

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20220011970

APPLICANT REQUESTS: the son of a deceased former service member (SM) requests reconsideration of the below-listed prior requests:

- Proper accounting in the SM's military medical records of the combat-related injuries incurred, on 31 October 1944
- In addition to redacting the word "accidental," insert an explanation of what actually occurred during the 31 October 1944 incident
- Include a statement that the SM was eligible for disability retirement income, effective the date of his discharge, on 6 January 1946
- Direct the U.S. Army Claims Service to properly resolve the applicant's currently pending claim

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

- Reconsideration Letter
- DD Form 149 (Application for Correction of Military Record)
- Documents from Army Board for Correction of Military Records (ABCMR) Docket Number AR2020009685, with applicant's commentary
- Three emails
- War Department (WD) Form 372A (Final Payment – Work Sheet), dated 31 July 1945
- WD Form 366 (Pay Roll) and WD Forms 366a for December 1918
- Untitled and undated document with signatures reflecting receipt of final pay

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous considerations of the applicant's case by the ABCMR in Docket Numbers:

- AR20110005774, on 8 June 2011
- AR20120010187, on 19 July 2012
- AR20120016134, on 26 October 2012
- AR20120021210, on 27 November 2012
- AR20190009486, on 1 April 2020

- AR20200005478, on 26 June 2020
- AR20200009685, on 12 May 2022

2. The applicant states the following, in a DD Form 149, dated 22 August 2022, and a self-authored statement, titled: "Case – AR20200009685 [SM] reply to another denial received on Nov 25, 2022, being more evidence that exposes the ABCMR/ARBA and Executive Branch misconduct and dishonor."

a. INTRODUCTION.

(1) The applicant's case, on behalf of his father, is fully documented with photo evidence and witnesses. The evidence shows the SM and his family have been defrauded and mistreated, starting in October 1944 and throughout the SM's lifetime, even after a Department of Veterans Affairs (VA) "Tiger Team" ruled unanimously that the SM should be awarded a 100 percent service-connected disability rating. (According to the VA website, the term "Tiger Team" describes a group of specialists formed to work on specific goals. These teams ensure that social workers across the nation receive support, guidance, and resources to help them assist Veterans, families, caregivers, and civilians).

(2) The applicant notes, "The VA ignored a written request when they had (the SM's) records as well the entire time starting on Jan(uary) 6, 1946 upon his honorable discharge. Those records were not destroyed in the fire in St. Louis in 1973, and to prove it, a copy of his records were sent by the VA to his family 18 months after (the SM's) death."

(3) The applicant goes on to describe how his family has served the nation since before its founding, and that members of his family knew the founding fathers and served in the newly established Kentucky State Legislature with Daniel Boone. The applicant states:

(a) "The point is, the way deceased U.S. Army WWII Veteran [SM] and his family have been defrauded and mistreated by the U.S. Army, ABCMR, ARBA (Army Review Boards Agency), and the VA...why should any younger people serve America given the facts of this case?"

(b) "If the Law, Constitution, the Executive Branch and their division's own rules, plus the truth, evidence and facts mean nothing one has to fairly ask, what has happened to the America he and his family served over a long time? But of course, this ABCMR calls it speculation to justify their violations and denials in a very clear case with major errors and injustices."

b. THE ABCMR/ARBA RECORD DOCUMENTED FACTS.

(1) "I want to make a fact very clear to the ABCMR/ARBA and U.S. Army. I have lived through most of this case and seen the truth, facts, and the law that applies first handed. It has proven to be nothing but a corrupt mess when this case could and should have been corrected and resolved by these Executive Branch agencies long before now and has not. Veteran [SM] and his family have followed the law and the U.S. Army and ABCMR/ARBA's own rules and been met with lies, deceit, injustice, and dishonor on the part of these Executive Branch Agencies and it is NOT going to continue and why this nation's military Veterans have been mistreated as they have been for way too long."

(2) In 2011, copies of the factual evidence were given to the U.S. Army Judge Advocate General's Office (OTJAG). Upon OTJAG's review, they stated the SM's case was the "most unjust case they had seen in over 20 years," and they directed the family to correct the SM's records as soon as possible (ASAP). Speculation was not a factor in reaching that conclusion; OTJAG saw proof and evidence. The applicant provided the same documentary evidence to the then-Secretary of the Army and his staff; rather than take action, the Secretary forwarded the SM's documents to the ABCMR and told them to handle it, "but look what they did, even after Veteran [SM]'s family was advised to get his records corrected ASAP."

(3) The applicant's U.S. Senator sent documents to the ABCMR, but they claimed they never received them; the applicant's U.S. Representative then forwarded the documents a second time and later confirmed ABCMR had actually gotten the documents the first time, "showing how inept and lying the ABCMR/ARBA had been from the outset in this case."

(4) "The first ABCMR Board, as did (Secretary of the Army), manifested their dishonor and misconduct by ignoring the facts and evidence and refused to do anything even according to their own laws and rules or it would never have been submitted to them in the first place." That first Board was replaced and a new director arrived who not only saw the evidence but asked the applicant to submit a short paragraph to define the word, "accidental" for inclusion in the records correction. The replacement Board and its new director Colonel (COL) [REDACTED] (sic, now retired COL [REDACTED] was formerly an executive officer in the Office of the Secretary of the Army) were willing to delete "accidental," but failed to add the short paragraph, "so they said he should have been discharged disabled and issued a new one."

(5) The new ABCMR was given photo evidence showing how the Army had lied. On one hand, the Army stated the SM had fought in the battle for the liberation of Manila, but, after hospitalizing him and issuing a statement indicating they were "not keeping him because he started the same symptoms all over again," the Army then rendered a discharge physical examination that portrayed the SM's entire condition as "all normal." The Army made this claim about a decorated combat Veteran who was

nearly killed, along with half of his company, and incurred permanent combat-related injuries after serving in three major battles in the Philippines. After fighting in the "3rd worst battle in the Philippines at Peleliu," the SM would earn "combat ribbons with bronze star clusters for 2 additional battles. His meritorious service, honor, and the truth meant nothing to the U.S. Army and the VA. Time and documented facts have proven it still does not to him or his family. Or to America!"

(6) "The current ABCMR did some proper and good things the first ABCMR and the U.S. Army Secretary [REDACTED] failed to do and appreciation was shown for that being done even though this ABCMR failed to add the paragraph to define the accidental incident that had been asked for by COL [REDACTED]. Plus, this ABCMR upheld [SM's] original combat injury claims with the VA BUT ignored a request to correct the U.S. Army's record tampering, ignoring his major combat injuries and issuing an order to the U.S. Army Claims Director COL [REDACTED] to settle claims submitted to him by Veteran [SM's] family for the U.S. Army's tort damages to (the SM) and his family. This ABCMR essentially accused Director [REDACTED] of lying by saying they could not do so."

(7) "The request for this ABCMR to correct Veteran [SM]'s records a third time to include those corrections that should have been done during previous requests was continued after Col [REDACTED] was replaced by a Major [REDACTED] and he was told that the 3rd correction should be done no later than during September of 2021, and he conferred that to me. However, after checking with him several months later in 2022, it still had not been done, and he was replaced by a (Mr.) [REDACTED]"

c. THIS ABCMR EXPOSES INTENT WITH ERRORS, VIOLATIONS, AND THE U.S. ARMY'S DISHONOR.

(1) The applicant states he spoke with Mr. [REDACTED] on the phone, and Mr. [REDACTED] said he would receive a list of combat injuries required to further correct Veteran [SM]'s records, but rather than do that, Mr. [REDACTED] told the applicant they did not need the list. The Board then turned around and stated in their denial that the applicant had not submitted any additional evidence to justify the correction of records; also, the Board used the term "speculation" as an excuse not to properly correct the SM's records.

