

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230002447

APPLICANT REQUESTS:

- a. The applicant requests the following corrections to his military record -
  - DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 16 June 2011 - to show his reentry code as "1" instead of "NA"
  - Orders 13-219-00017, Headquarters, 99th Regional Support Command, Fort Dix, NJ, dated 7 August 2013 - to upgrade his under other than honorable conditions character of service to honorable
  - DA Form 5016 (Chronological Statement of Retirement Points) - to make appropriate updates
  
- b. The applicant also requests -
  - Medical Evaluation Board (MEB)
  - retroactive compensation
  - retirement pay
  - a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record), January and March 2023
- DD Form 2808 (Medical Examination) 27 July 2010
- Personnel Qualification Record
- DD Form 214, period ending 16 June 2011
- Traffic Tickets, 1 December 2011
- DA Form 4187 (Personnel Action), promotion to specialist, 4 April 2012
- Memorandum, Subject: Warning Notice, 19 November 2012
- DA Form 1559 (Inspector General Action Request), 11 May 2013
- Orders Number 13-219-0018, 7 August 2013
- Several emails, 2013

- Separation Packet, 2013
- Army Discharge Review Board, Case Report and Directive, Case Number AR20140001742, 25 June 2014
- VA Form 21-0960E-2 (Disabilities Benefits Questionnaire), 2018
- DD Form 2586 (Verification of Military Experience and Training), 1 November 2021
- Board of Veteran's Appeals, dated 28 September 2021, and 13 May 2022
- List of Prescriptions
- Medical Records
- DA Form 5016 (Chronological Statement of Retirement Points), 6 January 2023
- three-character reference letters
- College Transcripts and Degree

#### FACTS:

1. The applicant states:

a. On 8 October 2011, he enlisted in the U.S. Army Reserve (USAR). He completed basic combat training, advanced individual training and was awarded the military occupational specialty 31B (Military Police). He was enrolled in a Bachelor of Art degree program and the college Reserve Officers' Training Corps (ROTC) program.

b. On 1 December 2011, he was stopped by a police officer, and refused to submit a breathalyzer test. During the search the police officer found his military identification card and contacted his company commander. His ROTC cadre was also informed, and he was kicked out of the ROTC program.

c. In December the unit's drill was cancelled. He attended the January 2012 drill, at this time his commander Captain (CPT) F\_\_\_\_ informed him that during the search the police officer found prescribed anti-depressant medication, and that he would decide on what to do with him after the court proceedings.

d. On 16 May 2012, he took a plea bargain, was found guilty of refusing to submit to a breathalyzer test and his license was revoked for seven months. On 16 and 17 June 2012, CPT F\_\_\_\_ informed him that he was being questioned by leadership about why he was still in the unit, he informed the applicant he was not allowed to sign in, and further stated the battalion was aware of his situation and if he tried to sign in, they would not allow it. He also informed him that he was sending paperwork to battalion for recommendation of an under other than honorable conditions discharge.

e. In August 2013, he received an under other than honorable conditions discharge letter in the mail. On 23 January 2014, he submitted a DD Form 293 (Military Discharge Upgrade) to the Army Discharge Review Board (ADRB); his request was denied. The

ADRB letter did not mention the evidence he submitted, and no one asked for his side of the story.

f. He received his degree in criminal justice, but due to his driving under the influence (DUI) charge it has been difficult to get a job in law enforcement. He is rated at 70 percent with the Veteran Affairs (VA) effective February 2017. He is service connected for major depression with anxious stress and hypogonadism at 0 percent. His notice of reconsideration for a higher rating for hypogonadism is awaiting review by the Board of Veterans Appeals (BVA). On 31 August 2022, during his second compensation and pension examination the examiner rated him at 100 percent and total disability, based on individual unemployability. His case is pending review by the BVA.

g. His secret clearance was still active after his DUI. His unit was not mobilized or in a deployment status. He was never evaluated by the medial evaluation board (MEB) or the VA. He knows he messed up. He was only twenty-one years old. He just wanted to serve. (See full statement).

