ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240009544

APPLICANT REQUESTS: amendment to his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending on 1 March 2016, to show in item 28 (Narrative Reason for Separation) "Medical Retirement"

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

- DD Form 149 (Application for Correction of Military Record)
- Two photos
- Self-authored letter in support of application
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States)
- Awards, decorations, commendations, evaluations, and training completion certificates for the duration of the applicant's enlisted service (18 documents)
- Enlisted Record Brief (ERB)
- DD Form 214 for the period ending on 7 May 2007
- Awards, decorations, commendations, evaluations, and training completion certificates for the duration of the applicant's service as a commissioned officer (16 documents)
- Officer Record Brief
- Character references (17 documents)
- Memorandum subject: Initiation of Elimination, dated 30 September 2015
- Memorandum subject: Service of Officer Elimination Discharge Recommendations, dated 1 October 2015
- Memorandum subject: Officer Elimination Case, dated 12 February 2016
- DD Form 214 for the period ending on 1 March 2016
- Medical records (86 Pages)

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, in effect, at the time of his involuntary discharge, he was suffering from an undiagnosed traumatic brain injury (TBI), which led to the misconduct that caused his military career to end after 17 years, 11 months, and 14 days of active duty service. He reported his TBI symptoms, yet the Army failed to properly diagnose and treat him. He was not afforded the opportunity for an MEB or PEB, even though in his discharge physical he indicated such concerns. He was finally properly diagnosed with a TBI, in the year 2020. He is now asking for his narrative reason for separation to show, in effect, a medical retirement.

3. The applicant provides and the service record shows:

- He enlisted in the Regular Army on 18 March 1998
- He was honorably released from active duty on 5 May 2007, to accept commission or warrant in the Army. He completed 9 years, 1 month, and 4 days of active federal service
- During this period of service, he received high evaluation ratings, and "among the best" for overall potential
- On 5 May 2007, he was appointed as a Reserve Commissioned Officer, at the rank of second lieutenant (2LT)/O1
- He served in Iraq from 15 August 2009 through 6 August 2010
- On 28 March 2013, while with his spouse, he sustained a concussion due to a head injury not combat related. He fell and hit the back of his head on the ground. He states he lost consciousness for about one minute
- Medical records that pertain to his head injury, will be reviewed and discussed by the Medical Staff at the Army Review Boards Agency (ARBA)
- Up until 8 May 2014 he received "proficient", "best qualified", "outstanding performance", and "must promote" evaluation ratings
- On 9 May 2014, he engaged and maintained a romantic relationship with an enlisted Soldier
- On 6 June 2014, he was arrested for driving while intoxicated (DWI)
- On 25 June 2014, he underwent an Army Regulation (AR) 15-6 (Procedures for Investigation Officers and Boards of Officers) investigation, in which his romantic relationship with an enlisted Soldier, was substaniated
- On 12 February 2015, he was reprimanded for conduct unbecoming of an officer and for fraternizing with a junior enlisted Soldier by entering in and maintaining an inappropriate intimate relationship
- On 16 July 2015, a Board of Inquiry recommended he be involuntarily eliminated from the Army based on misconduct and moral or professional dereliction, with an honorable characterization of service.

- On 12 February 2016, in a memorandum, subject: Officer Elimination Case, the Deputy Assistant Secretary of the Army (Review Boards), determined that he be involuntarily eliminated from the Army
- On 1 March 2016, he was honorably released from active duty, due to unacceptable conduct. He completed 8 years, 9 months, and 27 days of active federal service, and 9 years, 1 month, and 4 days of prior active federal service.
- The applicant completed 18 years, 3 months, and 1 day of active federal service.

4. The applicant's service record does not reflect any other misconduct throughout his career or any other disciplinary actions prior to 8 May 2014.

5. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). Essentially, the applicant requests for retroactive retirement status. He indicated that PTSD and TBI were related to his request. The applicant's PTSD and other mental health conditions were reviewed under separate cover by ARBA Medical Reviewer BH (behavioral health) specialist. The applicant contends that a TBI sustained in March 2013 was not considered during his involuntary discharge process nor was it considered for medical retirement. In his application, he also stated that his thumb condition should have been referred for a medical board. And finally, as support for his contentions, he stated that he was awarded 40% disability rating by the VA immediately upon discharge from service.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was in active service from 18Mar1998 to 01Mar2016. He was commissioned in 2007. His MOS was 25S Satellite Communication Systems Operator/Maintainer. He served six years overseas (Korea 1999 to 2000 and Germany 2002 to 2006) and during one combat deployment to Iraq 2009-2010 where he was the logistic officer. The applicant was arrested 06Jun2014 for driving under the influence. 12Feb2015 he was reprimanded for conduct unbecoming of an officer for having maintained an intimate relationship with an enlisted servicemember after having received an Article 15 for the same conduct. He was discharged 01Mar2016 under provisions of AR 600-8-24 para 4-2B for unacceptable conduct. His service was characterized as honorable.

