

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240009917

APPLICANT REQUESTS: in effect-

- a retirement due to disability
- video/telephone appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Various Department of Veterans Affairs (VA) letters and rating decisions

FACTS:

1. The applicant states, in effect:

a. His request is related to post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). While on active duty he completed the required outpatient treatment for a substance abuse condition that was related to PTSD and TBI. Unfortunately, he was unable to recover sufficiently to remain on active duty.

b. Upon failing a Substance Use Disorder Clinical Care test, his command immediately initiated action to separate him. He contends that he should have been referred to the Disability Evaluation System. (DES).

c. Further, his current narrative reason for separation may cause potential employers and schools to be biased in their selection process without the benefit of knowing his conditions are service connected.

d. The VA has granted him a disability rating of 50% which includes his PTSD, TBI, and substance abuse conditions.

2. Having prior service in the Army National Guard, the applicant enlisted in the Regular Army on 6 December 2016. He held military occupational specialty, 27D, paralegal specialist.
3. He was discharged on 11 November 2023 with half separation pay by reason of alcohol rehabilitation failure. His service was characterized as honorable. He completed 6 years, 11 months, and 6 days of net active service for the period.
4. His DD Form 214 does not list any contingency operations or awards for valor.
5. The applicant provides several VA letters for the period February 2024 to June 2024. These letters show the applicant has several service-connected conditions which include PTSD with alcohol and cannabis use disorder and TBI. He currently has a combined disability rating of 70%, effective 24 May 2024.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement for a traumatic brain injury (TBI) and PTSD instead of his administrative separation due to an alcohol rehabilitation failure. 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) Having prior service in the Army National Guard, the applicant enlisted in the Regular Army on 6 December 2016 as a paralegal specialist; 2) He was discharged on 11 November 2023 with half separation pay by reason of alcohol rehabilitation failure. His service was characterized as honorable. He completed 6 years, 11 months, and 6 days of net active service for the period.

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 medical documentation provided by the applicant were also examined.

c. The applicant asserts he should be discharged for service-incurred PTSD and a TBI rather than an administrative separation for alcohol rehabilitation failure. The applicant was initially seen by behavioral health services on 29 July 2021. He was provided individual therapy and occasional group therapy for stress management and minor anxiety/depressive symptoms related to marital/relationship and occupational problems intermittently till January 2023. The applicant was not prescribed psychiatric medication, not diagnosed with a mental health condition that did not meet retention standards, was not put on a psychiatric profile, and his symptoms/concerns were reported to have improved at the completion of his treatment protocol each time he sought treatment. The applicant then reengaged in behavioral health services, on 23 January 2023, due to reported grief at recent loss of a close family member. The

following day, the applicant self-referred to SUDCC for an evaluation due to concern for increased alcohol use and marijuana use. He was evaluated and diagnosed with Cannabis Use Disorder, Mild and Alcohol Use Disorder, Moderate. He was notified of the limits of confidentiality, and that it was required that he maintain abstinence from all non MRO approved substances and alcohol while engaged in SUDCC treatment. He was recommended for continued SUDCC treatment and referred to an intensive outpatient substance abuse treatment program. On 23 February 2023, the applicant was seen again by his regular individual therapist, and the applicant was diagnosed with PTSD, which was "manifested by nightmares and flashbacks." These symptoms were reported to be related to a car accident, which was previously not discussed and the date was not reported. The applicant, however, reported his earlier concerns related to the loss of his family member had resolved and were no longer a focus of treatment. The applicant again was reported to not require a psychiatric profile for the symptoms reported as PTSD, and he was found to meet medical retention standards from a psychiatric perspective.

d. The applicant then completed substance abuse intensive outpatient treatment program from March-April 2023, and he was instructed to follow-up with regular appointments at SUDCC and behavioral health services. The applicant was seen at SUDCC for follow-up. However, on his next behavioral health appointment, the applicant disclosed that he had "failed a UA" while engaged in substance abuse intensive outpatient treatment program, and he was currently drinking alcohol as means of relaxation. The applicant then terminated behavioral health treatment. The applicant continued in SUDCC treatment till his discharge for alcohol rehabilitation failure. There is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD that did not meet medical retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permanent profile while on active service.

e. A review of JLV provided evidence the applicant underwent a Compensation and Pension (C&P) evaluation for PTSD in November 2023. The applicant reported PTSD symptoms related to seeing pictures and hearing about crimes as a paralegal, and the applicant did not discuss symptoms related to being in a car accident. These symptoms associated with being a paralegal had previously been addressed during his active service, and the applicant had reported the symptoms had resolved during his active service. The applicant was diagnosed as a result of this C&P evaluation with service-connected PTSD. The applicant underwent another C&P evaluation in May 2024 for PTSD, and his disability rating for PTSD was increased to 70%. There is insufficient evidence the applicant is currently involved in behavioral health treatment at the VA. The applicant underwent a C&P evaluation for a reported TBI. The applicant reported being involved in a car accident in November 2022. The airbags did not deploy, he did not lose consciousness, and the car was able to be driven. The applicant was not

diagnosed with a TBI during active service or as a result of this C&P evaluation. The applicant is currently found to be 100% disabled by the VA with physical and mental health conditions.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant had behavioral health treatment for problems/stressors and minor behavioral health symptoms which resolved after a normal course of treatment. The applicant did have 1-2 sessions where he was diagnosed with PTSD as a result of his report of being involved in a car accident many months prior. However, the applicant was not diagnosed with a mental health condition including PTSD that was determined to not meet retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permanent profile while on active service. In addition, the applicant was repeatedly evaluated by multiple behavioral health providers and determined to meet medical retention standards from a psychiatric perspective. The applicant was also seen following his car accident in November 2022 and determined to not be experiencing a TBI. The applicant was engaged in SUDCC treatment, was informed on the standards, policies, and procedures of the program, and he was found to be in violation of the standards. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant had behavioral health treatment for problems/stressors and minor behavioral health symptoms which resolved after a normal course of treatment. The applicant did have 1-2 sessions where he was diagnosed with PTSD as a result of his report of being involved in a car accident many months prior. However, the applicant was not diagnosed with a mental health condition including PTSD that was determined to not meet retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permanent profile while on active service. In addition, the applicant was repeatedly evaluated by multiple behavioral health providers and determined to meet medical retention standards from a psychiatric perspective. The applicant was also seen following his car accident in November 2022 and determined to not be experiencing a TBI. The applicant was engaged in SUDCC treatment, was informed on the standards, policies, and procedures of the program, and he was found to be in violation of the standards. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES 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 official finding insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time. The opine noted the applicant had behavioral health treatment for problems/stressors and minor behavioral health symptoms which resolved after a normal course of treatment. The Board determined there is insufficient evidence to support the applicant's contentions for a retirement due to disability. The Board found the applicant was not diagnosed with a mental health condition including PTSD that was determined to not meet retention standards. The applicant's record is absence evidence he attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service. Based on the preponderance of evidence the Board denied relief.

2. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

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) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

2. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Army Physical Disability Evaluation System. It states:

a. 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.

b. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made.

c. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted, and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. An enlisted Soldier whose reenlistment has been approved before the end of their current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that -

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

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

3. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. 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 on the basis of equity, injustice, or clemency grounds, Boards 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.

b. 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.

6. Section 1556 of Title 10, United States Code, 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.

7. AR 15-185, Boards, Committees, and Commissions-ABCMR, states 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. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//