

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240010260

APPLICANT REQUESTS: through Counsel, reconsideration of his prior request for honorable physical disability retirement in lieu of general administrative discharge under honorable conditions due to unfitness

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's letter
- Counsel's brief
- Applicant's self-authored statement
- Narrative Summary (NARSUM), 8 November 1973
- Doctor's opinion, 11 February 1974
- Medical Holding Company, Walter Reed Army Medical Center (WRAMC) Memorandum, 18 March 1974
- WRAMC memorandum, 16 April 1974
- Department of Veterans Affairs (VA) psychiatrist's letter, 28 August 2008
- VA Decision Review Officer Decision, 6 July 2012
- Office of the Surgeon General (OTSG) memorandum, 10 June 2016
- Army Review Boards Agency (ARBA) memorandum, 13 June 2016
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings for Docket Number AR20150002577, 7 July 2016
- ARBA memorandum, 13 July 2016
- DD Form 214 (Certificate of Release or Discharge from Active Duty), reissued 6 September 2016
- VA doctor's letter, 16 October 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20150002577 on 7 July 2016.

2. Counsel states:

a. The applicant served in the Army from 19 August 1972 through 9 May 1974. In October 1973, he began hearing voices in his head accusing him of being evil and at other times of being a secret agent. On 7 November 1973, he flew home after voices in his head told him to go to the airport and visit his parents. While at the airport, he refused to pay for a sandwich and was arrested.

b. On 8 November 1973, he was admitted to the Psychiatric Clinic at WRAMC. Dr. [REDACTED] diagnosed the applicant as suffering from schizophrenia, paranoid type, acute, severe, manifested by inappropriate affect, fragmentation of thoughts, flight of ideas, grandiose delusions, paranoid ideations, and auditory hallucinations. The schizophrenia was determined to have been incurred in the line of duty (LOD).

c. The Medical Board specified the applicant was unfit for further military duty, referred him to the Physical Evaluation Board (PEB), and recommended him to the nearest VA hospital to continue psychiatric treatment. In another medical opinion on 11 February 1974, Dr. [REDACTED] stated it was his professional opinion the illness was considered to be in the LOD and having considered the total picture, continued to believe the applicant was medically unfit and should be considered by the PEB for separation. However, Dr. [REDACTED] overruled that medical recommendation, stating that an individual whose performance is so substandard as the applicant's, justly merits administrative discharge regardless of medical unfitness incurred incident to service.

d. This ruling, especially other Army doctors diagnosed him with schizophrenia, was grossly unfair and prejudicial. The applicant's conduct and performance were the direct result of his illness, which occurred during his time in the service. His psychiatrist, Dr. [REDACTED] states it is his opinion that all undesirable behaviors exhibited by the applicant during this time in service were directly due to his psychotic disorder, schizophrenia, schizoaffective type. While suffering from schizophrenia, the Army took advantage of the applicant by making him waive his right to appeal the discharge.

e. Because of his unfavorable discharge, the applicant was not able to obtain that much needed benefits from the VA. As a result, he struggled his whole life with homelessness and not being able to seek proper medical treatment. In December 1986, the Army Discharge Review Board (ADRB) denied his request for an upgrade of his discharge. In October 1989, the ABCMR denied his request for an upgrade of his discharge due to schizophrenia and drug abuse and in 2011 his request for medical discharge was not considered due to lack of medical records. Finally in 2016, the Deputy Assistant Secretary of the Army (Review Boards) upgraded his discharge to general, under honorable conditions based on sufficient evidence.

f. Sadly, the upgrade was long overdue and the years of stigmatization due to not having an honorable discharge and all the benefits that come with it took a toll on the applicant. After all these years, he is still seeking a medical discharge or retirement. He currently has a 100 percent disability rating from the VA for schizophrenia and the medical advisory opinion from the OTSG for his prior case shows it was clear he did not meet retention standards at the time of his separation and that his undesirable behaviors were illness driven and related to his disorganized thinking. The applicant's primary mental health physician and his psychiatrist with the VA likewise believe his behavior that resulted in his discharge was more likely than not attributable to his illness.

g. The applicant was unjustly discharged without a rating from the PEB and should be retroactively granted a medical retirement with a rating of 100 percent. He qualifies for disability retirement because his disability is permanent in nature, not the result of his misconduct or willful neglect, and not incurred during a period of unauthorized absence. Additionally, the disability was not noted at the time of his entrance on active duty and was incurred in the LOD. Even if he were granted a disability rating of under 30 percent, he would still qualify for disability separation.

h. The applicant was unfairly discharged due to his medical condition of schizophrenia. Army doctors diagnosed him and considered in to have been incurred in the LOD. There is extensive evidence from doctors who attest the applicant's behavioral issues were directly related to his schizophrenia and he should have been medically retired.

