

Iraq. Sgt. Hayhurst developed Post-Traumatic Stress Disorder (PTSD) as a result of these traumas suffered in the line of duty.

3. However, despite overwhelming evidence demonstrating Sgt. Hayhurst incurred PTSD from combat, he was administratively separated from the Army for an alleged “personality disorder,” without retirement or benefits.

4. Generally, when the Army determines that a soldier has a disability leaving them unfit for continued military service, the soldier is referred into the Disability Evaluation System (“DES”) process in order to be separated from service with either (1) medical separation, or (2) medical retirement. Disabilities warranting DES processing include panic disorders, such as PTSD, incurred in the line of duty.

5. Whether a service member referred into DES is medically retired or separated turns on the combined disability rating assigned to the injuries or conditions that render the service member unfit for continued service. In assigning disability ratings, the Army is required by statute and Army Regulations to apply the U.S. Department of Veterans Affairs Schedule for Rating Disabilities (“VASRD”). *See* 10 U.S.C. § 1216(b)(2) and Army Reguls. 635-40 ¶ 4-22. If the service member is assigned a combined disability rating of less than 30%, the service member is administratively separated. If the service member is assigned a combined disability rating of 30% or more upon review by a Physical Evaluation Board, the service member is medically retired. A medical retiree is entitled to military medical retirement and corresponding benefits.

6. Certain conditions, however—like a personality disorder—can never result in DES processing or a medical retirement. Instead, when a service member’s personality disorder

interferes with performance of his military duties, the service member is administrative separation without benefits.

7. Despite the overwhelming evidence that Sgt. Hayhurst suffered from combat induced PTSD to a degree meriting medical retirement, the Army instead mis-classified his PTSD as a personality disorder, resulting in his administrative separation. Due to his administrative separation, Sgt. Hayhurst was denied DES processing and the resulting award of a medical separation or retirement with the appropriate benefits under 10 U.S.C. § 1201.

8. To correct the Army's error, Sgt. Hayhurst appealed for relief from the Army Board of Correction of Military Records (the "Army Board") under 10 U.S.C. § 1552(a)(1), which allows the Secretary of the Army to change the record of any service member to correct an error or remove an injustice, including being discharged without proper disability processing. In his application to the Army Board, Sgt. Hayhurst requested the Army Board correct the personality disorder designation to PTSD and to award him medical retirement.

9. The Army Board sought a recommendation from the Army Board Review Agency (the "Army Review Agency") to determine how to proceed with Sgt. Hayhurst's discharge. The Army Review Agency, which oversees the Army Board, issued an Advisory Opinion in which they determined that evidence presented by Sgt. Hayhurst indicated "there is no evidence to support the personality disorder diagnosed. It is more likely than not that his Adjustment Disorder symptoms were precursors to development of PTSD." As a result, the Army Board granted Sgt. Hayhurst "partial relief" in the form of referral to the Office of the Army Surgeon General for review to determine whether the disability evaluation he received from the Army at the time of discharge accurately depicted his conditions as they existed at the time and whether he should be referred into the DES for disability processing.

10. Yet, in direct conflict with the Army Review Agency's prior finding that the evidence did not support Sgt. Hayhurst having a personality disorder, the Army Board neither corrected Sgt. Hayhurst's military record, nor referred him into the DES for medical retirement due to PTSD. Indeed, the Army Board improperly abdicated its authority to correct records under 10 U.S.C. § 1552 to the Office of the Army Surgeon General. On February 2, 2022, Sgt. Hayhurst was informed by the Army Review Boards Agency, that the Office of the Surgeon General upheld Sgt. Hayhurst's discharge for personality disorder. As a result, the Army Board made no change to Sgt. Hayhurst's discharge.

11. In failing to recognize that Sgt. Hayhurst did not merit a medical retirement for his duty-limiting PTSD, the Army violated the Administrative Procedures Act and failed to honor its duty to Sgt. Hayhurst—that it not abandon him after he was wounded in service to his country.

JURISDICTION AND VENUE

12. Jurisdiction in this Court stems from a federal question and is proper under 28 U.S.C. §§ 1331, 2201, and 2202. Plaintiff seeks relief under the APA, 5 U.S.C. § 701 et seq.

13. The Army Board's decision constitutes a final agency decision for which there is no other adequate remedy in a court. *See id.* § 704.

14. Venue is proper under 5 U.S.C. § 703 because this is a Court of competent jurisdiction.

PARTIES

15. The Plaintiff, Sergeant Benjamin J. Hayhurst, is a citizen of the United States now residing in [REDACTED] that served honorably in the United States Army from September 29, 1999 until September 30, 2005.