(2) The foregoing is yet another example of how the ABCMR operates and violates its own rules. The applicant received the denial letter in June 2022, not September 2021 as originally promised, and Mr. [REDACTED] signed the letter. The denial of the applicant's very legal and justifiable request was a clear example of the ABCMR's misconduct, latent with errors, lies, contradictions, and the complete disregard of facts.

(a) In its Record of Proceedings (ROP), the ABCMR starts off by failing to identify all of the applicant's requests; the applicant asked the Board to list ALL of the SM's major combat-related injuries, insert a correct definition of the "accident" incurred

by the SM and his unit on Peleliu, and the issuance of an order to the U.S. Army Director of Claims to settle the Veteran's and family's damage claims.

(b) This ABCMR claims, on one hand, that it considered all supporting documentation (previously seen by OTJAG, the former Secretary of the Army's staff, and the previous ABCMR director, COL [REDACTED] but then failed to keep their promise of sending the applicant the list of the SM's major combat-related injuries; further, the Board "did not yet in writing state they reviewed that same evidence."

(c) "This ABCMR also claims Veteran [SM]'s records were not available to them to review...if (the SM's service records) had been burned up in the fire in 1973, they can (then) explain (how) the Veteran's son received those records 18 months after the Veteran died...." "It became very clear that this Board does not deal with facts but lies and denies when they clearly have evidence to prove Veteran [SM]'s and his family's facts and evidence."

(3) The applicant states he responded to the ABCMR's 13 July 2022 letter and provided the Board a copy of their 8 June 2022 denial, which contained major errors and locations, along with the letter that itemized the criminal acts that had been perpetrated against the SM and family by the Army, the ABCMR, and the VA. In addition, the applicant provided the "Laws and the Yearwood Case" to demonstrate the extent of their lies, misconduct, and deceit. The applicant also submitted a new DD Form 149, dated 29 August 2022, which clearly restates what he is asking the Board to do:

- properly account for ALL of the SM's major combat-related injuries, incurred while in the battle of Peleliu
- insert a paragraph describing the word, "accidental," which appeared on a form prepared by the U.S. Army during the SM's hospitalization
- issue an order to the U.S. Army Claims Director to properly resolve the family's tort claims

d. CONCLUSION AND RECOMMENDATION.

(1) "This case could and should have been fairly and justly settled long before now! The fact (that) it is not is just additional evidence to prove how big of a mess the Executive Branch is and has been in for way too long. When it involves military decorated Veterans and their families who have served America in honor, it exposes how ALL Agencies in the Federal Branch and their so called systems are not and have not been adequate according to even their own rules and the law."

(2) "The fact is Veteran [SM] and his next of kin, former POA, and heirs have been caught in a system, and the U.S. Army and VA, that should have made this case a

major priority and settled it long before today and it has not. If this ABCMR and its Director are NOT going to resolve this case direct, then this ABCMR needs to send it to the U.S. Army Secretary for a just resolution and to do what they should have not done so." Additionally, the ABCMR should be aware that the damage sustained by the SM and his family has increased the amount of the original tort claim made against the Army in 2011.

(3) "The Executive Branch President, the Agency Secretaries, and groups such as the ABCMR and Tort Claim Group are also codefendants and liable for all damages incurred by Veteran [SM] and his next of kin, agent, family, and heirs. Since this has been and is a major case that truly is a matter of honor and justice, the U.S. Army and/or the ABCMR should assign it to the proper party who may want to work with the VA and assign it to a high priority and not prolong it any longer and justly and fairly settle it."

3. The applicant provides:

a. Documents associated with ABCMR Docket Number AR20200009685, to include the ROP with the applicant's commentary:

(1) Under "APPLICANT REQUESTS," and concerning the request to explain what occurred, on 31 October 1944, at Peleliu, applicant writes, "did not do, even though it was requested (see reply)." Next to the request to add a summary report of events on 31 October 1944, the applicant states, "Include all major injuries supported by factual evidence, not speculation." With regard to the request to show the SM as eligible for disability retirement income, the applicant notes, "Did not do when correcting (SM's) discharge."

(2) The applicant writes, "Wrong" next to paragraph 2, which noted the unavailability of the SM's service records due to a 1973 fire at the National Personnel Records Center (NPRC).

(3) Paragraph 3 summarized the applicant's self-authored statement. Under the first sentence, the applicant contends the Board failed to ask for additional records, but then states the records were subsequently required, but nothing else was provided; the applicant adds, "This Board lied again." The applicant writes, "Factual" or "Fact" next to sixteen subparagraphs; "Ignored" for two subparagraphs that pertain to the applicant's requests for an explanation of "accidental" and a statement showing disability retirement eligibility; "Not Speculation!" under the subparagraph addressing the applicant's ability to support his requests with "photo proof and evidence"; and a comment indicating that, despite his offer to submit additional evidence, the Board first claimed further was required, then denied the applicant's requests.

(4) Paragraph 4a summarized the SM's WD AGO (Adjutant General's Office) Form 53-55 (Enlisted Record and Report of Separation – Honorable Discharge); the applicant wrote, "No, he was in (not clearly legible) after 2 more major battles....not speculation but fact!"

(5) Subparagraph d of paragraph 4 addresses the Board's decision in ABCMR Docket Number AR20200005478, on 26 June 2020. The applicant declares, "Ignores the law!" In addition, where it states, "As each ROP addresses the 3 November 1946 'friendly fire' incident at Peleliu...", the applicant points out the date is wrong (should be 1944). The subparagraph continues, stating that, in 1946, the VA, not the Army, was responsible for determining disability pensions; as such, the ABCMR would not consider requests for payment of disability retired pay to the SM's estate. The applicant posits that this reasoning is "clearly avoidance, not by law or rules!"

(6) In response to the "Board Discussion," where the Board found relief was not warranted, the applicant writes, "Continu(ing) blatant injustice/errors...a joke!" Where the Board states that it already determined the SM should have received a Certificate of Disability for Discharge at his separation, and that the Army played no role in disability determinations in 1946, the applicant adds, "Proof given U.S. Army...Lies!" "Contradiction."

(7) The Board concluded, "the ABCMR's authority is limited to correcting military records when necessary to correct an error or remove an injustice. It has no authority to direct or order a DA employee or officer to take action relative to discretionary authority held by that employee or officer." The applicant contends this conclusion is wrong and that not directing the Director, U.S. Army Claims to act is a major injustice. For "Board Determination/Recommendation," the applicant writes, "Continue to violate own law & rules."

b. Emails sent by the applicant to ABCMR:

(1) 27 April 2022 – Applicant emails Mr. [REDACTED] stating he was told the ABCMR would only need a couple of days to know if they needed any documentation about the SM's combat injuries. "I think I provided them evidence and documents for the things I wanted them to correct and they saw the evidence and corrected his discharge to disabled and I think I gave them the documentation they needed to correct the rest else why would they correct his discharge as disabled but not those major injuries that caused him to be that way?" "...this family is more than fed up with it and I cannot hold the info back from the Daily Caller and other media outlets much longer." He asked Mr. [REDACTED] to complete the case ASAP and send the order to COL [REDACTED] at U.S. Army Claims so that he could settle the tort claim.

(2) 27 June 2022 – The applicant stated he still had not received any corrections to his father's records. "The end of June is Thursday and I have been holding back and followed all the rules and cooperated with the ABCMR now for 11+ years and you dare refer to me having patience. It is past time for your group to show some honor and truth and follow the law or be held liable for it and also major news outlets such as the Daily Caller and Fox and others will see to it the entire nation knows about this case and how it even involves criminal acts in violation of numerous laws done to a decorated U.S. Army veteran who was almost killed serving this nation." The applicant ended the email by stating, "With all that's going on today I am sure your delays and making false predictions will set well with those who believe in truth and honor. Past time for you to show some honor and truth."

