

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20230001770

APPLICANT REQUESTS: in effect, an upgrade to a medical disability separation vice chapter 14-12c (under other than honorable conditions) discharge.

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

- DD Form 149 (Application for Correction of Military Record) - Online
- DVA Rating Decision, 28 November 2022
- Department of Veterans Affairs (DVA) decision letter, 29 November 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he has post-traumatic stress disorder (PTSD) from his injuries while serving. He is 80% (percent) disabled for the service-connected disabilities. He has been homeless too long, he lost his wife, car, everything. He went to jail over his PTSD.
3. The applicant enlisted in the Regular Army on 22 May 2017. He held military occupational specialty 12R (Interior Electrician).
4. He served in Syria from 25 March 2018 – 25 April 2018.
5. On 1 April 2019, his commander was notified that the applicant tested positive for Tetrahydrocannabinol (THC) in a sample collected on 19 February 2019, by the Forensic Toxicology Drug Testing Lab (FTDTL) within his command.
6. On 4 April 2019, his commander was notified that the applicant tested positive for THC for a second time, in a sample collected on 12 February 2019, by the FTDTL.

7. On 7 April 2019, the company commander counseled the applicant for separation notification for a urinalysis (UA) failure. The commander informed the applicant that he will be recommending the applicant for a Field Grade Article 15 because of his THC Positive UA Test collected 19 February 2019. Based on this he was being flagged effective 9 April 2019; recommended for a Field Grade Article 15; command directed to Criminal Investigative Division; command referred to Substance Use Disorder Clinical Care (SUDDC); and initiated/flagged for separation.

8. On 15 April 2019, the applicant was counseled by his team leader for failure to report and failure to be at appointed place of duty (chiropractor appointment).

9. On 23 April 2019, the applicant underwent a mental status evaluation for the purpose of misconduct administrative separation evaluations. The Behavioral Health disposition determination shows no duty limitations due to behavioral health reasons. He met medical retention standards and was cleared for administration action. Pertinent finding on mental status examination were PTSD; Depression; Traumatic Brain Injury (TBI); Substance misuse; Sexual Trauma.

10. On 15 May 2019, the applicant was flagged for involuntary separation – field initiated.

11. On 10 June 2019, his commander was notified that the applicant tested positive for THC for a third time in a sample collected on 21 May 2019, by the FTDTL.

12. The applicant received non-judicial punishment under Article 15, of the Uniform Code of Military Justice (UCMJ) on 19 June 2019, for between on or about 19 January 2019 and on or about 19 February 2019, wrongfully use marijuana. Also, on or about 11 April 2019, with intent to deceive, make an official statement, which statement was totally false, and was then known by him to be false. He was reduced to private (E-1), forfeiture of \$840.00 pay per month for two months (suspended), to be automatically remitted if not vacated on or before 19 December 2019.

13. The applicant underwent a medical examination for separation on 20 June 2019. He was found medically eligible for separation.

14. On 24 June 2019, his commander was notified that the applicant tested positive for THC for a fourth time in a sample collected on 31 May 2019, by the FTDTL.

15. DA Form 4187 (Personnel Action) shows the applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) effective 0630 hours, 12 July 2019.

16. A Supplementary Action under Article 15, 17 July 2019, vacated his suspension of the punishment of forfeiture of \$840.00 pay per month for two months imposed on 19 June 2019. Vacation was based on the offense that he did between on or about 1 May 2019 and on or about 31 May 2019, wrongfully use marijuana a schedule I controlled substance.

17. DA Form 4187 shows the applicant's duty status was changed from AWOL to PDY effective 1200 hours, 9 August 2019, after he reported in from AWOL status on 9 August 2019.

