

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230003275

APPLICANT REQUESTS: in effect,

- His major depressive disorder (MDD), single episode, mild to be included in his Physical Evaluation Board (PEB) Proceedings
- Reconsideration of his previous request that his permanent disability retirement be labeled as combat related

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

- DD Form 149 (Application for Correction of Military Record)
- Enlisted Record Brief
- MD M.L.M. Mental Health (MH) Evaluation Medical Evaluation Board (MEB) Letter, 22 June 2004
- DA Form 199 (PEB Proceedings), 8 September 2004
- Physical Disability Review Board (PDRB) Statement Letter, 22 February 2014
- PDBR Record of Proceedings, 18 April 2014
- MD R.J. Veterans Affairs (VA) Letter, 9 July 2014
- PDBR Rating Letter, 21 November 2014
- VA Rating Decision and Award Letter, 6 July 2015
- MD D.A. MH Evaluation, 20 October 2016
- Self-authored letter
- Outpatient Summary Report, 28 February 2017
- Admission Medical Report, 4 April 2018
- Inpatient Discharge Plan, 9 November 2018
- VA medical records (8 pages)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150008837 on 19 April 2016.

2. The applicant states correct the error of not including the unfit rating of 296.21 Major Depressive Disorder, Single Episode, Mild, in his PEB Proceedings dated 9 September 2004, or the Record of Proceedings by the Department of Defense (DoD) PDRB. Also, need to fix the error of characterizing the unfit rating that was not included in the PEB Proceedings dated 9 September 2004, 296.21 MDD, Single Episode, Mild, as combat related as it was incurred while pulling security detail in a classified combat zone at Eskan Village, Riyadh, where he was receiving combat pay. To note, the mental health disorder diagnosis and rating has now been changed to bipolar disorder at a 70% disability rating by the VA (which was claimed as major depression and post-traumatic stress disorder (PTSD)).

a. The error of the MEB of not including his unfit rating of MDD and error of not characterizing his MDD as a combat-related injury has proposed an undue financial hardship on him, because not including the unfit rating and characterization of a combat-related injury of the MDD was not included in the PEB Proceedings dated 9 September 2004, and the Record of Proceedings by DoD PDRB dated 18 April 2014, even though the unfit condition was evaluated by Dr. M.L.M. at Fort Jackson, South Carolina on 9 September 2004.

b. The letter he sent to the DoD PDRB; states he would like to fix the error to include his mental health diagnosis as an unfit rating. If these errors were not made, then he would have been able to be medically discharged involuntarily with a retired status from the United States Army and would have been qualified to military retirement pay from the military. As of now, he does not receive military retirement pay because none of his unfit conditions that was decided by the Department of the Army MEB was decided to be combat-related.

c. He was evaluated by the psychiatrist at Fort Jackson, SC, Dr. M.L.M., on 9 February 2004, where the psychiatrist rated him as a Global Assessment of Functioning Scale: 70 for the unfit condition which was for evaluating him for the MEB dated 9 September 2004, but was not included as an unfit condition in the PEB Proceedings dated 9 September 2004. Dr. M.L.M. also states this unfit condition did not exist prior to service (EPTS) and the unfit condition was caused in Line of Duty (LOD).

d. The VA rated this unfit condition at 70% as bipolar disorder (originally claimed as Major Depression and PTSD) on 7 July 2014. Dr. R.J., a medically certified psychiatrist, at the VA Chalmers P. Wylie Ambulatory Care Center, in a letter dated 9 July 2014, to process his VA Total Disability Individual Unemployability Claim (TDIU), stated the unfit condition was unfit to perform any duty in a work-like setting. Also, after having a mental health evaluation for his Office of Personnel Management (OPM) Federal Employee Retirement System (FERS) disability retirement claim, Dr. D.A. at Mission Hospital in Bangkok, Thailand stated that the unfit condition while in Saudi Arabia and was diagnosed soon after returning from Saudi Arabia.

e. He did eventually get moved to permanent retired status due to the decision of DoD PDRB dated 1 November 2014, which dated back to his separation date of 11 October 2004, but there was no mention in the decision letter that the injuries were combat-related. If found that his unfit condition is combat-related, then please update his retirement orders and all other retirement paperwork to reflect that.

f. Any help correcting these errors would be extremely appreciated by him and his family. As you can see, this unfit condition has caused undue mental health stress and occupational stress on himself, and his family and he would like to get it rectified by the Department of the Army so at least this stressor will be one less thing he has to worry about not getting recognized.

