

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011258

APPLICANT REQUESTS:

- entitlement to award of the Purple Heart
- reconsideration of his previous request that his physical disability retirement rating of 30 percent (%) be increased to 100% based on the Veterans Affairs (VA) and Combat-Related Special Compensation (CRSC) rating decisions for his combat related post-traumatic stress disorder (PTSD)

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- letter, Warrant Officer One (WO1) ATS, 30 September 2007
- Army CRSC Reference Guide, 22 October 2022
- letter, Army Human Resources Command (AHRC), CRSC, 11 April 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220004331 on 13 October 2022.

2. The applicant states, in effect, he was deployed to a combat zone with the 1st Cavalry Division. During his yearlong deployment, he saw and experienced hell; as a result, he and his unit were awarded the Combat Action Badge.

a. While deployed he saw people getting blown up by mortars and receiving shrapnel wounds while running for cover on an almost daily basis. He himself was blown up with a mortar round that hit very close to him just below the tower. When the mortar hit, the applicant and his buddy were both dazed, it was loud and they saw stars, but they recovered after the Sergeant of the Guard came to them and told them to go to the medic's station. They were still dazed and confused but refused to go to the medic's station because they were not bleeding. He was supposed to be awarded the Purple Heart for this incident.

b. Before his unit redeployed, his first sergeant told him to go to a special awards formation where he would be awarded the Purple Heart. His two friends, both sergeants, told him he should not go to the formation to accept the Purple Heart because they had all been seeing people get blown up at breakfast, lunch, and dinner time during the entire deployment. The applicant agreed with his friends and did not go to the formation, nor did he receive the award. Incidentally, after his discharge he reached out to a member of his unit, a sergeant, and asked about the Purple Heart. The sergeant told him his name was not put on the Purple Heart awardee listing because he did not go to the award ceremony.

c. After his deployment, when he was at the wounded warrior battalion, he could no longer socialize and did not want to be around people; he even had to write to his Member of Congress to save him from the maltreatment he was receiving from the Wounded Warrior Battalion chain of command. The chain of command yelled at him and questioned why he went to mental health. The reason he went to mental health was because the staff at Madigan hospital saw he was having problems and issues mentally and recommended he go to mental health. They later tried to kick him out of the Army for harassing a female and he had to threaten them about retaliation. He told the other Soldiers at the Wounded Warrior Battalion that if he went through with his plan to kill people, he would tell them not to go to formation. About a week later the shooting at Fort Hood Texas happened and after that everyone was really nice to him, and they medically Boarded him.

d. The medical board did not consider PTSD as a condition because he was only seen by the staff for a few moments and that was not long enough to diagnose him with PTSD. When he was medically boarded, he only received a 30% disability rating for his back and tinnitus, and he did not fight for more; however, when he separated from the Army the Department of Veterans Affairs (VA) awarded him a 100% disability rating for PTSD. His PTSD is combat related, but that information is not reflected on the medical disability he received from the Army because the Army did not rate him for PTSD. He is appealing to have his PTSD included on his Department of Defense (DOD)/Army disability rating so that he can receive CRSC for this condition.

3. The Board will not consider the applicant's request for entitlement to award of the Purple Heart. The applicant's request for the Purple Heart is premature, as there is no evidence he first applied to the AHRC for their action. Army Regulation 15-185 (ABCMR), the regulation under which this Board operates, stipulates that the Board will not consider an application until the applicant has exhausted all available administrative remedies to correct the alleged error or injustice. The applicant may submit a request to the AHRC Awards and Decorations Branch (ADB) in letter format. His request to AHRC should include a copy of his DD Form 214 (Certificate of Release or Discharge from Active Duty) and any other documentation supporting his request. He should submit his request to the following address: Commander, Army Human Resources Command,

ATTN: AHRC-PDP-A (ADB), 1600 Spearhead Division Ave, Fort Knox, KY 40122-5408 or email: usarmy.knox.hrc.mbx.tagd-awards@mail.mil. If he still believes that an error or injustice exists after receiving a response from AHRC, he may submit a new DD Form 149 to this Board. His application to the Board must include a copy of the denial letter from AHRC.