3. The applicant states:

a. He served in the Army from 29 August 1972 until 9 May 1974. He was diagnosed with schizophrenia by a psychiatrist while in service in November 1973, at the psychiatric ward of WRAMC.

b. He was not perceiving reality clearly when he decided to visit his girlfriend in Virginia during his two periods of absence without leave (AWOL), from 18 June 1973 through 1 July 1973 and from 11 July through 13 July 1973. He was attending mental hygiene appointments and not perceiving reality clearly at the time he committed the offenses of assault and battery, carrying a concealed weapon, and possession of a loaded firearm on 4 July 1973.

c. He was convicted of those offenses on 15 August 1973, in [REDACTED]. He erroneously believed he was a member of the military police (MP) during the time period he committed those crimes, when in reality he was a clerk/typist.

d. He was being treated for schizophrenia at WRAMC at the time he signed his waiver to appeal his discharge and have counsel present on 16 April 1974. He signed the waiver under duress. He was told by officials working for the Army he was never going to leave the room until the waiver was signed. He was then administratively discharged from the Army due to unfitness in 1974.

4. The applicant enlisted in the Regular Army on 29 August 1972.

5. Multiple DA Forms 2627-1 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) show the applicant accepted nonjudicial punishment on the following dates for the following misconduct:

- on 17 January 1973, for failing to go to morning formation on that date
- on 23 July 1973, for being AWOL from his unit from 18 June 1973 through 1 July 1973, and for a second period of AWOL from his unit from 11 July 1973 through 13 July 1973

6. On 7 November 1973, the applicant's immediate commander at the 521st MP Company at Fort Belvoir, VA, recommended his discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) paragraph 13-5, for unfitness, due to having committed frequent acts of a discreditable nature.

a. His discharge was recommended because his emotional, personality, and characterological development was of such a degree to render him a liability. Classification to another type of duty and further rehabilitative measures would not be productive, as attested by psychiatric evaluation.

b. Since his assignment at his unit, his performance of duty was unsatisfactory. He lacked the motivation, attitude, and ability necessary to perform in his Military Occupational Specialty (MOS) as a 71B (Clerk Typist), was often late, was AWOL twice, and appeared in ██████████ General District Court where he was charged with and found guilty of assault and battery, carrying a concealed weapon, and possession of a loaded firearm. Waiver of the requirement for rehabilitation was recommended.

7. A NARSUM, 8 November 1973, shows:

a. The applicant reported he began hearing voices in October, accruing him at time so being an evil person and at other times of being a secret agent. On 7 November 1973, he decided to go to the airport and fly home to Chicago after voices in his head told him his parents needed him at home. While at the airport, he took a sandwich and refused to pay for it. As a result, he was arrested by the airport police and returned to the authorities at Fort Belvoir. Because of his hostility and aggressiveness and marked

paranoid ideation, he was referred to the Outpatient Psychiatric Clinic at WRAMC and subsequently admitted to the closed psychiatric ward for further treatment.

b. His diagnoses were:

(1) Schizophrenia, paranoid type, acute, severe, manifested by inappropriate affect, fragmentation of thoughts, flight of ideas, grandiose delusions, paranoid ideations, auditory hallucinations; stress, minimal, routine military duty, predisposition, unknown; impairment for further military duty, marked; impairment for social and industrial adaptability, definite. LOD: yes.

(2). Drug abuse, mixed type, chronic, severe, manifested by ingestion of marijuana, chronic heroin use, amphetamines and LSD-25. LOD: N/A.

c. It was the opinion of the medical examiner that he was unfit for further military duty under the provisions of Arm Regulation 40-501 (Standards of Medical Fitness) and was therefore referred to the PEB for consideration for separation.

8. A DA Form 8-118 (Medical Board Proceedings) shows a medical board convened on 17 January 1974, where the applicant was found medically unfit for the diagnoses as listed in the NARSUM and he was referred to the PEB.

9. On 5 February 1974, the applicant's commander while receiving treatment at WRAMC requested a psychiatric evaluation of the applicant to process a request for determination by the Commanding General of the U.S. Military District Washington whether the applicant would be medically retired or administratively discharged.

10. A subsequent medical opinion, 11 February 1974, shows the applicant was medically unfit, his illness was considered in the LOD, and that he should be considered for separation by the PEB.

11. On 7 March 1974, the applicant's commander at WRAMC requested the Commander, U.S. Military District of Washington render a determination as to whether the applicant may be medically retired or administratively separated. He had been determined to be medically unfit for further military service and was recommended by his former unit commander for elimination for unfitness due to frequent incidents of an unfavorable nature.

