

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20220011800

APPLICANT REQUESTS: Upgrade his characterization of service from under honorable conditions (general) to fully honorable and change his narrative reason for separation from misconduct (drug abuse) to medical reasons.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Separation Notification
- Memorandum for Record (MFR), subject: Impartial Medical Review (IMR) for the applicant
- DD Form 2808 (Report of Medical Examination)
- Three Character References
- Two Physical Profiles
- Memorandum, Subject: Administrative Separation and Medical Evaluation Board (MEB) from Trial Defense Counsel
- Enlisted Record Brief
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision
- VA Benefit Information

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 he is making this request because his depression and anxiety were undiagnosed at the time. He failed a urinalysis test while going through the MEB/physical evaluation board (PEB) process. Both his MEB/PEB packet and administration separation packet were completed and sent to the commanding general of the post where the decision was made to separate him from the military with a general discharge, due to misconduct (drug abuse). [At the time], his judgment was

clouded due to his mental state and the pain from his disability. His company commander recommended his service be characterized as honorable as shown on his separation notification.

3. A DD Form 2807-2 (Medical Prescreen of Medical History Report), dated between 11 and 26 August 2015 showing prior to entering the Regular Army (RA) he had surgery on what appears to have been the right knee/fibular on 20 November 2009 and 19 February 2010. He had three screws that were in a good position. This document states "do focal exam of the right knee for pain, swelling, and limitation." May need consult.

4. The applicant underwent a medical evaluation for the purpose of enlistment on 3 September 2015. His DD Form 2808 (Report of Medical Examination) shows no significant defects, full range of motion. No swelling, and limitation. He was found qualified for service and assigned a physical profile with PULHES of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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. Physical profile ratings can be either permanent or temporary.

5. A DD Form 2807-1 (Report of Medical History), dated 3 September 2015, showing he was in good health (Right Fibular).

6. The applicant enlisted in the Regular Army on 13 October 2015. He held military occupational specialty 92F (Petroleum Supply Specialist). The highest rank he achieved was specialist/pay grade E-4.

7. The applicant provided a Physical Profile Record reflecting in Section 2 (Permanent Profile):

- "L" 2 profile was issued on 17 October 2017, for knee pain/injury (left)
- "L" 3 profile was issued on 17 November 2017, for knee pain/injury (left)
- Section 8 (Unit Commander) a date of 1 November 2017

8. The applicant provided DD Form 2808 (Report of Medical Examination), dated 31 October 2017, showing he was not qualified for service (chapter 14-12c). Physical Profile P U L H E S: 1 1 3 1 1 1. Unilateral Osteoarthritis, left knee, severe, left knee

instability. He would be referred to an MEB; the nurse case manager had been talking to him about an MEB prior to the chapter initiation. His command was notified as well.

9. The applicant provided separation notification showing on 7 December 2017, when assigned to Fort Hood, TX, he was notified by his commander that action was being initiated to separate him for using marijuana between on or about 19 August and 19 September 2017 with an honorable discharge. He was advised of his rights. The separation documents are void of his available records.

10. The applicant provided a Physical Profile Record reflecting in Section 2:

- “L” 2 profile was issued on 17 October 2017, for knee pain/injury (left)
- “L” 3 profile was issued on 19 December 2017, for knee pain/injury (left)
- P U L H E S: 1 1 3 1 1 1
- Section 8 a date of 2 January 2018

11. The applicant provided: MFR, subject: IMR, dated 2 January 2018, for the applicant showing:

a. Left knee joint osteoarthritis was reported on his IMR findings of his 17 January [2018] left knee MRI [magnetic resonance imaging], also documented in the Narrative Summary (NARSUM), and inquired as to whether there were other left knee diagnoses, based on these findings, in addition to the osteoarthritis, which should be listed on the DA Form 3947 [not available].

b. “IAW IDES guidance in OPORD 12-31, Annex 0, the VA examination (C&P) is the exam of record and determines the diagnosis, which in this case, is as per Dx #1.”

c. Clinically, there was evidence (AHLTA, PA Morales, 30 August 2017; Civilian orthopedic surgeon, Dr. WH, 20 July 2017) of additional diagnoses left “rupture of anterior cruciate ligament of left knee and lateral meniscus tear” which together with his left knee osteoarthritis were taken into consideration when determining the optimal left knee joint treatment recommendation.

d. Note: In his consult to Fort Hood, TX, orthopedics PA, [REDACTED] 11 August 2017, provider JS documented treatment recommendations from two civilian orthopedic providers, however, those civilian encounters are not available in the [Armed Forces Health Longitudinal Technology Application (AHLTA), [Health Artifact and Image Management Solution (HAIMS)], or in other documents available for the review. Recommend that those encounters be added to his MEB file and uploaded to AHLTA.

e. This IMR was reviewed with the applicant on 2 January 2018. The MEB packet was provided to Brook Army Medical Center (BAMC) MEB was reviewed which included

documents not limited to the Narrative Summary (NARSUM), IMR request, and VA examination findings.

