ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20230003553

APPLICANT REQUESTS:

- in effect, reversal of the U.S. Army Human Resources Command (HRC) Determination to find her line of duty (LOD) investigation in line of duty, existed prior to service (EPTS), service aggravated
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record) online application
- Additional Narrative
- Deployment Mental Health Assessment
- Orders 188-100 Order to Active Duty (AD)
- Orders 275-129 Order to Fulltime National Guard Duty - Operational Support (FTNGD-OS)
- Orders 113-100 Order Active Duty for Training (ADT)
- Orders 270-136 Order to ADT
- Orders 04-067-0017 Order to AD
- Orders 059-105 Order to ADT
- Orders 147-1010 Order to FTNGD-OS
- Cardiac Records
- Memorandum Appointment of an Investigation Officer (IO)
- DA Form 2823 (Sworn Statement) (Applicant)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- DA Form 2823 D- K. M-
- DA Form 3881 (Rights Warning Procedure/Waiver Certificate)
- DD Form 261 (Report of Investigation LOD and Misconduct Status)
- Orders 279-104 Order to ADT
- Memorandum Applicant LOD Investigation Summary
- Memorandum LOD Appeal Applicant
- Orders 04-1272-00080 Order to FTNGD-OS
- Email from Trial Defense Attorney
- Memorandum Legal Opinion for Applicant's Appeal

- Email from Soldier and Family Support Team Chief
- Orders 04-2333-00010 Order to FTNGD-OS
- Medical Records
- Q-Stress Final Report
- Zio XT Final Report

FACTS:

1. The applicant states:

a. She does not believe the National Guard Bureau (NGB) and HRC considered all the evidence regarding her LOD claim based on the documentation provided and the adjudication memorandum she received.

b. The adjudication memorandum has discrepancies that lead her to believe that NGB and AHRC did not thoroughly review her records. The memorandum states she was on AD orders, while deployed from 28 April 2019 through 21 January 2020, with no mention that she had been on orders for nearly 2 years already before deployment.

c. The denial also gives the rationale that she was not on medication at the time of the incidents; has not had further episodes, and returned to her predeployment baseline, therefore not service aggravated. Her predeployment baseline was stable, episode and medication free, which is well documented in her medical records. She also had one documented episode after returning home that was not considered, during the decision making.

d. The denial memorandum also states "your diagnosis of ulcerative colitis is not service incurred or aggravated." She has not been diagnosed with ulcerative colitis, and she has concerns that her records were not thoroughly reviewed or mixed with another servicemember's record.

e. She has been on AD orders since 7 July 2017. She did not have any episodes of cardiac dysrhythmia between 7 July 2017 and the deployment aggravation documented on 9 August 2019.

f. Before deployment, she received cardiac clearance and was tapered off all medications due to improvement and management symptoms. Her cardiac condition was documented on her Period Health Assessments (PHA) in 2013, with no reported episodes leading up to deployment. She was cleared for deployment without restriction.

g. Her condition worsened nearly four months into a combat deployment after switching to the night shift at the hospital she was working in Iraq. The deployment stressors, including traumatic events, and sudden shifts in sleep schedules directly

contributed to the recurrence of cardiac symptoms. She experienced three significant cardiac episodes and required care from a provider. She was restabilized on beta blockers and was instructed to receive cardiac care upon returning home.

h. Her case has been formally appealed, reviewed multiple times, and her condition was found to be incurred in the LOD as a service aggravation by two different investigating officers, the current Arizona Army National Guard (AZARNG) State Surgeon and the Deputy Chief of Staff, G-1. Her cardiologist also noted that the symptoms were likely due to deployment-related stress.

i. NGB adjudicated her LOD with a determination of "Not in LOD, Existed Prior to Service, Not Service Aggravated" (NLD-EPTS-NSA) with the rationale that she was not on medication, at the time of the incidents, had not had further episodes, and returned to her predeployment baseline. Her predeployment baseline was stable, episode and medication free, which is well documented in her medical records.

j. The present asymptomatic status does not indicate a lack of permanent change in her condition. Since returning home, she has been unable to stop medications and is on a high does of extended-release beta blockers. Despite the beta blocker, one occurrence of cardiac dysrhythmia was noted while wearing a continuous cardiac device (ZIO Monitor Report) after returning home. The AZARNG State Surgeon noted in his most recent review that the beta blockers might have residual side effects on her performance, and the alternative, cardiac ablation, also has a risk. She is concerned that this finding will prevent her from seeking additional care in the future if she is no longer on AD orders.

