ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 3 December 2025

DOCKET NUMBER: AR20240011736

APPLICANT REQUESTS: Reconsideration of his previous requests for:

- Medical Retirement with retroactive pay (reconsideration)
- Combat Related Special Compensation (CRSC)
- Upgrade of his Army Commendation Medal to Bronze Star Medal with V Device, Soldiers Medal, Meritorious Service Medal, or Legion of Merit
- Addition of the Mississippi Emergency Medal to his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement of Events
- DA Form 1059 (Service School Academic Evaluation Report) Warrior Leaders Course (WLC) and Certificate
- DA Forms 638 (Recommendation for Award) Army Commendation Medal
- Army Commendation Medal Certificate
- Ranger School Volunteer Statement and Agreement
- Ultrasound Photo
- Enlisted Record Brief (ERB)
- Applicant's Attendance in Intensive Out-Patient Program
- Election of Rights
- Turn in of Equipment
- Email from Medical
- Police Department Citizens Complaint Form (2)
- Police Department Daily Activity Log
- Petty Offense Docket
- Child Abuse, Adult Abuse, and Domestic Abuse Standard Report
- Domestic Violence Petition/Motion
- DD Form 214 (Certificate of Release or Discharge from Active Duty) and DD Form 215 (Correction to DD Form 214)
- Honorable Discharge Certificate

- Emergency Order of Protection
- Motion to Amend Prior Domestic Violence Order
- Self-Authored Statement
- Letters to and from Senators/Representatives
- Petition for Dissolution of Marriage
- Copy of Letter Written to Attorney
- Findings of Fact, Conclusions of Law, and Final Decree of Dissolution of Marriage
- Civilian Court Documents
- Letter from Army Discharge Review Board (ADRB)
- Casualty Feeder Repot
- Adoption Evaluation
- Letter from [City] Police Department
- DNA Test Results
- Email from Applicant
- Purple Heart Certificate
- Email from County Veterans Service Officer (CVSO)
- Department of Veterans Affairs (VA) Rating Decision
- Clerk's Office Memo
- UPS Shipping Label
- Privacy Release Form
- Photographs
- Letters of Support
- Medical Documents
- Social Media Posts
- Excerpt from Department of Defense Instruction (DoDI) 1342.24 (Transitional Compensation for Abused Dependents)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20170010234 on 17 July 2020, AR20210015056 on 30 September 2022, and AR20230009885 on 23 April 2024.

2. In regard to the applicant's request for payment of CRSC, that portion of his request is premature. If the Board grants the applicant medical retirement, he will need to apply to U.S. Army Human Resources Command (AHRC) for payment of CRSC. This portion of his request will not be addressed further in this Record of Proceedings.

3. The applicant states, in pertinent part:

- During his deployment, his ex-wife was having an extramarital affair with an Army Reservist and [City], Kentucky police officer J- R. B-
- They were scamming the transitional compensation program for financial gain
- The applicant has overwhelming evidence and the police officer was forced to resign
- The applicant's career was shortened and it cost him a promotion
- He was not given a fair process, and he was due to have a Medical Evaluation Board (MEB)
- He should be receiving CRSC for being awarded the Purple Heart, but cannot receive that unless he is medically retired
- He was involved in six improvised explosive device (IED) explosions and is 100 percent total and permanently disabled by the VA
- He sustained post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), a knee injury, and a spinal injury
- He served this country honorably and did not deserve what happened to him
- When he was unjustly discharged, he had 72 days of accrued leave
- His ex-wife had stolen military equipment
- He did not get the money from his accrued leave days and owed the DoD for his ex-wife's actions
- He has filed complaints with the Federal Bureau of Investigation and to multiple Congress and Senate members throughout the years
- This has been going on for 14 years now
- He enlisted in the Army National Guard (ARNG) in 2003 and served with Operation Vigilant Relief, Hurricane Katrina in 2005
- He received the Mississippi Emergency Service Medal
- He was sent to the Primary Leadership Development Course in 2005 and terminated his contract with the ARNG to go on active duty in 2006
- He had two deployments one to Iraq from 2006 to 2007 and one to Afghanistan from 2008-2009
- Upon his return from Afghanistan, he went to the staff sergeant promotion board and was enrolled into Army Ranger School
- He was being treated for his injuries and received the Purple Heart
- He was due to have an MEB in 2010 and should have been medically retired and awarded CRSC
- He was not medically retired because of false allegations that were not investigated or vetted by the military
- When he returned from combat in 2009, he found that his ex-wife was in multiple extramarital affairs
- In addition, while he was training for another deployment, his ex-wife, at the direction of J- R. B-, accused him of abuse
- Seven days after the dismissal, J- R. B- falsified a police report, which was also later dismissed