2. He enlisted in the U.S. Army Reserve on 8 October 2010.

3. His record contains a DD Form 214 showing, on 26 January 2011, he entered active duty for training. He completed basic combat and advanced individual training, and he was awarded military occupational specialty 31B (Military Police). He was honorably released from active-duty training, upon completion of required active service and transferred to his U.S. Army Reserve unit on 16 June 2011 under the provisions of Army Regulation 635-200 (Personnel Separations), chapter 4. His DD Form 214 shows he completed 4 months, and 21 days of net active service this period.

a. He was awarded or authorized the National Defense Service Medal, and the Army Service Ribbon.

b. He was assigned the separation code "MBK" and the reentry code "NA."

4. The applicant provides medical records which show in part, on 8 September 2011, an evaluation/intake psychiatrist shows, the applicants chief complaint is that he feels anxious, and he was not like this before, he is uncomfortable around other people, and he feels panic around authority figures.

5. N.J. Automated Traffic System shows, on 1 December 2011 the applicant was issued a violation for reckless driving, refusal to consent to a breathalyzer, and a fine for \$300.00.

6. A letters of instruction -- unexcused absence, dated 26 January 2012, states attendance records for the unit show the applicant was absent from the scheduled unit

training assembly (UTA) or multiple unit training assembly (MUTA) - he missed two (2) periods of training on 21 January 2012. Unless the absence was excused, he will have accrued 5 unexcused absences within a 1 year period.

7. A letter of instruction -- unexcused absence, dated 14 February 2012, states, attendance records for the unit show the applicant was absent from the scheduled UTA or multiple unit training assembly MUTA - he missed two (2) periods of training on 11 February 2012 and two (2) periods of training on 12 February 2012. Unless the absence was excused, he will have accrued 9 unexcused absences within a 1 year period.

8. He provides a DA Form 4187, Personnel Action, dated 4 April 2012, showing he was promoted to the rank/grade of specialist (SPC)/E-4 effective 4 April 2012.

9. A letter of instruction -- unexcused absence, dated 24 April 2012, shows attendance records for the unit show the applicant was absent from the scheduled UTA or multiple unit training assembly MUTA - he missed two (2) periods of training on 22 April 2012. Unless the absence was excused, he will have accrued 7 unexcused absences within a 1 year period.

10. A letter of instruction -- unexcused absence, dated 8 May 2012, shows attendance records for the unit show the applicant was absent from the scheduled UTA or multiple unit training assembly MUTA - he missed two (2) periods of training on 4 May 2012, two (2) periods of training on 5 May 2012, and two (2) periods of training on 6 May 2012. Unless the absence was excused, he will have accrued 11 unexcused absences within a 1 year period.

11. A letter of instruction -- unexcused absence, dated 18 June 2012 shows, attendance records for the unit show the applicant was absent from the scheduled UTA or multiple unit training assembly MUTA - he missed two (2) periods of training on 16 June 2012, and one (1) period of training on 17 June 2012. Unless the absence was excused, he will have accrued 14 unexcused absences within a 1 year period.

12. On 5 June 2012, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 135-178, paragraph 13, for unsatisfactory participation. His commander's rationale for the proposed action was due to the applicant failing to attend scheduled inactive duty training on nine occasions within one year period and failing to provide a valid excuse. He was advised of his rights via certified mail to his last known address.

13. The applicant's unsigned election of rights form was found in the available record. However, the unit commander indicated in the notification letter that he was suspending the separation action for 30 days, to allow the applicant the opportunity to exercise his right to consult with legal counsel. On 24 July 2012, the unit commander recommended

separation from the USAR. The intermediate commander reviewed the proposed action and recommended an under other than honorable conditions discharge.

14. A memorandum issued by U.S. Army Central Personnel Security Clearance Facility, dated 19 November 2012 shows, in part, he was granted a secret security clearance with a warning that subsequent unfavorable alcohol or criminal conduct related information may result in the suspension of his security clearance.

15. His medical records show in part, on 5 February 2013, he received a medical diagnosis for generalized anxiety disorder, cocaine, cannabis, and alcohol abuse.