3. Summary of medical records related to the head injury, TBI and TBI Residuals.

a. An entire year from February 2011 through February 2012, the applicant was

engaged with BH services in the context of being an alleged offender of domestic abuse (while intoxicated) and for substance abuse (alcohol). *This predated the head injury and TBI in March 2013*.

b. 28Mar2013 and 01Apr2013 Bennett Family Care Clinic Fort Hood. The applicant reported having fallen on the ground hitting his head on the right side. His wife wanted him to go to the ER, but he declined. He reported loss of consciousness (LOC) for about 1 minute. He reported dizziness. He denied nausea and current headache. He denied problems with memory. His pain was 0/10 (pain-free). His current medication was listed as "none". The right tympanic membrane (TM) had erythema (inflammation). The TM was intact and not bulging. The neurologic exam was normal. Diagnoses: Concussion and Skull Fracture. *A concussion is a TBI*. The 28Mar2013 Skull series showed a linear skull fracture in the posterior occipital/parietal region. The Head CT revealed a right temporal bone fracture. CT of the temporal bones confirmed the right temporal bone fracture and also revealed a small hemorrhage collecting around the malleus and incus bones of the right ear. The left temporal bone was normal. The 28Mar2013 Brain CT showed a normal brain.

c. 11Apr2013 Audiology and 12Apr2013 ENT Clinic Darnall AMC. He had sustained a right temporal bone fracture on 16Mar2013 when he fell on wood flooring landing on the back of his head on the right side. There was LOC for a few seconds. He had accompanying headache and hearing loss. He reported that sound was muffled on the right. The audiogram showed mild right side hearing loss (borderline normal). Left ear hearing was normal. There was no tinnitus and no vertigo although he did report intermittent disequilibrium. He was referred to audiology clinic for amplification in the right ear to restore sound balance to hearing. The audiogram was to be repeated in 6-12 months. He was released without limitations.

d. 13Nov2015 Neurology. The applicant was seen for skull fracture and persistent hyposmia. The injury had reportedly occurred 18 months prior. He was getting ready for bed and tripped and fell striking the back of his head against a wooden floor. He did not remember the fall itself and was briefly unconscious. He remembered awakening in bed the following morning. He did not miss work. He denied an altercation or alcohol involvement. He did not have persistent or bothersome headaches, cognitive difficulties or change in balance or coordination. He noted initial loss of hearing which eventually returned to normal. He also noted decreased taste and smell which had improved but were not back to normal. Currently, he denied dysarthria, dysphagia, language difficulty, hearing loss and vertigo. Mental Status Exam: "Orientation, attention, mood, affect, recent and remote memory, language and fund of knowledge are judged to be normal for the patient's stated educational and occupational attainment". The neurologist indicate that the decreased sense of smell was likely due to shearing injury to the axons of the olfactory nerve. Zinc supplement was recommended for 3-4 months

to facilitate the return of his smell discrimination. A scan was not repeated because he was asymptomatic for the most part. He was to return to neurology as needed.

e. 16Jun2016 Initial TBI DBQ and TBI: Initial/Psychiatric Exam. The applicant reported being present in the motor pool, when he tripped and fell and hit the back of his head on the ground. He was not wearing a helmet. He thinks he had LOC for a few seconds and recalled the guys from the motor pool helping him up. *This account varied from circumstances of the event reported in 2013 and 2015.* He denied headache, nausea, and vomiting. He did have dizziness and post traumatic amnesia. He did not receive care at the time of the injury and was able to return to his duties immediately. Since the event, he noticed he couldn't hear out of one ear. He also noticed a difference in his taste and smell. He reported no coordination issues or seizures. The exam showed no memory, attention, concentration or executive function impairment. There was also no judgement, social interaction or motor activity impairment. Subjective symptoms considered to be residuals of the TBI included mild or occasional headaches and mild anxiety. He had no prior history of TBI. While in the Army, he worked in signal artillery and obtained the rank O3 Captain. Since leaving service, he worked in telecommunications. The examiner diagnosed TBI and Post-traumatic Dizziness/Vertigo. The examiner assessed that the applicant did not have any mental or cognitive, residuals attributable to the TBI condition.