4. On 17 October 2000, the applicant enlisted in the Regular Army.
5. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty on 13 June 2005 and transferred to the U.S. Army Control Group (Reinforcement) after completing 4 years, 7 months, and 27 days of net active service during this period. His DD Form 214 shows he served in Iraq from 13 March 2004 - 13 March 2005.
6. He provides a letter of support, dated 30 September 2007, which states:

Hello, my name is WO1 [AST]. I am writing this letter in regards to [the Applicant]. I was his Supervisor while conducting full spectrum operations in Iraq supporting Operation Iraqi Freedom II (OIFII). We deployed for a total of 12 months with the 1st Battalion, 12th Cavalry regiment. During our tenure in Iraq we conducted maintenance operations for a heavy combat unit.

[The applicant] was injured on the convoy into Iraq when the Light Medium Tactical Vehicle (LMTV) he was driving was involved in an accident. He was the driver of the vehicle when it rear ended another LMTV going approximately 25-35 MPH. Though his injuries were minor he continually struggled with back problems for the next 12 months. He continued to conduct his daily activities despite his ailment. His daily activities involved lifting, moving and holding parts and equipment well over 70 LBS. He also witnessed and assisted with the transport of injured and dead soldiers during an attack on US Forces. At the time he showed no signs of PTSD but a high number of the soldiers that had returned from our area of operations had been diagnosed with different levels of PTSD. He was also exposed to a high lead concentration and this should be documented in his medical records...

7. Orders dated 23 July 2008 ordered him to active duty on 29 August 2008 in support of Operation Iraqi Freedom for 400 days.
6. Orders dated 26 May 2009 reassigned him upon completion of his duties in support of Operation Iraqi Freedom to 361st Psychological Operations Company Mobilized, Bothell, WA on 26 May 2009 until 24 June 2009 (30 days) due to medical evacuation of Reserve component Soldiers for continued medical care. He was to report to the Madigan Army Medical Center, Tacoma, WA.

7. The applicant's available record is void of a DA Form 3947 (Medical Evaluation Board (MEB) Proceedings) for review and was not provided by the applicant for the Board to review.

8. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A formal PEB convened on 19 July 2010 and found the applicant unfit with a recommended combined disability rating of 30% and that his disposition be permanent disability retirement for the following conditions:

- chronic low back pain with intervertebral disk protrusion, unfitting due to inability to tolerate repeated heavy lifting required of a mechanic, 20%
- neuralgia of femoral nerve, affecting left thigh, unfitting due to burning pain provoked by standing or walking more than a few minutes, 10%

b. The condition listed as MEBD Dx #3. Counsel's contention at the formal PEB was that the MEB diagnosis of adjustment disorder was unfitting, and that the condition should be rated. The PEB found the diagnosis to be a condition not constituting a physical disability in accordance with (IAW) Department of Defense Instruction (DODI) 1332.38, paragraph ES.1.2.9.4. The PEB notes that Army and DOD rules determine compensability and eligibility for the Disability Evaluation Process, and Enclosure 5 to DODI 1332.38 prohibits this. This condition may be administratively unfitting.

c. The conditions listed as medical board diagnoses 2, 4, 5, 6, and 7 were determined to meet retention standards by the medical treatment facility. Further consideration by the PEB found the conditions to be not unfitting and therefore not ratable as they are not listed on the physical profile as limiting any of the Applicant's functional activities, the commander did not consider the conditions to hinder Applicant's performance and the case file contains no evidence that these diagnoses independently, or combined, render the Applicant unfit for his assigned duties.

d. On 29 July 2010, the applicant concurred with the findings and recommendations of the formal PEB. On 4 August 2010, the PEB was approved for the Secretary of the Army.

9. His DD Form 214 shows, on 8 September 2010, he was retired under provisions of AR 635-40, paragraph 4-24b(1), disability, permanent with 2 years and 11 days of net active service during this period. His DD Form 214 shows he served in Iraq from 25 October 2008 - 11 May 2009 and he was awarded the Combat Action Badge.