16. The Defendant is the United States of America, acting by and through the Department of the Army, an agency of the United States government. This Complaint may interchangeably refer to the Defendant as the “United States,” “Defendant,” and “Army.”

FACTUAL ALLEGATIONS

I. Sgt. Hayhurst Developed PTSD During His Iraq Deployment in April 2004 Necessitating His Discharge from Service in September 2005

i. Background: PTSD vs. Personality Disorder

17. Department of Defense Instruction 1332.38 E4.13.1 provides that throughout the DES, the “terminology and diagnostic concepts . . . are in consonance with the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV).”

18. According to DSM-IV, Text Revision (“TR”), the version of the DSM-IV in effect at Sgt. Hayhurst’s discharge, PTSD is an appropriate diagnosis where: 1. “The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others;” and 2. “The person’s response involved intense fear, helplessness, or horror.”

19. PTSD is thus a mental health disorder that can develop after an individual experiences, witnesses, or undergoes a traumatic event, often one that causes or threatens grave physical harm or death to that person or others involved in the incident.

20. PTSD was classified by the American Psychiatric Association as a distinct mental health disorder in 1980. Prior to 1980, U.S. Armed Services personnel suffering from combat-stress related disorders were commonly classified as suffering from “shell shock,” “combat fatigue,” or “traumatic war neurosis.”¹ The recognition of PTSD as a distinct mental health disorder has enabled mental health professionals to provide early assessment and diagnosis of the condition so that individuals can receive intervention and proper treatment, thus enabling them to cope with the effects of this devastating disorder and lead healthy and fulfilling lives.

21. Almost 3 million U.S. Armed Services personnel have been deployed around the world as part of the U.S. efforts to combat global terrorism since the events of September 11, 2001. Countless numbers of these service men and women have been exposed to traumatic events during combat, and many have returned home with a variety of psychological and mental injuries, including PTSD. Indeed, Operation Enduring Freedom (the official name of the war in Afghanistan) and Operation Iraqi Freedom (the official name of the war in Iraq) have produced an unprecedented number of service personnel suffering from PTSD, making PTSD the most prevalent psychological disorder resulting from these conflicts.

22. The Department of Veterans Affairs has reported that up to 20% of the veterans who served in Afghanistan or Iraq may have PTSD.

23. Service personnel that suffer from PTSD exhibit a wide range of symptoms. Those afflicted may suffer crippling flashbacks that cause them to replay the traumatic event or events, while others may tend to avoid places, people, or other things that may remind them of the triggering event, thus compromising the daily routine of ordinary life. Many may experience trouble controlling emotions and exhibit abnormal irritability or anger to those around them.

¹ Michael J. Friedman, Paula P. Schnurr, Annmarie McDonagh-Coyle, MD, 17 *Post-traumatic stress disorder in the military veteran*, *Psychiatric Clinics North Am.* 265-77 (1994).

Victims of PTSD also may have difficulty concentrating, have long-term or short-term memory loss, swing from pangs of grief to emotional numbness, suffer from depression, or experience sleep disorders. These and other symptoms may last for minutes, or continue for days, weeks, or years.

24. A veteran suffering from PTSD faces daunting obstacles as a result of his or her injury, including, but not limited to: difficulty readjusting to work or maintaining employment; difficulty interacting with others; feelings of estrangement or detachment; nightmares and sleep deprivation; impaired functioning; occupational instability; memory disturbances; and family, parenting or marital discord. Early treatment of PTSD can help lessen the severity and symptoms of PTSD and help those veterans afflicted by it lead healthy and fulfilling lives.

25. A personality disorder, on the other hand, is defined under DSM-IV-TR as an “enduring pattern of inner experience and behavior that deviates markedly from the expectations that manifests in at least two of the following areas: (1) cognition (i.e., ways of perceiving and interpreting self, other people, and events) ; (2) affectivity (i.e., the range, intensity, lability, and appropriateness of emotional response); (3) interpersonal functioning; and (4) impulse control.” The pattern of behavior, according to DSM-IV-TR, must be “inflexible and pervasive across a broad range of personal and social situations,” cause clinically significant distress, and be “stable and of long duration” with “onset [that] can be traced back at least to adolescence or early adulthood.” Additionally, according to DSM-IV-TR, the enduring pattern must not be better accounted for as a manifestation or consequence of another mental disorder. Similarly, Army Regulation 635-200 § 5-13(a) defines a personality disorder as a “deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier’s ability to perform duty.”

