ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240010139

APPLICANT REQUESTS:

- physical disability retirement
- personal appearance before the Board

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, 3 October 2019
- VA Rating Decision, 10 February 2021
- VA letter, 23 April 2024

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 was involuntarily discharge due to promotion non-selection but should have been evaluated for a medical retirement. He was awarded an 80 percent VA disability rating in 2019, while a member of the U.S. Army Reserve (USAR). He notified his chain of command at the time but was never given a Medical Evaluation Board (MEB).

b. Additionally, he failed a flight physical on 17 August 2020, due to post-traumatic stress disorder (PTSD) and related issues but was never sent for a flight evaluation board and subsequent MEB. Due to these issues, he was unable to return to the USAR or the Army National Guard (ARNG) as an Aviator and was discharged.

c. He suffers from PTSD due to a series of events in Afghanistan in 2006. Though this went undiagnosed while he was on active duty, it contributed to him leaving active duty in 2010. He then served in the ARNG and USAR for several years and was

diagnosed in 2019. This service-connected injury significantly affected his career and ended his ability to serve as an Aviator.

d. He believes this was disregarded at the time and when he failed a flight physical and was awarded the VA disability, he should have been given an MEB and considered for a medical retirement. He served for a total of nearly 22 years, with 15 years toward retirement and requests that the Board give him the opportunity to be evaluated for a medical retirement.

3. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. After a prior period of active service, the applicant again entered active duty on 5 August 2003, in the primary specialty 153D0 (UH-60 Pilot).

b. He deployed to Afghanistan from 1 February 2006 through 1 March 2007, and to Iraq from 15 September 2009 through 15 July 2010.

c. He was honorably discharged after 7 years, 4 months, and 11 days of active service this period on 15 December 2010, due to non-selection, permanent promotion, with corresponding Separation Code JGB, and transferred to a unit in the ARNG.

4. State of Ohio, Adjutant General's Department Orders 361-011, 27 December 2010, appointed the applicant a Chief Warrant Officer Two (CW2) in the ARNG effective 16 December 2010.

5. A review of the U.S. Human Resources Command (AHRC) Soldier Management System (SMS) shows the applicant voluntarily transferred from the ARNG to the USAR Control Group (Reinforcement) due to cogent personal reasons effective 30 June 2012, and on 6 November 2017, voluntarily requested transfer from the USAR Control Group to a USAR Troop Program Unit (TPU).

6. A DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3 -CW5) Officer Evaluation Report (OER), covering the period from 6 November 2018 through 4 March 2019, is a referred report and shows the applicant failed the 2-mile run event of the Army Physical Fitness Test (APFT) on 26 August 2018.

7. An Evaluation Record Letter of Referral – Rated Officer Response shows:

a. On 20 March 2019, the applicant provided remarks pertaining to his referred OER. He indicated his failed APFT was his first test taken since his return from the Individual Retired Reserve (IRR) and was taken prior to his submission for a permanent physical profile for a service-related injury in 2008.

b. He directed attention to a Medical History Form. The enclosed Standard Form 600 (Chronological Record of Medical Care), dated 8 October 2018, shows the applicant was diagnosed with chronic midline low back pain without sciatica and should do physical therapy if needed. He was unable to perform the 2-mile run but was not limited in any functional activities.

8. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

9. SMS shows:

a. The applicant failed his APFT in August 2018.

b. He voluntarily transferred from the USAR TPU to the USAR Control Group (Reinforcement) effective 21 June 2019.

10. A VA Rating Decision, 3 October 2019, shows the applicant was granted a service-connected disability rating for the following conditions effective 2 January 2019:

- PTSD, 30 percent
- lumbosacral strain, 20 percent
- tinnitus, 10 percent

11. AHRC Orders D-11-024582, 18 November 2020, honorably discharged the applicant from the USAR effective 1 April 2021, under the provisions of Army Regulation 135-175 (Separation of Officers), paragraph unlisted.

12. SMS shows the applicant had a PULHES of 111111 based on his last physical on 14 December 2020, and a profile rating date of August 2018, with no limitations in all factors. He was found not medically ready for deployment – status unknown – commander determines deployability.

13. A VA Rating Decision, 10 February 2021, shows the applicant's PTSD was increased from 30 percent to 70 percent effective 7 January 2021.

14. A DA Form 5016 (Chronological Statement of Retirement Points) shows the applicant completed 13 years and 1 day of qualifying service for retirement effective 31 March 2021.

15. SMS shows the applicant was involuntarily discharged from the USAR Control Group (Reinforcement) effective 1 April 2021, due to promotion non-selection and that his record was archived.

16. A VA letter, 23 April 2024, shows effective 1 December 2023, the applicant's combined service-connected evaluation is 90 percent.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability retirement in lieu of honorable involuntary administrative discharge due to promotion non-selection. The applicant asserts PTSD is related to his request. 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) After a prior period of active service, the applicant again entered active duty on 5 August 2003 as a pilot (warrant officer); 2) He deployed to Afghanistan (1 February 2006-1 March 2007) and to Iraq (15 September 2009-15 July 2010); 3) He was honorably discharged on 15 December 2010 due to non-selection permanent promotion and transferred to the ARNG; 4) The applicant voluntarily transferred from the ARNG to the USAR Control Group due to personal reasons effective 30 June 2012. On 6 November 2017, he requested transfer from the USAR Control Group to a USAR Troop Program Unit (TPU); 5) After failing a APFT in August 2018 and a subsequent referred OER in March 2019, the applicant voluntarily transferred from USAR TPU to the USAR Control Group effective 21 June 2019; 6) The applicant was honorably discharged from the USAR on 01 April 2021.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