- Due to the false allegations from his ex-wife and Officer J- R. B-, the Army discharged him with an under honorable conditions (General) discharge, which was later changed to honorable upon appeal
- After his discharge, his ex-wife and Officer J- R. B- defrauded the Transitional Compensation Program out of approximately $96,872.32
- J- R. B- admits to fraud in their County Social Study Adoption Evaluation
- J- R. B-'s ex-wife filed an Emergency Protective Order against J- R. B- for having an affair with the applicant's wife
- He is requesting the Board review the evidence he is submitting
- He is asking that his discharge be changed to medical retirement
- He was robbed of his career and the ability to take care of his family
- This would have been handled properly had he not been discharged and left homeless over false allegations for years
- He has sought help with multiple agencies regarding his ex-wife's fraud; no one wants to take ownership of this fraud that has occurred and effected his life for over 15 years
- His loyalty, duty, respect, selfless service, honor, integrity, and personal courage to this country has remained unwavering despite what has happened to him
- In 2022, he started a non-profit organization to help homeless veterans

3. The applicant provides and his service record shows:

- On 17 December 2005, he achieved course standards in WLC
- On 2 March 2006, he enlisted in the Regular Army
- Permanent Orders 190-100, were published awarding him the Army Commendation Medal from 8 May 2007 to 9 May 2007 for service as a vehicle operator, during Operation Iraqi Freedom
- On 14 June 2007, a Casualty Feeder Report shows the applicant was lightly wounded or injured in action due to hostile action
- In an undated memorandum, the applicant volunteered for ranger training and/or assignment
- On 18 September 2009, his ERB was published and shows he had service in Iraq from 20 October 2006 through 19 October 2007 and Afghanistan from 10 October 2008 through 10 March 2009 and
- On 27 October 2009, he accepted nonjudicial punishment for willfully disobeying a lawful order and making a false official statement
- On 2 February 2010, a memorandum, Attendant in Intensive Out-Patient Program was published, which states, in pertinent part:

    - The applicant had been screened at Behavioral Health
    - He met the criteria for PTSD or the effects/symptoms thereof

  - He would benefit from the Intensive Out-Patient Program Healing of Post Traumatic Effects
  - Enrollment in the program is not complete until the command's support is received

- An undated email from Medical Command states, in pertinent part:

  - The applicant was referred by the MEB Legal Outreach office
  - He had displayed suicidal tenseness and was recommended for outpatient treatment
  - His unit did not let him attend
  - Hid unit started a separation packet on the applicant
  - The MEB outreach counsel contacted the unit and provided legal advice
  - Legal is stating the unit may proceed with the administrative separation; however, the applicant must be recommended to the MEB because of existing medical conditions, prior to the unit recommendation for an administrative discharge

- On 25 March 2010, his commander initiated his separation for patterns of misconduct in that he disobeyed an order from a noncommissioned officer, made a false official statement, failed to report to duty, failed to obey a military protective order, failed out a air assault school, and was picked up by military police on three occasions for domestic assault
- On 1 April 2010, he was advised by his attorney of the basis for the initiation of separation; his election of rights states, "soldier is not cleared for chapter - see mental health evaluation; he was diagnosed with PTSD and TBI"
- On 31 July 2010, the applicant completed a [City] Police Department Citizens Complaint Form, which states, Officer B- and H- M- K- were having an affair and they violated a Domestic Violence Order by meeting with the applicant at a Walmart parking lot
- On 11 August 2010, a Report of Behavioral Health Evaluation was completed and shows:

