ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240010162

APPLICANT REQUESTS: in effect, medical discharge and retirement with change of corresponding narrative reason for separation and separation program designator code

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

- DD Form 149 (Application for Correction of Military Record)
- Statement in Support of Claim
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Eligibility Report
- Medical Records
- Department of Veterans Affairs (VA) Rating Decision

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, he joined the Army on 13 November 2007 as an Infantryman. He was deployed to Afghanistan on 23 June 2008 where he lost two fellow Soldiers, which affected him. He needed help and he asked for help. On 3 October 2008, he was taken to medical for consuming too much medication and was sent to Landstuhl, Germany. He was transferred to Darnell Army Medical Center on 11 October 2008 where he continued to be monitored for his anxiety, depressed feelings, and insomnia. On his exit examination, he noted he felt depressed due to the death he experienced, while in Afghanistan. He was diagnosed with anxiety disorder, post-traumatic stress disorder (PTSD), and adjustment disorder with disturbance of emotion and conduct. He continued therapy until he was discharged. Due to the severity of his mental health condition with a suicide attempt, at the time of discharge, the U.S. Army should have considered medical board proceedings followed by permanent retirement.

3. The applicant provides medical documents, which will be reviewed by the Army Review Board's Agency Medical Section who will provide an advisory opinion. A VA

rating decision, 26 June 2023, shows he has 100 percent disability for PTSD as well as other physical disabilities.

4. The applicant's service records shows he enlisted in the Regular Army and entered active duty on 13 November 2007. An undated memorandum shows his commander initiated separation of the applicant for mood, anxiety, and sleep disorder. As part of his separation, a psychologist evaluated him and diagnosed him with adjustment disorder with disturbance of emotions and conduct. After the applicant completed his election of rights, the appropriate approval authority approved his separation from the Army with an honorable discharge. On 23 August 2009, he was discharged accordingly. His DD Form 214 shows in item:

- 18 (Remarks) service in Afghanistan from 23 June 2008 through 9 November 2008
- 24 (Character of Service) honorable
- 26 (Separation Code) JFV
- 27 (Reentry Code) 3
- 28 (Narrative Reason for Separation) condition not a disability

5. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting a medical discharge and retirement with a change of corresponding narrative reason for separation and program designator code. On his DD Form 293, the applicant indicated Post-traumatic Stress Disorder (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) the applicant enlisted in the Regular Army on 13 November 2007, 2) the applicant served in Afghanistan from 23 June 2008 through 09 November 2008, 3) An undated memorandum shows his commander-initiated separation of the applicant for mood, anxiety, and sleep disorder. As part of his separation, a psychologist evaluated him and diagnosed him with Adjustment Disorder with Disturbance of Emotions and Conduct, 3) the applicant was discharged on 23 August 2009 under the provisions of AR 635-200, paragraph 5-17, with the narrative reason for separation as “condition, not a disability” and a separation code of JFV.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant’s military service and available medical records. The VA’s Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records provided by the applicant and available via JLV were reviewed. While on leave for Rest & Recouperation from Afghanistan, the applicant

presented to the VA on 21 September 2008 due to severe anxiety and PTSD. It was documented that he reported a long-standing history of anger dyscontrol, PTSD from childhood with exacerbation of PTSD from Afghanistan. The provider documented that he was started on Zoloft four weeks prior and that his best friend died by him two weeks ago. He endorsed new onset nightmares, flashbacks, hypervigilance, and hyperarousal since then. He was diagnosed with PTSD, Chronic, Severe, PTSD Acute, Severe, Depressive Disorder Not Otherwise Specified (NOS), and Bereavement. He was started on Ativan for PTSD and his prescription for Zoloft was increased. The evaluating provider offered inpatient psychiatric treatment to establish stability of his symptoms; however, he was not hospitalized and returned to Afghanistan.