(3) 30 June 2022 – The applicant wrote:

(a) "Today is the last day of June and of course nothing in the mail from the ABCMR as previously stated would happen and also no verification of an order being issued by the ABCMR to the U.S. Army Claims Director to settle the Army's part of Dad's case with me direct....The 4th is Monday and I am giving him until next Friday to call me and let me know where are my Dad's records, plus the order, and sirs, no more excuses for I think 11+ years is more than long enough and to be frank I have photo evidence to prove the U.S. Army as well as the VA tampered with Dad's records which is a criminal act and have the proof and goods to have an attorney take legal action against ALL parties liable for the crimes of these agencies and I am not putting up with it any longer."

(b) "If the Daily Caller made a front page story about Dad's case what do you think they and others such as Fox will do with how I have been abused and mistreated trying to get Dad's case corrected and justice for him? I will also be contacting the U.S. Army Sect Office and VA Sect Office after the 4th so it is advisable for you to finish this case on the ABCMR's and U.S. Army's part or you can deal with an attorney over it with a major increase in damages." "I have more than had it. As many have had it."

c. WD Form 372A (Final Payment – Work Sheet), dated 8 January 1946, reflecting the SM's final payment prior to his discharge.

d. WD Form 366 (Pay Roll), with associated WD Forms 366a, showing, for the month of December 1918, the payments made to a by-name list of members assigned to the 69th Field Artillery at Camp Knox, KY. Additionally, a document indicating the disbursement of final pay on an unknown date, and the signatures of individuals acknowledging the receipt of funds.

4. The SM's complete military personnel records are not available for review.

a. The NPRC, as part of the National Archives, has the primary responsibility of retaining the military personnel files for all former members of the U.S. Armed Forces. In 1973, a fire destroyed approximately 18 million service members' records, affecting Army personnel records dated between November 1912 and January 1960; it is believed the SM's military personnel records were among the files lost.

b. Other governmental agencies, such as the VA, may also retain copies of at least part of a former service member's service records so that the agency can address such matters as requests for Veterans' benefits.

c. Based upon the documents previously provided by the applicant and what is available in the ABCMR's previous considerations, the Board can address the applicant's requests.

5. A review of the available service records reveals the following:

a. The SM's WD AGO 53-55 shows that, on 21 July 1943, the Army of the United States inducted the SM and he entered active duty, on 11 August 1943. On 8 July 1944, the SM arrived in the Pacific Theater; he was assigned to Company C, 323rd Infantry Regiment, 81st Infantry Division, and he held military occupational specialty 604 (Light Machine Gunner).

(1) For historical context, the U.S. Army Center of Military History states the 81st Infantry Division arrived in Hawaii, between 11 June and 8 July 1944.

(2) The Naval History and Heritage Command's website provides a summary of Operation Stalemate II, The Battle of Peleliu:

(a) By the Summer of 1944, Southwest Pacific Area Forces, under General Douglas MacArthur, were moving to retake the Philippines. Capturing the Palau group of islands (which included a Japanese airfield on Peleliu) appeared to be a logical step to secure the Southwest Pacific Area Forces' right flank.

(b) In March 1944, the Joint Chiefs of Staff issued a planning order directing the Commander in Chief, Pacific Ocean Area (CINCPAC) to execute "Operation Stalemate" to secure the Palau Islands and surrounding area; however, in July, and following the Battle for Saipan, new orders directed a scaled-down version (Stalemate II), which was to include limited attacks on the Southern Islands of Palau and Ulithi (part of the Caroline Island Group). The operation was to be the largest amphibian operation in the Pacific thus far, and the two major units designated to participate were the 1st Marine Division and the 81st Infantry Division.

(c) U.S. intelligence had very little information about Japanese forces on Peleliu; the heavy foliage and ground cover hid the true extent of Japanese fortifications and, as a result, the 1st Marine Division commanding general predicted a quick conclusion to battle.

(d) In early August 1944, the 81st Infantry Division moved to Guadalcanal to train for its role in Operation Stalemate II. On 15 September 1944, the 1st Marine Division landed on Peleliu and, within the first week, the Marines had captured the southern half of the island, to include the airfield; however, the mountainous ridges in the island's interior proved to be major obstacles due to well-emplaced Japanese strongpoints honeycombed throughout the rocky terrain.

(e) The ground fighting proved slow and very costly; the Marines (in particular the 1st Marine Regiment) suffered very heavy losses, and some of those losses resulted from friendly fire. The U.S. Marine Corps Historical Division's 1950 account, titled, "The Assault on Peleliu," verifies that, on 18 September 1944, the 2nd Battalion, 1st Marine Regiment sustained 34 casualties because of friendly fire.

(f) On 17 September 1944, the 81st Infantry Division (minus the Regimental Combat Team (RCT) 323) invaded Angaur (the southern-most island in the Palau Group); (although enemy resistance was not completely eliminated), on or about 21 September 1944, the 81st Infantry Division declared the end of major combat operations on Angaur Island.

(3) The Operation Report – 81st Infantry Division – Operation on Peleliu Island, 23 September - 27 November 1944, provides a summary of events and maps detailing the Division's combat operations on Peleliu.

(a) On 21 September 1944, RCT 323, 81st Infantry Division, departed as part of the naval task force to secure Ulithi Island (located southwest of Guam). On 23 September 1944, RCT 321, 81st Infantry Division, arrived on Peleliu and was attached to the 1st Marine Division; between 23 September and 9 October 1944, RCT 321 relieved the 5th Marine Regiment on two nearby islands and seized another island. The subsequent redeployment of the 1st Marine Division to the central part of the Peleliu Island, coupled with advances made by the 5th Marines, allowed the Marines to secure the northern part of the island and regain the momentum.

(b) On or about 16 October 1944, the 1st Battalion of RCT 323 (which included Company C) rejoined the 81st Infantry Division on Peleliu Island, and, along with RCT 321, began offensive operations against the enemy in the south central part of the island. On 20 October 1944, Company C, RCT 323 withdrew from the perimeter to take on the task of clearing out enemy resistance along the southern edge of the

Umurbrogal Mountain. On 26 October 1944, the remainder of RCT 323 returned from Ulithi and relieved RCT 321.

(c) Between 27 and 31 October 1944, RCT 323 continued to improve its defenses, as heavy rains and poor visibility reduced operations to a minimum. "Company C continued operations to clear the area in rear of the southwestern perimeter. A number of aerial bombs were discovered and detonated. In several instances, it was discovered that the Japanese replaced mines in areas which had been previously reconnoitered and cleared by our troops."

b. On 31 October 1944, the 1st Battalion Aid Station completed a Medical Department Form 52b, which showed the SM had sprained his right ankle; the medical personnel gave the SM morphine as part of their treatment.

c. On 3 November 1944, and following the SM's transfer from the battalion clearing station, the 17th Field Hospital admitted the SM to treat the following medical conditions: (1) right ankle contusion, severe, incurred by falling rock during combat on Peleliu Island, 31 October 1944; (above the comment concerning how the SM incurred his injury, someone added the word "accidentally"). (2) Furunculosis (pus-filled boil). A 17th FH Form 5 shows the following:

(1) The form includes comments that start, "According to pt..."; the remainder is cut off. The second line continues, "...4 days before admission here. No twisting or turning of jo..(remainder of word cut off). Pt shows diffuse (not legible) & moderate swelling, involving entire right ankle. Diffusely tender & localized areas of increased tenderness."