2. The applicant provides:

a. Cardiac Records from April 2018 through May 2020, and 2020 through 2022, which are available for the Board's review.

b. DA Form 2823 from the applicant, 26 June 2020, states she very strongly believes the cardiac events she suffered in Iraq were due to unprecedented stress levels. She can attest that she had not had a cardiac episode in several years, and while deployed, she suffered three. She believes it was due to stressors of deployment, as well as the sudden change to the night shift, at the clinic. She has not had a single cardiac event since returning home and has been deemed stable by both her primary care physician as well as her cardiologist.

c. DA Form 2173, 7 July 2020, shows she had supraventricular tachycardia heart. The injury was not likely to result in a claim against the government for future medical care and it was incurred in LOD. The disability may result in permanent partial disability. She was on active duty when the event occurred. She had a history of

tachydysrhythmia that was cleared by her cardiologist. This recurred in theater with medication titration to maximal beta blockade. She had several visits during her deployment for the issue. A formal LOD investigation was required. The injury was considered to have been incurred in LOD.

d. DA Form 2823, Major (MAJ) D- K. M-, 7 July 2020, states:

(1) The applicant had medical clearance for deployment by her cardiologist and primary care physician after disclosing prior history of palpitations and paroxysmal supraventricular tachycardia (PSVT). She had been on low dose beta blocker and able to perform all high intensity military occupational specialty (MOS) specific tasks without event for several years prior to the deployment.

(2) During the deployment, she did have three episodes of symptomatic PSVT in which the MAJ had managed, while in theater. Her episodes were due to multiple factors, including lack of sleep, caffeine, situational stress from deployment, and working both day and night shifts. She was escalated on her metoprolol with monitoring of her cardiac rhythms. Elimination of caffeine, discontinuation of night shifts, and avoidance of excessively stressful situation (i.e. heavy weigh lifting, etc.). Despite following all recommended practices, she had two more episodes. Given their current deployment status, it was suspected that these were related to deployment-related stressors (i.e. difficulty sleeping, family situation, and other company related factors).

(3) Post deployment, the MAJ recommended she be evaluated by her cardiologist and primary care physician. Since she had returned home and reintegrated back with her family and job, she has reported no palpitations or cardiac arrhythmias (as detected on her Apple watch). She has had several evaluations, cardiac assessments, electrocardiograms, etc. She has returned to doing all of her normal activities of daily living, including weightlifting, moderate caffeine consumption, running, and continuing to perform all MOS specific tasks without any further episodes, since returning home.

(4) In the MAJ's clinical assessment, based on her post deployment recovery and no further cardiac episodes, it was highly likely that deployment related stressors and issues contributed to her having episodes of PSVT.

e. DD Form 261, 5 October 2020, shows the applicant was called or ordered to AD for more than 30 days. The episodes were caused by lack of sleep, stress, and changing from day shift to night shift. She was first diagnosed with tachydysrhythmia mobilization day status according to her PHA in 2013. Prior to deployment she was cleared by her cardiologist and medical provider during her Post Deployment Health Assessment (PDHA), and had not had episodes in a number of years. While deployed, episodes recurred on three occasions and were treated. No episodes occurred post deployment. Findings were in LOD. Both the appointing authority and reviewing

authority approved the findings. The final approval was Chief, NGB and found to be NLD-EPTS-NSA for heart supraventricular tachycardia. The appointing authority states she was on orders and no misconduct. The reviewing authority states records indicate that, while the condition EPTS, the condition was aggravated by military service and her deployment. In LOD. The approval authority (NGB) states no evidence of misconduct, negligence, or impairment. In accordance with Army Regulation (AR) 600-8-4 (Line of Duty Policy, Procedures, and Investigations) paragraph 3-4b, the mere fact that she had symptoms of, or reported, a pre-existing condition, while in an authorized status does not automatically make the underlying condition duty related. The cardiology evaluations after deployment report that once she returned from the stress of deployment, the palpitations resolved back to their baseline from prior to the deployment. Once her medication was restarted the palpitations resolved back to their baseline. This condition appears to have resolved back to her baseline and there is no evidence presented that this was a significant exacerbation that altered the long-term progressive course of this condition.

f. Memorandum, Applicant LOD Investigation Summary from the IO, 14 October 2020, states:

(1) While deployed to Iraq, she suffered a LOD illness, three different episodes of tachydysrhythmia with increased heart rate. These episodes occurred on 9 August 2019, 18 August 2019, and 27 September 2019. Episodes were caused due to lack of sleep, stress, and changing from day shift to night shift. No episodes have occurred since returning from deployment.