f. 16Jun2016 Mental Disorders DBQ. The applicant reported being a telecom director for a small company called Futaris. During the exam, it was noted that his level of insight and judgment appeared to be good. Recent and remote memory for history-giving were above average. He was an excellent planner and was very strong with directions and navigation. In short, the VA BH examiner determined that the applicant did not have a mental health diagnosis.

g. 16Jun2016 Hearing Loss and Tinnitus DBQ. He reported temporary difficulty hearing following the skull fracture in March 2014. He endorsed that the hearing had returned to normal over time.

h. 16Jun2016 Ear Conditions DBQ. After his fall, he noted dizziness about per month lasting 10-15 seconds with spontaneous resolution. The ear exam was normal, bilaterally. The condition had not required treatment. Diagnosis: Post-traumatic Dizziness/Vertigo.

i. 16Jun2016 Loss of Sense of Smell and/or Taste DBQ. He had a partial loss of smell. He retained the ability to smell differences but not pinpoint the difference. For example, he knew the smell of food, but he couldn’t discern the smell of spaghetti from barbeque. He had a partial loss of taste. He could taste the difference between chocolate and spaghetti sauce, but he didn’t have the subtle palate he used to have. Diagnoses: Hyposmia (reduced ability to detect odors) and Hypogeusia (decrease in

sense of taste). The examiner listed his 20-plus-years smoke history as a known anatomical or pathological basis (or risk factor) for the partial loss of taste. *The TBI was also presumed contributory. The reader may also recall that neurology had determined that the decreased sense of smell was due to the TBI*. The examiner assessed that the applicant's partial loss of sense of smell and taste did not impact on his ability to work.

j. 18Nov2020 Neurology Attending Note VAMC. The applicant was given a migraine diagnosis by an outside provider. The neurologist noted that the applicant was service connected for TBI and taste/smell disorder. In short, recent brain MR findings (obtained for unrelated recent illness/symptoms) reflected the remote TBI/axonal injury.

4. Summary of medical records for conditions not related to his TBI

a. 16Apr2016 Ankle Conditions DBQ. He had a remote left ankle injury (25Sep1998) playing baseball. There was no evidence of pain noted with examination of the left ankle. Service treatment records were silent for the right ankle treatment; however, he was service connected by the VA due to 18 years of service. Pain was noted on the right ankle exam but did not result in/cause functional loss. The bilateral exam showed no evidence of pain with weight bearing. Muscle strength was normal (5/5). Diagnosis: Left Lateral collateral ligament sprain (September 1998) and Right Tendonitis (Achilles/peroneal/posterior tibial) diagnosed during the compensation and pension exam.

b. 16Apr2016 Back Conditions DBQ. There was no specific back injury reported and no specific treatment records for the back. The VA service connected the condition due to presumed wear-and-tear related to duties. He reported using Motrin for treatment. There had been no physical therapy, chiropractic, or injections. The exam showed near normal ROM in all movements. There was no pain noted during the exam and no evidence of pain with weight bearing. There were no radicular symptoms reported or signs observed during the exam. Diagnosis: Lumbosacral Strain.

c. 16 Jun2016 Knee and Lower Leg Conditions DBQ. Service treatment records indicated remote treatment (30May2001) for the left knee with physical therapy for Retropatellar Pain Syndrome (or Patellofemoral Pain Syndrome). The right knee exam revealed near normal ROM. Left knee ROM was normal. There was pain with flexion but no loss in function. The bilateral knee exam showed no evidence of pain with weight bearing and knee strength was normal. Diagnosis: Patellofemoral Pain Syndrome, Bilateral.

d. Thumb Condition
28Sep2015 Bennet Family Care Clinic-Hood. The applicant reported that a

nodule at the base of the left thumb, present for many years, caused pain with any gripping with the left hand. The thumb x-ray was normal.

04Nov2015 Bennet Family Care Clinic-Hood. The left hand cyst was excised.

29Jan2016 Orthopedics Darnall AMC. Status post excision of the mass at the base of proximal phalanx, he was experiencing ulnar sided pain, numbness and tingling.