  - He had the mental capacity to understand and participate in the proceedings
  - Was mentally responsible
  - He was diagnosed with adjustment disorder with mixed emotional features
  - His potential for self-harm, harm to others, and absent without leave was low
  - Treatment, at that time was deemed not to be necessary
  - He was psychiatrically cleared for any administrative action deemed appropriate by command
  - He was screened for PTSD and TBI and the results were negative
  - He had two deployments

- A Petty Offense Docket Sheet, 3 September 2010, shows the offense of domestic assault against the applicant was dismissed
- On 10 September 2010 a Child Abuse, Adult Abuse, and Domestic Abuse Standard Report was completed; H- M. K- stated she was afraid of the applicant and he had been extremely abusive during their marriage; the name of the officer filing the report was J- R. B-
- On 11 September 2010, H- M. K- completed a Domestic Violence Petition/Motion which resulted in the applicant being restrained from any communication with her and having to remain at least 500 feet away from her
- The applicant's chain of command recommended his separation and on 27 September 2010, the appropriate approval authority approved his separation with an under honorable conditions (General) discharge; there is no information on the separation memorandum regarding MEB processing
- On 1 October 2010, the applicant was discharged from the Army for pattern of misconduct with an under honorable conditions (General) discharge
- On 23 October 2010, A- M- completed a [City] Police Department Citizens Complaint Form against Officer J- R. B-
- On 4 November 2010, K- S- B- completed an Emergency Order of Protection against J- R. B- due to emotional trauma because of his infidelity
- On 10 November 2010, a Motion to Amend Prior Domestic Violence Orders was completed
- On 24 November 2010, a Petition for the Dissolution of Marriage between the applicant and K- S- B- was completed
- On 25 November 2010, a copy of a letter J- R- B- wrote to his attorney on terms and conditions for the Domestic Violence Order was submitted
- On 5 May 2011, a Findings of Fact, Conclusion of Law and Final Decree of Dissolution of Marriage between the applicant and K- S. B- was completed
- On 25 May 2012, his discharge was upgraded to Honorable and the reason for separation was changed to Secretarial Authority following application to the ADRB on 2 November 2011
- On 24 June 2019, an Adoption Evaluation was completed and is available for the Board's review
- On 11 November 2019, the [City] Police Department wrote the applicant a letter stating former Officer J- R. B- resigned from their department on 8 November 2010
- On 26 May 2021, his DD Form 214 was corrected by adding award of the Purple Heart
- On 14 June 2021, a CVSO stated in an email the applicant did not receive a medical retirement, which she believes was a serious oversight on their part
- On 9 September 2023, a VA rating decision shows he received the following disabilities:

  - 100 percent for PTSD
  - 30 percent for post traumatic headaches
  - 10 percent right knee patellar tendonitis
  - 10 percent tinnitus
  - 10 percent residuals of TBI
  - 10 percent gastroesophageal reflux disease

- Letters to and from Congress regarding the applicant's requests are available for the Board's review
- The applicant provides the following for the Board's review:

  - Photographs
  - Letters of support
  - Medical documents, which will be reviewed by the Army Review Boards Agency (ARBA) medical section who will provide a medical review
  - Social Media Posts from H- R-
  - Excerpt from DoDI 1342.24

- The applicant's service record is void of medical documentation, an MEB, or a PEB or information showing he was being referred to an MEB/PEB

4. The applicant previously petitioned the Board for correction of his records to change his discharge to medical retirement.

