

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230001539

APPLICANT REQUESTS: reconsideration of his previous request to have his narrative reason for separation corrected to show he was discharged or retired due to disability.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Army Board for Correction of Military Records (ABCMR), Case AR20150006139 Record of Proceedings, 11 August 2015
- Orders Number 126-227, 5 May 2012
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 9 October 2012
- Calendar of Year 2012
- Department of the Army (DA), Office of the Deputy Chief of Staff, G-1, Implementation Guidance 25-Day Rule for Release from Active Duty (REFRAD) of Soldiers with Pre-Existing Medical Conditions
- DD Form 689 (Individual Sick Slip), 24 August 2012
- DD Form 689, 12 September 2012
- DD Form 689, date illegible
- Chronological Record of Medical Care, 12 September 2012 and 21 September 2012
- DD Form 2697 (Report of Medical Assessment), 21 September 2012
- DA Form 3349 (Physical Profile), 3 June 2014
- Chronological Record of Medical Care, 15 August 2015
- Department of Veterans Affairs (VA) Rating Decision, 7 June 2021
- VA Problem List, 12 November 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20150006139 on 11 August 2015 and Docket Number AR20150016256 on 6 April 2017.

2. The applicant states, in effect:

a. Mistakes caused material facts to remain unexamined before a decision was rendered. On 21 September 2012, the physician assistant (PA) entered into official government records that he was being REFRAD due to inability to wear the improved outer tactical vest (IOTV). The PA attests that he was evaluated for shoulder pain and further evaluation was not required.

b. The 25-day rule states a determination of a preexisting condition must be made in the first 25 days. The calendar for 2012 shows 37 days elapsed before a determination was made that he had a static medical condition. Thereafter, he was discharged from active duty on "1 October 2012", for medical reasons stated in the report. His DD Form 214 shows "2 months and 23 days" on active duty until REFRAD. There are six chronological government documents found showing observation of medical conditions that interfere with the ability to perform combat duties, formulated prior to him being discharged from active duty.

c. He returned from active-duty status to the Army National Guard (ARNG) and after returning to his home station he had a doctor's visit on 15 August 2013 at Fort Drum, NY. The complaints noted during the visit were left shoulder pain, knee pain, hip, and other joint pain. The report shows a diagnosis of osteoarthritis and a prescription for 60mg of prednisone. A DA profile, dated 6 June 2014, shows he was given a 3-month profile, which noted asthma. The profile shows he was unable to perform tasks commensurate with his duties.

d. He was discharged after a qualitative retention review on 10 October 2014. Documentation after he was discharged shows he was rated by the VA for conditions noted in his medical reports, as service-connected peacetime, aggravated, and service-connected Gulf War incurred.

e. The omission of material information caused a miscomprehension of the reason for discharge. The DA admits that he was discharged due to medical inability, therefore, the discharge reason is for physical disability.

3. The applicant provides the following documents:

a. Orders Number 126-227, issued by the Office of the Adjutant General, dated 5 May 2012, which shows he was ordered to active duty in support of Operation Enduring Freedom for a period not to exceed 400 days. His report date to home station (Yonkers G1) was 16 August 2012 and his report date to the mobilization station (MOB) (Fort Bliss, TX) was 19 August 2012. Additional instructions noted:

(1) He was ordered to active duty for a period of less than 30 days for mobilization processing that included medical and dental screening and/or care.

(2) If upon reporting for duty he failed to meet deployment medical standards, whether because of a temporary or permanent medical condition, he may be released from active duty, returned to his prior reserve status, and returned to his home address, subject to a subsequent order to active duty upon resolution of the disqualifying medical condition.

(3) Pursuant to Presidential Executive Order of 14 September 2001, he was relieved from his present reserve component status and ordered to active duty not to exceed 25 days for mobilization processing.

b. A calendar of the year 2012, in which he writes on the document: "There were 39 days between the date of reporting for mobilization and the date it was determined I had an illness/injury that interferes with the performance of my duty when one looks at medical records and the calendar dates."

c. DA Implementation Guidance 25-Day Rule for REFRAD of Soldiers with Pre-Existing Medical Conditions, which shows the rule applies to Reserve Component and Title 32 Army National Guard Reserve Soldiers who are being mobilized in support of contingency operations. It states:

(1) Determination of disqualifying pre-existing medical conditions must be identified within the first 25-days of mobilization. The clock starts when the Soldier reports to home station (M date).