As detailed below, Sgt. Hayhurst's records demonstrate that he suffered from a PTSD condition manifesting while in service after the siege of Sadr City and persisting immediately after his discharge; evidence which the Army improperly declined to consider in failing to submit him to DES processing for his PTSD condition. Furthermore, the Army mis-diagnosed Sgt. Hayhurst with a personality disorder in direct contravention to documented evidence demonstrating Sgt. Hayhurst's PTSD condition was incurred in the line of duty.

ii. Sgt. Hayhurst did not have a personality disorder

26. As noted, the Army defines a personality disorder as a "deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty." The Army Board wrongly maintains Sgt. Hayhurst has a personality disorder. Pre-service, as an adolescent and young adult, Sgt. Hayhurst never demonstrated a pattern of behavior that was inflexible and pervasive across personal and social situations as is specified for a diagnosis of personality disorder. Similarly, Sgt. Hayhurst's in-service record contained no evidence of long-standing behavioral or misconduct issues prior to, during, or after his deployment to Iraq that would warrant a "personality disorder" diagnosis. In fact, Sgt. Hayhurst's commander expressly found otherwise, finding that "SGT Hayhurst gets along very well with others in the unit."

27. Sgt. Hayhurst's post-discharge record also supports a diagnosis of PTSD, not a personality disorder. On April 27, 2006, Sgt. Hayhurst received a compensation and pension examination from the U.S. Department of Veterans Affairs ("VA") that was extensively documented by VA Psychiatrist Cynthia Holm, M.D. In her examination, Dr. Holm found "[t]he veteran had a history of *fair psychological functioning prior to joining the Army*[".]" Dr. Holm's evaluation also confirmed that a diagnosis of personality disorder would have been

inappropriate, where she found that Sgt. Hayhurst “showed superior functioning during his first several years in the Army[.]”

iii. Sgt. Hayhurst’s near-death experiences in Iraq caused his PTSD

28. Sgt. Hayhurst incurred PTSD as a direct result of his service in Iraq. During March 2004, Sgt. Hayhurst was deployed with the First Cavalry to Iraq. The First Cavalry Division came under surprise attack in Sadr City on April 4, 2004, now known as “Black Sunday.” The siege in Sadr City was filled with terror for many soldiers and their families, with its significance now embedded in history. During this attack, Sgt. Hayhurst suffered was wounded in the left shoulder and upper arm when his combat unit was ambushed. He was medically transported and treated stateside before later returning to combat (as discussed further below). Sgt. Hayhurst was awarded a Purple Heart, the Army Commendation with Valor Device, and the Combat Infantry Badge for his honorable service in Iraq.

29. The degree of trauma faced by Sgt. Hayhurst and other soldiers during the siege of Sadr City has been repeatedly confirmed by various sources, including news outlets. In 2007, ABC News’ chief correspondent Martha Raddatz recounted Black Sunday through the eyes of the courageous American men and women who lived it, including Sgt. Hayhurst, in her book *The Long Road Home: A Story of War and Family*.

30. In 2017, Ms. Raddatz’s book was adapted into a National Geographic miniseries titled, “The Long Road Home.” The description of the first episode, “Black Sunday, Part 1,” which reached 1.099 million views, notes, “[t]he First Cavalry Division launches a rescue mission when one of their platoons is ambushed by thousands of enemy insurgents in Sadr, a suburb district of Baghdad. As news breaks, the lives of the soldiers and their families at Fort Hood are thrown into chaos and uncertainty.” In the *Long Road Home*, Patrick Schwarzenegger

was cast as Sgt. Hayhurst to portray the Sergeant's role and experience during the siege of Sadr City.

31. Based on interviews with First Cavalry Division soldiers in "The Long Road Home," Ms. Raddatz recounted the fear of facing the unpredictable in enemy territory, "[t]his was the hell of urban warfare: The enemy knows the streets and every conceivable place to hide." *See* Martha Raddatz, *The Long Road Home* 88 (2004). The book also recounted that the "enemy" ambushed the division by "hopping from one adjoining rooftop to the next, getting closer and closer to the platoon, lobbing grenades, squeezing out five or six rounds of rifle fire, and then ducking for cover, only to pop up again a few minutes later." *Id.* As noted in the story, at one point the "platoon had been under attack for more than thirty minutes and there was no sign of a rescue." *Id.* at 89.