12. The endorsements from the applicant's WRAMC chain of command show their recommendations regarding whether the applicant should receive a medical or an administrative discharge:

a. The Medical Holding Company commander indicated his opinion was the applicant should be discharged for unfitness in lieu of being medically retired. Inasmuch as competent medical authority could not attribute his misconduct to his mental illness, it was the commander's opinion that his performance was so substandard that it justly merited administrative discharge, regardless of his medical unfitness incurred incident to that service.

b. The brigade commander agreed with the unit commander's recommendation that he receive an administrative discharge.

c. The WRAMC Commanding General recommended the applicant's administrative discharge from the service.

13. On 16 April 1974, the applicant was notified by his immediate commander at the WRAMC Medical Holding Company of his initiation of action to separate him under the provisions of Army Regulation 635-200, paragraph 13-5 for unfitness, due to frequent incidents of an unfavorable nature. He was advised of his right to present his case before a board of officers, submit statements in his own behalf, and be represented by counsel.

14. On 16 April 1974, the applicant acknowledged notification of his proposed separation under the provisions of Army Regulation 635-200, chapter 13, and was advised by counsel. He indicated he waived consideration of his case by a board of officers, did submit statements in his own behalf, and waived representation by counsel.

15. On 2 May 1972, both the applicant's battalion and brigade commander's recommended approval of the applicant's discharge under the provisions of Army Regulation 635-200, chapter 13 for unfitness because of frequent incidents of a discreditable nature.

16. On 8 May 1974, the approval authority directed the applicant's undesirable discharge under the provisions of Army Regulation 635-200, chapter 13, for unfitness due to frequent involvement in incidents of a discreditable nature with civil or military authorities.

17. The applicant's original DD Form 214 (Report of Separation from Active Duty) shows:

a. He was discharged under other than honorable conditions on 9 May 1974, under the provisions of Army Regulation 635-200, paragraph 13-5, due to unfitness, frequent involvement in incidents of a discreditable nature with corresponding Separation Program Designator (SPD) 246.

b. His rank/grade is shown as private (PV1)/E-1.

c. He was credited with 1 year, 7 months, and 27 days of net active service, with 15 days lost time.

18. In 1986, the applicant applied to the ADRB requesting a discharge upgrade and on 17 December 1986, he was notified that the ADRB denied his request, determining he had been properly discharged.

19. A VA psychiatrist's letter, 28 August 2008, shows it was his opinion that the applicant's undesirable behaviors exhibited while in the service were directly due to his psychotic disorder, which has been determined by the VA to be a service-connected disability since 1995, and that his discharge should be upgraded to honorable.

20. A VA Decision Review Officer Decision, 6 July 2012, shows the applicant's evaluation of schizophrenia, which was rated 50 percent disabling, was increased to 100 percent effective 18 September 2008.

21. The applicant previously applied to the ABCMR on multiple occasions requesting honorable physical disability discharge in lieu of administrative discharge under other than honorable conditions due to unfitness. Most of those applications were administratively closed without board action due to missing documentation, but in June 2016, the ABCMR accepted and worked his application.

22. In the adjudication of that application, an advisory opinion was obtained from the OTSG on 10 June 2016, which shows the medical evidence was clear that the applicant did not meet retention standards at the time of his separation and his opinion was that his undesirable behaviors were illness driven. Although his administrative discharge was according to regulatory guidance, his persistent mental illness suggests that a medical separation would have been more suitable.

23. On 7 July 2016, the Board denied the applicant's request, determining the evidence presented did not reflect an error or injustice and did not warrant a correction to the applicant's records.

24. On 13 July 2016, the Deputy Assistant Secretary of the Army (Review Boards) indicated via memorandum that after reviewing the findings, conclusions, and recommendations of the Board, she decided there was sufficient evidence to grant partial relief and directed the reissuance of the applicant's DD Form 214 to reflect his characterization of service as general, under honorable conditions and his rank/grade as private two (PV2)/E-2.

25. On 6 September 2016, the applicant's prior DD Form 214 was voided and he was issued a new DD Form 214, which shows his character of service as general, under honorable conditions, his rank/grade as PV2/E-2, and his reason for separation as unfitness, with an unchanged separation authority.

26. A VA doctor's letter, 16 October 2019, shows the doctor followed the applicant in the Mental Hygiene Clinic at the Jesse Brown VA Medical Center as his primary mental health physician. Although his discharge was previously upgraded to general, under honorable conditions, his military medical records indicate his symptoms were attributable to his service-connected mental illness and his behavior that resulted in his discharge was more likely than not attributed to this illness. He supported the applicant receive a medical discharge.