16. A DA Form 1559 (Inspector General Action Request) dated 11 May 2013, shows his request for the Inspector General to reintegrate him into the USAR and transfer to another unit.

17. Several emails between the applicant, SSG H\_\_\_\_, and MSG\_\_\_\_, K\_\_\_\_ P\_\_\_\_ (Attorney General at Law), and the Inspector General reference his case, show:

a. On 14 August 2012, K\_\_\_\_ P\_\_\_\_ contacted the applicant and requested documents regarding the matter.

b. On 28 December 2012, K\_\_\_\_ P\_\_\_\_ asked the applicant the status of his case. On the same day, the applicant emailed SSG H\_\_\_\_ inquiring on the course of actions regarding his case and informed him to keep K\_\_\_\_ P\_\_\_\_ aware of any new details.

c. On 27 January 2013, the applicant contacted K\_\_\_\_ P\_\_\_\_ on the status of his case.

d. On 29 January 2013, K\_\_\_\_ P\_\_\_\_ contacted SSG H\_\_\_\_ on the status of the case. The applicant later provided K\_\_\_\_ P\_\_\_\_ with the IG's point of contact.

e. On 13 May 2013, K\_\_\_\_ P\_\_\_\_ responded to the applicant and informed him that he has not received a response from his command. On 6 June 2013, MSG S\_\_\_\_, informed the applicant that he tried to contact his lawyer and the IG, and that the new commander was aware of the situation.

18. On 30 July 2013, the separation authority waived further rehabilitative efforts and directed the applicant's discharge with a characterization of service of under other than honorable conditions and that he be reduced to the grade of E-1.

19. The record contains documentation that shows the unit attempted to contact the applicant on several occasions at his last known address, and he did not respond to the letter of instructions.

20. A memorandum issued by U.S. Army Central Personnel Security Clearance Facility, dated 19 November 2012 shows, in part, he was granted a secret security clearance with a warning that subsequent unfavorable alcohol or criminal conduct related information may result in the suspension of his security clearance

21. His medical records show in part, on 5 February 2013, a medical diagnosis for generalized anxiety disorder, cocaine, cannabis, and alcohol abuse.

22. A DA Form 1559 (Inspector General Action Request), dated 11 May 2013, shows his request for the Inspector General to reintegrate him into the USAR and transfer to another unit.

23. Orders Number 13-219-00017, issued by Headquarters, 99th Regional Support Command, dated 7 August 2013, shows, in part that the applicant was reduced in rank from specialist to private, effective 7 August 2013. He was discharged from the USAR, under other than honorable conditions, effective 14 August 2013.

24. The applicant was separated on 14 August 2013, under Army Regulation 135-178, Chapter 13, with an under other than honorable conditions discharge and reduced to the lowest enlisted grade of E-1.

25. The applicant provides his Bachelor of Arts Criminal Justice degree, awarded October 2013.

26. A letter from the ADRB, dated 25 June 2014, informed the applicant that, after careful consideration of his military records and all other available evidence, the ADRB determined his request for a change in the character and/or reason for his discharge was denied.

27. The Board of Veterans' Appeals letter, dated 28 September 2021 and 13 May 2022, shows in part:

a. Entitlement to service connection for an anxiety and depression is granted. Entitlement to service connection for hypothyroidism was denied.

b. Entitlement to an earlier effective date of June 26, 2017, for the award of service connection for major depressive disorder with anxious distress is granted.

c. Entitlement to an increase rating of 70 percent, but no higher, for major depressive disorder with anxious distress is granted subject to the regulations governing the award of monetary benefits.

28. His DA Form 5016 (Chronological Statement of Retirement Points), dated 6 January 2023 shows 1 year of creditable service for retired pay.