c. The applicant asserts he was involuntarily discharged due to promotion non-selection but should have been evaluated for a medical retirement, specifically for PTSD. Consequently, he requests to be referred to DES to be assessed for a medical discharge, specifically for PTSD. There is evidence the applicant had two combat deployments while in the Regular Army. There is, however, insufficient evidence the

applicant reported or was diagnosed with a mental health condition including PTSD, while on serving in the Regular Army. After transferring to the ARNG and then the USAR, there is again insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD till 2019. Then, in 2019, the applicant began to report some mental health symptoms. During an Annual Periodic Health Assessment, completed on 19 March 2019, the applicant noted he was undergoing counseling for PTSD through private insurance. There was insufficient evidence prior to this encounter that the applicant notified his flight surgeon or other unit medical providers that he was engaged in behavioral health counseling. However, the applicant also reported that he was not taking any prescribed medications, which would impact his flight status. He also noted that he was planning to separate or retire within the next year and was planning to file a claim at the VA. The applicant reported despite counseling he was continuing to experience mental health symptoms, and he was recommended for an evaluation and treatment. There is insufficient evidence the applicant was diagnosed with a mental health condition that did not meet medical retention standards, attended six-months of continual treatment without improvement, required at least two inpatient psychiatric inpatient hospitalizations, or was ever placed on a permanent psychiatric profile while on active service.

d. A review of JLV provided evidence the applicant was initially seen by the VA for mental health symptoms on 11 June 2019. He reported symptoms of PTSD related to combat and stated he was in the process of submitting a disability claim at the VA. Again, the applicant noted that he was not taking any psychiatric medication, at that time, and he was reporting symptoms consistent with PTSD. He was recommended for continued psychotherapy. There is insufficient evidence the applicant continued at the VA for psychotherapy for behavioral health, but he did complete a Compensation and Pension evaluation for PTSD and was diagnosed with service-connected PTSD (30%SC) in 2019. The applicant reengaged with the VA for behavioral health treatment and treatment for physical concerns in 2020. He has attended treatment predominately for medication management for behavioral health concerns till present. The applicant is currently 70% service-connected for PTSD as of 2021.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was not formally diagnosed with service-connected PTSD till shortly before his transfer back to the USAR Control Group. In addition, there is insufficient evidence the applicant was experiencing a mental health condition at the time of his active service that would have been determined to not meet medical retention standards. The applicant was receiving “counseling” through private insurance, but that would not determine the applicant as not meeting medical retention standards. In addition, during his active service, the applicant was not prescribed psychiatric medication for this condition which would impact his flight status, and flight status standards are different than those of medial retention. Lastly, there is insufficient evidence the applicant was engaged in at least six months of consistent behavioral

health treatment, required at least two inpatient psychiatric hospitalizations, or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was not formally diagnosed with service-connected PTSD till shortly before his transferred back to the USAR Control Group. In addition, there is insufficient evidence the applicant was experiencing a mental health condition at the time of his active service that would have been determined to not meet medical retention standards. The applicant was receiving "counseling" through private insurance, but that would not determine the applicant as not meeting medical retention standards. In addition, during his active service, the applicant was not prescribed psychiatric medication for this condition which would impact his flight status, and flight status standards are different than those of medial retention. Lastly, there is insufficient evidence the applicant was engaged in at least six months of consistent behavioral health treatment, required at least two inpatient psychiatric hospitalizations, or was ever placed on a permanent psychiatric profile. 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:

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 the medical review, the Board concurred with the advising official finding that the applicant was not formally diagnosed with service-connected PTSD until shortly before his transfer back to the USAR Control Group. In addition, there is insufficient evidence the applicant was experiencing a mental health condition at the time of his active service that would have been determined to not meet medical retention standards. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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 correction of the records of the individual concerned.

[redacted]

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 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 (Disability 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; 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 their 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 their 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.

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635–40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

6. 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.

7. Army Regulation 135-175 provides policy, criteria, and procedures for the separation of officers of the ARNG and the USAR, except for officers serving on active duty or active duty training exceeding 90 days. Paragraph 4-3 (Removal from an active status) states members of the USAR will be removed from an active status for any of the reasons in paragraphs 4–3a(1) through 4–3a(17), with or without the officer's consent, regardless of the length of commissioned service. Removal will be by discharge characterized as Honorable, transfer to the Retired Reserve (if eligible and the member applies) or, if eligible, transfer to the Standby Reserve (Inactive Status List). The list of reasons includes the following:

a. Failure to qualify for promotion from warrant officer one (WO1) to warrant officer two (WO2). When a WO1, who has completed their statutory military service obligation

(MSO), fails to qualify for promotion to chief warrant officer two (CW2), and a determination has been made to discharge the WO by the area commander, or Commanding General U.S. Army Human Resources Command (AHRC) for WOs under the jurisdictional control of AHRC.

b. Non-selection for promotion after second consideration. An officer in the grade specified below who has completed his or her statutory MSO will be discharged for failure to be selected for promotion after second consideration by a Department of the Army (DA) Reserve Component (RC) selection board not later than the first day of the seventh month after the month in which the President (or Secretary of the Army for WOs) approves the report of the board which considered the officer for the second time, unless the officer is retained under the provisions of Title 10 U.S. Code, section 12646, Title 10 U.S. Code, section 12686, Title 10 U.S. Code, section 14701, or Title 10 U.S. Code 14703. However, an officer will be transferred to the Retired Reserve, if qualified, in lieu of discharge, unless the officer requests not to be transferred.

8. 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.

9. 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.

10. 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.

11. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//