22Feb2016 General Surgery. He rated his pain as 6/10 at rest and increased to 10/10 when he grabbed things. He described the pain as dull, sharp and reported nothing alleviated the pain. He was not on current profile. Removal of the mass caused some damage to the digital nerve of left thumb. The 04Dec2015 pathology report indicated the lesion was a giant cell tumor of tendon sheath. On this date, he underwent excision of the left thumb mass and digital nerve exploration with nerve repair with allograft.

08Mar2016 General Surgery. About 2 weeks after surgery, the pain was currently well managed. He had no complaints. The exam showed he could make a complete fist with good tendon function and excursion of all fingers, but at the time, the thumb was limited to only gentle active flexion and extension, to protect the nerve repair. He was given a removable thumb spica splint. He could remove the splint for active ROM exercises. He was also to have occupational therapy. *He was discharged from the Army on 01Mar2016*.

16Jun2016 Peripheral Nerves Conditions DBQ. The applicant was right hand dominant. The exam showed mildly decreased left pinch (thumb to index finger) strength (4/5). Bilateral grip strength was normal. There were paresthesia, numbness and intermittent pain of mild severity. The examiner assessed that there was incomplete paralysis of the thumb digital branch of the left median nerve, “with no functional impact due to the numbness, tingling, or electrical sensations”. He had a residual surgical scar that was tender to pressure, but the scar was not unstable (per Scars/Disfigurement DBQ).

e. 16Jun2016 Scars/Disfigurement DBQ. The applicant also had a tender scar status post removal of a pilonidal cyst at Fort Hood. He was previously treated for the condition in Apr/May2007 and Feb2008. The cyst was successfully removed in August 2012 without recurrence. There had been no further drainage. The scar was tender to pressure, but it was not unstable.

f. 06Jan2016 Urology Consult (Darnall Medical Center Fort Hood). The applicant was seen for “mildly uncomfortable” right varicocele at the base of the right penis diagnosed by ultrasound on 22Oct2015. There was no pain or mass in the testicles.

The urologist assessed that the tiny mass was separate from the testes and epididymis and represented an inflammatory disorder of the scrotum that likely did not represent a significant problem. They advised a wait-and-see approach. During the June 2016 Male Reproductive System Conditions DBQ exam, the applicant endorsed that it had not changed in the past 6 months.

5. DoD separation exams summary

a. 14Sep2015 Periodic Health Assessment. He reported a lump in scrotum between the testicles and a lump in the [left] thumb joint. He also reported "minor" back pain. Of note, he denied frequent headaches. He was not on profile for any condition. His physical profile was PULHES 111111.

b. 28Sep2015 Phase II Physical Exam Bennett Family Care Clinic Fort Hood. This was a Termination Examination (recorded on DD Forms 2808 and 2807). He reported head injury/skull fracture, a period of loss of consciousness or concussion, dizziness/fainting spells, ear/hearing issues, respiratory issues, multiple orthopedic issues (back pain, wrist pain, knee pain), and multiple cysts/lumps (thumb, pilonidal, testicular, facial and armpit). However, the head, neurologic, ear, extremity and spine exams did not reveal abnormalities. The examiner did not list defects in block #77 of DD Form 2808. However, in the electronic chart note, the examiner did document the presence of nodules at the base of the left thumb and a lump above the right testicle (recorded as a small nodule on the right side of the base of the penis). Of note, the applicant denied headache and ear pain. The physical profile was PULHES 111111. He was deemed qualified for service. In addition, the examiner wrote that there was no medical condition that would require a MEB— he met retention standards.

6. Summary/Opinion

a. Within a few months of discharge from service and 6 months after his separation physical exam, the applicant completed the VA disability claims related evaluations captured in the DBQ examinations summarized above. These comprehensive physical exams were important for this review as they provided information much like would be needed had he undergone medical discharge processing. The applicant believes that the 40% rating from the VA effective 02Mar2016, the day after he was discharged, suggested that he should have been medically retired from the Army. The VA Rating Decisions dated 08Jul2016 and 29Jul2016 showed the Thumb and Back Scars (painful) were rated at 20%; Thumb Digital Nerve Injury at 10%; Right Ankle Tendonitis at 10%; Lumbosacral Strain at 10%; Left Knee Patellofemoral Pain at 0%; Hypogeusia, Loss of Taste at 0%; Loss of Smell (partial) at 0%; and TBI (to include posttraumatic dizziness, vertigo and claimed as skull fracture, concussion condition) rated at 0%. The TBI rating was increased to 40% in 2019, three years after discharge from service.

b. The Army only rates conditions that were found to be unfitting by a PEB. Service members are referred for a PEB after review by a MEB had determined there were conditions which failed medical retention standards. Criteria for medical retention standards for the conditions specifically mentioned by the applicant were listed below; however, retention standards were reviewed for all of the other reviewed medical conditions. The applicant endorsed receiving "stellar reviews and recommendations" for performance. Review of his OERs and Company Grade Plate OERs from 20130116 thru 20160108 did indicate that for promotion potential to the next level, he was 'best qualified' or 'highly qualified'.