3. The applicant enlisted in the Regular Army on 29 August 2000. He was awarded military occupational specialty 42F (Personnel Information Systems Management Specialist).

4. He served in Southwest Asia from 4 February 2002 to 6 November 2002.

5. DA Form 3349 (Physical Profile) shows he was issued a permanent profile on or about 17 May 2004, for Cervical Radiculopathy C5/ Ratello Femoral Syndrome. His PULHES reflected as P-1 U-3 L-3 H-1 E-1 S-1.

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.

6. The MEB narrative summary of examination, in pertinent part, shows -

- Diagnoses: Right cervical C5 radiculopathy, bilateral retropatellar pain syndrome, depression; please see the addendum from psychiatry (umbilical hernia); see general surgery addendum
- Chief Complaint: Neck pain and right arm pain
- History of Present Illness: This dates back to while he was working in Saudi Arabia having to lift heavy boxes, in one particular incident, in June of 2002, where a box fell striking him in the head
- Line of Duty (LOD): Yes

- Existed Prior To Service: No

7. In an addendum to MEB dated 22 June 2004, shows a diagnosis of 296.21 Major Depressive Disorder, Single Episode, Mild as manifested by mild sleep disruption, irritability, variable concentration, and mildly depressed mood. Precipitating stressors: Medical and occupational problems. Predisposition: None. Impairment for military duty: Mild. Impairment for social and industrial adaptability: Mild. LOD: Yes. EPTS: No.

8. DA Form 3947 (Medical Evaluation Board (MEB) Proceedings) shows an MEB convened on 30 June 2004 at Moncrief Army Community Hospital, Fort Jackson, SC. The MEB found the applicant had the following medical conditions/defects:

- Right cervical C5 radiculopathy. In accordance with (IAW) Army Regulation (AR) 40-501 (Standards of Medical Fitness), Chapter 3-41e (1); Medically unacceptable
- Bilateral retropatellar pain syndrome. IAW AR 40-501, Chapter 3-41e (1); Medically unacceptable
- Major depressive disorder, single episode. IAW AR 40-501, Chapter 3-41e (1)
- The MEB recommended the case be referred to a PEB
- The findings and recommendation of the board was approved and the applicant agreed with the Board's findings and recommendation

9. A PEB convened on 8 September 2004 at Washington, DC and found him unfit for Neck pain with degenerative disc disease C3/C4 and C4/C5 rated at 10 percent and Bilateral retropatellar pain syndrome rated at 0 percent. The board recommended that his disposition be separation with severance pay. DA Form 199 shows:

- Neck pain with degenerative disc disease C3/C4 and C4/C5 - EMG/NCV was normal; The range of motion showed 45 degrees flexion; Other parameters (CMEDREC) are within normal ranges
- Bilateral retropatellar pain syndrome - There is no ligamentous laxity; There are no neurovascular deficits; Range of motion is within acceptable norms
- DA Form 751 (Telephone or Verbal Conversation Record) shows on 8 September 2004, the applicant agreed with the informal PEB decision

10. The applicant was honorably discharged on 11 October 2004, under the provisions of AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b (3) for disability, severance pay. He completed 4 years, 1 month, and 13 days of net active service the period. His DD Form 214 shows his separation code was JFL, and reentry code was 3. He received disability severance pay in the amount of \$15,928.80.

11. A PDBR convened on 18 April 2014, and recommended that the applicant's prior determination be modified; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement with a combined disability rating of 30%, effective as of the date of his prior medical separation as follows:

- Degenerative Disc Disease, Cervical Spine rated at 20%
- Retropatellar Pain Syndrome, Left Knee rated at 10%
- Retropatellar Pain Syndrome, Right Knee Not Unfitting

12. On 21 November 2014, the Deputy Assistant Secretary (Review Boards) approved the recommendation of the DoD PDBR.

13. Headquarters, U.S. Army Training Center (USATC), Fort Jackson, SC, Orders 351-1300, dated 17 December 2014, revoked Headquarters, USATC, Fort Jackson, SC, Orders 257-1325, dated 13 September 2004.