(2) Soldiers identified in the first 25-days as having a pre-existing medical condition that renders the individual non-deployable may be REFRAD immediately.

(3) Disqualifying pre-existing medical conditions can be identified by authorized medical personnel at Home Station or at the Mob Station. Pre-existing conditions include temporary and permanent conditions that do not meet medical retention standards.

(4) Administrative processing of REFRAD orders, Soldier out-processing and return to home record must be completed no later than 30-days from Soldier's M date.

d. An Individual Sick Slip dated 24 August 2012, which shows in the remarks section the applicant was seen for right knee pain. It states he was not to run, jump, or march for one week.

e. An Individual Sick Slip dated 12 September 2012, containing the entry “No IOTV, vest today – Vest needs to be adjusted (loosened)” in the remarks section.

f. An Individual Sick Slip, date illegible, which states in the remarks section that he has an IOTV/vest and if he cannot wear it due to discomfort he should not deploy.

g. A Chronological Record of Medical Care which shows on:

- 12 September 2012 – he reported difficulty wearing his vest (tight), allergies to dust in new climate, small abrasion to ankle, and eczema. He had nasal discharge, postnasal drip, and nasal passage blockage, with no throat symptom, and was not feeling congested in the chest. He was also suffering from dyspnea when wearing his vest.
- 21 September 2012 – he was seen in the Soldier Readiness Processing (SRP) deployment clinic, and he reported having chronic shoulder joint pain, an allergy, tendonitis, right back strain, and eczema.

h. A Report of Medical Assessment dated 21 September 2012, shows the applicant noted he had been seen/treated for left shoulder pain and difficulty breathing with protective vest, and right knee pain and weakness. The health care provider noted that the applicant was being REFRAD due to inability to tolerate wearing his IOTV. She also noted he had been evaluated for shoulder and knee pain and did not require further evaluation at that time.

i. DA Form 3349, dated 3 June 2014, shows he was given a temporary profile for asthma. He was expected to be fully mission capable on 1 September 2014.

j. A Chronological Record of Medical Care dated 15 August 2015, which shows the applicant complained of lower back pain and hip pain that radiated throughout his right thigh. The pain started from the right knee while doing heavy lifting in the armory. He reported that his body armor felt like a knife through his left shoulder. It was also noted that he had osteoarthritis in his right hip and knee.

k. VA rating decision, dated 7 June 2021, which shows he was service connected and receiving compensation for the following conditions:

- Asthma with sleep apnea, rated at 60 percent.
- Eczema, rated at 60 percent.
- Migraine headaches associated with allergic rhinitis, 50 percent.
- Lumbosacral strain with degenerative arthritis and intervertebral disc syndrome, rated at 10 percent.
- Left shoulder strain with acromioclavicular joint and glenohumeral joint osteoarthritis, rated at 20 percent.

- Left knee chondromalacia, rated at 20 percent.
- Right knee chondromalacia, rated at 20 percent.
- Allergic rhinitis, rated at 10 percent.
- Right knee instability, rated at 10 percent.
- Left sciatic radiculopathy associated with lumbosacral strain with degenerative arthritis and intervertebral disc syndrome, rated at 10 percent.
- Right sciatic radiculopathy associated with lumbosacral strain with degenerative arthritis and intervertebral disc syndrome, rated at 10 percent.

I. VA Problem List dated 12 November 2022, which contains the applicant's active health problems that his VA providers are helping him manage.