12. The applicant provided a Memorandum, subject: Administrative Separation and MEB, dated 12 February 2018, from the trial defense counsel stating:

a. The applicant was facing separation under Chapter 14-12c (2), for abuse of illegal drugs, based on a positive urinalysis for Tetrahydrocannabinol (THC). He was also in the process of an MEB for severe and chronic knee injuries that began in basic training. The fair and just result in this case was an MEB for his injuries incurred as a result of his service.

b. He initially sustained his injury during basic training when he twisted his knee during a ruck march. Not wanting to fail or be left behind, he powered through and continued to excel as a Soldier. It was not until almost 2 years later that he realized the extent of his injury. He was diagnosed with a severe Anterior cruciate ligament (ACL) tear, bone spurs, and osteoarthritis, in addition to other problems and symptoms, which caused continuing pain and mobility problems, which he had suffered from over a year.

c. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 1-33 states you may direct that he be processed through MEB/PEB channels rather than separation under chapter 14-12c when "the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination" or "other circumstances of the individual case warranting disability processing instead of further processing for elimination."

d. Please consider the applicant's written statement, which described his recognition of the extremely poor choices he made in his use of marijuana to cope with his injury and pain. His chronic injury can be considered a substantial contributing cause of his marijuana abuse. In addition, the letters of support he provided showing a dedicated and motivated Soldier with outstanding service, except for one serious mistake in turning to marijuana rather than using lawful pain medications. His circumstances warranted disability processing rather than administrative separation. Trial defense counsel respectfully requested that the applicant be allowed to proceed with the MEB/PEB process so he could receive the treatment he needed.

13. On 14 February 2018, the applicant requested separation through the MEB process rather than administrative separation. He acknowledged he was sincerely sorry for the choice he made to use marijuana. He stated this was his first duty station, when he joined his unit in May 2016, he was injured already upon arriving at Fort Hood. While he pushed through his injuries throughout basic training and advanced individual training upon arrival at Fort Hood, he reinjured his knee in December 2016. Additionally, he stated:

a. On 12 September 2017, he and his Orthopedic Army doctor decided to try a knee injection (Gel-One) to compensate for his deteriorating cartilage. The injection caused excruciating pain for 2 weeks. Earlier in that week he found out his mother was admitted to the hospital after having a serious seizure and was not coherent for a day. His mother was diagnosed with cirrhosis of the liver and had frequent seizures along with some other complications. Due to her condition, she was legally disabled and did not have a job. He helped his mother financially.

b. On 15 September 2017, he was presented with an opportunity to numb his pain by way of marijuana. He regrets the decision; he should have used better judgment. He realizes that he should have communicated to his doctor that the pain medication was not working, but he let his emotions get the best of him and it clouded his judgment.

c. His noncommissioned officers and officers provided character reference letters. He was requesting that the MEB process be allowed to continue in lieu of the administrative separation.

14. The applicant provided the following three-character references:

a. Second Lieutenant [REDACTED], Executive Officer, dated 16 December 2017, stating the applicant worked in multiple key positions as a member of Company C and Headquarters Company 57th Expeditionary Signal Battalion (ESB), Fort Hood, TX, for almost 3 years from June 2014 to November 2017. His volunteer service benefitted over 80 of the units Soldiers drastically increasing physical training (PT) scores and mission readiness. He was a volunteer member working over 12 extra duty hours a week. He assumed responsibilities in the absence of other volunteers and performed duties such as the companies PT sustainer. He executed all his duties in an efficient and thorough manner. He had a unique ability to adapt and improvise using whatever was at hand to get the job done and with the minimal resources available to him. He also helped several other companies accomplish their goals without expectation of being compensated. He helped the unit work as a team and increased their overall effectiveness and team cohesion. The applicant was a great human being overall. The applicant made him a proud supervisor, and he was sure the applicant would continue to do so through growth in his career.