(2) The first report of her having tachydysrhythmia episodes were reported on a PHA in 2013. These episodes include light headedness and increased heart rate. Tachycardia was reported on all subsequent PHAs, with no more episodes leading up to deployment. Both her cardiologist and the medical provider, during the PDHA, cleared her for deployment with no restrictions.

(3) The first episode occurred, during deployment, on 9 August 2019. She was seen by medical provider MAJ M- at the Al Asad Role 2 clinic. She was advised to avoid a vitamin pack she had been taking, energy drinks, and caffeine. She was prescribed Toprol XL and told to follow up if she developed symptoms. The second episode occurred on 18 August 2019. Again, she was seen by MAJ M-, she was told to continue the medication, limit caffeine or supplements, and maintain a stress free environment. She was told to follow up with her cardiologist once back home. The third episode occurred 27 September 2019, with elevated heartrate, shakes, and dry heaving. She was seen again by MAJ M-. She was recommended to limit heavy lifting and her dose of Toprol was increased. MAJ M-, in his sworn statement, believed the episodes were caused by stressors caused by deployment, lack of sleep, and changing from day to night shift.

(4) She had multiple follow ups with her cardiologist, after returning from deployment. Her cardiologist reported palpitations are well controlled now that she has returned from deployment.

(5) All medical documentation states she is of sound mind. None of the episodes were caused by her own misconduct or gross negligence, and all incidents occurred, while in a duty status. Pursuant to AR 600-8-4, this would be considered in LOD.

g. Memorandum to NGB Legal Opinion for applicant, 9 November 2020, states the legal opinion was in LOD. Her condition EPTS, but was well-controlled, per the available medical records. Her medical provider, MAJ M-, noted that "deployment related stressors and issues contributed" to recurrence of her medical condition. Consequently, the legal opinion found the IO's conclusion that her medical condition was service aggravated to be supported by a preponderance of the evidence. There was no evidence of the injury being caused or exacerbated by her gross negligence or misconduct. Therefore, the IO's finding of in LOD is legally sufficient.

h. Memorandum from HRC, LOD Appeal, Applicant, 12 August 2021, states:

(1) After a thorough administrative review of her LOD, AHRC determined the finding of NLD-EPTS-NSA, will stand.

(2) AR 600-8-4 under Terms for Preponderance of Evidence states: "Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion."

(3) After reviewing the provided documentation and medical records from the electronic medical record system used by medical providers of the U.S. Department of Defense (Armed Forces Health Longitudinal Technology Application), it has been determined her diagnosis of ulcerative colitis is not service incurred or service aggravated.

(4) She was on AD orders while deployed from 28 April 2019 to 21 January 2020. Her supraventricular tachycardia condition EPTS in 2019; however, at the time of her deployment, she was not taking any medication for the condition, although she had in the past.

(5) During her deployment, she was seen three times for tachycardia events that required medication to control her heart rate. Upon redeployment, her cardiologist performed more testing (echocardiogram, 24-hour Holter monitor) that did not show any worsening of her cardiac condition. She was started back on medication to control her heart rate. Medical records indicate her supraventricular tachycardia condition was worsened due to her deployment/military service. However, in her case, the condition

EPTS and the condition recurred, while deployed, due to stress but did not cause any lasting damage or changes to the condition. Because there was no permanent worsening of her pre-service medical condition over and above the condition's natural progress, there was no service aggravation.

i. Memorandum to NGB Legal Opinion for Applicant's Appeal, 28 July 2022, states the legal opinion was in LOD- existed prior to service- service aggravated. The entire memorandum is available for the Board's review.

j. Her PHAs, medical records, Q-Stress final report, and Zio XT Final Report are available for the Board's review.

3. A review of the applicant's service records show:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the ARNG on 18 November 2008. She remained in the ARNG through immediate reenlistments/extensions of her enlistment.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was ordered to AD, as a member of the ARNG, on 7 July 2017. She completed 2 years, 7 months, and 21 days of active service. She had service in Iraq from 28 April 2019 to 1 January 2020. She was honorably released from active duty due to the completion of her required service on 27 February 2020. Her DD Form 214 also shows she had 7 months and 13 days of total prior active service, 8 years and 6 days of total prior inactive service, and 8 months and 16 days of foreign service.

