ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 20 November 2025

DOCKET NUMBER: AR20240010992

APPLICANT REQUESTS:

- medical retirement vice an administrative discharge with an uncharacterized characterization of service
- an upgrade in rank/decorations and pay and allowances commensurate with the new rank (rank request not specific)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Social Security Administration
- Letter from Board of Veterans' Appeals
- Letters from Department of Veterans Affairs (VA)

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. Based on the applicant's unclear request for decorations, the Board will not consider this portion of his request. As a result, the Board will consider the applicant's request for a medical retirement and rank upgrade.

3. The applicant states, in pertinent part, the local police assaulted him, while he was serving in a cadet/simultaneous membership program position, during his sophomore year of college. This traumatic event was the major and brutal reason he could not continue his service, at the time.

4. The applicant provides and his service record shows:

- He served as an enlisted member of the U.S. Air Force, in the grade of E-3, from

9 August 2005 through 30 June 2010, a period of 4 years, 10 months, and 22 days; he was honorably discharged for completion of required active service

- On 17 August 2012, he enlisted in the Army National Guard (ARNG), in the rank of E-3
- Civilian Court Documents show he was arrested on:

    - 19 November 2012, for disorderly conduct
    - 15 January 2013, for driving while intoxicated
    - 15 February 2013, for driving while intoxicated, 2nd offense

- On 8 September 2013, a memorandum was completed, requesting a new ship date for the applicant to attend training; he missed his original ship date because he was arrested and he had completed his sentence
- On 8 September 2013, he received a Developmental Counseling Form, wherein he was requesting a new training ship date
- On 14 July 2014, his discharge from the ARNG, due to conviction by criminal court, with an uncharacterized characterization of service, was approved
- On 14 July 2014, he was discharged from the ARNG, in the rank of Specialist/E-4, for conviction by criminal court; he had completed 1 year, 10 months, and 28 days of net service; he was unqualified in his military occupational specialty; his characterization of service was uncharacterized
- On 17 September 2022, he received a letter from the Social Security Administration which shows payments were stopped beginning November 2016
- On 9 November 2023, he received a letter from Board of Veterans' Appeals, which states:

    - A disability rating in excess of 70 percent for service-connected persistent depressive disorder and generalized anxiety disorder from 26 February 2015 through 26 May 2017 is denied
    - A disability rating of 100 percent for service-connected persistent depressive disorder and generalized anxiety disorder from 27 May 2017 is granted
    - A total disability rating based on individual unemployability (TDIU) from 26 February 2015 through 26 May 2017 is granted
    - A TDIU solely due to a service- connect disability other than persistent depressive disorder and generalized anxiety disorder from 27 May 2017 is denied

- On 3 September 2024, he received a letter from the VA, which shows his disabilities and disability ratings
- On 9 October 2024, he received a letter form the VA, which shows he had honorable service in the U.S. Air Force from 9 August 2005 through 30 June 2010; his combined service-connected evaluation is 100 percent

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting medical retirement in lieu of an administrative discharge with an uncharacterized characterization of service. His requests for an upgrade in rank, decorations, pay and allowance are outside of the scope of this Advisory and will not be addressed. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) are related to his request. More specifically, he stated that the local police assaulted him while serving in a cadet/SMP position during his sophomore year of college and it was due to this traumatic event that he was not able to continue to serve. 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 served in the U.S. Air Force from 09 August 2005 through 30 June 2010 and was honorably discharged for completion of required active service, 2) he enlisted in the ARNG on 17 August 2012, 3) civilian court documents show he was arrested on three occasions for the following: disorderly conduct (19 November 2012) and driving while intoxicated (15 January 2013 and 15 February 2013), 4) on 08 September 2013, a memorandum requesting a new ship date to attend training was completed noting that he missed his original date because he was arrested and had completed his sentence, 5) the applicant was discharged from the ARNG on 14 July 2014 due to conviction by criminal court, with an uncharacterized characterization of service. He completed 1 year, 10 months, and 28 days of net service. He was unqualified in his MOS.