18. In a sworn statement from law enforcement obtained on 13 August 2019, the applicant stated:

"I smoked weed from January-Now because I have PTSP, Depression, Anxiety, and problems meeting new people and getting along with co-workers who think they run my life. To keep me from having angry outburst or disrespecting a fellow co-worker, I smoked on my time off, and I popped pills when I started having thoughts of killing myself. I smoked weed and popped pills to ease the lifelong pain I've endured. Having the police take you away from your mom at 3 and being thrown into foster care for a year, into living with a family that doesn't even care about me. I smoke weed because my Zoloft that I'm getting from the doctor isn't working. I tried numerous times to consult my doctor. When I feel hopeless or left out I got to turn to the only natural organic thing that I trust to go into my body. No one has yet come to me trying to get me help, like putting me in a center or something, Instead the first thing my leadership always do is try to incriminate me like I didn't self-refer and try to seek help from the military. No one would ever know about my illness if I never would've brought it to the army's attention."

The applicant answered follow on questions from the investigator.

19. DA Form 4187 shows the applicant's duty status was changed from PDY to AWOL effective 1830 hours, 14 August 2019.

20. DA Form 4187 shows the applicant's duty status was changed from AWOL to dropped from rolls (DFR) effective 1830 hours, 15 August 2019.

21. On 23 September 2019, his commander was notified that the applicant tested positive for THC for a fifth time in a sample collected on 13 August 2019, by the FTDTL.

22. DA Form 4187 shows the applicant's duty status was changed from DFR to PDY effective 2000 hours, 8 October 2019, after he reported in from AWOL status on 7 October 2019.

23. Court-Martial charges were preferred on 23 October 2019. DD Form 458 (Charge Sheet) shows:

a. Article 86 (AWOL) 2 specifications.

- On or about 12 July 2019, without authority, absent himself from his unit, and did remain so absent until on or about 9 August 2019
- On or about 14 August 2019, without authority, absent himself from his unit, and did remain so absent until on or about 7 October 2019

b. Article 112a (Wrongful use, possession, etc., of controlled substance) 8 specifications.

- Between on or about 13 January 2019 and on or about 12 February 2019, wrongfully use marijuana, a Schedule I controlled substance
- Between on or about 20 January 2019 and on or about 19 February 2019, wrongfully use marijuana, a Schedule I controlled substance
- Between on or about 21 April 2019 and on or about 21 May 2019, wrongfully use marijuana, a Schedule I controlled substance
- Between on or about 1 May 2019 and on or about 31 May 2019, wrongfully use marijuana, a Schedule I controlled substance
- Between on or about 26 May 2019 and on or about 31 May 2019, wrongfully use d-amphetamine, a Schedule II controlled substance
- Between on or about 26 May 2019 and on or about 31 May 2019, wrongfully use hydrocodone, a Schedule II controlled substance
- Between on or about 26 May 2019 and on or about 31 May 2019, wrongfully use hydromorphone, a Schedule II controlled substance
- Between on or about 14 July 2019 and on or about 13 August 2019, wrongfully use marijuana, a Schedule I controlled substance

24. Summary Court-Martial Rights Notification/Waiver Statement, shows on 7 November 2019, the applicant was afforded an opportunity to consult with legal counsel before making his decision to consent to Summary Court-Martial proceedings under Article 20, UCMJ.

- He decided not to see counsel in connection with this action
- He understood his rights under Article 20, UCMJ, including his right to object trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial in any subsequent courts-martial, and other consequences of his decision
- He voluntarily decided to consent to trial by Summary Court-Martial

25. In a plea agreement on 7 November 2019, the applicant pled guilty to all charges on his charge sheet.

26. On 26 November 2019, having been advised by an attorney of the basis for the contemplated action to separate him under Army Regulation (AR) 635-200 (Active Duty Enlisted Separations), chapter 14-12c (2), and its effects, of the rights available to him; and the effect of any action taken by him in waiving his rights.

