

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 July 2023

DOCKET NUMBER: AR20230002120

APPLICANT REQUESTS, through counsel, in effect:

- evaluation of his post-traumatic stress disorder (PTSD) and major depressive disorder (MDD) by a Physical Evaluation Board (PEB)
- he be retired due to disability instead of being discharged due to completion of his required active service
- all other applicable relief

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

- DD Form 149, Application for Correction of Military Record with legal brief
- 4th Infantry Brigade Combat Team (BCT) memorandum, 7 May 2007
- DA Forms 2166-8, Noncommissioned Evaluation Report (NCOER), 1 April 2006 through 21 March 2012
- 2-DA Forms 458 (Charge Sheet), 31 October 2012
- DA Form 458, 12 July 2013
- DD Form 214 Certificate of Release or Discharge from Active Duty), 15 August 2013
- Witness Statement, 7 December 2021
- Department of Veterans Affairs (VA) diagnosis, undated

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 indicates that his request is related to PTSD and MDD. The applicant's counsel states the applicant's request is based on material error and material injustice.
3. Counsel further states, in effect:

a. The applicant enlisted in the Army on 8 January 2003 and served his country for 10 years and 7 months. After graduating from basic training, held the military occupational specialty (MOS) of 11B, infantryman, for 10 years and 4 months. During the applicant's time in the Army, he evidenced a willingness to learn by completing multiple training courses including the Advanced Leadership, Battle Staff, Combat Life Savers, Equal Opportunity Leaders, Combatives Level I, Squad Designated Marks, and Warrior Leaders.

b. Not only did the applicant show a willingness to learn while serving in the Army but he demonstrated traits that the Army values, which are evidenced by the multiple different awards he received. These awards include the Iraq Campaign Medal with three campaign stars, the Bronze Star Medal, Army Commendation Medal (4th award), Army Achievement Medal, Meritorious Unit Commendation (2nd award), Valorous Unit Award, Army Good Conduct Medal (3rd Award), National Defense Service Medal, Afghanistan Campaign Medal with two campaign stars, Global War on Terrorism Service Medal, Korean Defense Service Medal, Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon (4th Award), North Atlantic Treaty Organization Medal, Combat Infantryman Badge, and finally the Expert Infantryman Badge. It is evident by the multitude of awards the applicant received that the applicant was an exceptional Soldier who was unwaveringly committed to the Army's mission.

c. This is also evidenced in a letter sent to the applicant's father in 2007 wherein the BCT Commander praised the applicant for being a stellar Soldier. His commander stated the applicant was "nothing short of phenomenal" in his letter but also felt so strongly of the applicant's performance that he felt the need to write a letter to his family.

d. Lastly, the applicant's profound service is evidenced through various NCOERs where he was rated as exceeding the standards for a majority of the time. The applicant was evaluated as among the best in all his NCOERs except one, where he still was rated fully capable overall. During most of his last year and a half of serving, the applicant was actively being treated for PTSD symptoms. He was in a rear detachment and his only duties were to report to morning formation and attend his medical appointments so he could pursue being medically retired. Despite being on numerous medications for PTSD and depression, his mental health became so bad that he became suicidal, and he could not even attend morning formation, which is what led to the charges of being absent without leave (AWOL). Unfortunately, the applicant was discharged in August of 2013. This discharge was not due to the instances of being AWOL but instead the applicant was allowed to reach his Expiration Term of Service (ETS) because he was obviously suffering from PTSD.

e. On 11 January 2016, the applicant was diagnosed with PTSD and MDD due to his combat in service from multiple deployments. It took three years for the applicant to be seen by the Department of Veterans Affairs (VA), despite him filing a disability claim

immediately after his discharge. He had been struggling with these mental health issues when he was found to be AWOL three times and would have been a major factor as to why he made the decisions he did. The applicant also did not receive a thorough explanation of his benefits which is why it took him so much time to file. The applicant's case should be decided on the merits due to the incredible injustice he has been the victim of and the continuing prejudice he suffers as a result of the injustice.