b. 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) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Military medical records available via JLV were reviewed. During his active-duty service in the Air Force, the applicant underwent treatment for problems related to sleep, depression, anxiety, and relationship problems from March 2010 through June 2010. He was trialed on Ambien for sleep. During a primary care visit on 08 June 2010, it was documented that he had been experiencing depression and anxiety for about 1.5 years since returning from deployment to Afghanistan (2008-2009), with worsening symptoms and thoughts of suicide. He was immediately referred to BH the same day and it was documented that he had passive suicidal ideation and was released without limitations. His treatment included individual psychotherapy (four sessions) and group therapy (anger management and healthy thinking) (three sessions). His diagnoses throughout treatment were documented as Phase of Life or Life Circumstance Problem, Relational Problem, and Occupational Problem.

d. A review of JLV shows the applicant is 100% service-connected through the VA for the following conditions: Eczema (0%), Dysthymic Disorder (100%), Lumbosacral or

Cervical Strain (10%), Migraine Headaches (30%), and Tinnitus (10%). A VA Letter dated 09 November 2023 shows 100% service-connection was granted for Persistent Depressive Disorder (PDD) and Generalized Anxiety Disorder (GAD), from 27 May 2017. The applicant underwent an Initial Posttraumatic Stress Disorder (PTSD) VA Compensation and Pension (C&P) examination on 07 September 2012 and was diagnosed with PTSD. The provider documented that there was no diagnosis of TBI. The stressor(s) associated with his diagnosis of PTSD were documented as combat-related exposures during his tour(s) to Afghanistan (e.g., ambushes, sniper fire, mortars, and three service members killed by an IED in his presence). A subsequent C&P examination dated 17 October 2016 shows that the applicant was diagnosed with PTSD with a note that he was already service-connected for PTSD. It was also documented that he reported a history of TBI from a motor vehicle accident (MVA) [*Advisor's Note: the date of MVA was not specified*]. Regarding treatment, the examiner documented that he was prescribed two antidepressant medications (Mirtazapine and Sertraline) and Hydroxyzine (anxiety). It was also documented that he was receiving PTSD treatment through the mental health clinic. The evaluating provider opined that it was at least as likely as not that his current symptoms were a progression of his service-connected PTSD rather than a separate diagnosis.

The applicant sought BH treatment through the VA during the period of time he was enlisted in the ARNG. Review of records shows he had one appointment in November 2012 reporting psychosocial issues, legal issues, and mood issues since not being on his BH medication for the previous three months. He was diagnosed with Major Depressive Disorder, Severe, Without Psychotic Features, PTSD, and Alcohol Abuse and was started on Mirtazapine. He sought BH services again beginning in January 2014 for housing assistance. He was engaged in treatment through the Sober Living Center in January 2014. The applicant also sought BH services through the VA for ongoing psychosocial issues (relationship, school, housing, employment) and his BH symptoms. He continued to follow-up with BH, with his diagnoses during this period of treatment documented as Major Depressive Disorder and PTSD. In addition to Mirtazapine, he was trialed on Zoloft (antidepressant), which he reported helped with his concentration.

A VA treatment note dated 04 November 2010 documented that the applicant did experience a deployment-related mild TBI (concussion) but had no lasting effects and that his complaints at the time of the visit were likely not related to a history of mild TBI.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant failed medical retention standards IAW AR 40-501, Chapter 3 while in the military. Thus, a referral to the Disability Evaluation System (DES) is not warranted.

Review of the applicant's medical records during his time in the ARNG shows that he was diagnosed with PTSD and Major Depressive Disorder through the VA, with his diagnosis of PTSD being attributed to combat-related stressors incurred during his prior service in the Air Force. The applicant was diagnosed with mild TBI November 2010 (in between his service in the Air Force and ARNG), which was noted to not have any lasting effects in a VA treatment note, nor is he service-connected through the VA for TBI. Since being discharged from the military, he has been diagnosed and 100% service-connected through the VA for PDD and GAD. It is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent behavioral health diagnosis of MDD, PDD, PTSD, or GAD through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even in-service diagnoses of PTSD, MDD, PDD, or GAD are not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Per AR 40-501, Chapter 3-33, a referral to the DES is required when the condition results in: 1) persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, and/or 2) persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. The applicant was discharged from the ARNG due to conviction by criminal court. His military medical records are void of any documentation showing that he was placed on a profile necessitating duty limitations for BH reasons or that he required extended or recurrent hospitalizations as a result of his BH conditions. As such, there is insufficient medical evidence that the applicant failed medical retention standards due to PTSD, MDD, PDD, GAD, or TBI IAW AR 40-501, Chapter 3.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A, the applicant is requesting medical retirement.

(2) Did the condition exist or experience occur during military service? N/A, the applicant is requesting medical retirement.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A, the applicant is requesting medical retirement.

