ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 20 August 2025

DOCKET NUMBER: AR20240011164

APPLICANT REQUESTS: in effect, a change to the narrative reason for his separation from Condition, Not a Disability to a medical discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Letter, Department of Veterans Affairs (VA), 28 June 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he arrived at Fort Campbell, KY and completed Air Assault School as an 11B (Infantryman), sergeant/E-5. From day one he was called a “fat tanker” and “gay fat” every day which resulted in him going to Mental Health. The battalion started a false investigation for sexual misconduct which proved unfounded. A malicious narrative was created to chapter him out of the active duty Army. Several times he requested a rehabilitative transfer but was denied. He has been rated by the VA for his post-traumatic stress disorder (PTSD) since June 2015.

3. The applicant enlisted in the Regular Army on 19 July 2005. He served in military occupational specialty (MOS) 11B (Infantryman) and 19D (Cavalry Scout). Evidence shows he served in Iraq from 15 November 2006 to 9 December 2007.

4. His Official Military Personnel File contains a Report of Behavioral Health Evaluation conducted on 6 July 2010, for pre-deployment. The evaluation found the applicant diagnosed with an adjustment disorder with depressed mood. It was noted the applicant needed further evaluation and would benefit from continued treatment as he would not be able to complete mission-oriented activities and should not deploy at this time.

5. On 7 February 2011, he underwent a behavioral health evaluation due to consideration for administrative separation in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) because of personality disorder. He was diagnosed with an adjustment disorder with mixed emotional features and impulse control disorder as well as a personality disorder – anti-social type, with obsessive-compulsive and paranoid features. He was found psychiatrically cleared for any administrative action deemed appropriate by his command and he met the criteria for expeditious administrative separation in accordance with chapter 5-17, Army Regulation 635-200. The applicant was screened for PTSD and mild traumatic brain injury. It was noted he did not report or display and PTSD-like symptoms.

6. On 14 February 2011, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under Army Regulation 635-200, chapter 5-17, by reason of "Other Designated Physical or Mental Conditions." The reason for the proposed action was that the applicant had been diagnosed with an adjustment disorder with depressed mood.

7. On 14/17 February 2011, the applicant acknowledged receipt of the separation notification memorandum. He indicated he understood the basis for the contemplated separation action and its effects, the rights available to him, and the effect of a waiver of his rights. He elected not to submit a statement on his own behalf.

8. Subsequent to this acknowledgement and waiving legal consultation, the applicant's immediate commander initiated separation action against him under the provisions of Army Regulation 635-200, chapter 5-17, by reason of other designated physical or mental conditions.

9. On 4 March 2011, the separation authority directed the applicant be separated from service with an honorable characterization of service.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged on 10 March 2011; the below blocks contain the following entries:

- block 23 (Type of Separation) - Discharge
- block 24 (Character of Service) - Honorable
- block 25 (Separation Authority) - Army Regulation 635-200, paragraph 5-17
- block 26 (Separation Code) - JFV
- block 27 (Reentry Code) - 3
- block 28 (Narrative Reason for Separation) - Condition, Not a Disability

11. The applicant provides a letter from the VA dated 28 June 2024, which verifies his service-connected disabilities for a combined rating of 80 percent. He received a

70 percent rating for PTSD with major depressive disorder.

12. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System (PDES) 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

13. 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.

14. 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

15. Title 38, U.S. Code, 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.

16. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

17. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical discharge in lieu of his honorable separation for "Condition, Not a Disability." He asserts military sexual trauma (MST), reprisal, and Posttraumatic Stress Disorder (PTSD) 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) On 19 July