(2) Progress Notes, covering period 4 to 16 November 1944, and showing the following entries:

- 4 Nov 44 – No evidence of fracture by x-ray
- 5 Nov 44 – Swelling less, ankle taped
- 6 Nov 44 – Beginning to use ankle a little. It is feeling better. 4 cm area on inner (not legible) leg above ankle burned prior to admittance by hot pad...may break down
- (No entries between 6 and 12 November 1944; 5-day period)
- 12 Nov 44 – Ankle improving slowly... now fully ambulatory
- 13 Nov – Superficial infection in area of burn on leg. Starting wet compresses
- 15 Nov – Burn healing slowly
- 16 Nov – Burns look satisfactory...(not legible) removed from ankle, moderate skin irritation underneath

(3) Second page of Progress Notes, for 18 November to 13 December 1944, including the following entries:

- 18 Nov – skin --- & burns healing sat (remainder of word unclear)...slight swelling over (unclear)... but ankle improving
- 20 Nov – leg improving slowly
- 24 Nov – has had a sore throat "c ant. + post. cervical adenitis during past 4 days. Throat moderately reddened & tonsils show (unclear) exudate"
- 9 Dec – crusty, superficial infection chin, apparently impetigo
- 13 Dec – chin healing ... ready for discharge

(4) Diagnosis: (1) Contusion, R. ankle, severe, incurred (with "accidently" added above the word "incurred") by falling rock during combat on Peleliu Island, 31 October 1944. (2) Furunculosis, acute, suppurativa, back, mild, cause undetermined (C.U.) (3) Burn, right lower leg, 2nd degree, accidently incurred by application heat pad to leg at clearing station, between 31 Oct 44 and 3 Nov 44.

(5) Disposition: Duty 14 December 1944.

d. Historical Context. The Operation Report – 81st Infantry Division – Operation on Peleliu Island, shows the 81st Infantry Division, including Company C, RCT 323, continued combat operations against Japanese forces. Inclement weather, to include a Typhoon occurring between 4 and 9 November 1944, reduced operations to a minimum. However, by 27 November 1944, the Division had successfully routed the remaining Japanese forces and declared the island secure. The report does not state the 81st Infantry Division demobilized Company C, RCT 323 immediately following the end to combat operations on Peleliu.

e. Medical Department Form shows that, on 14 December 1944, the 17th Field Hospital, located on Peleliu Island, released the SM and returned him to duty. The form listed the diagnoses as: (1) "Contusion, rt ankle, severe, AI incurred by falling rock during combat on Peleliu Island, on 31 Oct 44; (2) Furunculosis, acute, supp, back, mild, C.U.; (3) Burn, right lower leg, 2° (2nd degree), AI by application heat pad to leg at Clearing Sta, between 31 Oct and 3 Nov 44."

f. Historical Context. The Operation Report – 81st Infantry Division – Palau Islands to New Caledonia to Leyte P.I. to Japan, 5 January 1945 to 10 January 1946, reflects that, in January 1945, the 81st Infantry Division, to include Company C, RCT 323, started moving to New Caledonia for rehabilitation and to train for an upcoming operation on Okinawa (Operation Iceberg).

g. On 3 April 1945, medical authority at the 31st Station Hospital, New Caledonia, admitted the SM following a referral by the battalion aid station for abdominal pain, nausea, and vomiting.

(1) On or about 5 April 1945, a doctor gave the SM a physical examination, showing normal results, except for several scars from Furunculosis. On a Medical Department Form 55B (Chief Complaint – Condition on Admission – Previous Personal History), the doctor wrote the following:

(a) Chief Complaint: "Abdominal pain, nausea, vomiting – since age 15." Also included a description of the SM's general appearance and conditions on admission.

(b) Occupation: "Machine Gunner. Volunteered for induction. 19 days of action. Got severe sprained ankle when hit by rock, which was part of a booby trap. 6 weeks and 5 days in 17th F.H. (Field Hospital). Headaches and vomiting."

(c) The examination then described the SM's habits as "Moderate," and detailed the SM's family history.

(2) On 6 April 1945, the SM's doctor requested a neuropsychiatric consult based on a provisional diagnosis of "psychoneurosis, mild." On 7 April 1945, a physician completed a neuropsychiatric evaluation of the SM and concluded, "Under a purely psychiatric point-of-view, yet in compliance with present policies of military expediency through conservation of manpower, it may be said that the man can be returned to duty and stay there until he becomes (which he certainly may) not effective enough to be kept in the company...Under a more somatic medical point-of-view, you have to make your decision taking into consideration his current Furunculosis. If separated from present outfit, he should be recommended for reclassification to a non-combat outfit via 6th Replacement Depot."

(3) On 16 April 1945, the 31st Station Hospital discharged the SM and returned him to duty; the diagnoses were: psychoneurosis – mixed, chronic, moderate, severe C.U. and Lambliasis – chronic, mild, C.U.

h. Historical Context. The Operation Report – 81st Infantry Division – Palau Islands to New Caledonia to Leyte P.I. to Japan, 5 January 1945 to 10 January 1946: on 18 April 1945, higher headquarters released the 81st Infantry Division as area reserve for Operation Iceberg and ordered the Division to Leyte, The Philippines; the Division arrived in Leyte in June 1945. After undergoing amphibious training in Southeastern Leyte, the Division initiated "mopping-up" operations, on 21 July 1945, in Northwest Leyte; on 12 August 1945, the Division terminated that operation and prepared for movement to Japan. On 15 August 1945, Japan formally surrendered.

i. On or about 26 August 1945, the 116th Station Hospital in Leyte admitted the SM because of neuritis in his right arm and anxiety; the SM reported that, on the night of 23 August 1945, he slept on his right arm and when he awoke, his hand and arm were numb up to his elbow. This condition cleared up after two days, but he now felt pain in his forearm and it hurt to move his arm. On 22 September 1945, the 116th Station Hospital transferred the SM to the 44th General Hospital, also in Leyte. On 13 October 1945, the hospital discharged the SM and returned him to duty.

j. Historical Context. The Operation Report – 81st Infantry Division – Palau Islands to New Caledonia to Leyte P.I. to Japan states, starting in September 1945, the 81st Infantry Division began transferring its units to Japan to establish a military government in the Aomori Prefecture on the northern part of Japan's main island (Honshu).

k. On 3 December 1945, the SM departed the Pacific Theater and, on 15 December 1945, landed in the continental U.S.(CONUS). On or about 5 January 1946, the SM arrived at Fort Knox, KY for separation processing. On 8 January 1946, he underwent a separation physical. On the SM's WD AGO Form 38 (Report of Physical Examination of Enlisted Personnel Prior to Discharge, Release from Active Duty, or Retirement), the examining physician entered the following:

(1) Item 10 (At the Present Time, Do You Have any Wound, Injury, or Disease which is Disabling? (Yes - No)): "No Malaria or Syphilis, Atabrine stopped November 1945 – No"

(2) Item 11 (List All Significant Diseases, Wounds, and Injuries. State Circumstances under which Wounds or Injuries were Incurred and Date of Onset):

- "(a) Shrapnel wound right leg, 31 October 1944, 306 Medical Hospital, Peleliu"; "EPTS (Existed Prior to Service) – No; AMS (Aggravated by Service) – No; IMS (Incurred while in Military Service) – Yes; PD (Present Physical Defect) – No"
- "(b) Gonorrhea, July 1945, 41 Port Surgical Hospital, Leyte, Philippines" "EPTS – No; AMS – No; IMS – Yes; PD – No"

(3) In item 43 (Remarks, Special Tests, or Other Defects), the physician stated "None."

