration and in an abundance of caution given his history and functioning, the Board may wish to consider referral to DES to further evaluate appropriateness for a medical separation/disability retrospectively.

5. In his previous request (AR20170016290) on 14 December 2022 after reviewing the application and all evidence, the Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommended that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the

applicant's condition(s), to include [applicable conditions], met retention standards at the time of service separation.

6. On 18 October 2023, the Deputy Assistant Secretary of the Army, reviewed the evidence presented, findings, conclusions, and the Board member recommendations. Based upon the Board's original recommendation to refer the applicant's record to the Office of The Surgeon General (OTSG) for further evaluation, that evaluation finding insufficient evidence to grant the requested relief, and the OTSG findings being concurred with by the Army Review Boards Agency's medical staff, the application submitted by the individual concerned was denied.

BOARD DISCUSSION:

1. After review of the application and all evidence, the Board found 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 the medical review, the Board concurred with the advising official finding that in the applicant's prior request, the Board voted to grant partial relief. The Board agreed the applicant's record should be referred to the Office of the Surgeon General for medical evaluation consideration, with all relief dependent upon a final medical determination. His case was referred to OTSG and subsequently denied. In the applicant's current request, the Board found no evidence that he was formally determined to have not met medical retention standards, or that he was referred for disability processing and found not fit for duty. Therefore, the Board determined there was insufficient evidence to warrant a change to the prior decision and denied relief.

2. Referral to the IDES occurs when a Soldier has one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. 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.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 amendment of the ABCMR decision rendered in Docket Number AR20170016290 on 14 December 2022.

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. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, the individual must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
3. Army Regulation 40-501, chapter 7 (Physical Profiling) of the regulation in effect at the time of the applicant's separation, provides that the basic purpose of the physical profile serial system is to provide an index to the overall functional capacity of an individual and is used to assist the unit commander and personnel officer in their determination of what duty assignments the individual is capable of performing, and if reclassification action is warranted. Four numerical designations (1-4) are used to reflect different levels of functional capacity in six factors (PULHES): P-physical capacity or stamina, U-upper extremities, L-lower extremities, H-hearing and ears, E-eyes, and S-psychiatric. Numerical designator "1" under all factors indicates that an individual is considered to possess a high level of medical fitness and, consequently, is medically fit for any military assignment.
4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria for enlistment and processing into the Regular Army and the United States Army Reserve (USAR). This regulation provides that prior to discharge or release from active duty, individuals will be assigned reentry code (RE) codes based on their service records or the reason for discharge. Chapter 3 of this regulation prescribes basic eligibility for prior-service applicants for enlistment. This chapter includes a list of Armed Forces RE codes. RE-1 applies to persons completing their term of service who are considered qualified to reenter the Army, provided all other qualifications are met.
5. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) 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. It states that 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. 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

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 error or injustice on the part of the Army. 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 awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Section 1556 of Title 10, USC, 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.

8. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//