32. The story also noted that, while under attack, "Sergeant Benjamin Hayhurst – who had been firing from a crouched position near the outer wall of the roof – went down." And that Sgt. Hayhurst shouted, "Sergeant D., I'm shot. I'm shot!" *Id.* Further, the book provided an account of these harrowing moments for Sgt. Hayhurst, noting that at that moment, "[h]e had been hit in the shoulder – it wasn't life-threatening but was bad enough that he couldn't keep firing." and that another Sergeant, Sgt. Davis, told him to "lie flat on the roof." *Id.* This traumatic moment was captured in the below photograph of Sgt. Hayhurst on Black Sunday, *Id.* at 321:



Sergeant Benjamin Hayhurst on the alleyway rooftop, moments after being shot in the shoulder, April 4. (PHOTO BY SPECIALIST CARL WILD)

33. In her Appendix, Ms. Raddatz describes the lives of many soldiers following the aftermath of Black Sunday. Many soldiers were diagnosed with PTSD after the Sadr City attack. Sergeant Robert Miltenberger recounts, “[h]e was later diagnosed with PTSD, and says no amount of therapy could make him stop thinking about that day.” *Id.* at 316. The excerpts in the book describe how the Sadr City attack in particular caused PTSD for many soldiers—as was the case for Sgt. Hayhurst.

iv. Sgt. Hayhurst’s in-service medical records evidence he developed significant PTSD symptoms during his Iraq deployment that continued through his discharge

34. Despite the traumatic experiences he faced in Sadr City, Sgt. Hayhurst wanted to return to combat and was re-deployed in June of 2004 through March of 2005 despite his injuries. Unfortunately, he returned to a situation of heavy combat in Sadr City where he soon began experiencing panic attacks and eventually broke down into a state of fearfulness and hypervigilance. This breakdown was one of the first manifestations of Sgt. Hayhurst’s PTSD.

35. Extensive record evidence establishes Sgt. Hayhurst developed PTSD as a result of the siege of Sadr City. While deployed, Sgt. Hayhurst sought treatment from the Combat

Stress Team, resulting in his being diagnosed with depression and treated with Zoloft and trazodone. Sgt. Hayhurst's PTSD symptoms continued upon his return stateside from Iraq. Sgt. Hayhurst's wife found that Sgt. Hayhurst would "wake up . . . standing by the window watching for intruders." Sgt. Hayhurst eventually reported to an Army psychologist at the Army Medical Center Darnall Hood for treatment for nightmares, anxiety, and other PTSD-related symptoms. Army psychologist, Gerald Matthews, M.D., diagnosed Sgt. Hayhurst with PTSD and depression and suggested a fitness evaluation.

36. On May 18, 2005, Sgt. Hayhurst underwent a "Million Clinical Multiaxial Inventory – III" exam², which showed he suffered from an "Axis I Disorder," such as PTSD or Major Depression Disorder, and not an "Axis II Personality or Intellectual Disorder."

37. On May 23, 2005, upon the request of his stateside commander, Sgt. Hayhurst underwent a next mental health status examination out of concern that he showed "signs of PTSD." His commander, Troy M. Denomy, noted that while "SGT Hayhurst gets along very well with others in the unit," he "never fully recovered mentally and emotionally from being shot." Importantly, his commander did not believe his separation from the military was necessary, but rather that Sgt. Hayhurst's PTSD left him "unable to remain in MOS 11B," his military occupational specialty of infantryman.

38. The ensuing mental health evaluation requested by Sgt. Hayhurst's commander—documented by just a single page—summarily found Sgt. Hayhurst to "manifest [] a personality disorder" for which he was to be administratively discharged. This assessment did not mention

² The Million Clinical Multiaxial Inventory (MCMI) II/III Interpretive System provides clinical interpretation based on base rate scores hand-entered from an MCMI II or III administration. MCMI is a psychological assessment intended to provide information on psychopathology, including specific disorders outlined in the DSM-IV. *See* VA Technical Reference Model v 22.6: Million Clinical Multiaxial Inventory (MCMI) II/III Interpretive System, Mar. 12, 2022.

any consideration or evaluation of PTSD, even though it was the specific basis of the mental evaluation request by his commander. On August 16, 2005, his commander notified him of the pending separation action and, on September 30, 2005, Sgt. Hayhurst separated from service under the impression that he was discharged due to his PTSD.

39. Thus, despite ample in-service evidence of Sgt. Hayhurst's PTSD, Army psychologist Dr. Matthews' *diagnosis* of PTSD, and the Million Clinical Multiaxial Inventory – III *finding* of PTSD, the Army improperly administratively separated Sgt. Hayhurst for a personality disorder instead of properly submitting him to DES processing for his PTSD condition.

v. *Post-discharge medical records show the symptoms the Army attributed to personality disorder were actually symptoms of PTSD*

40. There is also ample post-discharge medical evidence that Sgt. Hayhurst suffered from service-related PTSD rather than a personality disorder. Upon separation from service, Sgt. Hayhurst filed a compensation claim for PTSD with the VA. As discussed above, in response to Sgt. Hayhurst's claim, a compensation and pension examination was conducted on April 27, 2006 by Dr. Holm at the VA Medical Center in Wala Wala, Washington. Dr. Holm concluded Sgt. Hayhurst "clearly developed PTSD symptoms *after* being wounded during an ambush in April 2004. PTSD symptoms interfered with his ability to function as a combat soldier, and *necessitated his separation* from the Army in September of 2005. Unfortunately, symptoms have *persisted....*" (emphasis added).