- AR20170010234, 17 July 2020, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to his narrative reason for separation
- AR20210015056, 21 April 2022, the Board found insufficient new evidence to support a recommendation to change their previous decision in the case
- AR20230009885, 23 April 2024, after a review of the evidence found within the military record, the Board found relief was not warranted

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR requesting, in essence, referral to the Disability Evaluation System and a medical retirement. He states in part:

"... I wasn't given a fair process as I was due to be Med Boarded out. I should also be receiving CRSC (Combat Related Special Compensation) for my Purple Heart, but cannot receive that unless I am medically retired. From the 6 IED explosions I was involved in, I am l00% Total and Permanent Disabled by the VA. I sustained PTSD, TBI, a knee injury, and a spinal injury to my C-5 and C-6.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows the former infantryman entered the regular Army on 3 March 2006 and was honorably discharged on 1 October 2010 under the separation authority provided in paragraph 5-3 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Secretarial Authority. The reenlistment code of 1 means he was fully qualified to reenter the Army. The DD 214 shows he served in both Iraq and Afghanistan. He was awarded a Combat Infantryman Badge.

d. This request was denied by the ABCMR on 17 July 2020 (AR20170010234) and again by the ABCMR on 22 April 2022. Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. A 14 June 2007 Casualty Feeder Report (DA Form 1156) states the applicant was lightly wounded or injured in action. A 7 July 2007 Individual Sick Slip shows the applicant was on a profile for continued pain in his right knee following this injury.

f. He was initially diagnosed with a contusion of the right knee and seen for this issue on 21 July 2007 and diagnosed with prepatellar bursitis.

g. The EMR shows a 29 April 2008 MRI of the knee was normal. It also shows the applicant continued to be seen intermittently for right knee pain and was for which he was treated conservatively. He was seen for left knee pain on 14 May 2009 and diagnosed with patellofemoral syndrome. On 5 August 2009, he stated he hurt his right leg/knee on a road march and it really began to hurt after a run. From a 28 August 2009 encounter for right leg pain:

"Pt (patient) initially noticed his injury while running a little less than two years ago. Pt states that anything other than running makes it better. He is able to withstand impact exercises such as side straddle hops. Running is what makes it worse. Pt is able to use the elliptical and stationary bike which help out for a cardio workout. Pt describes his pain as a shin splint from his ankle up to his knee engulfing his entire

lower leg. Pain does not radiate. Pt was told previously he had shin splints about 2-3 weeks ago."

h. The medical evidence from Veterans Hospital Administration documents showing he has cervical spine arthritis (2019), avascular necrosis of the right femoral head (2014), and a small vascular anomaly on MRI of the Brain (2012)

i. There remains insufficient probative evidence the applicant had one or more duty incurred physical medical conditions would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows the VA has awarded him multiple service-connected disability ratings, including one for PTSD (100%), migraine headaches (30%), limited flexion of knee (10%) and traumatic brain disease (10%). However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

k. It is the opinion of the ARBA medical advisor that a referral to his case to the DES remains unwarranted.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior requests for a medical retirement. In part, the applicant asserts PTSD and traumatic brain injury (TBI) are related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP).

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 VA, military, and civilian medical documentation provided by the applicant were also examined.

c. There is sufficient evidence the applicant was deployed to areas of combat and exposed to IED blasts. There is insufficient evidence the applicant engaged in behavioral health treatment till August 2009 where he was seen both at the Family Advocacy Program (FAP) and behavioral health services due to depressive, anxiety,

suicidal and homicidal ideations. The primary focus of his behavioral health concerns were related to significant marital, family, and occupational problems, and he was diagnosed with corresponding conditions such as problems related to family circumstances and marital and partner relational problems. The applicant consistently attended appointments at behavioral health services and FAP, and his diagnosis was changed to Adjustment Disorder with Disturbance of Emotions and Conduct in November 2009 at behavioral health services due to an increase in depressive symptoms and thoughts of harming others in his unit. Also in November 2009, the applicant was referred to neurology due to reported symptoms of "blacking out." The applicant underwent evaluation and treatment of migraine headaches in 2010, and he was evaluated for evidence of residual TBI. His brain MRI and electroencephalogram (EEG) were both normal. There was insufficient evidence the applicant was ever placed on a profile for a TBI.

