ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240011613

APPLICANT REQUESTS: in effect, physical disability retirement in lieu of physical disability separation with severance pay through the inclusion of post-traumatic stress disorder (PTSD) and other mental health conditions as unfitting and ratable

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349 (Physical Profile), 21 June 1994
- Medical Evaluation Board (MEB) Narrative Summary (NARSUM), 3 October 1994
- partial DA Form 3947 (MEB Proceedings), 12 October 1994
- partial DA Form 199 (Physical Evaluation Board (PEB) Proceedings), 19 October 1994
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 27 February 1995
- Progress Notes,, Mental Health Attending Note, 12 and 26 August 2009
- Compensation and Pension (C&P) Exam, Mental Disorders (Other than PTSD and Eating Disorders), 23 July 2019
- Board of Veterans' Appeal letter, 21 June 2023
- Board of Veterans' Appeal Order, 21 June 2023
- Department of Veterans Affairs (VA) Rating Decision, 27 June 2023
- VA Clinical Psychologist's letter, undated

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:

a. He is requesting a disability rating for his PTSD and other mental health conditions to be added to his MEB decision and/or to be considered secondary to his

existing rating for stress fractures. Several medical experts and a Board of Veterans' Appeals Judge have determined that is mental health conditions are directly related to military service events and/or secondary to his physical rating.

b. He is requesting the same rating as the VA recently granted him for PTSD/bipolar disorder, which is 70 percent, since they both use very similar criteria for determining ratings.

c. The military had access to the same information in his military records that the VA had when they made their decision, took note of his decline in performance in counseling notes, and the Army should have reasonably performed a mental health evaluation as part of his MEB process.

d. It is only fair to correct this, considering the extensive effect these in-service stressors have had on his qualify of life. He meets the definitions for liberal consideration for relief under the clarification memorandum from the Office of the Under Secretary of Defense, dated 27 August 2017.

e. He realizes that from a monetary standpoint, this makes little difference as his VA compensation is greater. From a mental health standpoint, correcting this injustice would have a significant impact on how he views himself. This has been painful for him over the last 30 years and he would like to stop feeling like he did something wrong. He needs the Army to accept responsibility.

3. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

4. A DA Form 3349 shows on 21 June 1994, the applicant was given a permanent physical profile with a PULHES of 113111 for chronic bilateral tibial stress fracture, which prevented him from multiple functional activities and the 2-mile run event of the Army Physical Fitness Test (APFT).

5. An MEB NARSUM, 3 October 1994, has been provided in full to the Board for review and shows in pertinent part:

a. The applicant underwent a physical exam on 29 August 1994, after referral to the Tripler Army Medical Center Orthopedic Clinic with a diagnosis of chronic bilateral grade II tibial stress fractures, where he was given a P3 profile and indicated he desired a medical board.

b. His chief complaint was pain in both legs, trouble standing, and pain while climbing stairs.

c. His diagnosis was bilateral grade II tibial stress fractures; did not exist prior to service (EPTS); service aggravated; in the line of duty (LOD).

d. The recommendation shows he did not meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3.

6. A partial DA Form 3947 shows an MEB convened on 12 October 1994, and the applicant was referred to a PEB for his bilateral grade II tibial stress fractures.

7. A DA Form 199 shows:

a. A PEB convened on 19 October 1994, where the applicant was found physically unfit with a recommended combined rating of 20 percent and that his disposition be separation with severance pay.

b. His unfitting condition was bilateral grade II tibial stress fracture with objective evidence at the mid and distal thirds of both tibia, manifested by ankles swelling and tenderness along both tibia shafts and around both ankles. (MEB diagnosis (Dx) 1); 20 percent.

c. On 25 October 1994, the applicant signed the form indicating he had been advised of the findings and recommendations of the PEB and concurred, waiving a formal hearing of his case.

8. The applicant's DD Form 214 shows he was honorably discharged on 27 February 1995, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, with corresponding Separation Code JFL.

9. Progress Notes, Mental Health Attending Note, 12 and 26 August 2009, show in pertinent part:

a. On 12 August 2009, he met with his therapist to review interval mental health history prior to August 2008. Prior to that time he suffered from chronic depression,

PTSD, and panic disorder managed with a combination of therapy and medicine management since April 2006.

b. On 26 August 2009, he met with the psychiatrist to discuss denial for service-connected disability rating for bilateral shoulder condition, back pain, neck pain, bilateral hip condition, bilateral hearing loss, tinnitus, PTSD, and depression/anxiety.

10. A multi-page C&P Exam, Mental Disorders (Other than PTSD and Eating Disorders), 23 July 2019, has been provided in full to the Board for review, and shows the applicant's mental disorder diagnosis is bipolar II disorder with symptoms of anxiety, panic attacks, agoraphobia, attention deficit hyper activity disorder (ADHD), and PTSD.