3–19. Head. A skull defect that poses a danger to the Soldier or interferes with the wearing of protective headgear is cause for referral to an MEB.

3–30. Neurological disorders. The causes for referral to an MEB are as follows: *j*. Any other neurologic conditions, TBI or other etiology, when after adequate treatment there remains residual symptoms and impairments such as persistent severe headaches, uncontrolled seizures, weakness, paralysis, or atrophy of important muscle groups, deformity, incoordination, tremor, pain, or sensory disturbance, alteration of consciousness, speech, personality, or mental function of such a degree as to significantly interfere with performance of duty.

3–38. Skin and cellular tissues *y.* Scars and keloids so extensive or adherent that they seriously interfere with the function of an extremity or interfere with the performance of duty.

c. The VA TBI examiner assessed that while the applicant did sustain traumatic brain injury with a skull fracture, he appeared to recover cognitively from the injury fairly quickly. He was back to work with only limited rest— his thinking was clear even the week following the incident during which he functioned in command while in the field. He did not describe developing any neurobehavioral effects including irritability or sluggishness. He had no clinically significant psychological symptoms. Moreover, he did not describe having any cognitive issues and this was corroborated by the objective test findings. An abbreviated and limited cognitive battery designed to gather objective evidence for the purpose of answering the TBI facets questions, was administered. The test results were deemed valid. The VA TBI examiner wrote "Given the above evidence, it is less likely than not (less than 50% probability) that there are any cognitive or psychological residuals of head injury". In addition, the VA TBI examiner indicated that there was no impairment in judgement and did not indicate that there was any impairment in impulse control, that was attributable to the TBI condition.

d. While in service, the applicant was evaluated by ENT and audiology services, and it was determined that his hearing had returned to within normal limits, and that no vertigo rehabilitation or medication was recommended. He was also evaluated by neurology services which noted the applicant's TBI residuals (reduction in taste and

smell) and made some recommendations; however, the applicant did not require cognitive rehabilitation.

e. Based on review of available evidence, in the ARBA Medical Reviewer's opinion, the applicant did not have conditions (including but not limited to TBI, TBI Residuals and Thumb conditions) which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service. Referral for medical discharge processing is not warranted. In addition, there was insufficient evidence to support that the applicant's TBI in March 2013 caused or significantly contributed to his substance abuse issues or associated consequences or to the misconduct which led to his involuntary discharge.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement in part due to PTSD which also mitigates his misconduct. 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 18 March 1998, and he accepted his commission as USAR 2LT on 05 May 2007; 2) The applicant deployed to Iraq from 15 August 2009-06 August 2010; 3) On 6 June 2014, the applicant was arrested for driving while intoxicated; 4) On 12 February 2015, the applicant was reprimanded for conduct unbecoming of an officer and for fraternizing with a junior enlisted Soldier by entering in and maintaining an inappropriate intimate relationship; 5) On 16 July 2015, a Board of Inquiry recommended he be involuntarily eliminated from the Army based on misconduct and moral or professional dereliction, with an honorable characterization of service; 6) On 1 March 2016, the applicant was honorably released from active duty, due to unacceptable conduct. He completed 8 years, 9 months, and 27 days of active federal service, and 9 years, 1 month, and 4 days of prior active federal service. The applicant completed 18 years, 3 months, and 1 day of active federal service.