b. First Lieutenant, [REDACTED], Executive Officer, Company C, 57th ESB stated she had the pleasure of working directly with the applicant on many occasions. Upon his arrival at the unit and taking over as the executive officer, he was one of the first Soldiers that was noticeably motivated, and his attitude quickly rubbed off on his peers, subordinates, and leadership. He prided himself on making the best out of any situation and having a positive attitude that would transcend any negativity while performing his duties. His work ethic, ability to develop in his position, and confidence led to him being chosen to

brief the brigade commander during the battalion's motor pool walkthrough. He was easily one of the best Soldiers that she had worked with during her Army career and even though he made a terrible decision she would not hesitate to work with him again.

c. Staff Sergeant (SSG) MPE stated the applicant was one of the hardest working Soldier's, he has known. His go get-it attitude was contagious and inspired others to complete tasks at hand. He never used his profile or injury to get out of work or PT. He was a stellar Soldier that could be continually relied on to accomplish any task given. He made a poor choice; however, that did not hinder his performance. It was extremely disappointing that he made such a poor decision; because he possessed the mentality, perseverance, and attitude that would have made him, not only an excellent non-commissioned officer, but a great leader.

15. The applicant's complete separation packet was void of his available service records. On 27 February 2018, the separation authority approved the recommendation and directed the issuance of a general discharge. The separation authority stated:

a. He had carefully considered the MEB's recommendation to refer the applicant's case to a PEB and the recommendation to administratively separate the applicant from the Army prior to the expiration of his current term of service.

b. After careful consideration of all relevant matters, he was directing the applicant's separation from the Army prior to the expiration of his current term of service. The recommendation of the MEB was disapproved. The applicant's medical condition was not the direct or substantial contributing cause of the misconduct. Furthermore, no other circumstances of his case warranted disability processing instead of administrative separation. Therefore, the applicant's separation under the provisions of AR 635-200, chapter 14, paragraph 4-12c (2), due to misconduct-abuse of illegal drugs was directed.

16. Accordingly, on 14 March 2018, he was discharged in pay grade E-1. His DD Form 214 shows he completed 2 years, 5 months, and 2 days of active service. His DD Form 214 also show the following pertinent entries:

- Character of Service – “Under Honorable Conditions (General)”
- Separation Authority – AR 635-200, paragraph 14-12c (2)
- Separation Code – JKK
- Reentry Code – “4”
- Narrative Reason for Separation – Misconduct (Drug Abuse)

17. The available evidence does not contain any nonjudicial punishment.

18. The applicant provided:

a. VA Rating Decision, dated 27 August 2019 showing:

(1) An evaluation of persistent depressive disorder with generalized anxiety disorder (previously rated as adjustment disorder with mixed anxiety and depressed mood under DC 9440) (now claimed as dysthymic disorder and anxiety condition), which was currently 30 percent disabling, was increased to 50 percent effective 29 July 2019.

(2) Service connection for left knee instability was granted with an evaluation of 20 percent, effective 29 July 2019.

(3) Evaluation of left knee osteoarthritis ACL reconstruction (claimed as cartilage), which was currently 10 percent disabling, was continued.

b. VA Benefit Information dated 28 August 2019 showing he had a combined rating/evaluation of 100%, effective 29 July 2019.

19. There is no indication the applicant applied to the Army Discharge Review Board for an upgrade of his discharge within its 15-years statute of limitations.

20. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code "JKK" is the appropriate code to assign Soldiers separated under the provisions of AR 635-200, paragraph 14-12c (2), by reason of "Misconduct (Drug Abuse)."

21. The SPD/RE Code Cross Reference Table stipulates the RE code "4" was to be assigned to members separated with the SPD code of "JKK."

22. AR 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

23. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not

have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

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

25. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

26. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reversal of his general court martial convening authority's (GCMCA) decision that he be administratively discharged rather than referred to a physical evaluation board (PEB). He states:

"A change is being requested due to the fact that my depression and anxiety was undiagnosed at the time. I failed an UA [urinalysis] test once in the Army while going thru a MEB/PEB process. After my MEB/PEB and chapter packet were completed they both went up to the commanding general of the post and there is where it was decided to chapter me out the military with General Under Honorable Conditions with the narrative of Misconduct (Drug Abuse). Due to my mental state and the pain from my disability my judgment was clouded."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 13 October 2015 and was discharged under honorable conditions (general) on 14 March 2018 under provisions provided in paragraph 14-12c(2) of AR 635-200 Active Duty



Enlisted Administrative Separations (19 December 2016): Serious misconduct – Abuse of illegal drugs. It does not list a period of Service in a hazardous duty pay area.