4. A review of the applicant's service record shows:

a. A DD Form 214, which shows the applicant served honorably in the United States Marine Corps from 3 April 1978 to 16 November 1979.

b. NGB Form 22 (National Guard Bureau Report of Separation and Record of Service), which shows he served honorably in the [REDACTED] ARNG from 23 September 1987 to 22 September 1990 and from 11 May 1999 to 10 May 2005.

c. A DD Form 2807-1 (Report of Medical History) dated 21 April 2006, wherein the medical examiner noted in block 30 (Examiner's Summary and Elaboration of all Pertinent Data) that the applicant had asthma since he was 6 years of age and had no asthma attacks while in the military.

d. A DD Form 2808 (Report of Medical Examination) dated 21 April 2006, which shows the applicant underwent a medical examination for the purpose of enlistment and was found qualified for service.

e. DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in [REDACTED] ARNG on 14 July 2006.

f. Orders Number 275-0088, issued by Headquarters, 1st Armored Division and Fort Bliss, Fort Bliss, TX dated 1 October 2012, which shows he was released from active duty, not by reason of physical disability, and assigned to Company C, 101st Signal Battalion, Yonkers, NY, effective 9 October 2012. The orders noted that the applicant was REFRAD for contingency Operation Enduring Freedom and the REFRAD was for demobilization of forces from a contingency operation.

g. His DD Form 214 shows he was honorably released from active duty on 9 October 2012. He completed 1 month and 24 days of active service during this period.

h. DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report) for the period covering 15 March 2013 thru 14 March 2014, shows the applicant received an annual evaluation. The rater noted on the evaluation that the applicant was frequently unwilling to cooperate in working towards unit goals which affected readiness, failed to comply with orders and regularly showed disrespect to NCOs and required constant supervision, and he failed to realize the importance of finishing assigned tasks without supervision. His rater rated him marginal and stated he was not a contributing member of the U.S. Army; do not retain and remove from positions of responsibility immediately.

i. A memorandum for Non-Selection for Continued Unit Participation, dated 21 April 2014, which states the [REDACTED] ARNG held an Enlisted Qualitative Retention Board (EQRB) to consider Soldiers with 20 years credible service towards retirement for continuation. The applicant was not selected for continued retention. It stated he would be separated from the [REDACTED] ARNG and transferred to the Retired Reserve according to the option he selected on his 2014 EQRB packet.

j. The applicant's NGB Form 22 shows he was honorably discharged on 10 October 2014 and transferred to the Retired Reserve.

k. Orders Number C02-091816, issued by the U.S. Army Human Resources Command, Fort Knox, KY, dated 27 February 2020 shows he was placed on the retired list, effective 25 February 2020.

5. The ABCMR considered the applicant's request to correct his military records to show he was medically discharged in ABCMR Docket Number AR20150006139 on 11 August 2015. The Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records of the applicant.

6. The Deputy Chief, Personnel Policy Division, NGB, provided an advisory opinion in this case on 18 January 2017 and recommended disapproval.

a. In coordination with [REDACTED] ARNG, it was determined that the applicant's discharge from the [REDACTED] ARNG was not based on his medical issues. His temporary profile, dated June 2014, stated he was expected to be mission capable on 1 September 2014. The applicant failed to provide the Medical Command (MEDCOM) with any supporting documentation to either extend or clear the profile. In fact, they never received any medical documentation to support the claimed condition. The applicant's lack of follow up with MEDCOM led to the profile expiring and he was given an adverse action flag for not clearing his open medical case.

b. An email from the ARNG Surgeon's office pointed out that the applicant did not have a permanent "3" profile. He provided a temporary one which did not require evaluation by a Military Occupational Specialty/Medical Retention Board (MMRB) or MEB. Additionally, simply because he was REFRAD from a deployment did not mean he was unfit for service.

c. The [REDACTED] ARNG concurred with the recommendation.

7. The ABCMR considered the applicant's request correct his records to show he was discharged or retired due to disability in ABCMR Docket Number AR20150016256 on 6 April 2017. The Board determined that there was no evidence in his records, and he did not provide any conclusive evidence that showed he ever incurred any injury/condition while serving in the ARNG that permanently prevented him from performing the duties required of him. The Board determined there was no evidence of error in the case.

8. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting his nonregular length of service retirement be revoked and, in essence, that he be referred to the Disability Evaluation System (DES) and subsequently granted a permanent retirement for physical disability. He states:

"I was the only person in my unit in MOS 25S [Satellite Communication Systems Operator-Maintainer] that was REFRAD [released from active duty] prior to my Unit Deploying. The actual reason for my non-deployment was for medical unsuitability due to disability, not operational downsizing as alleged.

