

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2223

DOCKET NUMBER: AR20230003228

APPLICANT REQUESTS:

- a physical disability discharge in lieu of her honorable discharge for completion of required active service
- a personal appearance before the Board

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

- ARBA online application in lieu of DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) rating letter, dated 11 May 2015
- VA rating letter, dated 12 August 2016
- VA rating decision, dated 22 March 2017
- VA rating letter, dated 24 March 2017
- VA rating decision, dated 14 August 2018
- VA rating letter, dated 21 August 2018
- VA rating letter, dated 9 May 2019
- VA rating decision, dated 15 August 2019
- VA rating letter, dated 20 August 2019
- medical record (1,385 pages)

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 she was denied a medical discharge because of her race, sexual identity, and a court martial that resulted in her being not guilty. Her chain of command prevented her from obtaining the next rank and denied her medical board process resulting in her servicing exactly 14 1/2 years. They stalled the process for an entire year, resulting in the derailment of her military career. She should have been medically retired 2 years prior to the time she applied for a medical board due to sexual

harassment and posttraumatic stress disorder (PTSD), and other mental and physical problems sustained while in the military. All of this is well documented in her military medical records. Some behavior issues also resulted from the trauma. Just recently the US military has started to recognize the inequalities that were rampant throughout the ranks, specifically dealing with black females, and gay and lesbian personnel. Her entire adult life was dedicated to the US military and she was subjected to mental and physical abuse the entire time. She was scared that her injustice would not be taken seriously. She has just recently been working through that fear. Resulting in her applying now.

3. The applicant served honorably in the United States Navy from 6 June 2000 to 6 May 2004.

4. The applicant underwent a medical examination on 24 January 2005 for enlistment purposes. The associated DD Form 2807-2 (Medical Prescreen of Medical History Report) and DD Form 2807-1 (Report of Medical History) show she indicated she was in good health without significant defect. The corresponding DD Form 2808 (Report of Medical Examination) shows she was found qualified for service and assigned a physical profile of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

5. The applicant enlisted in the Regular Army on 24 February 2005 for a period of 3 years. She reenlisted 29 December 2008 for an additional 6 years.

6. The applicant was promoted to Sergeant (E-5) effective 1 September 2009. A DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report) covering 4 October 2009 through 6 June 2010 shows she passed her Army Physical Fitness Test (APFT) on 20 November 2009. She was rated among the best, with the comments: promote ahead of peers and great performance by a new NCO in a challenging environment. Her senior rater rated her 1 – Successful and 1 – Superior.

7. A DA Form 2166-8 covering 7 June 2010 through 6 June 2011 shows she passed her APFT on 12 April 2011. She was rated fully capable, with the comments: send to Advanced Leader Course now and continue to place in positions of increased responsibility. Her senior rater rated her 2 – Successful and 2 – Superior.

8. A DA Form 2166-8 covering 7 June 2011 through 6 June 2012 shows she passed her APFT on 9 January 2012. She was rated fully capable, with the comment has the potential to succeed in higher and more challenging positions of leadership. Her senior rater rated her 3 – Successful and 2 – Superior.

9. A DA Form 2166-8 covering 7 June 2012 through 6 June 2013 shows she passed her APFT on 24 January 2013. She was rated fully capable, with the comments: unlimited potential in any capacity or position and superb technical and tactical skills, understands assigned task and performs effortlessly to standard. Her senior rater rated her 3 – Successful and 2 – Superior.

10. A DD Form 2697 (Report of Medical Assessment), dated 8 October 2013, shows the applicant reported her overall health was worse than her last medical assessment/physical examination due to mental problems, fainting, dizziness, blurred vision, feet, hips, anemia, and syncope. She indicated she had treatment by a heart doctor and for ear/nose congestion and was taking medication. She had conditions which limit her ability to work in her primary military occupational specialty (MOS) or limitations on assignment. She indicates she had dental problems. At the time she indicated she intended to seek VA disability for insomnia, syncope, female problems, feet, hand, teeth, scars, neck pain, back pain, hips, and anemia.