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 made the following conclusions:

- **Medical Retirement Request:** The Board reviewed the applicant's medical history, separation documents, and the medical advisor's review. The Board concurred with the medical advisor's review and concluded that there is insufficient evidence that the applicant failed medical retention standards in accordance with AR 40-501, Chapter 3, while serving in the military. As such, referral to the Disability Evaluation System (DES) was not warranted. The Board concurs with this assessment and finds no basis to support medical retirement.

- **Upgrade in Rank/Decorations/Pay:** The applicant requested advancement in rank and associated benefits but did not specify the rank sought. The Board found no evidence in the record to support entitlement to a higher rank, additional decorations, or retroactive pay and allowances. Promotions and awards are governed by strict criteria and require documented recommendations or approvals, which are absent in this case

- **Equitable Considerations:** While the Board acknowledges the applicant's concerns, it must operate within statutory and regulatory limits. Relief may be granted only when supported by evidence of error or injustice. In this case, the documentation and medical review do not establish that the applicant was improperly denied medical retirement or that she is entitled to advancement in rank or benefits.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determines that the evidence presented, together with the medical evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

/SIGNED/

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. 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).

4. 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.

5. 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.

6. 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

7. 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.

8. 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.

9. Army Regulation 600-200 (Enlisted Personnel Management System) in effect at the time states:

a. Section 7-3 (Authority to promote) states pay grades E-5 and E-6. Field grade commanders of any organization which is authorized a commander in the grade of lieutenant colonel or higher may promote assigned personnel to pay grades E-5 and E-6.

b. Section 7 (Appointment of Acting Non-Commissioned Officers (NCO's)), sub section 7-52 (Units), Company, troop, battery, and separate detachment commanders. may appoint qualified soldiers as acting corporals, E-4, and sergeants, E-5. They will serve in vacant positions in their units at their present or higher grade. This includes- those caused by temporary –absences of assigned NCOs. For acting corporal, E-4, and sergeant/E-5, the Soldier may not be more than one grade lower than the one to which appointed.

10. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), Chapter 3 (Semi-Centralized Promotions (Sergeant and Staff Sergeant) governs the SGT and SSG promotion system. Soldiers will compete for promotion to SGT based on automatically calculated promotion scores generated from both the personnel and training data in the electronic military personnel office system (eMILPO) and the Army Training Requirements and Resources System (ATRRS).

a. Paragraph 3-4 (Promotion Packet) provides that because promotion scores are a function of an automated process, there is no promotion packet. Upon receipt of the promotion board's recommendation, the promotion authority's decision to authorize integration of a Soldier onto the promotion recommended list will be by memorandum.

The recommending unit will maintain the original memorandum and provide a copy to all Soldiers considered by the promotion authority during the given month. The recommending unit will maintain a copy of the memorandum for 1 year after the Soldier departs the unit. Soldiers should maintain a copy for their personal records.

b. Section II (Promotion Eligibility Criteria) provides that establishment of more stringent criteria for use in determining eligibility for promotion recommendation other than provided for in this regulation is prohibited. Commanders may recommend Soldiers in the secondary zone as an incentive for those who strive for excellence and whose accomplishments, demonstrated capacity for leadership, and marked potential warrant promotion ahead of their peers. Promotions to SGT will be announced on orders. All Soldiers must otherwise be eligible in accordance with paragraph 1–10. Eligibility criteria for recommendation and promotion to SGT are:

- Must be qualified in their assigned MOS
- High school diploma or General Education Development
- Completion of Structured Self Development I prior to Board appearance
- Secondary Zone: 17 months Time-in-Service (TIS), 5 months Time-in-Grade (TIG); Primary Zone: 35 months TIS, 7 months TIG; Command List Integration: 47 months TIS, 11 months TIG
- Passing Army Physical Fitness Test
- Not flagged

c. Paragraph 5-7 (Eligibility Criteria for Selection Board Consideration) provides that A Soldier is considered to be physically qualified for promotion if he or she meets the retention medical fitness standards and remains eligible for consideration and promotion until found medically unfit for continued service by medical board process.

d. Section IV (Promotion to Sergeant through Sergeant Major) provides that Soldiers undergoing medical evaluation processing will be considered for promotion board action or, if already promotable, will not be denied promotion based on medical disqualification if they are otherwise qualified for promotion.

//NOTHING FOLLOWS//