In December 2009, the applicant was admitted into an inpatient civilian psychiatric treatment program after ingesting an overdose of Percocet with an intent to kill himself. The applicant reported taking the overdose in the context of occupational and marital stressors. He also reported an increase in anger and anxiety attacks. The applicant was also prescribed psychiatric medication, and he was recommended for continued individual therapy. His diagnosis at discharge was Adjustment Disorder with Depressed Mood. However, the applicant did not continue to attend regular behavioral health therapy, but he did consistently attend therapy at FAP where he was diagnosed with partner relationship problems. In February 2010, the applicant was seen by behavioral health services again and recommended for an Intensive Outpatient Program (IOP) due to screening positive for symptoms of PTSD and TBI. However, the applicant did not attend the IOP program or regular behavioral health treatment following this recommendation. Again, He did consistently attend therapy at FAP where he was diagnosed with marital or partner relationship problems. The applicant also consistently attended medication management appointments, and he was noted to have reported an improvement in overall symptom by his treating psychiatrist in March 2010 due to improvement with his marriage, and the provider noted an administrative separation was appropriate due to the applicant's reported improvement of symptoms related to his situational changes. There was also evidence the applicant was enrolled in Command Directed substance abuse treatment related to alcohol being involved in a domestic disturbance allegation. Later in the Summer 2010, the applicant did complete an IOP program with notable improvement in symptoms and was diagnosed with an Adjustment Disorder at the completion of the program in August 2010. In September 2010, the applicant reported to behavioral health services not as an emergency walk-in. He stated he had been approved to deploy again, but he was uncertain at the status of his administrative separation proceedings. The applicant's last encounter with behavioral health services was in October 2010, as part of his out-processing procedure. He was not diagnosed with a mental health condition, but he was reported to have a history of anxiety, adjustment disorder, alcohol dependence. There insufficient evidence the

applicant was consistently diagnosed with a mental health condition including PTSD or TBI, which was determined to not medical retention standards. There was insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, placed on a permanent psychiatric profile or a profile related to a TBI, or required inpatient psychiatric treatment on two or more occasions.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with a service-connected PTSD and residuals of TBI at his discharge, and he does receive service-connected disability for these conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence which would warrant a change to the applicant's discharge. There is sufficient evidence the applicant was deployed to areas of combat and exposed to IED blasts, which resulted in TBI and the applicant being diagnosed with service-connected PTSD by the VA. There is also evidence the applicant was experiencing symptoms of PTSD and TBI during his active service. However, also during the applicant's active service, there is sufficient evidence he was experiencing significant legal, marital, and occupational stressors, which was the predominate focus of his mental health symptoms and treatment at that time. Thus, during the applicant's active service, there is insufficient evidence the applicant was diagnosed with or treated for a TBI determined to not meet the medical retention standard. In addition, there is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD, which was determined to not medical retention standards, was engaged in six months or more of behavioral health treatment without improvement, was ever placed on a permanent psychiatric profile, or required inpatient psychiatric treatment on two or more occasions. Therefore, there is insufficient evidence the applicant warrants a referral to IDES to be assessed for a medical retirement related to a mental health condition including PTSD or TBI at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence which would warrant a change to the applicant's discharge. There is sufficient evidence the applicant was deployed to areas of combat and exposed to IED blasts, which resulted in TBI and the applicant being diagnosed with service-connected PTSD by the VA. There is also evidence the applicant was experiencing symptoms of PTSD and TBI during his active service. However, also during the applicant's active service, there is sufficient evidence he was experiencing significant legal, marital, and occupational stressors, which was the predominate focus of his mental health symptoms and treatment at that time. Thus, during the applicant's active service, there is insufficient evidence the applicant was diagnosed with or treated for a TBI determined to not meet the medical retention

standard. In addition, there is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD, which was determined to not medical retention standards, was engaged in six months or more of behavioral health treatment without improvement, was ever placed on a permanent psychiatric profile, or required inpatient psychiatric treatment on two or more occasions. Therefore, there is insufficient evidence the applicant warrants a referral to IDES to be assessed for a medical retirement related to a mental health condition including PTSD or TBI at this time.

(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.

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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising officials finding insufficient evidence to support a referral to IDES process for a mental health or physical condition at this time. The Board noted, the opine found no evidence he was diagnosed with this condition during service, nor that the conditions he did have (or may have had) rendered him unfit for duty. The Board agreed there is insufficient evidence that the applicant was not fit for duty from a mental health standpoint, that he was on a psychiatric profile, that he did not meet medical retention standards, nor that he was at the medical readiness decision point and needed a referral to the IDES process. The Board recognized the applicant's request for referral to the DES for a behavioral health condition, however it is without merit and relief was denied.