4. Based on the applicant's LOD, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

5. 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 (AHLTA), 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 requesting reversals of the Army National Guard Bureau's (ARNG) and the United States Army Human Resources Command's (USAHRC) determinations that her cardiac dysrhythmia was not incurred in the line of

duty, had existed prior to service, and had not been permanently aggravated by her military service. She states in part:

> "The adjudication memorandum provided for the NLD-EPTS-NSA [Not in Line of Duty - Existed Prior to Service – Not Service Aggravated] finding has discrepancies that lead me to believe that NGB [National Guard Bureau] and HRC did not thoroughly review my records. The memorandum states I was on active duty orders while deployed from 28 April 2019 - 21 January 2020, with no mention that I had been on orders for nearly two years already before deployment.
>
> The denial also gives the rationale that I was not on medication at the time of the incidents, have not had further episodes and returned to my pre-deployment baseline, therefore not service aggravated.
>
> My pre-deployment baseline was stable, episode and medication free, which is well documented in my medical records. I also had one documented episode after returning home that was not considered during the decision making."

c. The Record of Proceedings outlines the circumstances of the case. Her DD 214 for the period of Service under consideration shows the former Army National Guard Soldier entered active duty on 7 July 2017 and was honorably discharged on 27 February 2021 under provisions provided in chapter 4 of AR 635-200 (19 December 2016) after having completed his required active service. It shows two periods of service in Kuwait/Iraq from24 April 20199 January 2020.

d. The Investigating Officer's 14 October 2020 Investigation Summary lays out his findings for this EPTS condition. The Report of Investigation Line of Duty and Misconduct Status (DD Form 261) completed on 17 December 2020 Army National Guard Bureau summarized his findings and stated:

> "SM [Service Member] was first diagnosed with tachydysrhythmia while on M-Day [drilling] status according to PHA [periodic health assessment] in 2013. Prior to deployment, SM was cleared by her cardiologist and medical provider during PDHA [Pre-deployment Health Assessment] and hadn't had episodes in number of years. While deployed, episodes recurred on three occasions and was treated. No episodes occurred post deployment."

e. Their finding for her cardiac condition: "Not In Line of Duty-EPTS-NSA for Heart Supraventricular Tachycardia."

f. Paragraph 4-8b(4)(a) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 March 2019) addresses EPTS and SA:

(a) A Soldier is presumed to have been in sound physical and mental condition upon entering active service except for medical defects and physical disabilities noted and recorded at the time of entrance.

1. The term “EPTS” may be added to a medical diagnosis if there is a preponderance of evidence the injury, illness, or disease or underlying condition existed prior to the current period of military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly prevents a conclusion that the injury, illness, or disease started during short tours of authorized training or duty.

2. During an examination, treatment, or diagnosis of the Soldier, a medical provider (physician that is a cardiologist for cardiac-related conditions) will determine an EPTS condition. These providers will state on the DA Form 2173 whether the condition EPTS. The specialized physician will prepare a separate memorandum and attach to the DA Form 2173 explaining the Soldier’s diagnosis, natural progression, and service aggravation of the condition. When determining service aggravation, the opinion of the medical provider, using medical records and all-inclusive periods of military orders will be used to support a conclusion that an EPTS condition was or was not aggravated by military service. If an EPTS condition was aggravated by military service, the determination will be “ILD.” If an EPTS condition is not aggravated by military service, the determination will be “NLD–EPTS–NSA.”

3. Specific findings of natural progress of the pre-existing injury or disease based upon well-established medical principles alone are enough to overcome the presumption of service aggravation.

4. Service aggravation is defined as a permanent worsening of a pre-service medical condition over and above the natural progression caused by trauma or the nature of military service. A permanent worsening of a condition, as a result of the performance of military duties, is required to find there is service aggravation.”

g. The AR 600-8-4 glossary definition of existed prior to service:

“Any injury, illness, or disease to include the underlying causative condition, which was sustained or contracted prior to the present period of active duty or authorized training or had its inception between prior and present periods of active duty or training is considered to have EPTS. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental

conditions, which can all be present well before they manifest themselves by becoming symptomatic.)"

h. The AR 600-8-4 glossary permanent service aggravation:
"The permanent worsening of a pre-service medical condition over and above the natural progression of the condition.

i. The Adjutant General to the Army (TAG) at USAHRC oversees and manages the Army's line of duty processes as directed by the Deputy Chief of Staff, G-1. Paragraph 1-7c(1) of AR 600-8-4 Line of Duty Policy, Procedures, and Investigations (15 March 2019):