4. Upon his return to theater, the applicant presented to the Combat Stress Control (CSC) clinic on 03 October 2008 reporting that he had "snapped" at his brother while on leave for R&R as he thought he was the enemy and became physical with him. He was diagnosed with Chronic PTSD and was released with work and duty limitations. A separate note the same day documented that he reported having command auditory hallucinations telling him to kill himself and attempted suicide via overdose of his prescribed medications. The applicant was medically evacuated and was psychiatrically hospitalized at Landstuhl Regional Medical Center (LRMC) from 04 October 2008 through 10 October 2008. His diagnoses at the time of discharge were documented as Major Depressive Disorder (MDD) with Psychotic Features vs. Schizophreniform Disorder, Acute Stress Disorder. It was documented that the applicant reported a history of suicide attempt at age 16 and was previously prescribed Xanax for anxiety. While at LRMC, he reported experiencing the following symptoms: depressed mood for past several months, difficulty falling asleep, frequent awakening with nightmares, increased anxiety, nervousness, irritability, agitation, and feeling hopeless and helpless, loss of concentration and focus, decreased motivation, and feeling guilty he was unable to save his friend. The applicant's stressors were documented as deployment, the death of his grandmother less than one year ago who he said had been raped and murdered, his wife's miscarriage last August, and two friends dying in Afghanistan.

5. A psychiatry note dated 14 October 2008 shows he was diagnosed with Acute PTSD and prescribed Zoloft, Risperdal (antipsychotic), and Cogentin (anti-tremor). He was put on a temporary profile on 21 October 2008 [*Advisor's Note:* the profile was unavailable for review] and was referred to group therapy for PTSD. On 28 October 2008, it was documented that the applicant expressed a desire to separate from the military via a Medical Evaluation Board (MEB) and that administrative separation via Chapter 5-17 was also discussed. The provider diagnosed the applicant with Depression at the time of the visit and documented that a diagnosis of PTSD could not be ruled out at the time. The provider documented a history of personality and behavioral traits consistent with Cluster B, which was noted to need further evaluation. The provider documented that he had not reported suicidal ideation had had reconstituted rapidly since returning from theater. On 19 November 2008, his provider documented that there was no need for a

permanent profile at the time of the visit and that a Chapter 5-17 memorandum was provided. The provider documented the applicant's continued desire for separation via MEB to maximize his benefits and maintain a non-deployable status. The diagnosis of Depression was continued.

6. At the time of a BH intake on 25 November 2008, the evaluating provider diagnosed him Adjustment Disorder with Disturbance of Emotions and Conduct. The provider documented that the applicant did not appear to meet criteria for PTSD. During a psychiatry appointment on 17 December 2008, the provider documented that the applicant's symptoms were more characterological in nature due to personality development and behaviors prior to joining the Army and opined that his mental status evaluation (MSE) was "totally normal." His diagnosis of Adjustment Disorder was continued, as was his medication regimen with the addition of Trazodone. On 02 February 2009, it was documented that he was sleeping well but continued to experience anxiety and irritability. It was also documented that he had received orders for Afghanistan with a departure date of 14 February 2009 and that his profile had expired on 21 December 2008. His medications were documented as Zoloft, Risperdal, and Trazodone and diagnosis was noted as Depression. On 18 February 2009 during a psychiatry appointment, it was documented that the was not on profile for PTSD and that his treating provider said he had no signs of PTSD, had a previous history of aggression disorder, and was "very aggravated easily and was preexisting to the military." On 11 March 2009, the provider documented the applicant was an inconsistent reporter and continued to document that the applicant was motivated for separation via MEB. The provider documented that his diagnosis did not meet criteria for an MEB. It was further noted that the provider was uncertain if the applicant had been taking his Risperdal and Cogentin as the prescriptions had not been filled regularly but continued to take Zoloft and Trazodone. The provider reaffirmed the recommendation for Chapter 5-17 separation. The applicant presented as a command referral on 08 April 2009 and documented his diagnoses as Adjustment Disorder with Disturbance of Emotions and Conduct, Cluster B Personality Traits. His prescriptions for Cogentin, Risperdal, and Zoloft were discontinued on 20 April 2009.