f. Material Error. It is respectfully submitted that the applicant has been the victim of a material error as a result of his erroneous discharge. The error is evident as the applicant's narrative reason for discharge was due to ETS, instead of being retired due to disability. The applicant excused himself from his duties on three different occasions because of PTSD and MDD issues and the Army failed to consider that along with the outstanding service he provided for over ten years of his life.

g. It is evidenced through the applicant's 16 different awards, the letter to his family from his commander, and his performance evaluations that the applicant was more than just a great asset to the U.S. Army but instead an essential one. He served for over 10 years and experienced multiple deployments. Due to his multiple deployments, the applicant unfortunately saw and experienced things that traumatized him for life. These deployments directly led to his VA diagnoses for PTSD and MDD with a disability rating of 100%.

h. Regrettably, the applicant's mental health issues were not treated or diagnosed until about three years after he was discharged from the Army. However, even though the applicant was not diagnosed until after being discharge, a review of his records makes it apparent that he was suffering from his behavioral health issues at the end of his Army career. The applicant's undiagnosed and untreated illnesses directly led to his period of AWOL. The applicant felt he needed to simply take a break from his service but was not sure how to approach his command for help. At the time of his discharge, PTSD and depression were not high-visibility issues as they are now. If they were, the applicant certainly would have been screened for these mental health issues and likely would have received treatment prior to his discharge.

i. Even though he was discharged with an honorable characterization of service, he was still improperly separated. When discharging the applicant and charging him as being AWOL three different times, his command failed to take into account the mental state of the applicant that led to the decisions he made. Rather than attempting to discover the root cause of the applicant's AWOLs, and rehabilitate the applicant, he was summarily separated from the Army without a meaningful opportunity to overcome the misconduct. Therefore, it was a material error to not have convened a PEB to determine his fitness for continued service at the time of his discharge due to his PTSD and MDD.

j. Material Injustice. It is submitted that the applicant has been the victim of a material injustice as a result of the failure to investigate further by the Army into why the applicant was excusing himself from his duties and instead giving him with an erroneous discharge status. The discharge continues to cause undue harm to the applicant because of the lasting mental health issues that he still struggles with. The military is supposed to provide care for its Soldiers who suffer from mental disorders that are a result of their service. Here, the applicant has been left to fend for himself as he works to thrive in the civilian world and provide for his family. The applicant sacrificed his mental health in service to his country during a time of war. This Board has the opportunity to correct the errors and injustices that resulted in the applicant being separated from the Army without the chance of obtaining a medical retirement.

4. A review of the applicant's record shows he enlisted in the Regular Army on 8 January 2003 and he was awarded MOS 11B, infantryman.

5. His Enlisted Record Brief, shows he completed deployments to Iraq (8 August 2004- 29 July 2005) and Afghanistan (5 June 2009- 16 May 2010).

6. The applicant received a permanent profile for hearing loss on 22 June 2010. A MOS/Medical Retention Board (MMRB) Proceedings, 1 December 2010 shows his permanent medical condition did not preclude satisfactory performance of PMOS/SC physical requirements in a worldwide environment and he should be retained in his primary MOS.

7. The applicant received an NCOER for the period 1 April 2011 through 21 March 2012, while assigned as a squad leader, Rear Detachment, 2nd Battalion, 12th Infantry, 4th Infantry BCT, 4th Infantry Division, Fort Carson, CO. His rater indicated the applicant was "Fully Capable" however, needed improvement in the area of Leadership because he "failed to maintain standards and allowed his performance rating to decrease from excellent to satisfactory." His senior rater indicated the applicant's overall performance and overall potential for promotion and/or service in positions of greater responsibility as "Fair."

8. On 5 April 2013, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL on 4 March 2013 with no intent to return. The disposition of his court-martial charges is unknown.

9. A DD Form 553, Deserter/Absentee Wanted by the Armed Forces, 12 July 2013, shows the applicant was a previous absentee. This form further shows that this was the applicant's 3rd AWOL, he was known to have suicidal tendencies, and known to abuse alcohol.

10. On 12 July 2013, Court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 10 July 2013 with intent to stay there permanently. The disposition of his court-martial charges is unknown.

11. A DD Form 616, Report of Return of Absentee, 18 July 2013, shows the applicant departed AWOL on 10 July 2013, and he was dropped from the rolls on 11 July 2013. He was subsequently apprehended by civil authorities on 18 July 2013 in Colorado. He was returned to military control at Fort Carson, Colorado on the same day.