29. The applicant provides the following three-character reference letters, which show in part:

a. A letter issued by D\_\_\_\_ B\_\_\_\_, his supervisor, states prior to joining the military the applicant was a hard worker. Upon his return he did not seem like himself. He started to lack in many areas and seemed depressed.

b. A letter issued by W\_\_\_\_ H\_\_\_\_, his cousin, states the applicant was a born leader. He joined the military and was doing everything correct. His experience was horrific. He has post-traumatic stress disorder (PTSD), this is something that he has never had before. The military did not provide medical help.

c. A letter issued by R\_\_\_\_ C\_\_\_\_, his father, states he wants to share what the military did to his son. Prior to joining the military, he obtained his degree. He wanted to become a police officer in N.J. which is competitive, he wanted to stand out, so he joined the military. He was very confident. During basic training he was scrutinized, discriminated, and bullied by the drill sergeant. He returned in June 2011 and now suffers from anxiety depression and insomnia. He started to drink alcohol and got his first DUI. His son is hurting, this affects his employment and state of mind.

30. 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.

31. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

32. MEDICAL REVIEW:

a. Request: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable disability separation/retirement. The applicant also requests a revision of his RE code.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the U.S. Army Reserve (USAR) on 8 October 2011.
- N.J. Automated Traffic System shows, on 1 December 2011 the applicant was issued a violation for reckless driving, refusal to consent to a breathalyzer, and a fine for \$300.00.
- On 16 May 2012, he took a plea bargain, was found guilty of refusing to submit to a breathalyzer test and his license was revoked for seven months.
- Letters of instruction -- unexcused absence, dated 26 January 2012, 14 February 2012, 24 April 2012, 8 May 2012, and 18 June 2012 show attendance records for the unit indicating the applicant was absent from the scheduled UTA or multiple unit training assembly MUTA.
- On 5 June 2012, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 135-178, paragraph 13, for unsatisfactory participation. His commander's rationale for the proposed action was due to the applicant failing to attend scheduled inactive duty training on nine occasions within one year period and failing to provide a valid excuse. He was advised of his rights via certified mail to his last known address.
- The record contains documentation that shows the unit attempted to contact the applicant on several occasions at his last known address, and he did not respond to the letter of instructions.
- Applicant was separated on 14 August 2013, under Army Regulation 135-178, Chapter 13, with an under other than honorable conditions (UOTHC) discharge and reduced to the lowest enlisted grade of E-1.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, self-authored statement, ABCMR Record of Proceedings (ROP), service record, discharge paperwork, DD Forms 214, character reference letters, and medical records. The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant reports he received his degree in criminal justice, but due to his driving under the influence (DUI) charge it has been difficult to get a job in law enforcement. He is 70% service connected for major depression with anxious stress effective February 2017. The applicant further reports he was prevented from participating in scheduled drills after his incident of being stopped by police and refusing to submit to a breathalyzer test. During the incident, while being searched the police officer found his military identification card and contacted his company commander. His ROTC cadre was also informed, and he was kicked out of the ROTC program. He states he attended the January 2012 drill but was informed that a decision about what to do with him would occur after the court proceedings. Per the applicant, he was not



allowed to sign in during the June 2012 drill and was informed paperwork was being sent to his battalion for recommendation of an under other than honorable conditions discharge

e. The electronic medical record does not evidence any mental health contacts while in service. However, the applicant submitted medical records showing a mental health encounter on 5 February 2013, with a civilian provider where he was diagnosed with Generalized Anxiety Disorder, Major Depression, Cannabis Abuse, and Alcohol abuse.

f. The applicant is 100% service connected, including 70% for Major Depressive Disorder. A C and P examination dated 05 September 2018 diagnosed him with Major Depressive Disorder with Anxious Distress. The report indicates in December 2011, the applicant received a DWI after having a fight at a bar and driving intoxicated. He refused a breathalyzer and was taken to the police station where his command was notified. He further reported he missed several months of drills because he was drinking and overslept. This is inconsistent with the applicant's assertion that he was prevented from participating in drills. Once he came back to drill, he was placed on administrative hold due to his DWI and multiple absences. He also had security clearance problems due to his DWI's. In 2013, the applicant had another DWI and was administratively separated. He completed a BA degree in Criminal Justice in 2013 but discovered that he could not find work in law enforcement due to the character of his discharge and his multiple DWI's. The medical provider, at the time of the 2018 C and P examination, opined the applicant's Major Depressive Disorder with Anxious Distress was likely associated with his poor choices (alcohol, drug use, and employment problems) which resulted in low-self-esteem and other psychological symptoms. The applicant was evaluated once again via a C and P on 18 October 2023 and was service connected.