41. On June 6, 2006, the VA issued a Rating Decision, conferring service connection and ascribing a 50 percent disability rating to his PTSD, effective October 1, 2005. His rating was based on his in-service medical records from July 19, 1999 through July 14, 2005, post-treatment VA records, and Dr. Holm's April 26, 2006 Compensation and Pension examination.

The VA subsequently increased his disability rating from 50 percent to 70 percent on January 22, 2009, effective from discharge.

II. Sgt. Hayhurst's Appeals to the Army Board

42. Sgt. Hayhurst appealed *pro se* to the Army Board for Correction of Military Records on three separation occasions (in 2009, 2012, and 2014) seeking to correct his discharge to remove the “personality disorder” mis-diagnosis and obtain DES processing for his PTSD condition.³ He was denied each time.

43. In September of 2018, he appealed again, with the help of counsel from the National Veterans Legal Services Program. In a decision dated December 8, 2020, mailed to Sgt. Hayhurst on May 11, 2021, the Army Board noted it had obtained an Advisory Opinion from the Army Review Board Agency (the “Army Review Agency”) Medical Advisor as part of its consideration of the application. That Advisory Opinion determined that there was “*no evidence to support the personality disorder diagnosed*” and that Sgt. Hayhurst’s case be referred to DES processing for his PTSD condition (emphasis added).

44. Instead of following the Advisory Opinion, the Army Board improperly remanded the request to the Office of the Army Surgeon General. Upon remand, the Office of the Surgeon General denied Sgt. Hayhurst DES processing for his PTSD condition, as further detailed below. Thus, after nearly fifteen years seeking proper relief, Sgt. Hayhurst’s request has been denied for a fourth time. In these fifteen years, the Combat Stress Team and Army psychologist Dr. Matthews at Monroe Health Center, VA Psychiatrist Dr. Holm at Walla Walla VAMC, and the

³ Sgt. Hayhurst pursued relief from the Army Board for almost 15 years. His first submission was erroneously denied on the grounds that he has a personality disorder. His subsequent two submissions were denied on the basis that they were not timely. He now brings this action under the Administrative Procedures Act after exhausting all administrative remedies for relief. *See infra* COUNT I.

Army Review Agency have *all* confirmed Sgt. Hayhurst suffered from PTSD in service. Yet, the Army Board continues to refuse to submit Sgt. Hayhurst to DES processing or correct his discharge records, in direct contravention of the applicable regulations.

i. The Army Review Agency's Advisory Opinion of PTSD

45. The Army Review Agency's advisory opinion directly refutes the conclusion of the Office of the Surgeon General. The Army Review Agency concluded that the developmental history recorded in Sgt. Hayhurst's VA examination "does not indicate any symptoms/behavior consistent with a personality disorder." Specifically, "[i]n accordance with the 3 September 2014 Secretary of Defense Liberal Guidance Memorandum and the 25 August 2017, Clarifying Guidance⁴ there is documentation to support a behavioral health condition at the time of his discharge. While he was evaluated and found to meet retention standards, there is no evidence to support the personality disorder diagnosed." Therefore, Sgt. Hayhurst's administrative separation due to a "personality disorder" diagnosis was again found unwarranted.

46. Not only did the Army Review Agency's Advisory Opinion determine that the personality disorder was unfounded, but it further opined the symptoms wrongly attributed to personality disorder were most likely properly attributable to PTSD. Specifically, the Advisory Opinion stated, "[i]t is more likely than not that his Adjustment Disorder symptoms were precursors to development of PTSD." Accordingly, the Army Review Agency recommended that because Sgt. Hayhurst "did not receive a period of treatment to determine if referral to the Disability Evaluation System (DES) was needed due to his discharge[, w]ith an abundance of

⁴ See further Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, Aug. 25, 2017.

caution, it is recommended that his case be referred to DES for consideration regarding medical retirement for PTSD.”

47. Despite the unequivocal findings by the Army Review Agency’s medical advisor that Sgt. Hayhurst did not suffer from a personality disorder at discharge and its recommendation that Sgt. Hayhurst be referred to the DES for consideration regarding medical retirement for PTSD, the Army Board took no action to ensure that Sgt. Hayhurst’s DD-214 separation paper no longer referenced personality disorder.