12. His record is void of documentation showing he processed through the Physical Disability Evaluation System (PDES) for a mental health condition.

13. Orders 217-0025, 5 August 2013, published by Headquarters, U.S. Army Garrison, Installation Management Command, Fort Carson, Colorado show the applicant's discharge date as 15 August 2013.

14. The applicant was honorably discharged on 15 August 2013. His DD Form 214 shows an additional deployment to Iraq (5 October 2006 to 31 December 2007). This form further shows:

- his awards include the Iraq Campaign Medal with three bronze service stars, Bronze Star Medal, and the Meritorious Unit Commendation (2nd Award)
- the separation authority as "AR 635-200, CHAP 4"
- the narrative reason for separation was "COMPLETION OF REQUIRED ACTIVE SERVICE"

15. The applicant provides:

a. A letter from the Commander, 4th Infantry BCT to the applicant's father. This letter expressed the commander's appreciation for the applicant's phenomenal performance while performing his duties as a dismounted team leader in Iraq. The commander indicates that the applicant discovered a hidden explosive resulting in lives of Soldiers being saved.

b. Six NCOERs for the period 1 April 2006 through 31 March 2012. These evaluations show the applicant successfully performed the duties of a fire team leader, squad leader, weapons squad leader and heavy weapons platoon sergeant. The first five reports rate the applicant as among the best, successful overall performance, and superior overall potential for promotion and/or service in positions of greater

responsibility. His NCOER for the period 1 April 2011 through 31 March 2012 was discussed earlier in this Record of Proceedings.

c. DD Form 458, 31 October 2012, which shows the applicant was charged with the offense of being AWOL from on or about 1 October 2012 from his unit at Fort Carson, Colorado, and with the intent to stay there permanently.

d. A witness statement, 7 December 2021, written by his commander. This officer indicated that while serving under his command the applicant was wounded by enemy fire and or explosions on several occasions.

e. Page 8 of 21 of a VA document, undated. This document shows the applicant was diagnosed with PTSD and MDD on 11 January 2016 after an examination at the VA Medical Center, Denver, Colorado.

16. Regulatory guidance 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.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

18. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

19. 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting a referral to the Disability Evaluation System (DES) for PTSD. He states through counsel:

"[Applicant] (hereinafter "Applicant") respectfully requests a correction to his military records so that a Physical Evaluation Board (PEB) is convened to determine if the Applicant should have been medically retired. The instant brief is for this Honorable Board's consideration in conducting a records review in support of the requested relief. Relief is requested under a theory of material error and material injustice."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former Infantryman (11B) entered the regular Army on 8 January 2003 and was honorably discharged on 15 August 2013 at the completion of his required active service under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It shows he had three combat tours. He served in Iraq from 8 August 2004 thru 29 July 2005 and again from 5 October 2006 – 31 December 2007, and in Afghanistan from 5 June 2009 thru 16 May 2010. It shows the applicant earned the Expert Infantryman Badge and awarded the Combat Infantryman Badge. His reenlistment code of 3 denotes he was fully qualified to reenlist with a waiver.

d. The applicant began seeking mental health care in the summer of 2010 and was diagnosed with adjustment disorder with mixed emotional features. From his 31 August 2010 encounter:

"The patient is a 26-year-old male. He reported: Anxiety -- Hypervigilance in crowds. Distressing nightmares (now 1/week). Denies generalized high anxiety -- daily anxiety at 5 /10. Anger is troublesome to Adam, and he adjusts his life around it -- isolating, numbing. Denies troubling memories -- liked combat, wishes he could go back to it, sleep disturbances, loss of interest in activities, and interpersonal relationship problems -- Irritability and numbing distance him from people ...