27. 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.

28. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade and a medical discharge due to disability. Specifically, he contends that mental health conditions including Schizophrenia are 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 29 August 1972; 2) The applicant accepted NJPs: A) On 17 January 1973, for failing to attend morning formation and B) On 23 July 1973, for going AWOL from 18 June 1973 to 01 July 1973 and from 11 July 1973 to 13 July 1973; 3) On 15 August 1973, the applicant was found guilty in a civilian court for charges of assault and battery, carrying a concealed weapon, and possession of a loaded firearm; 4) The applicant was discharged on 9 May 1974, Chapter 13-5, due to unfitness, frequent involvement in incidents of a discreditable nature. His character of service was under other than honorable conditions. The applicant completed 1 year, 7 months, and 27 days of net active service, with 15 days lost time. 5) The applicant has applied to ARBA in 1986, 1989, and 2011 resulting in a denial of his request and multiple returned applications for missing information. However, on 13 July 2016, ARBA determined there was sufficient evidence to grant partial relief to the applicant, and his discharge was upgraded to a characterization of general, under honorable conditions and a narrative reason for discharge as unfitness.

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

provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions including Schizophrenia while on active service, which mitigate his misconduct and warrant a medical discharge. The applicant began engaging in psychiatric care beginning on 08 November 1973 when he was admitted to inpatient psychiatric care after being detained at the airport due to displaying aggressiveness and paranoid ideation. On 17 January 1974, the date of the applicant's admission, his treating psychiatric providers initiated a medical board (MEB) due to the severity of his mental health condition. The applicant was determined to be psychotic and not fully oriented. He was diagnosed with Schizophrenia, paranoid type, acute, severe, and Drug use, mixed type, chronic, severe of marijuana, heroin, amphetamines, and LSD. The applicant's psychiatric providers noted that the applicant had remained psychotic even administration of large doses of psychiatric medication and an appropriate time had passed. His providers also noted the applicant had not received the maximum benefit from his psychiatric hospitalization and could not be safely discharged to a lower level of care. Therefore, it was recommended the applicant be transferred directly to an inpatient VA psychiatric hospital for continued treatment following his active-duty discharge. Per a memorandum, dated 11 February 1974, an active-duty medical provider noted that the applicant's mental illness was considered to be in the line of duty, and he was medically unfit for continued service. As a result, the applicant was referred for PEB consideration by his psychiatric providers. In addition, this provider stated there is a lack of clarity between the applicant's psychiatric illness, use of substances, and its relation to his misconduct. On 18 March 1974, the applicant's commander confirmed the applicant would be discharged for unfitness in lieu of being medically retired due to the lack of direct attribution of the applicant's misconduct to his mental illness and that the applicant's performance merited an administrative discharge regardless of medical fitness.

d. A review of JLV revealed evidence that the applicant has been connected with the VA for medical and mental health treatment since 25 July 1994. The applicant has been reported to have undergone numerous prior psychiatric hospitalizations following his active-duty service and prior to the availability of electronic medical records. The applicant has been diagnosed with a variety of psychotic disorders, which have continued until the present. The applicant provided a hardcopy letter from a VA psychiatrist, dated 28 August 2008, that asserted that the applicant's misconduct during his military service were a result of his psychotic disorder. The applicant is currently 100% VA service-connected for Schizophrenia.

e. Based on the available information; it is the opinion of the Agency Medical Advisor that there is sufficient evidence to refer the applicant's case to IDES to be assessed for

a medical discharge for Schizophrenia. During his active service, the applicant was psychiatrically hospitalized, found to be medically unfit for continued service, and was referred to a PEB. His PEB was not completed due to a deferral as a result of the administrative removal process. However, there is only sufficient evidence to partially support the applicant had a condition or experience which mitigates his misconduct. Specifically, there is insufficient evidence in regard to the specific facts and circumstances of the applicant's misconduct of assault and battery and carrying a concealed and loaded firearm. While there is sufficient evidence the applicant was diagnosed with Schizophrenia, there is no direct nexus between Schizophrenia and these types of misconduct in that: 1) They are not a part of the diagnosis or natural sequelae of Schizophrenia; 2) Individuals diagnosed with Schizophrenia at certain stages of this mental health condition are able to distinguish right from wrong. Due to the lack of sufficient documentation regarding the facts and circumstances of the applicant's civilian criminal case, a complete opine regarding mitigation on of these types of misconduct is not possible. Yet, there is sufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective and per the Liberal Consideration Policy, the applicant's assertions merit consideration for partial relief by the board.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions including schizophrenia which mitigate the applicant's misconduct leading to his separation. The applicant's providers at the time of his service diagnosed the applicant with schizophrenia and drug use in the line of duty and contributed to his conduct. The applicant is also 100% VA service-connected for schizophrenia.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including schizophrenia at the time of his active service that mitigates his misconduct. The applicant's providers at the time of his service diagnosed the applicant with schizophrenia and drug use in the line of duty and contributed to his conduct. The applicant is also 100% VA service-connected for schizophrenia.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report that the applicant was formally diagnosed with Schizophrenia during his active service that was determined to be in the line of duty and underwent an MEB and referral to a PEB. The applicant did go AWOL, had issues with work performance, and utilized drugs while on active service, and this type of avoidant and erratic behavior can be a natural sequelae of Schizophrenia. However, there is only sufficient evidence to partially to support the applicant had a