2. The Board determined that the applicant did not provide sufficient justification to warrant the upgrade of his Army Commendation Medal to Bronze Star Medal with V Device, Soldiers Medal, Meritorious Service Medal, or Legion of Merit. The Board concluded the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature with documentation to support the applicant's request for the upgrade. Based on this the Board determined relief was not warranted and denied relief.

3. The Mississippi Emergency Medal awarded for service during Operation Vigilant Relief is a state award and therefore is reflected on a National Guard Bureau (NGB)

Form 22 (National Guard Report of Separation and Record of Service). The Board denied the applicant's request to correct his DD Form 214 to reflect a state award.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 Board found 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. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. 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.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

4. 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 Physical DES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DoDI 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, 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, HRC.

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.

5. 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.

6. 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.

7. 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.

8. 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.

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

10. Army Regulation 600-8-22 (Military Awards) prescribes policies and procedures for military awards. It states:

a. The BSM is awarded in time of war for heroism and for meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy, or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

b. The bronze "V" device indicates acts of heroism involving conflict with an armed enemy and authorizes the device in conjunction with awards of the Bronze Star Medal, Army Commendation Medal, Air Medal, and the Joint Service Commendation Medal.

c. The Secretary of the Army is authorized to award the Soldier's Medal to any person of the Army Forces of the United States who, while serving in any capacity to include in the Reserve Component, distinguishes him/herself by heroism not involving actual combat with an enemy.

(1) The minimum degree of heroism required is comparable to that of the Distinguished Flying Cross for heroism. The extraordinary act must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from their comrades or from other persons in similar circumstances. (The heroism criteria for the Distinguished Flying Cross are:

- (The performance of the act of heroism must be evidenced by voluntary action above and beyond the call of duty)
- (The extraordinary achievement must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from their comrades or from other persons in similar circumstances)

(2) The heroism must have involved a clearly recognizable personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards will not be made solely on the basis of saving a life, assisting emergency personnel, or acting as a good Samaritan.

(3) The Soldier's Medal may be awarded for noncombat heroism in a combat zone or an area designated for imminent danger pay, hostile fire pay, or hazardous duty pay.

(4) If downgraded, a Soldier's Medal recommendation will be downgraded to an Army Commendation Medal.

(5) All Soldier's Medal recommendations are to be forwarded to the U.S. Army Human Resources Command for determination.

d. The Meritorious Service Medal is awarded to members of the Armed Forces of the United States or of a friendly foreign nation who distinguish themselves by outstanding meritorious achievement or service in a noncombat area. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

e. The Legion of Merit is awarded to any servicemember of the Armed Forces of the United States or a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievements.

f. The ARCOM is awarded to any Servicemember of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes themselves by heroism, meritorious achievement, or meritorious service. Award may be made to a member of the armed forces of a friendly foreign nation who, after 1 June 1962, distinguishes themselves by an act of heroism, extraordinary achievement, or meritorious service which has been of mutual benefit to a friendly nation and the U.S.

(1) The ARCOM may be awarded for combat-related service or achievement after 29 February 1964.

(2) Awards of the ARCOM may be made for acts of valor performed under circumstances described above which are of lesser degree than required for award of the Bronze Star Medal. These acts may involve aerial flight. A bronze letter “V” (for valor) is worn on the suspension and service ribbon of that medal.

(3) The ARCOM may be awarded with the “C” device to recognize exceptionally meritorious service or achievement performed under combat conditions on or after 7 January 2016.

11. Army Regulation 635-8 (Separation Processing and Documents) states, in pertinent part, for Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized), list all federally recognized awards and decorations for all periods of service. Do not enter foreign or State level awards on DD Form 214. State awards and decorations will be entered on NGB Form 22 (National Guard Report of Separation and Record of Service) upon separation from the Army National Guard.

//NOTHING FOLLOWS//