14. Headquarters, USATC, Fort Jackson, SC, Orders 352-1312, dated 18 December 2014, released the applicant from assignment and duty because of permanent physical disability, effective 11 October 2004, and placed him on the retired list effective 12 October 2004 in the retired grade of SGT. The orders also show:

- "Percentage of disability: 30"
- "Disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No"
- "Disability resulted from a combat related injury as defined in 26 USC 104: No"

15. A DD Form 215, issued on 24 December 2014, corrected the applicant's 11 October 2004 DD Form 214 to show he was transferred to the U.S. Army Reserve Control Group (Retired), 1600 Spearhead Division Avenue, Fort Knox, KY, under the provisions of AR 635-40, paragraph 4-24b (1), based on disability, permanent (enhanced).

16. In his previous case (AR20150008837) on 19 April 2016, the ABCMR determined so much of the application that pertains to disability resulting from a combat-related injury as defined in Title 26, United States Code, section 104; as a result, the Board denied this portion of his request.

17. The applicant provides:

a. PDRB Statement Letter, 22 February 2014, in which he wrote to the PDBR about his disabilities related to his work. (The entire letter is available for review in supporting documents).

b. MD R.J. VA TDIU Letter, 9 July 2014, in which the doctor stated the applicant was diagnosed with Bipolar Disorder. He also has a diagnosis of Sleep Apnea. (The entire letter is available for review in supporting documents).

c. VA Rating Decision and Award Letter, 6 July 2015, showing his rated disabilities and disabling percentages. He is entitled to individual unemployability effective 15 August 2014.

d. MD D.A. MH Evaluation, 20 October 2016, which diagnosed the applicant with Bipolar disorder, major depression and PTSD.

e. Self-authored letter stating in effect his mental health which led to multiple suicide attempts. (The entire letter is available for review in supporting documents).

f. Multiple medical documents related to his mental health and other disabilities. The documents which are available for review by the board include:

- Outpatient Summary Report, 28 February 2017
- Admission Medical Report, 4 April 2018
- Inpatient Discharge Plan, 9 November 2018
- VA medical records (8 pages)

18. 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.

19. 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.

20. 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.

21. 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 / 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 is applying to the ABCMR requesting that a mental health condition be determined to have been an unfitting for continued military service prior to his separation and a corresponding increase in his prior military disability rating. He also requests that his mental health condition be determined to have been combat related.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 and DD 215 shows he entered the regular Army on 29 August 2000 and was permanently retired for physical disability on 11 October 2004 under provisions in paragraph 4-24b(1) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990). It shows Service in Southwest Asia from 4 February 2002 thru 6 November 2002.

d. A Physical Profile (DA Form 3349) shows the applicant was referred to a medical evaluation board on for cervical radiculopathy and patellofemoral syndrome. His mental health was evaluated separately by a psychologist. The wrote in their narrative summary:

PERTINENT HISTORY: SGT [Applicant] began to experience depressive symptoms secondary to multiple medical issues. SGT [Applicant] had no previous mental health problems or treatment. He had difficulty sleeping, decreased appetite and libido, apathy, and depressed mood when he presented for evaluation on 9 FEB 04. SGT [applicant] had been undergoing treatment and evaluation for bilateral knee pain, a pinched nerve in his neck, and pain in both hands and wrists. Additionally, SGT had considerable work stressors and often felt as though his Chain of Command was not sympathetic of his medical issues.

SGT Stanley has been treated since 9 FEB 04 for his depression on a weekly basis with individual psychotherapy and medication management as needed per his individual medication protocol. He is currently taking Wellbutrin XL 300mg a day. His depressive symptoms have been well managed with this treatment program despite continued medical and occupational problems.

The severity of SGT Stanley's depression has been downgraded to Mild, from his presenting severity of Moderate."

e. The psychologist diagnosed with applicant with “Major Depressive Disorder, Single Episode, Mild” and assessed him with a Global Assessment of Functioning (GAF) of 70.

The Global Assessment of Functioning (GAF)

Source: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition

- **100-91:** Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms.
- **90-81:** Absent minimal symptoms (e.g. mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members).
- **80-71:** If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in school work).
- **70-61:** Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.
- **60-51:** Moderate symptoms (e.g., flat and circumstantial speech, occasional panic attacks) OR moderate difficulty in social occupational, or social functioning (e.g., few friends, conflicts with co-workers).

f. While it is clear he had depression and depressive symptoms, it did not fail the medical retention standard found in paragraph 3-32 of AR 40-501, Standards of Medical Fitness (29 August 2003):

“3–32. Mood disorders

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.”

g. The applicant’s Medical Board Proceedings (DA 3947) shows the applicant was found to have two conditions failing the medical retention standards in chapter 3 of AR 40-501: “Right cervical CS radiculopathy” and “Bilateral retropatellar pain syndrome.” The MEB found his “Major depressive disorder, single episode” did not fail medical retention standards.