11. A DD Form 2807-1, also dated 8 October 2013, shows the applicant reported the following history of conditions:

- asthma or any breathing problems related to exercise, weather, pollens, etc.
- a chronic cough or cough at night – specifically, cough at night
- sinusitis – specifically, sinus infections frequently
- hay fever
- severe tooth or gum trouble – specifically, front teeth were knocked out during basic training in 2001
- eye disorder or trouble – specifically, blurred vision
- ear, nose, or throat trouble – specifically, congestion all the time
- worn contact lenses or glasses – specifically, wore glasses
- a hearing loss or wear a hearing aid
- surgery to correct vision – specifically, PRK
- painful shoulder, elbow or wrist (e.g. pain, dislocation, etc.) – specifically, both shoulders ache
- recurrent back pain or any back problem
- numbness or tingling – specifically, numbness in right little finger, numbness and tingling in toes
- foot trouble (e.g., pain, corns, bunions, etc.) – specifically, pain in both feet, bunions require her to buy larger shoes

- knee trouble (e.g., locking, giving out, pain or ligament injury, etc.) – specifically, knee pain
- frequent indigestion or heartburn – specifically, heartburn
- skin diseases (e.g. acne, eczema, psoriasis, etc.) – specifically, acne on face and all over back
- high or low blood sugar – specifically, low blood sugar
- dizziness or fainting spells – specifically, dizziness all the time/fainting spells
- frequent or severe headache – specifically, severe headaches
- a head injury, memory loss or amnesia – specifically, 3 head injuries, last one resulting in traumatic brain injury (TBI)
- car, train, sea, or air sickness – specifically, car sickness
- a period of unconsciousness or concussion – specifically, 3 times during fainting
- palpitation, pounding heart or abnormal heartbeat – specifically, abnormal heartbeat
- heart trouble or murmur – specifically, murmur
- high or low blood pressure – specifically, chronic low blood pressure
- nervous trouble of any sort (anxiety or panic attacks)
- loss of memory or amnesia, or neurological symptoms – specifically, loss of memory due to TBI
- frequent trouble sleeping – specifically, insomnia
- received counseling of any type – specifically, for depression, anxiety, anger
- depression or excessive worry – specifically, depression
- been evaluated or treated for a mental condition
- attempted suicide – specifically, thoughts of attempting in 2006
- treatment for a gynecological disorder – specifically, painful menstrual cycle, excessive blood loss resulting in anemia
- any abnormal PAP smears

12. A DD Form 2808 shows the applicant underwent a medical examination on 23 January 2014. She was found qualified for separation from service and assigned a physical profile of 211111 with the acceptable medical condition of recurrent syncope. The Summary of Defects and Diagnoses shows:

- Insomnia
- recurrent major depression
- memory problem
- cervicgia
- headache syndromes
- anxiety disorder
- hallux valgus
- pes planus
- iron deficiency, anemia

- menorrhagia
- PRK
- substance abuse
- back pain
- syncope/dizziness
- neuroma

13. A DA Form 2166-8 covering 7 June 2013 through 6 June 2014 shows she passed her APFT on 15 November 2013. She was rated fully capable, with the comments: promote to Staff Sergeant ahead of peers and possesses the potential to excel; challenge her with higher level of responsibility. Her senior rater rated her 2 – Successful and 2 – Superior.

14. A DA Form 2166-8 covering 7 June 2014 through 17 November 2014 shows she passed her APFT on 1 October 2014. She was rated fully capable, with the comment: has good potential to excel in leadership roles. Her senior rater rated her 3 – Successful and 3 – Superior.

15. The applicant was honorably discharged on 28 December 2014. Her DD Form 214 shows she was credited 9 years, 10 months, and 5 days net active service this period and 3 years, 11 months, and 1 day total prior active service.