2005, the applicant enlisted in the Regular Army; 2) The applicant was deployed to Iraq from 15 November 2006 to 09 December 2007; 3) On 08 February 2011, the applicant received a developmental counseling that recommended the applicant for separation from the military via Chapter 5-17; 4) The applicant was discharged on 10 March 2011, AR 635-200, paragraph 5-17, by reason of condition, not a disability. His character of service was honorable. He completed 5 years, 7 months, and 22 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts MST, reprisal, and PTSD are related to his request for a medical discharge. The applicant was initially referred to mental health services on 25 March 2008 by his primary care manager for the treatment of insomnia and depressive and anxiety symptoms. He continued to be seen intermittently by mental health services primarily after outbursts of anger, impulsivity, and/or violence. The applicant tended to be escorted to mental health services or arrive emergently to be seen on a walk-in basis. The applicant's mental health providers reported that he displayed difficulties in maintaining consistent attendance or following mental health treatment recommendations. The applicant was treated for the diagnoses of Adjustment Disorder and/or Antisocial Personality Disorder throughout his time in active-duty mental health treatment. On 06 July 2010, the applicant underwent a pre-deployment mental health evaluation. During this assessment, the applicant was recommended for further evaluation due to his report of ongoing depressive symptoms, suspicion towards others in his unit, and emotionally lability. In addition, as a part of this evaluation, the applicant was diagnosed with Adjustment Disorder with Depressed Mood and to be at a moderate level for potential self-harm, harm to others, and going AWOL. As a result, it was recommended that he continue mental health treatment, engage in twice daily check-ins, and be denied use of firearms and alcohol. On a memorandum, dated 14 July 2010, the applicant's mental health provider recommended a Command Directed Evaluation (CDE) be performed to assess his suitability for continued military service. This recommendation stemmed from the applicant's labile emotional state and the potential risk of harm to others in his unit in a deployed environment due to his report of violent thoughts and history of violence. On 21 October 2010, the applicant reported that following a rehabilitative transfer to a new unit, his mood improved despite pending administrative separation and civilian criminal charges. The applicant's Chapter 5-17 administrative separation was endorsed by the Surgeon General on 02 February 2011. The applicant was again evaluated on 07 February 2011, and the applicant was again diagnosed with Adjustment Disorder with Mixed Emotional Features, Impulse Control

Disorder, and Personality Disorder-Anti-Social Type and formally recommended for a Chapter 5-17 administrative separation for a Condition, Not a Disability. As part of the evaluation, the applicant was screened for PTSD and TBI, neither producing positive results. Through this evaluation, it was determined that he did not have a mental health condition that impacted his retention standards, and he was cleared for continued administrative separation procedures from a mental health perspective. His final mental health visit occurred on 08 March 2011, where he was cleared for discharge from a mental health perspective and connected with civilian mental health resources to utilize post-discharge. The only notation of sexual assault in the available records during his time in service were two separate notations within his mental health notes. The first was of an alcohol-related incident on 05 December 2009 where the applicant allegedly became intoxicated at a party and took off all of his clothes, exposing himself to those around him (from a mental health note dated 16 December 2009). The second was reportedly allegations within his unit from an unknown date following his first investigation where he allegedly had forced his subordinates to perform sexual acts. All allegations were investigated and were reported as unfounded. The applicant had noted on at least one occasion with mental health providers that he suspected that the second allegation was a result of reprisal by a supervisor due to his alleged dislike of the applicant.

d. A review of JLV noted that the applicant initially connected with VA mental health care beginning on 08 March 2011 and continued to engage in VA physical health care since that time. The applicant is currently 80% VA service-connected (SC) for various physical and mental health conditions. This includes 70% VA SC for PTSD, which was diagnosed initially on 02 April 2015.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was determined to have not met medical retention standards due to a mental health condition during his time in service. The applicant did not attend more than six months of consistent mental health treatment without improvement, nor did he require any inpatient psychiatric hospitalizations, nor was he ever placed on a psychiatric permanent profile while on active service. As a result of a lack of these conditions prior to discharge, criteria were not met to recommend his referral to IDES.

f. Kurta Questions:

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

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

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation.

2. The Board considered the following Kurta Questions:

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

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

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

3. Upon review of the applicant’s petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence that the applicant was determined to have not met medical retention standards due to a mental health condition during his time in service. The Board concluded that referral of his case to the Disability Evaluation System is not warranted. Based on this the Board denied relief.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

[redacted]

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 5-17, states commanders who are special court-martial convening authorities may approve separation under this paragraph based on other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability, which are sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

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, under the operational control of the Commander, U.S. Army Human Resources Command (AHRC), is responsible for administering the Army PDES 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.

a. Soldiers are referred to the PDES 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, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, AHRC.

b. The PDES assessment process involves two distinct stages: the Medical Evaluation Board (MEB) and the 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 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 one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 40-501 provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

5. Army Regulation 635-40 establishes the PDES 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 their office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the

member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

6. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10 U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may

be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

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

9. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//