48. Instead, the Army Board acted arbitrarily, capriciously, contrarily to law and in a manner unsupported by substantial evidence by forwarding Sgt. Hayhurst’s case not into the DES system but to the Army Surgeon General to determine if Sgt. Hayhurst should have been medically retired for his PTSD.

ii. The Surgeon General’s Erroneous Determination

49. On February 2, 2022, the Army sent Sgt. Hayhurst a letter stating that the Surgeon General determined that he did not require disability processing for PTSD at the time of separation. The letter included an enclosure from the Office of the Surgeon General, dated January 26, 2022, which indicated that the Office of the Surgeon General, in response to the Army Board’s referral, had sought the medical opinion of psychologist, Brittany Rinehart, Psy.D. The Office of the Surgeon General endorsed the opinion of Dr. Rinehart and concluded “that a medical evaluation board (MEB) was not warranted at the time of [Sgt. Hayhurst’s] separation.”

50. Dr. Rinehart’s decision found a lack of “substantial evidence to support entry into the disability evaluation system (DES) in regard to psychological fitness.” Dr. Rinehart pointed to the following as evidence that Sgt. Hayhurst did not deserve DES processing due to an alleged

lack of: “1. a permanent or temporary psychological profile; 2. A behavioral health diagnosis that rendered Mr. Hayhurst unfit to perform military duties aside from a personality disorder that rendered him administratively unfit; 3. and medical records that supported entry into the DES at the time of his military separation.”

51. Dr. Rinehart’s medical opinion is flawed because it relies on at least three fundamental errors.

52. **First**, Dr. Reinhart relies on the erroneous assumption that Sgt. Hayhurst’s personality disorder diagnosis “was an accurate assessment of Mr. Hayhurst’s mental status at the time.” However, the Army Board, in its adoption of the Advisory Opinion, expressly found that the personality disorder diagnosis was without support. Moreover, Dr. Rinehart took no steps herself to compare Sgt. Hayhurst’s in-service symptoms with the DSM-IV.

53. **Second**, Dr. Rinehart’s medical opinion is flawed because it bases its conclusion on the very error identified by the Army Board. Specifically, Dr. Rinehart determined no DES processing was warranted due to Sgt. Hayhurst not having a physical profile or a PTSD diagnosis in service. However, the very reason that Sgt. Hayhurst had no profile or compensable in-service diagnosis was because of the erroneously diagnosed personality disorder.

54. **Third**, Dr. Rinehart’s opinion is flawed because it is based on her erroneous conclusion that there were no behavioral health records from Sgt. Hayhurst’s military service aside from the medical record that resulted in his personality disorder diagnosis. This is false. In support of his application, Sgt. Hayhurst provided the Army Board with contemporaneous medical records that indicate his behavioral health symptoms were incurred in combat. The records provided to the board included : (1) a medical note from September 2004 which indicated treatment for depression and nightmares; (2) a note from April 28, 2005 that indicates

Sgt. Hayhurst was experiencing PTSD symptoms, including a “history of recurrent nightmares . . . due to incidents witnessed in Iraq;” and (3) a medical note from August 5, 2005 where Sgt. Hayhurst indicated that over the past month he had felt down, depressed, hopeless and without interest or pleasure in doing things. *See supra* (I)(iv).

55. Moreover, Dr. Rinehart’s opinion failed to address that Sgt. Hayhurst’s VA records, not just his in-service records, were probative in determining whether he should have been referred into the DES. As indicated by the Army Review Agency’s Advisory Opinion, the Secretary of Defense Liberal Guidance Memoranda dated September 3, 2014 and August 24, 2017, a VA’s post-discharge diagnosis is relevant evidence in determining whether a soldier suffered from PTSD in service. The VA’s post-discharge diagnosis and 50 percent disability rating for Sgt. Hayhurst is also relevant because, as noted by the Advisory Opinion, Sgt. Hayhurst’s erroneous diagnosis of a personality disorder denied him the required period of treatment to determine if referral to the DES was needed. This period of treatment, however, was captured by Sgt. Hayhurst’s VA providers in Walla Walla and by the VA Compensation and Pension examiner, both of whom diagnosed him with PTSD.

56. Therefore, Dr. Rinehart’s conclusion that Sgt. Hayhurst did not suffer from PTSD in service and the Surgeon General’s subsequent reliance on this opinion are untenable. Rather, the only tenable conclusion is that Sgt. Hayhurst’s symptoms were attributed, as supported by the evidence, to service-connected PTSD.

COUNT I

The Army Board’s Failure to Correct Sgt. Hayhurst’s Erroneous Separation for Personality Disorder Violated the Administrative Procedures Act, 5 U.S.C. § 701 Et Seq.

57. Plaintiff hereby incorporates by reference all allegations set forth in the preceding paragraphs as if fully set forth herein.