16. The applicant provided the following:

a. VA rating letter, dated 11 May 2015, showing she was awarded service connected rating of 60 percent for the following conditions:

- bilateral pes planus – 10 percent – effective 29 December 2014
- alopecia – 0 percent – effective 29 December 2014
- right forearm burn scar – 0 percent – effective 29 December 2014
- anemia – 0 percent – effective 29 December 2014
- acne – 0 percent – effective 29 December 2014
- left knee patellofemoral syndrome – 0 percent – effective 29 December 2014
- right knee patellofemoral syndrome – 0 percent – effective 29 December 2014
- fractured #8/9, restored to full function – 0 percent – effective 29 December 2014
- deviated septum – 0 percent – effective 29 December 2014
- left hip trochanteric bursitis – 0 percent – effective 29 December 2014
- left forearm burn scare – 0 percent – effective 29 December 2014
- cervical strain with C5 spondylosis and arthritis – 10 percent – effective 29 December 2014

- major depressive disorder with alcohol use disorder – 30 percent – effective 29 December 2014
- scar, right forehead – 10 percent – effective 29 December 2014
- thoracolumbar strain – 10 percent – effective 29 December 2014
- irritable bowel syndrome with gastro esophageal reflux disease – 0 percent – effective 29 December 2014
- traumatic brain injury with vertigo and post traumatic headaches with migraines features – 10 percent – effective 29 December 2014
- right foot Morton's neuroma – 10 percent – effective 29 December 2014
- onychomycosis – 0 percent – effective 29 December 2014
- right hip trochanteric bursitis – 0 percent – effective 29 December 2014
- right foot hallux valgus – 0 percent – effective 29 December 2014
- left foot hallux valgus – 0 percent – effective 29 December 2014

b. VA rating letter, dated 12 August 2016, showing she was awarded service connected rating of 70 percent for the following additional condition: endometriosis with dyspareunia and infertility with obstructed tubes – 30 percent – effective 29 December 2014.

c. VA rating decision, dated 22 March 2017, showing she was awarded adjustments for the following service connected conditions:

- major depressive disorder with alcohol use disorder – increased from 30 percent to 50 percent effective 16 May 2016
- left hip degenerative joint disease (previously rated as left hip trochanteric bursitis) – increased from 0 percent to 10 percent effective 16 May 2016
- total hysterectomy (also claimed as temporary total disability) graded at 100 percent effective 20 December 2016 and reduced to 30 percent effective 1 April 2017
- scars; left upper abdomen, left mid abdomen, left lower abdomen, umbilical scar, right middle abdomen, right lower abdomen graded at 0 percent effective 20 December 2016
- endometriosis with dyspareunia and infertility with obstructed tubes graded at 30 percent and reduced to 0 percent effective 26 January 2017

d. VA rating letter, dated 24 March 2017, showing the following ratings:

- Scars; left upper abdomen, left mid abdomen, left lower abdomen, umbilical scar, right middle abdomen, right lower abdomen associated with total hysterectomy – 0 percent – effective 20 December 2016
- Left hip degenerative joint disease (previously rated as left hip trochanteric bursitis) – increased from 0 percent to 10 percent effective 16 May 2016

- Major depressive disorder with alcohol use disorder – increased from 30 percent to 50 percent effective 16 May 2016
- e. VA rating decision, dated 14 August 2018, showing the following ratings:
- post traumatic stress disorder (PTSD) with alcohol use disorder (previously rated as major depressive disorder with alcohol use disorder) – increased from 50 percent to 70 percent effective 29 April 2018
  - post traumatic headaches – 30 percent effective 29 April 2018
  - cervical degenerative arthritis with C5 spondylosis (previously shown with strain) – continued at 10 percent
  - thoracolumbar strain – continued at 10 percent
  - TBI with vertigo – continued at 10 percent
- f. VA rating letter, dated 21 August 2018, showing she was awarded service-connected rating of 90 percent for the following conditions:
- TBI with vertigo – continued at 10 percent
  - cervical degenerative arthritis with C5 spondylosis (previously shown with strain) – continued at 10 percent
  - thoracolumbar strain – continued at 10 percent
  - PTSD with alcohol use disorder (previously rated as major depressive disorder with alcohol use disorder) – increased from 50 percent to 70 percent effective 29 April 2018
  - post traumatic headaches with migraines – 30 percent effective 29 April 2018
- g. VA rating letter, dated 9 May 2019, showing she was awarded service-connected rating of 100 percent, effective 19 March 2019.
- h. VA rating decision, dated 15 August 2019, showing she was awarded adjustments for endometriosis with dyspareunia and infertility with obstructed tubes – increased from 0 percent to 10 percent effective 9 April 2019.
- i. VA rating letter dated 20 August 2019, she was awarded service-connected rating of 100 percent, effective 9 April 2019.