g. After reviewing the application and all supporting documents, it is the opinion of the Agency Behavioral Health Advisor there is evidence the applicant had a behavioral health condition during military service that would mitigate his discharge.

h. However, based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been service connected for Major Depressive Disorder, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of Major Depressive Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Major Depressive Disorder is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the

documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

**Kurta Questions:**

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends other mental health condition mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service connected for Major Depressive Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant is 70% service connected for Major Depressive Disorder. Given the nexus between depression and avoidance, as well as the use of substances as a coping mechanism, his discharge would be mitigated by his BH condition.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted the unexcused absence, considered the severity of the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of the applicant's request. The Board noted the applicant's reference to his rating assigned by the Department of Veteran's Affairs. Veterans Affairs and DoD operate under separate laws, policies and guidance. The VA primarily assesses the degree of disabling conditions to determine compensation and employment potential. The Army assesses for fitness for duty. Therefore, there is not necessarily a correlation between VA disability ratings and those of the Army. After due consideration of the applicant's request, the Board determined that the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

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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 135-178 governs procedures covering enlisted personnel management of the Army Reserve. Chapter 13 provides in pertinent part, that individuals can be separated for being an unsatisfactory participant. Army Regulation

135-91 states that a member is an unsatisfactory participant when nine or more unexcused absences from scheduled drills accrue during a 1 year period and attempts to have the Soldier respond or comply with orders or correspondence have resulted in the Soldier's refusal to comply with orders or correspondence; or a notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; or verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed. Discharge action may be taken when the Soldier cannot be located or is absent in the hands of civil authorities in accordance with the provisions of AR 135-91, paragraph 2-18, and Chapter 3, section IV, of AR 135-178.

3. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general discharge under honorable conditions or an honorable discharge may be granted.
4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.
5. 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; TBI; 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 to 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.
6. 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.

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, 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.

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. Title 38 U.S. Code 1110 (General - Basic Entitlement) states 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.

8. Title 38 U.S. Code 1131 (Peacetime Disability Compensation - Basic Entitlement) states 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.

9. Army Regulation 140-185 (Training and Retirement Points Credits and Unit Level Strength Accounting Records), sets responsibilities and procedures to establish and maintain retirement records prescribing the types of training and activities for which retirement points are authorized.

a. Paragraph 2-2 (Criteria for Earning Retirement Points) states retirement points may be earned by USAR Soldiers for active duty or duty in an active status for active duty for training (ADT), initial active duty for training (IADT), involuntary active duty for

training (involuntary ADT), voluntary IDT, annual training (AT), IDT, membership points, and for other activities.

b. Chapter 3 (Records Source Documents) states Source documents include training transcripts, DD Form 214, DD Form 215 (Correction to DD Form 214), DD Form 220 (Active-Duty Report), master military pay account, DFAS Form 702 (DFAS Military LES), DA Form 1379 (USAR Components Unit Record of Reserve Training), DA Form 1380 (Army Reserve Record of Individual Performance of Reserve Duty Training), DA Form 5016, and the Reserve retirement repository.

10. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active duty. SPD code "MBK" is the correct code for Soldiers separating under the provisions of chapter 4 of Army Regulation 635-200 by reason of "Completion of Required Active Service."

11. The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE code. An entry level separation would normally be given to an individual who failed to complete an initial period of 180 days of active service, some members may receive an "N/A" where the re-code would reside.

12. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covered eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and U.S. Army Reserve. It stated that individuals would be assigned RE codes based on their service records or the reason for discharge prior to discharge or release from active duty. Table 3-1 included a list of Regular Army RE codes.

- an RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- an RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable; they are ineligible unless a waiver is granted
- an RE-4 applies to Soldiers who are separated from their last period of service with a nonwaivable disqualification. They are ineligible for enlistment.

13. 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.

14. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. It states further, 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//