condition or experience which mitigates his misconduct of failing to follow orders, going AWOL, and demonstrating poor work performance/motivation. Specifically, there is insufficient evidence at this time to specific facts and circumstances of the applicant's misconduct of assault and battery and carrying a concealed and loaded firearm. While there is sufficient evidence the applicant was diagnosed with schizophrenia, there is no direct nexus between schizophrenia and these types of misconduct in that: 1) They are not a part of the diagnosis or natural sequelae of schizophrenia; 2) Individuals diagnosed with schizophrenia at certain stages of this mental health condition are able to distinguish right from wrong. Due to the lack of sufficient documentation regarding the facts and circumstances of the applicant's civilian criminal case, a complete opine regarding mitigation on of these types of misconduct is not possible. Yet, there is sufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective and per the Liberal Consideration Policy, the applicant's assertions merit consideration for partial relief by the board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 medical review, the Board concurred with the medical advisory opinion that there is sufficient evidence that warrants the applicant to be referred to IDES due to his behavioral health conditions for a determination whether or not he is entitled to a medical retirement.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions including schizophrenia which mitigate the applicant's misconduct leading to his separation. The applicant's providers at the time of his service diagnosed the applicant with schizophrenia and drug use in the line of duty and contributed to his conduct. The applicant is also 100% VA service-connected for schizophrenia.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including schizophrenia at

the time of his active service that mitigates his misconduct. The applicant's providers at the time of his service diagnosed the applicant with schizophrenia and drug use in the line of duty and contributed to his conduct. The applicant is also 100% VA service-connected for schizophrenia.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report that the applicant was formally diagnosed with Schizophrenia during his active service that was determined to be in the line of duty and underwent an MEB and referral to a PEB. The applicant did go AWOL, had issues with work performance, and utilized drugs while on active service, and this type of avoidant and erratic behavior can be a natural sequelae of Schizophrenia. However, there is only sufficient evidence to partially support the applicant had a condition or experience which mitigates his misconduct of failing to follow orders, going AWOL, and demonstrating poor work performance/motivation. Specifically, there is insufficient evidence at this time to specific facts and circumstances of the applicant's misconduct of assault and battery and carrying a concealed and loaded firearm. While there is sufficient evidence the applicant was diagnosed with schizophrenia, there is no direct nexus between schizophrenia and these types of misconduct in that: 1) They are not a part of the diagnosis or natural sequelae of schizophrenia; 2) Individuals diagnosed with schizophrenia at certain stages of this mental health condition are able to distinguish right from wrong. Due to the lack of sufficient documentation regarding the facts and circumstances of the applicant's civilian criminal case, a complete opinion regarding mitigation on of these types of misconduct is not possible. Yet, there is sufficient evidence the applicant's case warrants a referral to IDES from a behavioral health perspective and per the Liberal Consideration Policy, the applicant's assertions merit consideration for partial relief by the board.

The Board concluded there was insufficient evidence in the applicant's case which warrants a referral to IDES from a behavioral health perspective and per the Liberal Consideration Policy, the applicant's assertions merit consideration for partial relief by the board.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20150002577 on 7 July 2016. 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 Integrated Disability Evaluation System (IDES) 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 IDES, 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, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

8/15/2025

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. 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.
2. 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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.

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 (DES) 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 (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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/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.

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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

5. 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.

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, to include the elimination of enlisted personnel for unfitness and unsuitability.

a. An individual was subject to separation for unfitness when one or more of the following conditions existed:

- (1) frequent incidents of a discreditable nature with civil or military authorities
- (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child
- (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana
- (4) an established pattern of shirking
- (5) an established pattern of dishonorable failure to pay just debts
- (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments).

b. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

7. 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.

8. 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.

9. 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//