58. The Army Board's failure to correct Sgt. Hayhurst's erroneous separation for personality disorder is subject to judicial review as a final "agency action" under the APA. 5 U.S.C. §§ 551(13), 701, 704; *Walls v. United States*, 582 F.3d 1358, 1367 (Fed. Cir. 2009) ("[I]t has become well established that judicial review of decision of military correction boards is conducted under the APA.").

59. Sgt. Hayhurst's 2018 appeal to the Army Board was his final administrative option to have his discharge corrected to reflect a medical retirement for PTSD rather than an administrative separation for "personality disorder." Plaintiff has no further administrative remedies for challenging his erroneous separation for personality disorder. He has made every attempt in good faith to resolve this conflict with the Army and has exhausted all possible administrative remedies.

60. Sgt. Hayhurst's APA claim accrued on the date of Army Board's final agency action and is ripe for review by this Court.

61. Under the APA, this Court must set aside a final agency action that is arbitrary, capricious, unsupported by substantial evidence, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

62. Here, the Army Board's final decision not to change the reason for Sgt. Hayhurst's separation should be set aside as arbitrary, capricious, unsupported by substantial evidence and not in accordance with law because it determined "partial relief" was necessary due to there being no evidence to support the personality disorder diagnosed, yet it failed to fulfill its obligation under 10 U.S.C. 1552, Department of Defense Directive 1332.41 and Army Regulation 15-185, to correct an identified error or injustice.

63. Moreover, in failing to change Sgt. Hayhurst's diagnosis, the Army Board also acted arbitrarily, capriciously, without support of substantial evidence and contrarily to law by violating the mandate in DoDI 1332.38, E4.A1.1.3.7.4 that requires that "[e]very effort . . . be made to distinguish symptoms and impairment resulting from personality disorder . . . from impairment based on other psychiatric conditions." *See also* DoDI 1332.38 E4.13.1.1. At the time of Sgt. Hayhurst's separation, this "effort" required the use of DSM-IV by regulation to distinguish symptoms and impairment resulting from personality disorder and psychiatric conditions like PTSD. Despite this clear requirement, the Army Board made no effort to use the DSM-IV to distinguish the symptoms and impairment resulting from Sgt. Hayhurst's alleged personality disorder from his likely precursors of PTSD.

64. As a direct result of the Army Board's unlawful actions, Sgt. Hayhurst continues to be deprived of the disability retirement to which he is entitled under 10 U.S.C. § 1201.

COUNT II

The Army Board's Failure to Refer Sgt. Hayhurst's Into the DES for PTSD Violated the Administrative Procedures Act, 5 U.S.C. § 701 Et Seq.

65. Plaintiff hereby incorporates by reference all allegations set forth in the preceding paragraphs as if fully set forth herein.

66. 10 U.S.C. § 1201, Department of Defense Instruction 1332.38, and Army Regulations 635-40 and 635-200 require that soldiers who appear unable to reasonably perform the duties of their office, grade, rank or rating due to a physical disability incurred in the line of duty, like PTSD, be afforded DES processing. *DoDI 1332.38* E2.1.25 and E4.13.1.4. (the term physical disability includes mental disease but not inherent defects such as personality disorders). *See also* AR 635-200 ¶ 5-13c (separation for personality disorder is not appropriate where separation is warranted under AR 635-40). Once referred into the DES process, a soldier

can be awarded a medical retirement if it is determined that due to one or more physical disabilities, with a combined rating of 30 percent or more, the soldier is unable to reasonably perform the duties of their office, grade, rank or rating. However, where a soldier's inability to perform their requisite duties is due to personality disorder, they are ineligible for DES processing and must be administratively separated without benefits. DoDI 1332.38, E5.1.3 (certain conditions designated by the Secretary of Defense do not constitute a physical disability and should be referred for appropriate administrative action); AR 40-501 ¶ 3-35 (stating that a personality disorder renders an individual administratively unfit rather than unfit because of disability and will be dealt with through an administrative channel like AR 635-200).

67. The DoD mandate to refer all soldiers with mental disorders constituting a physical disability into the DES could not be clearer. Thus, it was arbitrary, capricious, unsupported by substantial evidence, and contrary to law for the Army Board to deny Sgt. Hayhurst's DES processing for his PTSD. The arbitrary, capricious, and unlawful nature of the Board's failure is highlighted by the fact that the Board's own advisor indicated referral was required because "there is no evidence to support the personality disorder diagnosed" and it "is more likely than not that his . . . symptoms were precursors to development of PTSD."