"1–7. Deputy Chief of Staff, G–1
The DCS, G–1 will —

c. Maintain functional responsibility for LOD determinations. The following specific tasks may be delegated, but not below The Adjutant General (TAG):

(1) Have functional responsibility for LOD determinations and act for the Secretary of the Army (SECARMY) on all LOD determinations and appeals referred to Headquarters, Department of the Army and all exceptions to provisions described in this regulation."

j. The applicant appealed ARNG's finding to USAHRC who confirmed the NLD–EPTS–NSA finding in their 12 August 2021 response:

"You were on active-duty orders while deployed from 28 April 2019 to 21 January 2020. Your supraventricular tachycardia condition existed prior to service in 2019. However, at the time of your deployment, you were not taking any medication for the condition, although you had in the past.

During your deployment, you were seen three times for tachycardia events that required medication to control your heart rate. Upon redeployment, your cardiologist performed more testing (echocardiogram, 24-hour Holter monitor) that did not show any worsening of your cardiac condition.

You were started back on medication to control your heart rate. Medical records indicate that your supraventricular tachycardia condition was worsened due to your deployment/military service.

However, in your case, the condition existed prior to service and the condition recurred while deployed due to stress but did not cause any lasting damage or changes to the condition. Because there was no permanent worsening of your pre-

service medical condition over and above the condition's natural progression, there was no service aggravation."

k. The applicant's condition was identified while she was in an M-day status, i.e. not on a period of active duty of 30 days or more. When looking at diseases presenting or being diagnosed during a call to active service of less than 30 days, Army regulations require there be a cause-and-effect relationship between the Soldier's service and the onset or permanent service aggravation of the condition in order for it to be determined to have been incurred in the line of duty. When a disease (e.g., a cancer, diabetes, or a mental health condition) presents or is diagnosed during a drill weekend or annual training, it is more likely than not that the condition was not caused by their military service and had been incurred between periods of Reserve Component service. When this is the case, it is said to have existed prior to service. The AR 600-8-4 glossary definition of existed prior to service:

"Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)"

l. The applicant's assertion that she was on orders for two years prior to this period of service does not change this finding as the condition was first identified during a PHA in 2013. This PHA shows the applicant was on the metoprolol, a common medication for tachyarrhythmias, and the applicant noted she had and was currently being treated for "Heart trouble/chest pain. The provider wrote "Cardiac work-up complete." She gave the same indications on her 2015 PHA at which time the provider wrote "On metoprolol for tachycardia / palpitations controlled."
JLV shows the applicant has no VA service-connected disabilities.

m. There is no probative evidence the applicant's cardia dysrhythmia was either caused or permanently service aggravated by her service during a drill weekend. In fact, clear and unmistakable evidence showed the condition had existed prior to service and had not been permanently aggravated by her service.

n. It is the opinion of the Agency Medical Advisor there is insufficient evidence warranting reversal of the Army National Guard Bureau's (ARNG) and the U.S. Army

Human Resources Command's determinations that her cardiac dysrhythmia was NLD–EPTS–NSA.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical advisor's review, the Board concurred with the advising official finding insufficient evidence the applicant's cardia dysrhythmia was either caused or permanently service aggravated by her service during a battle assembly weekend. To the contrary, the evidence shows the condition existed prior to her service. The Board noted the applicant's contention that she had been on active duty orders for 2 years prior to the diagnosis annotated in the Arizona Army National Guard's Line of Duty Investigation Summary and subsequent U.S. Army Human Resources Command's Line of Duty Appeal Investigation. The Board concluded the findings supported that her condition existed prior to her service and was not service incurred or service aggravated and therefore determined there was no basis to reverse the decision of the U.S. Army Human Resources Command's line of duty investigation to find her condition in line of duty, existed prior to service (EPTS), service aggravated.

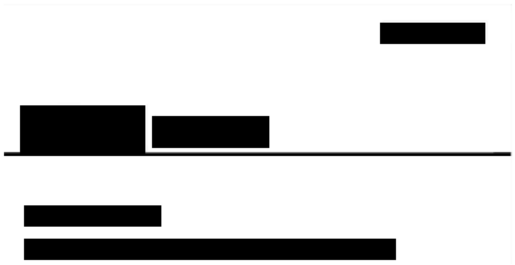
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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 for correction of the records of the individual concerned.



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 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

2. Title 38, U.S. Code, 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.

3. Title 38, U.S. Code, 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.

4. Army Regulation 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. 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.

5. 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//