10. The ABCMR's previous consideration notes a VA Rating Decision letter, dated 11 April 2019, shows the VA granted the applicant a combined disability rating of 100% effective 5 February 2019 for:

- PTSD, 30% effective 9 September 2010 to 100% effective 5 February 2019
- spondylosis deformans of the lumbar spine with intervertebral disc syndrome (formerly diagnosed as sacroiliitis and degenerative disease of the lumbar spine) - 20% effective 26 April 2013
- lumbar radiculopathy, right lower extremity associated with spondylosis deformans of the lumbar spine with intervertebral disc syndrome (formerly diagnosed as sacroiliitis and degenerative disease of the lumbar spine), 20% effective 16 September 2014
- right wrist limitation of motion, residual of ganglion cyst excision - 10% effective 9 September 2010
- tinnitus - 10% effective 9 September 2010
- allergic rhinitis - 10% effective 9 September 2010
- lumbar radiculopathy, left lower extremity associated with spondylosis deformans of the lumbar spine with intervertebral disc syndrome (formerly diagnosed as sacroiliitis and degenerative disease of the lumbar spine), 10% effective 14 March 2013
- bilateral sensorineural hearing loss, 0% effective 9 September 2010
- healed scar, residual of excision of ganglion cyst dorsum area, right (dominant) wrist, 0% effective 9 September 2010

11. The ABCMR previously considered the applicant's request in ABCMR Docket Number AR20220004331, on 13 October 2022. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted because the evidence presented did not demonstrate the existence of a probable error or injustice.

12. The applicant provides an Army CRSC Reference Guide and a letter from AHRC, CRSC, dated 11 April 2024, which states, after reviewing all documentation in support of the Applicant's claim, they were unable to overturn the previous adjudication(s). The documentation which the Applicant had submitted still shows no new evidence to link his requested conditions to a combat-related event. This disapproval is now considered final. If he chose to appeal this decision, he must submit his Notice of Disagreement (NOD) to the Army Review Boards Agency (ARBA).

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents including the personal statement and other letters of support, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests Purple Heart entitlement. He also requests Army disability rating for PTSD in order to receive CRSC benefits. The applicant's mental health condition(s) were reviewed by ARBA Medical with mental health expertise under separate cover.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was a member of the USAR and enlisted in the Regular Army 17Oct2000. He was released from active duty 13Jun2005. This period of active service included deployment in Iraq from 20040313 to 20050313. His final period of active service was from 20080829 to 20100908 with deployment in Iraq from 20081025 to 20090521. The record showed he received a Combat Acton Badge. His MOS was 63B Wheeled Vehicle Mechanic. He was retired from service due to disability 08Sep2010 under provisions of AR 635-40, para 4-24B(1). His service was characterized as honorable.

3. The Formal PEB convened 19Jul2010 found the following conditions were unfitting for continued service: Chronic Low Back Pain Associated With Intervertebral Disk Protrusion at 20% under code 5299 5243 and Neuralgia of Femoral Nerve, Left Thigh at 10% under code 8726. The narrative indicated the origin of the back condition was during a prior period of service and had recurred during repeated heavy lifting and wearing of body armor while deployed. The origin of the left thigh condition was not documented. Neither condition was designated as a combat injury, combat related or the result of an instrumentality of war. The recommended disposition was permanent retirement at 30% total. The applicant concurred with the PEB's findings.