7. He completed an intake with a new psychiatrist on 22 April 2009 who documented that he was a questionable historian. The provider documented his diagnoses as Anxiety Disorder Not Otherwise Specified (NOS), Explosive Disorder Intermittent, Alcohol Abuse, Episodic, and Antisocial History. His prescriptions were documented as Xanax (anxiolytic), Venlafaxine (antidepressant), and Zolpidem (sedative-hypnotic). His diagnoses were maintained until 29 June 2009 when his diagnosis was adjusted to Adjustment Disorder with Disturbance of Emotions and Conduct. On 08 July 2009, the provider added a diagnosis of Personality Disorder, rule out narcissistic Personality Disorder. It was further documented at this encounter that he did not meet criteria for PTSD and did not meet criteria for an MEB.

8. A review of JLV shows the applicant is 100% service connected through the VA for PTSD. He is also service-connected through the VA for several physical health conditions. There were four Compensation and Pension (C&P) evaluations available for review (three for PTSD and one for TBI). At each of his BH C&P examinations, he was diagnosed with PTSD. He was also diagnosed with Depressive Disorder Not Otherwise Specified, Chronic, Moderate, Alcohol Abuse in Early Remission, and Cannabis Abuse in Early Remission on 13 May 2010, and Cannabis Use Disorder, Comorbid with and secondary to PTSD on 13 January 2016. His diagnosis of PTSD was attributed to military trauma, specifically combat exposures. It was documented that he engaged in treatment for PTSD through the VA from 2009 through 2012, at which time he discontinued treatment as he reported feeling as though it made his symptoms worse. A Residuals of TBI VA C&P examination dated 18 March 2020 shows the provider documented that the applicant has not had a TBI or any residuals of TBI.

9. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with PTSD in-service and should be referred to the Disability Evaluation System (DES) for further review and processing. The applicant was diagnosed with PTSD, Anxiety Disorder NOS, MDD with Psychotic Features, and Depressive Disorder NOS in-service which fall under the purview of AR 40-501. He was medically evacuated from theater and psychiatrically hospitalized due to experiencing command hallucinations telling him to kill himself. His BH documentation in the weeks preceding his suicide attempt show he was reporting symptoms of PTSD and depression and was diagnosed by a VA BH provider accordingly. Additionally, the applicant was prescribed an antipsychotic medication from October 2008 through April 2009, which is a deployment limiting medication. Furthermore, since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA for PTSD and there is no documentation in his VA C&P examinations that he has been diagnosed with Personality Disorder, Adjustment Disorder with Disturbance of Emotions and Conduct, or Explosive Disorder, Intermittent. Although it is acknowledged by this Advisor that the applicant's treating providers noted some inconsistencies in his reporting and history, given the applicant's initial report of his constellation of symptoms consistent with PTSD, suicide attempt in theater due to command hallucinations requiring medical evaluation from theater, and treatment with an antipsychotic medication for approximately six months upon his return, there is evidence of significant impairment while on active duty suggestive of a level impairment that would not meet psychiatric retention standards. As such, a referral to DES for further review and processing is warranted.

10. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with PTSD in-service and should be referred to the DES for further review and processing. The applicant was diagnosed with PTSD, Anxiety Disorder NOS, MDD with Psychotic Features, and Depressive Disorder NOS in-service which fall under the purview of AR 40-501.

2. 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, and concluded the applicant's narrative reason for separation and separation program designator code did not warrant a change. Therefore, the Board granted partial relief for referral to DES.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. Directing the applicant be entered into the DES and a medical evaluation board convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.

b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his narrative reason for separation and separation program designator code.

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 5-17, commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5- 13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to, chronic air or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(1) When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with Army Regulation 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFV is used for discharge for condition, not a disability

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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.

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, 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.

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.

8. Title 10, 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 Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

9. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty 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 his or 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 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 are either

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 onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

10. Title 10, 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 percent. Title 10, USC, 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.

11. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

12. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies.

Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

13. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//