h. On 9 July 2005, the applicant agreed with the board’s findings and recommendation, and his case was forwarded to a PEB for adjudication.

i. The informal PEB convened on 8 September 2004 and determined his “Neck pain with degenerative disc disease C3/C4 and C4/C5” and “Bilateral retropatellar pain syndrome” were unfitting condition for continued service. The determined his major depressive disorder was not unfitting for continued service.

j. While they had recommended the applicant be separated with disability severance pay, this was changed to a permanent retirement for physical disability based upon a review by the Physical Disability Board of Review (PDBR) in 2014. In an 8 September 2004 telephone conversation, the applicant agreed with the initial PEB decision and waived his right to a formal PEB.

k. His final NCO Evaluation Report was for a change in rater, covered June 2004 thru September 2004, and shows he continued to be outstanding Soldier and NCO. His rater top-blocked him as “Among The Best.” His senior rater top-blocked him with 1’s on a scale of 1 to 5 for both Overall Performance” and Overall Potential” stating:

- “ unlimited potential; promote ahead of peers
- continue to challenge this NCO with increased responsibility
- his hard work and dedication contributed immeasurably to the
- Brigade IS success”

l. There is no probative evidence the applicant had a mental health which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of

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

m. JLV shows he has been awarded numerous VA service-connected disability ratings, including a rating for bipolar disorder. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

n. It is the opinion of the ARBA Medical Advisor that an increase in his current military disability rating, a referral of his case back to the DES, and/or an affirmative combat related determination for his mental health condition are all unwarranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was initially separated due to disability. This was later recharacterized by the PDBR as disability retirement. The conditions that were found unfitting were Degenerative Disc Disease, Cervical Spine, Retro patellar Pain Syndrome, Left Knee, and Retro patellar Pain Syndrome, Right Knee. The applicant requests a mental health condition be determined to have been an unfitting for continued military service prior to his separation and a corresponding increase in his prior military disability rating. He also requests that his mental health condition be determined to have been combat related. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination that there is no probative evidence the applicant had a mental health which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. the Board determined relief 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 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 to amend the decision of the ABCMR set forth in Docket Number AR20150008837 on 19 April 2016.

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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. Army Regulation (AR) 635-40 sets forth policies, responsibilities, and procedures 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.

a. Chapter 4 (Procedures), paragraph 4-19 (PEB decisions – common criteria), shows the voting members of a PEB make findings and recommendations in each case on the basis of the instructions set forth in this paragraph. The board decides all questions by majority vote. All findings must be based on a preponderance of the evidence.

b. Subparagraph j (Armed conflict - instrumentality of war) shows certain advantages accrue to Soldiers who are retired for physical disability and later return to work for the Federal Government when it is determined that the disability for which retired was incurred under specific circumstances. These advantages concern preference eligible status within the Civil Service system (5 USC 3501). The specific circumstances are:

(1) The disability resulted from injury or disease received in LOO as a direct result of armed conflict and which itself renders the Soldier unfit. A disability may be considered a direct result of armed conflict if:

(a) The disability was incurred while the Soldier was engaged in armed conflict, or in an operation or incident involving armed conflict or the likelihood of armed conflict; while the Soldier was interned as a prisoner of war or detained against his will in the custody of a hostile or belligerent force; or while the Soldier was escaping or attempting to escape from such prisoner of war or detained status.

(b) A direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

(2) The disability is unfitting, was caused by an instrumentality of war, and was incurred in LOO during a period of war as defined by law. (The periods of war are defined in 38 USC 101 and 301.)

2. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

3. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live-fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

4. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. Engaged in Hazardous Service: Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an

injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement). Once a determination of physical unfitness is made, disabilities are rated using the VA schedule of disability rating.

6. Title 26, U.S. Code, section 104, authorizes special rules for combat-related injuries for compensation for injuries or sickness. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness (A) which is incurred (i) as a direct result of armed conflict, (ii) while engaged in extra-hazardous service, or (iii) under conditions simulating war; or (B) which is caused by an instrumentality of war.

7. Title 10, U.S. Code, section 1413a, states the Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b). In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that (1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense) (A) as a direct result of armed conflict; (B) while engaged in hazardous service; (C) in the performance of duty under conditions simulating war; or (D) through an instrumentality of war.

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

9. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//