I have documentation that shows that an U.S. Army medical authority who saw my condition stated to my unit that I was not to deploy with my unit to Afghanistan due to medical reasons. This denied me the ability to pursue my career and serve my tour of duty stated in my original orders. I request me reason based upon the evidence be changed to Discharged for reasons Disability."

c. The Record of Proceedings and prior ROPs detail the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he was mobilized in support of operation Enduring Freedom on 16 August 2012 and REFRAD on 9 October 2012 under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009).

d. The applicant's Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows he enlisted in the Army National Guard on 14 July 2006 and was honorably separated from [REDACTED] Army National Guard ([REDACTED] ARNG) on 10 October 2014 under the provisions of paragraph 6-35n of NGR 600-200, Enlisted Personnel Management (31 July 2009): Not selected for retention by a qualitative retention board per AR 135-205, chapter 2 and elects discharge. It shows and 24 years, 1 months, and 24 days for retired pay.

e. This request was previously denied by ABCMR on 11 August 2015 (AR20150006139) and again on 6 April 2017. Rather than repeat their findings here, the board is referred to the record of proceedings for those cases.

f. The applicant was seen on 13 September 2012 (day 29 of mobilization) for pain while wearing his improved outer tactical vest (IOTV) during training and was diagnosed with localized right shoulder pain:

"History of present illness:

... 52 y/o male having difficulty with wearing vest during training.

Assessment/Plan:

1. joint pain, localized in the shoulder: Pt may not wear vest for now, he will have to make arrangements with his unit for proper fitting. If he cannot wear his vest, then he should be returned home and not deploy."

g. The applicant references the 25-day rule in his application. Soldiers activated for deployment who are identified in the first 25-days as having a pre-existing medical condition, one not caused by or permanently aggravated by this period of service and that renders the individual non-deployable, may be released from active duty (REFRAD) immediately. Pre-existing conditions include temporary and permanent conditions that do not meet medical retention standards (Reference AR 40-501, Chapter 3) and/or the medical standards of the planned deployment theater. These medical conditions can be identified by authorized medical personnel at their home station or at the mobilization site. REFRAD'd Soldiers will complete out-processing and the return to their home of record no later than 30 days from Soldier's mobilization date.

h. While the timeline for his REFRAD was not met, this does not mean that he had a physical disability incurred during these 29 days of active duty that failed the medical retention standards in chapter 3 of AR 40-501 and so would have been a cause for referral the DES. The clinical encounter does not mention any injury or disability, simply discomfort while wearing his IOTV. Soldiers who cannot wear all of their protective equipment are not deployable to combat theaters.

i. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

j. That the applicant was allowed to reenlist on 10 January 2014 shows he had remained a fully capable Soldier without significant limitations and had passed an Army Physical Fitness Test after his REFRAD in 2012.

k. The applicant received his Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) on 15 August 2011.

l. New evidence includes orders published by the United States Army Human Resources Command (USAHRC) on 27 February 2020 show the applicant was placed on the AUS Retired list effective 25 February 2020. Non-regular retirements are not automatic: The Veteran must apply and supply documentation to USAHRC.

m. There is no evidence the applicant had a medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge. Thus, there was and remains no condition for which he would be referred to the DES.

n. It is the opinion of the ARBA medical advisor that revocation of his nonregular retirement and referral to the Disability Evaluation System (DES) are both unwarranted.

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 concurred with the conclusion of the ARBA Medical Advisor that the evidence does not indicate the applicant had a medical condition that warranted his

referral to the Disability Evaluation System and, therefore, there is no basis for correction of his record to show he was discharged or retired due to a disability. Based on a preponderance of the evidence, the Board determined the applicant's discharge from the ARNG, transfer to the Retired Reserve, and eventual placement on the AUS Retired List upon reaching age 60 was not in error or unjust.

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 decision of the ABCMR set forth in Docket Numbers AR20150006139 on 11 August 2015 and AR20150016256 on 6 April 2017.

7/23/2024

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 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for

rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

2. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the DoD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

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

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

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards

for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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

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

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right

to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//