11. A Board of Veterans' Appeal letter, 21 June 2023, informed the applicant that a Veterans Law Judge at the Board of Veterans' Appeals made a decision on his appeal and advised him of what to do if he disagreed with the decision.

12. A Board of Veterans' Appeal Order, 21 June 2023, shows the applicant's entitlement to service connection on a direct basis for bipolar disorder with agoraphobia, panic disorder, PTSD, and depression/anxiety was granted effective 11 October 1996.

13. A VA Rating Decision, 27 June 2023, shows the applicant's entitlement to an earlier effective date for service-connection for bipolar disorder with agoraphobia, panic disorder, PTSD, and depression/anxiety was granted effective 11 October 1996, with a rating of 70 percent.

14. A lengthy undated VA Clinical Psychologist's letter has been provided in full to the Board for review, and in pertinent part shows a diagnostic impression of ADHD, inattentive type, agoraphobia, panic disorder, persistent depressive disorder (formally dysthymia) with melancholia. Still under consideration and without enough evidence to support at time of assessment are the provisional diagnosis of avoidant/unspecified personality disorder (melancholic).

15. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change of his medical discharge to a permanent medical retirement. As a part of his narrative reason for this change, he contends he experienced mental health conditions including PTSD that are related to his request for medical retirement. 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 09 October 1992; 2) The applicant was discharged on 27 February 1995, AR 635-40, Chapter 4-24B(3)- disability, severance pay. His character of service was honorable. He completed 2 years, 4 months, and 19 days of net active service.

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 medical and service 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 he experienced mental health conditions including PTSD warranting a military medical discharge. There is insufficient information regarding the applicant's mental health treatment or diagnoses (if any) during his time in military service. The applicant provided documentation of his permanent physical profile dated 22 June 1994 due to chronic bilateral tibial stress fractures which did not note any mental health conditions. The applicant provided a medical evaluation board evaluation dated 29 August 1994 due to a diagnosis of chronic bilateral grade II tibial stress fractures and that he was psychiatrically within normal limits. His medical board proceedings on 12 October 1994 determined that his injury was permanently aggravated by service and that he be referred to the Physical Evaluation Board (PEB). His PEB proceedings convened on 19 October 1994 and recommended 20% medical retirement as a result of his aforementioned injury. There was insufficient evidence of any mental health difficulties (either diagnosed or treated) documented in his medical board process.

d. A review of JLV noted that the applicant's initial contact with the VA was on 28 August 1997 for medical purposes. He began mental health services through the VA beginning on 17 April 2006 for the assessment and treatment of major depressive disorder, recurrent, severe without psychotic features and generalized anxiety disorder. The applicant denied any previous mental health treatment prior to this encounter. As documented in a 02 September 2009 mental health encounter, the applicant's mental health began to deteriorate, resulting in an increased frequency of mental health treatment and was placed on administrative leave from his work in March 2009. The applicant underwent a comprehensive neurobehavioral assessment on 26 April 2016 resulting the diagnoses of ADHD, inattentive type, agoraphobia, panic disorder, and persistent depressive disorder with melancholia. The applicant underwent a compensation and pension (C&P) examination on 23 July 2019 resulting in the diagnosis of bipolar II disorder reportedly incurred and aggravated by degeneration changes to his knees and legs. However, the applicant is currently 100% service connected for a variety of physical conditions as well as 100% for bipolar disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time to warrant a change to his discharge status. The applicant did undergo a medical board process while on active-duty status and was granted physical disability status at 20%. The applicant's medical separation took into account his behavioral health and physical symptoms prior to discharge. The applicant did not attend more than six months of treatment without improvement, nor did he require hospitalization in inpatient psychiatric treatment on two or more occasions, nor was he ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a change in his disability rating status from a behavioral health perspective, at this time.

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. The Board reviewed the applicant's medical records, personnel file, and the advisory opinion provided by medical authorities. The medical advisory concluded that there is insufficient evidence at this time to warrant a change to the applicant's discharge status. The record shows the applicant underwent a medical board process while on active duty and was granted physical disability status at 20 percent. The medical separation process considered both behavioral health and physical symptoms prior to discharge.

2. The record further reflects that the applicant did not attend more than six months of treatment without improvement, did not require hospitalization in inpatient psychiatric treatment on two or more occasions, and was never placed on a psychiatric permanent profile while on active service. The Board concurred with the medical advisory's findings. Under governing regulations, entitlement to physical disability retirement requires substantiated evidence that a service member's medical condition rendered

them unfit for continued service and met the criteria for permanent disability retirement. The applicant's medical evaluation resulted in a determination of 20 percent disability, which does not meet the threshold for retirement but instead supports separation with severance pay. The Board emphasized that the medical separation process appropriately considered the applicant's behavioral health and physical symptoms, and the determination was consistent with regulatory standards. Therefore, the Board denied relief.

3. 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. 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 VOTE:

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

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board

(DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted

and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

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

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

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in

this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

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.

//NOTHING FOLLOWS//