4. Pertinent medical records for the back condition and related.

a. 17Aug2005 General C&P EXAM VAMC. He was seen for post Iraq deployment. He was stationed in Sadr City at Camp War Eagle. He spent his time primarily on the base fixing vehicles. He stated that they were exposed to indirect fire pretty much on a daily basis and direct fire on two to three occasions. While in Iraq he was treated for sinus congestion as well as low back strain, a sprained left ankle, and one episode of elevated blood pressure. The back exam revealed mild increased tone, paraspinal musculature in the lower lumbar region but no flattening of the lumbar curvature. *The back exam was consistent with back strain however, the method of injury for the back strain was not reported/documentated.*

b. 21Dec2006 Psychological Evaluation Note VAMC. He worked as a mechanic on base, but also assisted with guard duty and patrols. On base he was subjected to indirect fire on a near-daily basis and received direct fire/near misses on a few occasions: An incoming mortar landed 15-20ft away and destroyed the building he was running towards. He also described being shot at by a sniper with the bullet passing close by his helmet. *He did not report physical injury as a result of these exposures.*

c. 30Jan2007 Primary Care Note VAMC. He was seen for an acute flair of back pain. He was shaving with his head over a sink when he heard a pop and had sudden pain down the back of both legs to his knees.

d. 07Feb2007 Physical Therapy Initial Consult VAMC. The applicant endorsed that he (originally) injured his back between March 2004 and March 2005 while in Iraq.

e. 22Aug2007 Physical Medicine Rehab Attending Note VAMC. He endorsed that his primary physical problem was his LBP. He could not manage the physical requirements of several jobs he had tried because of his inability to do heavy work and thus he was enlisting in active duty again. He stated the back pain started one night in 2004 when he had to carry a heavy windshield and about 12 batteries without help. The next day he had severe pain and was placed on light duty for 30 days. *This incident was not captured in the medical record.*

f. 30Sep2007 letter of support from the applicant's supervisor. They stated that the applicant was injured while driving a Light Medium Tactical Vehicle (LMTV) that rearended another LMTV in front of him causing injury to his back. They were on convoy into Iraq at the time. *This incident was not captured in the medical record.*

g. 16Mar2009 ASMC Tikrit, Iraq. The applicant reported a history of chronic back pain prior to this (second) deployment.

h. 07Apr2009 ASMC Tikrit, Iraq. He reported low back pain for 3 weeks which started after a 3-hour foot patrol.

i. 01May2009 and 19May2009 ASMC Tikrit, Iraq. The applicant was seen several times the past 2 months for complaints of chronic back pain. *No specific injury/trauma was documented.* He was being prepared to redeploy (early) to CONUS for a MEB.

j. 29May2009 Madigan AMC. He entered WTB for herniated disk which the applicant reported he feels he sustained during the first deployment. This visit was also coded as Post Deployment Exam.

k. 01Mar2011 General C&P Exam VAMC. Onset of back pain was in 2004. When the veteran was deployed to Iraq he experienced low back which he attributed to lifting of heavy objects when he worked as a mechanic.

l. 11Apr2024 US Army HRC letter confirmed verification of combat-related PTSD 9411 at 100%, Tinnitus 6260 at 10%, Allergic Rhinitis 6522 at 10%, and Bilateral Sensorineural Hearing Loss 6100 at 0%. Spondylosis Deformans of The Lumbar Spine with Intervertebral Disc Syndrome

5. Summary/Opinion

AR 600-8-22, Military Awards, Chapter 2 was reviewed. There were no service treatment records for a back condition before nor during the first Iraq deployment that were available for review. There were no medical records documenting discrete combat, combat related, or instrumentality of war injury to the back while deployed. There was no contemporaneous medical record documenting back injury while engaged in action against the enemy. The applicant did not report such during the August 2005 post deployment exam conducted by the VA after the first deployment nor during the 29May2009 post deployment exam conducted by the Army after the second deployment. The applicant's CAB award was not found in the available record (including iPERMS). In the ARBA Medical Reviewer's opinion, available evidence in the medical record was insufficient to support Purple Heart entitlement.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request that his physical disability retirement rating of 30% be increased to 100% based on the VA and Combat-Related Special Compensation (CRSC) rating decisions for his combat related PTSD diagnosis. 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 17 October 2000; 2) The applicant deployed to Iraq from 13 March 2004 -13 March 2005; 3) The applicant was released from active duty on 13 June 2005; 4) The applicant then reentered military service as a member of the Army National Guard at a later date and was ordered to active duty on 29 August 2008 in support of Operation Iraqi Freedom; 5) On 26 May 2009, the applicant was medically evacuated out of theater eventually sent to Madigan Army Medical Center; 6) A formal PEB convened on 19 July 2010 and found the applicant unfit with a recommended combined disability rating of 30% for two physical conditions, not including PTSD. The applicant's diagnosis of an adjustment disorder was noted to be a condition not constituting a physical disability. The applicant concurred with the findings and recommendations on 29 July 2010; 7) On 08 September 2010, the applicant was retired, Chapter 4-24b(1)-Disability, permanent with