17. The applicant contends she was subject to a court martial and discrimination, however, she did not provide evidence to support this contention. Her record does not contain any documentation showing she the subject of adverse action or administrative separation proceedings.

18. Based on the applicant's contention the Army Review Boards Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

19. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

20. 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.

21. 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.

22. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, 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 VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

23. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). She states:

"I was denied medical discharge because of my race and sexual identity and a court martial that resulted in me being not guilty. My chain of command



prevented me from obtaining the next rank and denied my med board process resulting in me servicing exactly 14 1/2 years.

They stalled the process for an entire year, resulting in the derailment of my military career. I should have been medically retired 2 yrs. prior to the time I applied for a med board due to Sexual harassment and PTSD, and other mental and physical problems sustained while in the Military. All of this is well documented in my military medical records. Some behavior issues also resulted from the trauma.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows she entered the regular Army on 24 February 2005 and was honorably discharged on 28 December 2014 under the separation authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009), after having completed her required active service. It shows the former food service specialist served in Cuba from 6 June 2009 thru 26 May 2010. The reentry code of 1 signifies she was fully eligible to reenlist.

d. The EMR does not contain any pre-separation encounters.

e. The applicant completed a separation physical on 23 January 2014 as her command was preparing to administratively separate her from the Army. The specific chapter was not identified. The provider listed sixteen medical defects and diagnoses, none of which failed the medical retention standards of AR 40-501, Standards of Medical Fitness and would thereby have been a cause for referral to the DES. He does annotate she had a permanent non-duty limiting physical profile for recurrent syncope.

f. Documents addressing this pending chapter separation were not submitted with the applicant nor found in iPERMS.

g. The applicant’s NCO Evaluation Reports covering her last 4 years of Service show she always passed her Army Physical Fitness Test and met height / weight standards. For her ratings of Overall Performance and Overall Potential, her senior raters gave her a mixture of 2’s and 3’s on a scale of 1 to 5 and always marked her as fully capable. Her senior rater opined on her final NCO Evaluation Report with a thru date of 17 November 2014 (5 weeks before voluntary separation):

- “promote with peers
- select for Advanced Leaders Course when available
- completed tasks when assigned
- has good potential to excel in leadership roles”

h. There is insufficient evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR

40-501, Standards of Medical Fitness, prior to her voluntary separation. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to her voluntary separation.

i. Review of her records in JLV shows she was awarded numerous VA service-connected disability ratings on 24 February 2020, including ratings for PTSD, sleep apnea, migraine headaches, and degenerative arthritis of the spine. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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

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

k. It is the opinion of the Agency Medical Advisor that a referral of her case to the DES is not warranted.

#### BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. 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 applicant's reference to the rating she received by the Department of Veterans affairs. Although the Board is cognizant of the applicant's VA disability rating, the Army and VA disability rating processes serve two different

purposes and operate under different authorities, thus ratings vary. After due consideration of the case, the Board found insufficient evidence that the applicant incurred a medical condition during her period of service that would have failed medical standards in accordance with applicable regulatory guidance. In the absence of sufficient documentation to support her contention, the Board found no compelling reason that would warrant a referral to the Disability Evaluation System or an increase in her disability rating and a recommendation for relief to show she was discharged by reason of physical disability is not warranted.

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 to show physical disability discharge in lieu of honorable discharge

2/28/2024

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████████████████████

CHAIRPERSON

████████████████████

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

REFERENCES:

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

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

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

c. 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. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 38 USC, section 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.

4. Title 38 USC, section 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.

5. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states 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 military service.

b. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

6. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

7. Section 1556 of Title 10, USC, 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. 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 UOTHC 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.

9. 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, or sexual harassment. Boards are 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.

10. 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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

11. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

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

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//