Work: Work history Ramadi, then Baghdad, then Kunar province. Deployments are the one place where he feels effective and at home with himself. Frustrated with garrison life."

e. By 1 March 2012, the former Infantryman had been diagnosed with PTSD. He signed an Acknowledgement and Consent for Treatment on 6 March 2012:

"I have been advised and understand that Cranial Electrotherapy Stimulation (CES) and Microcurrent electrical Therapy (MET) using the Alpha-Stim SCS is a treatment approach that has been researched and found useful in the treatment of depression, anxiety, insomnia, and pain reduction."

f. From a 6 November 2012 administrative encounter:

SM [Service member] arrested on warrant for desertion. Spoke with CPT H. and command expects SM to be released this evening. SM had detailed plan for suicide to include conversation with father about 'death by cops.'

Left sealed letter to estranged wife. Spoke with someone about TSGLI benefits being up to date and how that would work with suicide. CPT H. wanted to know steps to take after police release SM this evening. Guidance was given by this NCM, per Dr. B., to bring SM to ER [emergency room] and have SM admitted to either Cedar Springs or Aspen Pointe if possible. During the acute stay, further treatment will be decided. Spoke with on-call BH provider, R.L., and apprised him of the situation.”

g. From his follow-up clinical encounter on 21 November 2012:

SM came in for a nursing assessment status post inpatient hospitalization. SM 29-year-old Caucasian male, married, but currently separated trying to work things out. SM is 11B with 1-12, 4/4 ID [1st Battalion, 12th Infantry Regiment, 4th Brigade Combat Team, 4th Infantry Division. SM has had 2 deployments to OIF [Operation Iraqi Freedom], 1 to OEF [Operation Enduring Freedom] and 1 to Korea. SM has 10 years TIS [time in service]. SM is currently scheduled to ETS [expiration term of service] 17 Dec 12. However, there is talk of starting a MEB [medical evaluation board] for PTSD.

h. The former Infantryman began treatment for alcoholism in January 2013. Later that month, he was to go into a VA sponsored Posttraumatic Stress Disorder Residential Rehabilitation Treatment Program (VA PTSD-RRTP). From a 22 February 2012 administrative VA encounter:

“Received a call from Mr. [Applicant]'s referring provider, K.K., regarding SM's scheduled admission to the PTSD-RRTP for 2/24/13 @ 11 am. She stated that Mr. [Applicant] has been AWOL [absent without leave] for the last 4 days - he no-showed her appointment on Wednesday and has not been in to work either. She scheduled another appointment for the SM today and he also no-showed that appointment. She requested that his referral to the PTSD-RRTP be cancelled as she does not know what is happening with the SM and it is unclear if treatment in the PTSD-RRTP is clinically indicated given his AWOL status.”

i. From his 26 June 2013 mental health encounter:

“Urgent walk-in. Provider was contacted by SM's chain of command at 0600 today indicating that he was picked up from jail and returned from AWOL status.

SM reported that for the past 3 months, he has been staying with friends, living on the streets, and in jail for the past 3 weeks. He described being self-

destructive and "making decision with the intent of being gone before [he] had to live with the consequences." He said that his car was totaled in an accident while street racing, he was evicted from his house, and he received a field grade Article 15 all within a week's time in March ...

Discussed his return to the unit and SM described having severe anxiety attacks frequently, said that he is concerned he cannot handle being around other soldiers all the time. The unit's plan is for the soldier to live at the CQ desk, work extra duty, and being escorted 24/7. SM was tearful in session as he described his inability to handle this stress, said that he would likely try to take off again. Discussed provider's concerns about his safety, as well as his current level of distress. SM agreed to go to an inpatient facility for his safety and to request starting medications.

j. The applicant was subsequently admitted for acute inpatient care at Cedar Springs Hospital and discharged on 8 July 2013.

k. How his command managed to continually fail their Soldier up to and including at this point in time is unfathomable. Paragraph 3-2 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012), identifies command responsibility for referral of their Soldiers to the DES:

"When a commanding officer believes that a member of his command is unfit to perform the duties of his office, grade, rank, or rating because of physical or mental disability, he will refer the member for examination to the medical treatment facility which provides primary medical care to his command."

l. His penultimate NCO Evaluation Report, covering 1 May 2010 thru 31 March 2011, is that of an outstanding Noncommissioned Officer. He scored 298 out of 300 on his Army Physical Fitness Test (APFT). His Rater top-blocked him with "Excellence" for all five Values/NCO Responsibilities as well as top-blocking him as "Among the Best" for "Overall potential and/or service in positions of greater responsibility." His senior rater top-blocked him with "1"s on a scale of 1-5 for both overall performance and overall potential, opining:

- "promote to SFC immediately
- send to SLC [Senior Leader Course} immediately
- outstanding performance as a Platoon Sergeant
- extremely talented NCO; displayed unlimited potential to train and lead Soldiers"

m. His final NCO Evaluation Report, covering 1 May 2011 thru 31 March 2012, shows his PTSD had dramatically affected his performance as a Soldier. While he

passed his APFT with a 296, his rater marked him as simply “success” on four of the five Values/NCO Responsibilities while marking his leadership as “Needs some improvement” stating “ failed to maintain standards and allowed his performance rating to decrease from to satisfactory.” His senior rater marked him with 4’s with his first bullet “do not promote at this time.’

n. It is abundantly clear the applicant’s severe combat incurred PTSD rendered him incapable for further service as an Infantryman in the United States Army. Paragraph 3-33 of AR 40-501, Standards of Medical Fitness (29 August 2003) lists the criteria used to determine when an anxiety disorder, of which PTSD is one, fails medical retention standards:

The causes for referral to an MEB are as follows:

- a. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
 - b. Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
 - c. Persistence or recurrence of symptoms resulting in interference with effective military performance.
- o. His PTSD certainly failed the retention standard both 3-33a and 3-33c.
- p. Review of his records in JLV shows he was awarded a 100% VA service-connected disability rating for PTSD effective the day after his separation from the Army.
- q. It is the strong opinion of the ARBA medical advisor that a long overdue referral of the case to the DES is undoubtedly warranted.
- r. It is more likely than not that the applicant will be permanently retired for physical disability and subsequently entitled to Combat Related Special Compensation (CRSC). However, CRSC is subject to a 6-year statute of limitations (31 U.S.C., Section 3702(b)). To receive the full retroactive CRSC entitlement, a claimant must file their CRSC claim within 6 years of any VA rating decision that could potentially make them eligible for CRSC or the date they become entitled to retired pay, whichever is more recent. If a claimant files a claim more than 6 years after initial eligibility, they are restricted to 6 years of any retroactive entitlement.
- s. It is therefore recommended the Board consider authorizing the applicant to apply for CRSC beyond the 6-year statute of limitations, and if CRSC is granted, receive retroactive payments for this disability and other combat related disabilities he may have

incurred IAW Chapter 63, Volume 7B of Department of Defense 7000.14R, Financial Management Regulation - Combat-Related Special Compensation (CSRC). This should also include interest and COLAs. Because one criterium for receiving CRSC is that the Veteran be in a retired status (e.g., length of Service, permanent disability, etc.), this authorization could only be used by the applicant if/when he was retired.

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request, supporting documents and evidence in the records. The Board noted the applicant's length of service to include multiple combat tours. There is no evidence he was referred DES prior to his discharge as was the responsibility of his command. The Board further noted that he was awarded a 100% VA service-connected disability rating for PTSD effective the day after his separation from the Army. Based on the documentation available for review and in consideration of equity and justice, the Board determined the evidence presented sufficient 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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by affording him due process through the Disability Evaluation System for consideration of any diagnoses identified as having not met retention standards prior to his discharge.

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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) 635-40, Physical Evaluation for Retention, Retirement, or Separation, establishes the PDES and sets forth the policies, responsibilities, and

procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It states that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting disability. The VASRD, as modified in the regulation, is used to establish this rating. This regulation states:

a. Disability compensation is not an entitlement acquired by reason of 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.

b. The mere presence of 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 member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. A condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

e. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying.

f. Permits for permanent retirement when the disability is rated at 30 percent or more under VASRD, or the Soldier has at least 20 years of active Federal service.

3. Title 10, U.S. Code, section 1203, provides for the physical disability separation with severance pay of a member who has less than 20 years of service and a disability rated at less than 30 percent.

4. Title 38, USC, section 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.

5. Title 38, USC, section 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

a. 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 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.

7. 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.

8. AR 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 will decide cases on the evidence of record. It is not an investigative body.

//NOTHING FOLLOWS//