2 years and 11 days of net active service during this period. He served in Iraq from 25 October 2008-11 May 2009.

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

c. The applicant asserts his physical disability retirement rating should be increased from 30% based on his VA and CRSC rating for PTSD related to his combat experiences in Iraq. There is evidence the applicant was initially seen by his case manager/licensed clinical social worker as part of his inprocessing at the Warrior Transition Battalion (WTB) in early June 2009. The applicant was medically evacuated from theater due to back pain. He initially reported anxiety symptoms to include panic and hyper-arousal. In addition, he described abusing alcohol. The applicant was diagnosed with Generalized Anxiety Disorder and referred to ASAP to address his alcohol abuse. There is insufficient evidence the applicant attended any treatment at ASAP, and he was seen by case management again in late June 2009, and he was reported to be transiting well to the WTB and not diagnosed with a mental health condition. The applicant was later seen by WTB case managers in October and November 2009. He was reporting increased frustration with the WTB, his leadership, and the progression of his MEB. The applicant was also describing violent and threatening thoughts towards his Command, and he was reported to have made threatening statements towards leadership. The applicant was describing increased anxiety related to possible consequences of UCMJ action related to this event. On 23 November 2009, the applicant was seen by psychiatry and prescribed medication to address his reported problems with cravings for alcohol, sleep, and anxiety related to recent events with his leadership. He was diagnosed with an Adjustment Disorder with Disturbance of Emotions and Conduct, and he was again referred to ASAP, but there is insufficient evidence the applicant attended any treatment. The applicant was seen intermittently by his WTB case manager, who diagnosed him with Generalized Anxiety Disorder, and the focus of his sessions was directed toward his management of his symptoms related to his frustration with his leadership and MEB progression. The applicant also attended medication management appointments with psychiatry, and again the focus of his sessions was addressing his reported anxiety symptoms related to the situational problems with his leadership, and he was diagnosed with an Adjustment Disorder. In February 2010, the applicant was seen by behavioral health services after being referred by his psychiatrist, but the full intake was not completed till early March 2010. At that time, the applicant was diagnosed with Major Depressive Disorder and Anxiety Disorder Not Otherwise Specified (NOS). He also endorsed a significant number of PTSD symptoms on a PTSD screener. However, the applicant was noted to be endorsing symptoms primarily focused on his frustration with his previous unit rather than a potentially traumatic event during his deployment. Therefore, the applicant was

not diagnosed with PTSD, at that time. In further sessions, the applicant's behavioral health provider ruled out the possibility he met criteria for PTSD, and he was predominately diagnosed with Major Depression, Single episode and Anxiety Disorder NOS. Later in March 2010, he underwent his PEB evaluation and was diagnosed with an Adjustment Disorder. Due to the variety of the applicant's diagnoses during his treatment history, on 08 May 2010, a consult was completed to conduct a thorough diagnostic evaluation to determine the applicant's psychiatric diagnosis, and if he failed to meet retentions standards from a psychiatric perspective and required a permanent profile. This evaluation was completed on 18 May 2010, and it included a full clinical interview, review of medical records, and psychometric testing. The applicant was determined to meet criteria for an Adjustment Disorder with Mixed Disturbance of Emotions and Conduct with a rule out of Alcohol Use Disorder. He continued in individual therapy and medication management appointments till his discharge. There was insufficient evidence the applicant was determined to not meet medical retention standards for PTSD after being evaluated by multiple behavioral health providers; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA immediately following his first discharge for active service. He was diagnosed with PTSD in 2007, and later in 2010. As a result of his last Compensation and Pension Evaluation in 2019, the applicant has been determined to be 100% disabled related to service-connected PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant was deployed twice to an area of combat. There is evidence he was evaluated and treated for mental health symptoms during his active service by multiple behavioral health providers, and he was diagnosed with a variety of mental health conditions. However, he was not diagnosed with PTSD during his active service, despite being provided through diagnostic evaluations. In addition, there is insufficient evidence the applicant, during his active service; was determined to not meet medical retention standards for a mental health condition, including PTSD; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for an increase in disability related to PTSD.