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 VA and military medical documentation provided by the applicant were also examined.

c. The applicant asserts his misconduct should be mitigated, and he should have received a medical retirement in part for PTSD. There is evidence the applicant engaged in marital counseling from February-August 2011, and he also sought counseling for alcohol abuse at the same time. After mid-August 2011, there is insufficient evidence the applicant continued in marital counseling but focused predominately on alcohol abuse counseling till February 2012. There is insufficient evidence he reported or was diagnosed with a mental health condition including PTSD during this time. On 18 December 2014, the applicant was seen for a Command

Directed Mental Status Exam to assess for safety following a domestic disturbance with a neighbor. The applicant was noted to have a history of marital problems and recently had a Military Protective Order and had been removed from Command for fraternization. He also had been drunk during his Hail and Farewell. The applicant admitted to recent poor judgement, but he denied any suicidal or homicidal ideation. The applicant was not diagnosed with a mental health condition, and he did not request to continue in behavioral health treatment. The applicant was also referred to ASAP the same day to be evaluated for alcohol abuse, and he was diagnosed with alcohol abuse and recommended for continued substance abuse counseling. The applicant continued in treatment at ASAP till March 2015. There was insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, required inpatient psychiatric treatment, placed on a permanent psychiatric profile for psychiatric condition including PTSD, or was ever found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant has been treated by the VA for anxiety and panic symptoms. However, currently, he has not been diagnosed with a service-connected mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence the applicant's case warrants a referral to DES to be assessed for a medical retirement for PTSD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing PTSD, which mitigates his misconduct and warrants a medical retirement. The VA has treated the applicant's symptoms of anxiety and panic after his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct and warrants a medical discharge.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. In addition, there is no nexus between the applicant's reported PTSD and his misconduct of fraternization in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported PTSD; 2) the applicant's reported PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. Also, there is insufficient evidence the applicant's

case warrant's a referral to DES to be assessed for a medical retirement due to the applicant not ever being found to not meet retention standards from a psychiatric perspective while in active service for a mental health condition, including PTSD. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

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

BOARD VOTE:

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.

//SIGNED//

X _____

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 (Armed Forces), United States Code (USC), 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 (Army Board for Correction of Military Records (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. Title 10 (Armed Forces), United States Code (USC), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation 601-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty (AD) to the Reserve Component (RC) and discharge functions for all officers on AD for 30 days or more. It provides principles of support, standards of service, and policies to support office transfers and discharges. An officer approved for involuntary separation by SECARMY (or designee) or whose request for

resignation or discharge in lieu of elimination is approved will be separated accordingly for misconduct, moral or professional dereliction, or in the interest of national security. In CONUS, an officer will be separated no earlier than 5 calendar days and not later than 14 calendar days after the officer receives written notification.

4. Title 10 (Armed Forces), United States Code (USC), 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 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 MOS Medical Retention Board; 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 the Informal Physical Evaluation Board (PEB) Proceedings. 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.

5. Title 38 (Veterans' Benefits), United States Code (USC), 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.

6. Title 38 (Veterans' Benefits), United States Code (USC), 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.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. As such, this regulation implements the requirements of Title 10 (Armed Forces), United States Code, Chapter 61; DODI 1332.18, DODM 1332.18 (Volumes 1 through 3), and DOD policy memorandums to these issuances; and Army Directive 2012–22 as modified by DODI 1332.18.

a. Chapter 4 provides, Public Law 110–181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

b. A Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the Department of Veterans Affairs (VA) or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

c. The objectives of the Disability Evaluation System (DES) are to:

(1) Maintain an effective and fit military organization with maximum use of available manpower.

(2) Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the line of duty (LOD).

(3) Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

d. The DES begins for a Soldier when the Soldier is issued a permanent profile approved in accordance with the provisions of AR 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501 (see glossary). Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command's Medical Management Center before their referral into the DES.

e. The DES concludes for Soldiers as set forth below:

(1) For Soldiers determined by the MEB to meet medical retention standards and MAR2 did not refer the Soldier to the DES, the DES concludes the date the MEB returned the Soldier to duty. (If referral to MEB resulted from MAR2 evaluation, referral to the PEB may be mandatory.

(2) For Soldiers referred to the PEB and determined fit, the DES concludes as of the date of USAPDA's memorandum approving the finding of fit.

(3) For Soldiers referred to the DES under a Legacy Disability Evaluation System (LDES) process and determined unfit, the DES concludes on the date of the Soldier's separation or retirement for disability.

(4) For Soldiers referred to the DES under the Integrated Disability Evaluation System (IDES) process and determined unfit, the DES concludes on the date of the Soldier's notification of the VA's benefits decision. However, the Soldier's military status as a member of the Regular Army (RA) or Reserve Component (RC), as applicable, ends on the date of the Soldier's disability separation or retirement.

f. A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation.

g. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

8. Title 10 (Armed Forces), United States Code (USC), 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%. Title 10, United States Code (USC) (Armed Forces), 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%.

9. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//