d. On 17 November 2017, the applicant was placed on a permanent duty limiting physical profile for left knee pain/injury and subsequently referred to the Integrated Disability Evaluation System (IDES).

e. On 7 December 2017, his company commander informed him that he was initiating separation action under paragraph 14-12c(2) of AR 635-200:

“The reasons for my proposed action are: Between on or about 19 August 2017 and on or about 19 September 2017, you used Marijuana.”

f. This pending administrative discharge halted his IDDES processing. From paragraph 4-3f(2) of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

“Approval and suspension of an AR 635–200 separation action is not authorized when the Soldier is pending both an AR 635–200 and AR 635–40 action. The GCMCA must decide which action to pursue (as described in AR 635–200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.”

g. Paragraph 4-9a of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states:

“Disenrollment from DES, or termination of the case for any other reason, will occur no earlier than prescribed below:

“Enlisted Soldiers with an initiated or approved administrative separation for misconduct or fraudulent enlistment will be disenrolled when the MEB is completed, the Soldier’s GCMCA has reviewed the MEB, and the GCMCA has directed in writing to proceed with the administrative separation. If the separation action was initiated after the Soldier’s MEB was forwarded to the PEB, the last level of approved PEB findings prior to initiation of separation will be provided to the GCMCA for consideration in their decision.”

h. MG J.C.T.'s 27 February 2018 memorandum to the Director of Human Resources at Ft. Hood, TX, shows the GCMCA directed the applicant's DES processing be terminated and he be separated for misconduct with a general under honorable conditions characterization of service:

"1. I have carefully considered the enclosed separation packet and the recommendations of the Medical Evaluation Board (MEB) to have the case of Private (E-1) [Applicant] referred to a Physical Evaluation Board (PEB). I have reviewed the recommendations of the chain of command that the above named Soldier be considered for separation from the Army prior to the expiration of his current term of service.

2. After careful consideration of all relevant matters, I direct that this Soldier be separated from the Army prior to the expiration of his current term of service. Additionally, the recommendation of the MES is disapproved. The Soldier's medical condition is not the direct or substantial contributing cause of the misconduct. Furthermore, no other circumstances of this individual case warrant disability processing instead of administrative separation. Therefore, I direct that Private (E-1) [Applicant] be separated from the United States Army under the provisions of AR 635-200, Active Duty Enlisted Administrative Separations, Chapter 14, paragraph 14-12c(2), Misconduct - Abuse of Illegal Drugs.

3. I direct that this Soldier's service be characterized as:

(  ) Honorable.

(  ) General (under honorable conditions)."

i. The only behavioral health encounter in the applicant's EMR is a 5 April 2016 pre-deployment behavioral health (BH) screening which "found no BH issues that would facilitate need for acute evaluation or treatment."

j. JLV shows the applicant has been awarded several VA service-connected disability ratings, including one for dysthymic disorder in September 2018 and one for left knee prosthesis in November 2021. 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. 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. There is no probative evidence the applicant had a mental health condition which would be a mitigating cause of the illegal drug use that led to his administrative discharge for misconduct.

l. It is the opinion of the ARBA Medical Advisor a reversal of the GCMCA’s decision that the applicant’s left knee condition did not mitigate the misconduct which led to his administrative discharge is clearly unwarranted.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the severity of the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. The Board agreed that although documentation available for review indicates that the applicant had medical condition, it is not a mitigating factor for the misconduct for which the applicant was discharged. After due consideration of the request, the Board determined the character of service the applicant received upon discharge was not in error or unjust and relief is not warranted.

**BOARD VOTE:**

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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]

[REDACTED]

[REDACTED]

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. AR 635-5-1 provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. The SPD code "JKK" is the appropriate code to assign Soldiers separated under the provisions of AR 635-200, paragraph 14-12c(2), by reason of "Misconduct (Drug Abuse)."
3. The SPD/RE Code Cross Reference Table stipulates that RE code "4" would be assigned to members separated with the SPD code of "JKK."
4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 includes a list of the RA RE codes:
  - a. RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army. They are qualified for enlistment if all other criteria are met.

b. RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE-4 applies to Soldiers separated from service with a non-waiverable disqualification.

5. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 1-33 states you may direct that he be processed through MEB/PEB channels rather than separation under chapter 14-12c when the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination or other circumstances of the individual case warranting disability processing instead of further processing for elimination.

6. Title 10, USC, Section 1201 provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30% or greater.

7. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.

8. 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.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform her duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

9. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

10. 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, 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.

11. 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. 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 based on 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. 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.

//NOTHING FOLLOWS//