68. Had Sgt. Hayhurst been processed through the DES, he would have been found unfit for duty, since the Army already essentially found him unfit, albeit for PTSD symptoms mischaracterized as a personality disorder, by processing him pursuant to Army Regulation 635-200 ¶ 5-13, which allows for a personality disorder to be a cause for separation only when it interferes with a soldier's ability to perform the duties of his office, grade, rank or rating. Upon being found unfit, Sgt. Hayhurst would have received a disability rating of at least 30 percent, which in turn would have entitled him to a medical retirement.

69. The Army Board's failure to submit Sgt. Hayhurst to DES processing and its resulting failure to grant Sgt. Hayhurst a medical retirement should be set aside as unsupported by substantial evidence, arbitrary, capricious, and contrary to law.

70. As a direct result of the Army Board's unlawful actions, Sgt. Hayhurst continues to be deprived of the disability retirement to which he is entitled under 10 U.S.C. § 1201.

COUNT III

The Army Board's Delegation of Final Decision-Making Authority to the Office of the Surgeon General Violated the Administrative Procedures Act, 5 U.S.C. § 701 Et Seq.

71. Plaintiff hereby incorporates by reference all allegations set forth in the preceding paragraphs as if fully set forth herein.

72. The Army Review Agency found in its Advisory Opinion that Sgt. Hayhurst "did not receive a period of treatment to determine if referral to the Disability Evaluation System (DES) was needed due to his discharge. With an abundance of caution, it is recommended that his case be referred to DES for consideration regarding medical retirement for PTSD."

73. Yet, in direct contravention to the Army Review Board Agency's finding that Sgt. Hayhurst be submitted to DES processing for his PTSD condition, the Army Board delegated final decision-making authority to the Office of the Surgeon General to determine whether Sgt. Hayhurst should be submitted to DES processing for medical retirement. There is no authority in statute or regulations for this referral and it is an abdication of the Army Board's decision-making responsibility.

74. The Army Board can request commanders of military units or staff agencies, like the Office of the Surgeon General, to "[f]urnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, in a timely matter." AR 15-185; 32 CFR § 581.3(b)(5)(ii). However, neither the statute nor the Army Regulation allows the board to

delegate the final determination of an error or injustice, and ultimately the correction of a military record, to another agency or commander within the service branch.

75. The Army Board's refusal to independently determine whether correction was necessary was unsupported by substantial evidence, arbitrary, capricious, and contrary to law.

76. As a direct result of the Army Board's unlawful actions, Sgt. Hayhurst continues to be deprived of the disability retirement to which he is entitled under 10 U.S.C. § 1201.

COUNT IV

The Office of the Surgeon General's Reliance On Dr. Reinhart's Opinion was Arbitrary, Capricious, Contrary To Law, and Unsupported by Substantial Evidence

77. Plaintiff hereby incorporates by reference all allegations set forth in the preceding paragraphs as if fully set forth herein.

78. The Surgeon General relied on the medical opinion of Dr. Rinehart to deny Sgt. Hayhurst DES processing and correction of his records. Dr. Rinehart wrongly concluded there was a lack of "substantial evidence to support entry into the disability evaluation system (DES) in regard to psychological fitness." *See* ¶50. Her opinion was unsupported by the ample evidence on the record of Sgt. Hayhurst's PTSD condition. *See* ¶51-54.

79. Therefore, the Office of the Surgeon General's reliance on Dr. Rinehart's unsubstantiated opinion and failure to consider evidence supporting Sgt. Hayhurst's PTSD condition was arbitrary, capricious, contrary to law, and unsupported by the evidence.

80. The Office of the Surgeon General's reliance on Dr. Rinehart's unsubstantiated determination continues to deprive Sgt. Hayhurst of the disability retirement to which he is entitled under 10 U.S.C. § 1201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant and award the following relief:

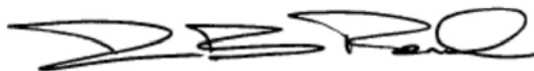
- a. Award Sgt. Hayhurst disability retirement;
- b. Order Sgt. Hayhurst's military records be corrected to reflect he was medically retired for PTSD, and remove the "Personality Disorder" designation at the date of his discharge, having been deemed to have failed medical retention standards and being unfit for continued service, with a disability rating of over 30% for his service-connected PTSD, that was incurred in the line of duty;
- c. In the alternative, remand Plaintiff's case to Disability Evaluation Processing specifically for a determination of the fitness of his PTSD at the time of his discharge and provide Plaintiff with his right to a hearing, as guaranteed by 10 U.S.C. § 1214 and, if the MEB or PEB finds he was unfit, medically retire him effective on the date of his discharge, September 30, 2005;
- d. Award Plaintiff interest, costs, and attorneys' fees; and
- e. Grant such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues triable.

November 10, 2022

Respectfully submitted,



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