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is sufficient evidence the applicant was deployed twice to an area of combat. There is evidence he was evaluated and treated for mental health symptoms during his active service by multiple behavioral health providers, and he was

diagnosed with a variety of mental health conditions. However, he was not diagnosed with PTSD during his active service, despite being provided through diagnostic evaluations. In addition, there is insufficient evidence the applicant, during his active service; was determined to not meet medical retention standards for a mental health condition, including PTSD; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for an increase in disability related to PTSD.

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

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

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board found that in regards to increasing his disability to 100%, they concurred with the advising official finding that Defense Finance and Accounting Service calculates and applies the most beneficial retirement to the applicant.

2. The Board noted that a formal PEB convened on 19 July 2010 and found the applicant unfit with a recommended combined disability rating of 30% for two physical conditions, not including PTSD. The applicant's diagnosis of an adjustment disorder was noted to be a condition not constituting a physical disability. The applicant concurred with the findings and recommendations on 29 July 2010. On 8 September 2010, the applicant was retired.

3. The Board also concurred with the medical advisor's review that although there is sufficient evidence the applicant was deployed twice to an area of combat and evidence that he was evaluated and treated for mental health symptoms during his active service by multiple behavioral health providers, and he was diagnosed with a variety of mental health conditions, he was not diagnosed with PTSD during his active service, despite being provided through diagnostic evaluations. In addition, there is insufficient evidence the applicant, during his active service; was determined to not meet medical retention standards for a mental health condition, including PTSD; attended six months of consistent mental health treatment without improvement; required two inpatient

psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for an increase in disability related to PTSD. The Board determined an increase in his military disability rating was not warranted.

4. Based upon 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? No. There is sufficient evidence the applicant was deployed twice to an area of combat. There is evidence he was evaluated and treated for mental health symptoms during his active service by multiple behavioral health providers, and he was diagnosed with a variety of mental health conditions. However, he was not diagnosed with PTSD during his active service, despite being provided through diagnostic evaluations. In addition, there is insufficient evidence the applicant, during his active service; was determined to not meet medical retention standards for a mental health condition, including PTSD; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permanent psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for an increase in disability related to PTSD.

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

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

The Board concluded there was insufficient evidence of an error or injustice warranting an increase to the applicant disability retirement rating to 100%.

5. In addition, the Board determined to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; there must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. The Board did not find documentary evidence that clearly or explicitly shows criteria for award of the Purple Heart. In addition, the Board concurred with the medical advisor's review in that there were no service treatment records for a back condition before nor during the first Iraq deployment that were available for review. There were no medical records documenting discrete combat, combat related, or instrumentality of war injury to the back while deployed. There was no contemporaneous medical record documenting back injury while engaged in action against the enemy. The applicant did not report such during the August 2005 post deployment exam conducted by the VA after the first deployment nor during the 29 May

2009 post deployment examination conducted by the Army after the second deployment. The applicant's CAB award was not found in the available record (including iPERMS). Therefore, the Board determined that with all the available evidence, to include his medical record, there was insufficient documentation to support a Purple Heart entitlement and the applicant does not meet the criteria for award of the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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 amendment of the ABCMR decision rendered in Docket Number AR20220004331 on 13 October 2022.

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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, 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 (HRC), is responsible for administering the 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, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the 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.

2. Army Regulation 40-501 (Standards of Medical Fitness) 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.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the 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 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.

4. 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.

5. 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.

6. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//