- He understood that he had less than six years of total active and reserve service at the time of separation under AR 635-200, chapter 14-12c (2)
- He is not entitled to have his case heard by an administrative separation board unless he was being considered for a discharge under other than honorable conditions
- He had been advised of his right to submit a conditional waiver of his right to have his case considered by an administrative board if he was so entitled in which he waived
- He waived to have his case heard by and administrative separation board
- He understood that he may expect to encounter substantial prejudice in civilian life in a (general) under honorable conditions discharge is issued to him
- He further understood that if he is subject to the issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws
- He understood he may expect to encounter substantial prejudice in civilian life
- He initialed and placed an [x] identifying he did believe that he suffers from PTSD or TBI as a result of deployment overseas in support of a contingency operation in the past 24 months

27. A Confinement Order dated 9 December 2019, shows the applicant was to be confined for 30 days and forfeiture of \$500.00 pay for one month for Article 86 x 2 - Absence from unit; Article 112a x 8 - Wrongful use of a controlled substance. He was examined at 1252 hours, on 9 December 2019 and found to be fit for confinement. It was certified that from the examination the execution of the foregoing sentence to confinement will not produce serious injury to the applicant's health.

28. On 10 December 2019, his chain of command recommended the applicant be separated under the provisions (UP) of AR 635-200, chapter 14-12c (2), for misconduct – abuse of illegal drugs, prior to the expiration of his current term of service with an under other than honorable conditions discharge.

29. On 13 December 2019, the separation authority approved separation UP of AR 635-200, chapter 14-12c (2) with an under other than honorable conditions.

30. Accordingly, the applicant was discharged on 30 December 2019. His DD Form 214 shows he completed 2 years, 4 months, and 16 days net active service this period. It also shows:

- Item 24 (Character of Service): Under other than honorable conditions
- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c (2)
- Item 26 (Separation Code): JKK
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Misconduct (Drug Abuse)
- Item 29 (Dates of Time Lost During This Period): 20190712-20190809; 20190814-20191008

31. There is no indication the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge within the ADRB's 15-years statute of limitations.

32. There is no evidence within his available records nor did the applicant provide any evidence that he was issued a permanent physical profile or was entered into IDES.

33. The applicant provided:

a. DVA rating decision, 28 November 2022, showing:

- Evaluation of adjustment disorder with mixed anxiety and depressed mood and cannabis use disorder (also claimed as insomnia), which is currently 50 percent disabling, is increased to 70 percent effective 19 May 2022
- Evaluation of strain, lumbosacral spine, which is currently 40 percent disabling, is continued
- Evaluation of benign epididymal cyst, right testicle, which is currently 0 percent disabling, is continued

b. DVA decision letter, 29 November 2022, showing an increase in combined rating evaluation from 70 percent effective 31 December 2019 to 80 percent effective 19 May 2022.

34. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

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

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

37. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade to a medical disability separation vice Chapter 14-12c (under other than honorable conditions) discharge. He contends he had mental health conditions including PTSD that mitigated his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 22 May 2017; 2) The applicant served in Syria for a total of six months in 2018; 3) The applicant received non-judicial punishment (NJP) on 19 June 2019 for using marijuana and making a false an official statement; 4) On 24 June 2019, the applicant tested positive for marijuana for a fourth time, and he was found AWOL from 12 July-09 August 2019; 5) The applicant was found AWOL (15 August-7 October 2019) and tested positive for marijuana again later in 2019; 6) Court-Martial charges were preferred on 23 October 2019 for the applicant going AWOL twice and eight specifications of using illegal substances. The applicant pled guilty to all charges on 07 November 2019; 7) The applicant was discharged on 30 December 2019, Chapter 14-12c (misconduct). His service was characterized as under other than honorable conditions.

c. The ARBA Medical Advisor reviewed the supporting documents and the applicant's military service records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined. The applicant did not provide any additional civilian medical documentation.

d. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. In addition, he is requesting a medical discharge due to the severity of his mental health condition at the time of service. There is sufficient evidence the applicant reported substance abuse while on active service. He initially referred himself to the Army Substance Abuse Program (ASAP) on 12 March 2018. He reported accidentally ingesting a baked good that

may have marijuana. He denied a history or current illegal substance use. He also denied any mental health symptoms, was not diagnosed with a mental health condition, and was not referred to behavioral health services or substance abuse treatment. Later in December 2018, the applicant self-referred to behavioral health. He was reporting marital problems and difficulty with anger and irritability. He denied any exposure to combat in his deployment, and he was diagnosed with relationship problems. He was found to meet retention standards, and the follow-up plan was to attend treatment with a Military Family Life Consultant (MFLAC) at the applicant's request. He attended a walk-appointment on 07 January 2019 at behavioral health services because he stated he again was accidentally exposed to marijuana while on leave. He reported not attending any treatment with the MFLAC, and he was referred to military substance abuse treatment.

e. During his substance abuse treatment intake, he admitted to a history of using illegal substance prior to his enlistment. He did not report significant mental health conditions and was diagnosed with cannabis abuse, mild. He was referred to outpatient substance abuse counseling. The applicant attended a total of nine substance abuse group and individual sessions after being disenrolled in the program. He continued to use marijuana and was clear he did not plan to discontinue. He was seen for a mental health evaluation as a part of his separation proceedings in April 2019. He reported significant symptoms of PTSD, depression, and anxiety during this evaluation. He was appropriately evaluated by a military licensed clinical social worker. He endorsed severe symptoms of PTSD, but he denied a history of exposure to a traumatic event. The applicant felt he was traumatized by having to remain in the Army and take orders from his command. He also reported military sexual trauma, but again after further examination, the applicant's report of hearing a Syrian servicemember make an inappropriate comment about female soldiers did not qualify as military sexual trauma. He also reported a history of a traumatic brain injury, and again the applicant's report of bumping the top of his head when a Humvee hit a bump did not qualify as a traumatic brain injury. The applicant was diagnosed with a problem of employment, met retention standards, and psychiatrically cleared for administrative action.

f. The applicant continued to attend substance abuse treatment appointments and occasion individual behavioral health therapy appointments. He also was prescribed anti-depressant psychiatric medication. The applicant insisted that he planned to continue to use illegal substances to leave the Army, and he was never diagnosed with PTSD or an adjustment disorder. The applicant was reported to go AWOL, because his leave was not approved, and he did not feel he needed to adhere to the directions of command. He was consistently diagnosed with cannabis use disorder and occupational problem. The was never placed on psychiatric profile beyond medication stabilization

after starting a psychiatric medication, and he was never found to require inpatient behavioral health treatment or not meet psychiatric retention standards.

g. A review of JLV provided evidence the applicant has been diagnosed with service-connected chronic adjustment disorder since 2022. There is insufficient evidence the applicant has been diagnosed with PTSD or a traumatic brain injury both during and after his military service.

h. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence the applicant has been diagnosed with service-connected chronic adjustment disorder by the VA. However, there is insufficient evidence the applicant has ever been diagnosed with PTSD related to his military service. There was also sufficient evidence the applicant was not exposed to a traumatic event during his military service, was provided multiple opportunities to attend behavioral health and substance abuse treatment and was appropriately assessed to determine if a mental health condition would mitigate his misconduct. He was not diagnosed with any mental health condition while on active service beyond a substance abuse disorder or an occupational/relationship problem. He was never placed on a psychiatric profile and was psychiatrically cleared for administrative action. Therefore, there is insufficient evidence the applicant was experiencing the severity of a mental health condition which would have met criteria for a referral to IDES at the time of his active service. Therefore, a referral IDES is not recommended at this time.

Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with service-connected chronic adjustment disorder in 2022.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with service-connected chronic adjustment disorder

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant has been diagnosed with service-connected chronic adjustment disorder by the VA. However, there is insufficient evidence the applicant has ever been diagnosed with PTSD related to his military service. There was also sufficient evidence the applicant was not exposed to a traumatic event during his military service, was provided multiple opportunities to attend behavioral health and substance abuse treatment and was appropriately assessed to determine if a mental health condition would mitigate his misconduct. He was not diagnosed with any mental health condition while on active service beyond a substance abuse disorder or an occupational/relationship problem. He was never placed on a psychiatric profile and was psychiatrically cleared for administrative action. Therefore, there is insufficient

evidence the applicant was experiencing the severity of a mental health condition which would have met criteria for a referral to IDES at the time of his active service. Therefore, a referral IDES is not recommended at this time.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the nature of the misconduct, the reason for separation and whether to apply clemency. The Board considered the applicant's statement of treatment from the Department of Veteran Affairs specifically for PTSD diagnosis from the VA and agreed that the misconduct was not mitigated by the condition. Based on the available documentation and the offense leading to the applicant's separation, the Board concluded that any mitigation for the offense was outweighed and the applicant received an equitable and just discharge. After due consideration of the request, the Board determined that the evidence presented does not meet applicable regulatory or statutory guidance and there is no basis upon which to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

██████ █████ ████████ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect

at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 14-12c (Commission of a serious offense) states commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court Martial. Paragraph 14-12c (2) (Commission of a serious offense), abuse of illegal drugs is serious misconduct.

3. AR 635-8 (Separation Processing and Documents), prescribes policy and procedural guidance relating to transition management. For Block 28, enter the reason for separation (shown in AR 635-5-1) based on the regulatory or statutory authority.

4. AR 635-5-1 (Separation Program Designators (SPD)) implements Department of Defense policy for standardization of certain entries on DD Form 214 and has been revised to update the separation program designator codes to be used and the authorities and reasons for their use and control. Table 2-3 Enlisted Personnel shows JKK is the correct Separation Code assigned to Soldiers discharged under chapter 14-12c of AR 635-200 due to misconduct (drugs).

5. AR 600-85 (The Army Substance Abuse Program (ASAP)) provides guidance for implementation of the Limited Use Policy. The Limited Use Policy is intended to ensure that Soldiers can seek treatment for alcohol or other drug abuse without concern that the information revealed will be used against them for UCMJ or for the issue of characterization of service in administrative proceedings. Limited use is automatic. It cannot be granted or taken away. It is not intended to protect a member who is attempting to avoid disciplinary or adverse administrative action. Limited Use Policy does not apply to evidence regarding continued drug abuse after initial entry into the Army Substance Abuse Program.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria, and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment; induction; appointment, including officer procurement programs; retention; and separation, including retirement. Once a determination of physical unfitness is made, the VA/DOD jointly rate all disabilities using the Veteran's Administration Schedule for Rating Disabilities (VASRD). Ratings can range from 0 to 100 percent, rising in increments of 10 percent.

9. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, set forth the policies for the disposition of Soldiers found unfit because of physical disability to reasonably perform the duties of his/her office, grade, rank, or rating.

a. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. The Soldier will not be declared physically unfit for military service because of disabilities known to exist at the time of the Soldier's acceptance for military service that have remained essentially the same in degree since acceptance and have not interfered with the Soldier's performance of effective military service.

b. Disability compensation is not an entitlement acquired by reason of a service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. Paragraph 4-17 states PEB's are established to evaluate all cases of physical disability equitability for the Soldier and the Army. It is a fact-finding board to investigate the nature, cause, degree of severity, and probable permanency of the disability of Soldiers who are referred to the board; to evaluate the physical condition of the Soldier against the physical requirements of the Soldier's particular office, grade, rank, or rating; to provide a full and fair hearing for the Soldier; and to make findings and recommendations to establish eligibility of a Soldier to be separated or retired because of physical disability.

10. Title 38 USC 1110 (General - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

11. Title 38 USC 1131 (Peacetime Disability Compensation - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

//NOTHING FOLLOWS//