(4) Under "Report of Board of Review," the form states:

- (a) "(1) He meets physical and mental standards for discharge – Yes."
- (b) "(2) He meets physical and mental standards except physical examination reveals:

- (a) "Well-healed shrapnel wound, superficial, medial surface of the right calf;"
- (b) Prostatitis, chronic, mild"

(5) "(3) The defect, wound, injury, or disease is likely to result in untimely death – No."

(6) "(4) The defect, wound, injury, or disease is likely to result in permanent disability – No."

(7) "(5) In our opinion, the defect, wound, injury, or disease was incurred in the line of duty in the military service of the United States – Yes."

l. On 8 January 1946, the Army honorably discharged the SM for the convenience of the government. His WD AGO Form 53-55 shows he completed 11 months and 14 days of service within CONUS and 1 year, 5 months, and 13 days of foreign service.

(1) Item 31 (Military Qualification and Date) lists the award of the Combat Infantryman Badge.

(2) Item 33 (Decorations and Citations) reflects the award of the Asiatic Pacific Theater (now called the Asiatic-Pacific Campaign Medal) with two bronze service stars, Philippine Liberation Ribbon with one bronze service star, Purple Heart, and Army Good Conduct Medal.

(3) Item 34 (Wounds Received in Action) states the SM sustained wounds, on 31 October 1944, at Palau Island.

m. On 30 January 1946, the Army inactivated the 81st Infantry Division in Japan.

n. In or around May/June 1948, the SM applied for VA benefits, based upon having incurred a right ankle injury, on 31 October 1945; stomach condition, in November 1945; and a dental condition. Thereafter, the SM and the applicant sought VA disability compensation for the SM's combat-related medical conditions. In March 1949, the VA approved compensation for "Nervous Condition," and, initially, found no service-connection for the SM's right leg, right ankle, and right arm neuritis, but later awarded those conditions a 0 percent disability rating. The VA continued to revise the SM's disability ratings over the subsequent decades.

o. On 25 July 2006, during a VA Compensation and Pension Examination pertaining to the SM's history of depression and anxiety disorder, the SM disclosed that, during combat in the Philippines, when "he and others were to 'take a Jap machine gunner out,'...the Air Force was bombing the enemy also, (and) he was hit in the leg by pieces

of an explosive that detonated. He also had a concussion from the blast. He was carried off the battle area to a field hospital, where he was out of action of about a month. After recuperation, he went back to combat." On 20 January 2007, the SM died from septic shock and pneumonia.

p. On 21 March 2011, the applicant petitioned the ABCMR, requesting the correction of his father's military medical records and the award of the Bronze Star Medal. On 8 June 2011, the ABCMR granted the award of the SM the Bronze Star Medal; per an Army policy made effective in September 1947, Soldiers who received the Combat Infantryman Badge were also eligible for the Bronze Star Medal.

q. On 30 May 2012, ABCMR reopened the applicant's petition to address his requests for the correction of his father's medical records. On 19 July 2012, the Board denied relief, stating:

(1) "Medical records reflect the observations and opinions of medical professionals at the time they were created. Alteration of a diagnosis in those records after the fact may lead to fundamental questions about the veracity of the records in this case and in general. For these reasons, it would not be proper to change any of the medical documents the applicant provides which would, in effect, alter a diagnosis in the FSM's (former service member's) medical records."

(2) The Board added, "...a physician makes certain observations and diagnoses and records them faithfully in the medical records at the time. It would take independent and corroborating evidence to alter a diagnosis. The applicant failed to provide the necessary evidence or proof to corroborate what he contends is incorrect on the FSM's medical records."

(3) "In the FSM's case, the preponderance of the evidence shows military medical officials made various entries on his medical records. Each diagnosis was duly recorded in his medical records and the applicant has not presented sufficient reason to alter the basis of the Army's diagnosis. In the absence of evidence to the contrary it is presumed the FSM was diagnosed by competent military medical authorities and his medical records were properly annotated."

r. On 6 August 2012, the applicant filed a reconsideration request; on 26 October 2012, the ABCMR administratively closed the applicant's request because he failed to provide new evidence.

s. On or about 26 October 2012, ARBA received two documents from the applicant indicating he had initiated a Tort Claim against the Army and a lawsuit against the ABCMR, VA, Department of Defense, and the U.S. Army. On 9 November 2012, the applicant sent ABCMR a letter outlining his issues with the Board's prior decisions.

(1) With his tort claim, the applicant included "3rd party" evidence to support his father's recollection of events on Peleliu. The evidence was in the form of emails and summaries about Veterans who had participated in the Battle for Peleliu; the documents state the following:

- 22 July 2008 – Mr. [REDACTED] wrote, "My father, [REDACTED] I believe was with the 81st Wildcats (i.e., 81st Infantry Division)....He has Alzheimer's now and can't tell me anything anymore"
- 24 September 2009 – Mr. [REDACTED] wrote, "I know nothing about what happened to C Company, 323rd, but a Marine once told me they were penned down by friendly artillery fire once...could have been the same instance"
- 24 September 2009 – Mr. [REDACTED] wrote, "My Dad was wounded in Sept(ember) in the battle for the adjacent Anguar (sic) Island. I was able to piece together the approximate location where he was wounded from his separation papers, personal accounts, and the unit history."
- 26 September 2009 – Ms. [REDACTED] wrote, "The letter from the chaplain of Headquarters of 323rd Infantry stated, [REDACTED] was killed in action while on patrol duty against the enemy. His unit was advancing when an undetected mine exploded in their midst killing several men instantly"
- 26 March 2010 – Ms. [REDACTED] wrote, "My father, [REDACTED] returned to his co. in late May (32nd (Infantry Division), 127th ((Infantry Regiment), Co G.) shortly after his company was bombed by friendly fire on the Villa Verde Trail (located in Luzon, Philippines)...all his friends were dead"
- Document – [REDACTED] Navy-Marine Corps; 1st Marine Division; suffered a blast concussion "supposed to be from friendly fire; happened on Peleliu"
- Document – [REDACTED] Marine Corps; C Company, 1st Tank Battalion, 1st Marine Division; served on Peleliu Island; "sustained seven wounds on 6/17/1945 earning him the nickname 'The Sieve' and rescued a fellow Marine from a burning tank. Veteran sustained wounds from friendly fire..."
- Document – [REDACTED] PFC (private first class) - 81st Division, 323rd Regiment. "He was WIA (wounded in action) on Peleliu on 10/23/44. The only info he ever relayed about his experience was that he was WIA by 'friendly (mortar) fire and that he was the only man to survive...out of 12 men"
- Document – [REDACTED] 323rd Regiment, 81st Infantry, C Company, Wildcat Division. "Injured when a mine blew up in front of him. He still has shrapnel in various parts of his body"
- Document – [REDACTED] Tech Sergeant, 81st Infantry Division (Wildcats), 323rd Regiment, 1st Battalion, Company I, 1st Platoon. Fought in Ulithi,

Angaur, and Peleliu...was severely WIA by mortar fire on "Bloody Nose Ridge" at 4:00 PM on 28 October 1944

(2) On 29 November 2012, ARBA advised the applicant that based on his disclosure that he had filed suit against the ABCMR in Federal court, which officials in the litigation division subsequently confirmed, the ABCMR was administratively closing the applicant's case without taking action.

t. On 8 June 2019, the applicant petitioned the ABCMR, requesting the Board grant the following requests: explain the Peleliu incident, pertaining to Company C, RCT 323; account for the SM's combat injuries; correct the SM's discharge examination (i.e., WD AGO Form 38); and review the Tiger Team's decision and 2006 health records, which confirm additional combat injuries. The applicant presented the following arguments:

(1) Combat Connected Injuries.

(a) Post-Traumatic Stress Disorder (PTSD). The applicant contended his father had incurred PTSD, as a result of traumatic events he experienced on Peleliu. The SM's medical records showed that an Army doctor recommended the SM's reassignment to a non-combat position. Although the Army never referred to Peleliu again, the horrors of combat resulted in the SM's permanent PTSD.

(b) Major Brain Injury with Concussion to Head and Entire Body.

- At a VA medical facility, the SM gave a vivid account, in the applicant's presence, of what happened on 31 October 1944
- The SM stated, "he heard the sounds of incoming shells while on a combat mission against the Japanese and had it not been for him diving behind a nearby rock formation at the last second he would have been killed as was close to half of Company C in an unintentional act of friendly fire."
- "He stated he had to be carried off the battlefield on a stretcher and was unconscious for close to 4 weeks. He stated he found out after he regained consciousness how badly Company C had been decimated from that unfortunate attack and lost several of his Army friends."
- "He stated on the day he was released from the hospital he was still out of it and was reassigned to another Company probably Company A."
- The Army failed to record the aforementioned events, and, although the SM's medical records reflect a lower back injury; ankle, leg, and shoulder injuries; and a "mild CU," they did not use the word, "unconscious" at any point during the SM's hospitalization

- "In fact the U.S. Army went out of their way to conceal the facts and truth about the incident and the extent of the Veteran's injuries. They made it look like the Veteran was conscious when he was not and could not be conscious. That he was ambulatory and up walking around and talking and could not be"
- (Apparently referring to the 17th FH Form 5, dated in November 1944) the applicant writes, "The very first entry in the medical record that would show Dad had regained consciousness was on November 24, 1944, when he was stated to have a bad sore throat"
- "The documents show that no entries were made in his medical record for 7 consecutive days one time and a total of 29 out of 45 days while he was in the hospital. No conscious soldier as badly injured as Dad was would have had as many consecutive or total days with no entries..."
- "Another documented fact that the U.S Army cannot explain or deny is that the medical record states that a heating pad was applied and left on his injured leg and ankle so long it burnt it, caused an infection that took weeks to heal and left a permanent scar"

(c) Lower Back Injury. "This injury was entered into the veteran's medical record at the time it occurred but the VA never rated him or accounted for it...."

(d) Ankle Injury. "This is recorded in the medical record and the VA recognized it and rated him for it."

(e) Stomach, Intestinal, and Bowel Trouble. "Obviously this is a condition that anyone can develop without being wounded in combat. But in this case when the Veteran had NO previous symptoms and reasons for it, I witnessed it over a long period of time, it originated on Peleliu and was one of the earliest symptoms I saw him exhibit. My mother told me he had been like that since the war. The effect of the explosions damaged the walls of his entire digestive tract and his complaints began at Peleliu." "The U.S. Army and VA, however; rather than attribute these symptoms to combat, attributed it to other reasons."

(f) Tinnitus and Hearing Damage. The applicant's father complained about ringing in his ears, but VA never tested his hearing until the Tiger Team stepped in. "Even though the VA knew he had complained about it over a long period of time they never placed any combat connection to it."

(g) Neuritis in Shoulder. "This is another one of the problems Dad had, in addition to his lower back damage...."

(2) Errors in U.S. Army Medical Records and Responsibility to [SM].

(a) "I have submitted documentation and evidence that show the errors the U.S. Army made in the Veteran's records when he was on active duty and in combat."

(b) "I have to ask you how was it possible that if dad were conscious and talking when he was carried off the battlefield why he would not yell to the U.S. Army medics when they applied a heating pad to his leg it was so hot that it burnt his leg and caused a serious infection from the bum? So hot that it took weeks to heal and left a permanent scar? What conscious soldier would allow that to happen? A minor CU does not render a soldier unconscious. No where is the word unconscious found in his medical record. Why?"

(c) "How was it possible that he was up walking around on November 13, 1944 when they allege his injured ankle and foot were now ambulatory then they come back and question it and say he was healing slowly? If he would have been conscious at that time there would have been no doubts he would have told them he could walk on it." "The U.S. Army Board of Corrections and the VA need to do the research I did on the Battle of Peleliu. The invasion and Battle at Peleliu was one of the bloodiest in the South Pacific Theater during WWII and the U.S. casualties were near 10,000 with over 3,000 killed in action."

(d) "When half of Company C were killed or severely wounded from support force shelling from friendly fire during combat, how could anyone fail to recognize the level of impact of this accidental shelling attack on soldiers like Dad?" "To find in Dad's record that a U.S Army physician recommended to commanders that he not be reassigned to a combat position after his Company C had to be demobilized from so many casualties during that incident, he was reassigned to combat duty anyhow without him having any time to recover, if that were possible, from his near death on Peleliu is even more upsetting." "The incident he experienced at Peleliu on October 31, 1944 is THE ORIGIN of the injuries he sustained as listed above and for life."

(3) The applicant continues with a description of his evidence of fraud by the VA and details his father's efforts to appeal VA's denial of benefits and the difficulty in obtaining the SM's medical records until after the SM's death.

u. On 30 January 2019, an ARBA Medical Advisor provided an advisory opinion concerning any behavioral health conditions the SM may have had while on active duty. The Medical Advisor concluded that the SM did not meet the criteria for PTSD, but he did have "Somatic Symptom Disorder," (previously known as "Undifferentiated Somatoform Disorder), and this condition failed medical retention standards.

v. On 30 January 2020, an ARBA Medical Advisor completed an advisory opinion pertaining to the SM's other medical conditions:

(1) The ARBA Medical Advisor determined the following:

- Right Ankle Injury – Combat injury but, at separation, the condition met medical retention standards
- Right Leg Scars – Burns from a heating pad caused the scars, and the SM incurred the injury in a combat zone; at separation, the condition met medical retention standards
- Stomach and Bowel Issues – SM had a parasitic infection (giardiasis/lambliasis) incurred in combat, but at discharge, the infectious bowel conditions were resolved; the "nervous stomach" was not incurred in but was aggravated by combat; met retention standards at separation
- Tinnitus – Not reported during military service; the hearing specialist opined the tinnitus was likely not related to military exposure because it was intermittent
- Hearing Damage to Both Ears – "It is at least as likely as not that combat exposure contributed to the Veteran's hearing loss"
- Lower Back Injury – "While inpatient in September 1945, the Veteran reported back pains, the etiology was not documented/discussed. There were no other in-service notes related to back pain/injury...Evidence does not support that there was a back condition/injury at the time of discharge."
- Shoulder Neuritis – SM claimed shoulder injury due to explosives exposure; evidence does not support the presence of a shoulder condition/injury at time of discharge
- Right Arm Neuritis – The SM incurred this injury while in a combat zone; however, his discharge physical examination noted no musculoskeletal defects; evidence does not support that later symptoms of right arm brachial neuritis were present at time of separation
- Brain Injury – "Proximity and exposure to explosives is documented (and would be expected during the Battle of Peleliu events as described), however, a definitive brain injury was not diagnosed"; a 29 June 2006 scan of the head showed a chronic subdural hematoma," but "no indication...medical providers attributed this finding to a head injury due to exposure to explosives"
- Brain Injury (continued) – "A subdural hematoma would not persist for decades; the overall evidence does not support an inference that the patient was in a coma or was unconscious for a protracted period of time."
- Brain Injury (continued) – "Likewise, the overall evidence does not support that there was a distinct brain injury/condition at time of discharge"
- Chronic, Mild Prostatitis – Condition listed on WD AGO Form 38The Report of Board of Review determined the "defect, wound, injury, or disease" was not likely to result in permanent disability

(2) The ARBA Medical Advisor noted that the discharge examination did not completely list all of the SM's conditions. To be complete, the discharge examination could have included the following conditions that all appear to have met retention standards:

- (1) Right ankle sprain, severe- resolved (combat injury)
- (2) Right leg scar (right calf), secondary to shrapnel wound- well healed (combat injury)
- (3) Right leg scar, secondary to heating pad burn- well healed (combat zone incurred)
- (4) Right leg infection, secondary to heating pad burn- resolved (combat zone incurred)
- (5) Functional gastrointestinal condition, intermittent- not currently active (existed prior to service, aggravated in a combat zone)
- (6) Appendectomy scar- well healed (existed prior to service, not aggravated in service)
- (7) Amebic dysentery (*Entamoeba histolytica*)- treated (combat zone incurred)
- (8) Gastrointestinal parasitic infection (giardia), mild- treated (combat zone incurred)
- (9) Brachial neuritis, right arm, moderate to severe- resolved (combat zone incurred)
- (10) Chronic, mild prostatitis, organism (gonorrhea)- treated, mild inflammation persists

w. The applicant provided a rebuttal and argued the advisories were inaccurate and had missed significant facts.

x. On 1 April 2020, the Board granted partial relief, following a review of all available evidence, and a teleconference with the applicant.

(1) Under "Board Discussion," the Board stated the following:

(a) The Board concurred with the medical advisor's assessment that, to be complete, the SM's WD AGO 38 should have included the 10 medical conditions listed at the end of the 30 January 2020 advisory opinion.

(b) Additionally, the Board found that, although it was possible that the SM suffered some type of concussive head injury during combat, the available records did not mention this; further, the Board found the medical advisor's comment persuasive that subdural hematomas do not persist for decades. As such, the Board concluded the evidence was insufficient to warrant a change to the SM's records to show a brain

injury. Nonetheless, the Board did agree the record should reflect the SM complained of such an injury while in service, and that the SM's WD AGO 38 should show he mentioned having tinnitus and hearing problems.

(c) As to PTSD, the Board concurred with the ARBA Medical Advisor's assessment that the SM had Somatic Symptom Disorder at the time of his discharge, but that the preponderance of evidence indicated he was exhibiting PTSD symptoms prior to discharge. While PTSD was not a recognized diagnosis at the time, the Board agreed the WD AGO 38 should have documented the SM's behavioral health diagnosis (i.e., psychoneurosis, anxiety state, later changed to anxiety state, moderate).

(d) The Board agreed with the ARBA Medical Advisor's finding that the SM was not fit for continued military service at the time of his discharge; based on the preponderance of evidence, the Board determined the SM's records should be corrected to show the basis for the SM's separation was disability, incurred in the line of duty, and that the SM should be issued a Certificate of Disability for Discharge.

(e) "Finally, the Board considered the insertion of the word "accidentally" in the clinical record of the ankle injury the FSM incurred from a falling rock on or about 31 October 1944." The Board agreed the word "accidentally" should be removed from the record.

(2) The Board recommended the following actions

(a) Amend the WD AGO 38 to show the following:

- (1) Right ankle sprain, severe- resolved (combat injury)
- (2) Right leg scar (right calf), secondary to shrapnel wound- well healed (combat injury)
- (3) Right leg scar, secondary to heating pad burn- well healed (combat zone incurred)
- (4) Right leg infection, secondary to heating pad burn- resolved (combat zone incurred)
- (5) Functional gastrointestinal condition, intermittent- not currently active (existed prior to service, aggravated in a combat zone)
- (6) Appendectomy scar- well healed (existed prior to service, not aggravated in service)
- (7) Amebic dysentery (*Entamoeba histolytica*)- treated (combat zone incurred)
- (8) Gastrointestinal parasitic infection (giardia), mild- treated (combat zone incurred)
- (9) Brachial neuritis, right arm, moderate to severe- resolved (combat zone incurred)

- (10) Chronic, mild prostatitis, organism (gonorrhea)- treated, mild inflammation persists
- (11) Psychoneurosis, anxiety state, later changed to anxiety state, moderate (combat zone incurred)
- (12) Complaint of head injury, no related treatment or diagnosis documented
- (13) Complaint of tinnitus and hearing loss, no related treatment or diagnosis documented

(b) Issue a Certificate of Discharge for Disability or equivalent document indicating the SM's discharge was due to disability incurred in the line of duty.

(c) Redact the word "accidentally" from the SM's 17th Field Hospital Clinical Record (17th FH Form 5) listing 3 November 1944 as the date of admission.

(3) "The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above."

(4) On 9 April 2020, the ABCMR advised the applicant the Board had partially granted his requests, and that the approved ROP had been forwarded to the Office of The Surgeon General (OTSG) for their corrective action.

y. On 15 May 2020, the applicant requested reconsideration, stating that he wanted to thank the ABCMR for doing a far better job than the previous Board, but, after reviewing the Board's ROP, he found that major errors in his father's records remained. The following still needed to be done:

(1) Attach a summary about the Peleliu incident, stating that, on 31 October 1944, the SM was almost killed, along with half of Company C, RCT 323, and that so many members of Company C were injured, the unit had to be demobilized.

(2) The word "accidental" should be left alone because the Peleliu incident was an accident; that is why it is essential to add the aforementioned explanation.

(3) The SM incurred a major head injury with explosion concussion to his brain and entire body; in addition, the SM sustained hearing damage, brachial neuritis, and PTSD. All can be confirmed, either by looking at his original military medical records or by reviewing VA's subsequent findings. As to stomach and bowel issues, the SM incurred this condition during combat, not from growing up during the depression.

(4) Beyond changing the SM's record to show he was disabled, and per OTJAG's original direction, the Board needs to clarify that the SM was eligible for disability retirement at his discharge.

z. On 10 June 2020, the Case Management Division (CMD) of ARBA advised the applicant of the following:

(1) "We are pleased to inform you the OTSG informed us the medical records of former service member [SM] have been corrected in accordance with the findings of the ABCMR. A copy of the memorandum (dated 15 May 2020) is enclosed for your use."

(2) "Please be advised a new WD AGO Form 38 is not possible as it is no longer in use. The Certificate of Discharge for that period is the WD AGO Form 40. It was a form issued for use by the VA, but the form is no longer available and there is no equivalent document. Therefore, the filing of the ABCMR decision into the official record of [SM's] serves to implement all of the corrections directed by ABCMR decision AR20190009486." "An official copy of the ABCMR decision and the OTSG memorandum has been forwarded to the National Archives Records Administration and filed in the official military record."

aa. On 24 June 2020, the applicant emailed COL [REDACTED] Executive Officer within the Office of the Secretary of the Army.

(1) The applicant asked COL [REDACTED] to attach a short report to the SM's records, which would clarify that what happened to the SM and his unit at Peleliu was an accident. The applicant added that COL [REDACTED] had told him that "a sentence that (SM's) disability discharge qualified him for monthly disability retirement should be included, and that that was to be handled by the VA at the time of (SM's) discharge on Jan(uary) 6, 1946." The applicant further provided COL [REDACTED] a list of his father's combat-related injuries, which he wanted added to the SM's records:

- Brain injury or subdural hematoma
- Permanent hearing loss
- Tinnitus
- Permanent PTSD
- Severe leg and ankle injury
- Brachial neuritis, later causing intermittent paralysis in the SM's hands and arms
- Bowel and stomach trouble

(2) COL [REDACTED] forwarded the applicant's email through the Assistant Secretary of the Army for Manpower and Reserve Affairs to the ABCMR for the ABCMR to respond.

bb. On 26 June 2020, the Board considered the applicant's reconsideration requests: correction of the SM's medical records to show the severity of what happened to him; provide more specific details about the extent of the SM's injuries and how they occurred; and show the SM's entitlement to disability retirement pay. The Board voted to grant partial relief.

(1) The Board recommended inserting the following statements in the SM's military medical records:

- Right ankle sprain, severe – sprain resolved; residual intermittent pain; no physical exam findings (combat injury), and;
- Brachial neuritis, right arm, moderate to severe – neuritis resolved, residual intermittent pain and subjective numbness, no physical exam findings (combat zone incurred)

(2) The Board further recommended denying so much of the application that pertained to relief other than that stated above.

(3) On 13 July 2020, the ABCMR notified the applicant of the Board's results.

(4) On or about 15 July 2020, ARBA CMD forwarded all documents to the NPRC to be interfiled in the SM's service record.

cc. On 12 May 2022, in response to the applicant's requests for reconsideration, the Board voted to deny relief.

(1) The Board addressed the following requests:

- Add an explanation to the SM's record explaining what occurred on 31 October 1944 at Peleliu
- Add a summary report described the events on 31 October 1944
- Add a statement in the SM's record showing his eligibility for disability retire pay, effective 6 January 1946

(2) The Board stated it reviewed the applicant's analysis of the available records and the conclusions he reached based on that analysis.

(a) "The Board noted that its decisions are based on a preponderance of evidence standard and, unfortunately, what the applicant has requested would require the Board to speculate rather than apply the preponderance of evidence standard. The Board determined there is insufficient evidence available to support adding an explanation to the FSM's record of an incident that occurred on 31 October 1944 on

Peleliu or adding a summary report of what happened during the incident on 31 October 1944."

(b) "The Board has already determined the FSM should have received a Certificate of Disability for Discharge at the time of his separation, and the Board's determination was approved and is now a matter of record. At the time of the FSM's service, the Army played no role in paying or determining eligibility for a pension based on disability. This was the role of the Veterans Administration (now the Department of Veterans Affairs). The Board determined there is no basis for adding a statement to the FSM's Army service record that he was eligible for disability retirement income effective 6 January 1946."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found no basis for making any further changes to the SM's medical records. The Board has previously considered all available records, and the Board determined there is no new evidence that would serve as a basis for any additional corrections.
3. Regarding inserting into the SM's record an explanation of what occurred on 31 October 1944, the Board again noted that its decisions are based on a preponderance of evidence standard, and what the applicant has requested would require the Board to speculate rather than apply the preponderance of evidence standard. The Board determined there is insufficient evidence available to support adding an explanation to the SM's record of an incident that occurred on 31 October 1944 on Peleliu.
4. The Board previously determined the SM should have received a Certificate of Disability for Discharge, and the filing of previous proceedings in his record served as a means to constructively correct his record. As previously noted by the Board, in 1946, the Army did not make determinations of eligibility for a pension based on disability—this was a function of the Veterans Administration (now the Department of Veterans Affairs). The Board again determined there is no basis for adding a statement to the SM's Army record regarding his eligibility for disability retirement income because this was not an Army function.
5. Regarding the applicant's request to direct the U.S. Army Claims Service to properly resolve the applicant's currently pending claim, the Board again noted that the

ABCMR's authority is limited to correcting military records when necessary to correct an error or remove an injustice. It has no authority to direct or order a Department of the Army employee or officer to take action relative to discretionary authority held by that employee or officer, and therefore the Board cannot make a ruling, favorable or unfavorable, on this portion of the applicant's request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decisions of the ABCMR set forth in Docket Numbers:

- AR20110005774 on 8 June 2011
- AR20120010187 on 19 July 2012
- AR20120016134 on 26 October 2012
- AR20120021210 on 27 November 2012
- AR20190009486 on 1 April 2020
- AR20200005478 on 26 June 2020
- AR20200009685 on 12 May 2022

9/24/2024

X

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 (AR) 615-361 (Enlisted Men – Discharge – Medical), in effect at the time, discussed Certificates of Disability for Discharge, which were issued to enlisted Soldiers who were permanently unfit for further military service because of wounds, injuries, or disease.
2. AR 615-395 (Enlisted Men – Retirement), in effect at the time, stated Regular Army Enlisted Soldiers who completed 20 or more years of service, and who had become permanently incapacitated from active duty because of physical disability incurred in the line of duty, were to be placed on the retired list provided they were honorably discharged; any former enlisted man placed on the retired list prior to 4 May 1945 were not entitled to receive retired pay.
3. Public Law (PL) 67-47, enacted 8 August 1921, established the Veterans Bureau; On 21 July 1930, Executive Order (EO) Number 5398 combined organizations, to include the Veterans Bureau, to form the Veterans Administration.
4. PL 408, section 1, dated 30 August 1935 (as amended by the PL 18, section 5, 3 April 1939) authorized the President to call Reservists to active duty; EO Number 8099, dated 28 April 1939, permitted Army of the United States Soldiers to be eligible for the same pensions, compensation, retirement pay, and hospital benefits available to Regular Army Soldiers. The EO additionally designated the Veterans Administration to administer the aforementioned benefits. PL Number 8461, dated 28 June 1940, directed the Secretary of War to determine eligibility for the foregoing benefits, as spelled out by the law and Regular Army regulations.
5. PL 140, section 2, dated 30 June 1941 (subsequently amended by PL 51, dated 4 May 1945), authorized enlisted men in the Regular Army who had completed years or more and become permanently incapacitated due to physical disability incurred in the line of duty, were to be placed on the retired list, provided they were honorably discharged; any former enlisted man placed on the retired list prior to 4 May 1945 were not entitled to receive retired pay.
6. PL 346 (Servicemen's Readjustment Act of 1944) stated no person was to be discharged or released from active duty in the Armed Forces until his certificate of discharge or release from active duty and final pay, or a substantial portion thereof, were ready for delivery to him or to his next of kin or legal representative; and no person was to be discharged or released from active service on account of disability until and unless he had executed a claim for compensation, pension, or hospitalization, to be filed with the Veterans' Administration.

7. Public Law 351, Career Compensation Act of 1949, Title IV (Provisions Relating to Retirement, Retirement Pay, Separation, and Severance Pay for Physical Disability) transferred the responsibility for disability compensation from the VA to the military services for service members found to be unfit for continued military service due to physical disability.

8. AR 40-66, currently in effect, policies and procedures for the preparation, disposition, and use of Army electronic and paper medical records and other healthcare documentation.

a. Paragraph 1-5 (Background). The purpose of a medical record is to provide a complete medical history for patient care, medicolegal support (for example, reimbursement and tort claims), research, and education. A medical record also provides a means of communication, where necessary, to fulfill other Army functions.

b. Paragraph 1-6 (Record Ownership). Army medical records are the property of the Government. Thus, the same controls that apply to other Government documents apply to Army medical records.

c. Paragraph 3-4e (Medical Record Entries – General – Corrections to Entries). To correct an entry, a single line is drawn through the incorrect information, and it is noted as “error,” then dated and initialed. This information must remain readable. Deletion, obliteration, or destruction of medical record information is not authorized. The new information is then added, with the reason for the change (for example, “wrong patient’s chart”), the date, and signature (with title) of the person making the change. Electronic corrections to entries must show a complete audit trail.

d. Under the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA), individuals have the right to request an amendment or correction to their medical records. Such a request can be denied, and the denying agency must provide the basis for denial; a statement advising the individual of his/her right to submit a written statement of disagreement, along with a description as to how the individual can file the statement. The denying agency must also inform the individual of his/her right to file a complaint with the Department of Health and Human Services (HHS).

9. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant’s service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//