

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230003760

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Discharge or Release from Active Duty) to show a separation code and narrative summary reflecting completion of required service or a medical separation resulting in no bonus recoupment and/or eligibility for separation pay
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Defense Finance and Accounting Service (DFAS) In/Debt and Claims letter
- DA Form 2166-9-1 (NCO Evaluation Report (SGT)), covering the period 1 July 2020 to 1 July 2021

FACTS:

1. The applicant states:

a. The reason this correction should be made is due to lack of proper treatment for post COVID breathing problems consistent with being unable to conduct cardiovascular exercises to maintain fitness. The explanation of his situation is stated below.

b. December 2021: Post his rotation to National Training Center (NTC) all but 1 member of his team contracted COVID-19. His Soldier was exhausted as they were the only Soldiers in their team able to attend recovery from the rotation of NTC. The applicant let his Soldier leave early from physical training (PT) one morning and he was caught by their battalion (BN) sergeant major (SGM) and was made an example of throughout the BN by the SGM restricting the entire battalion to only do PT in one confined area. He became depressed and went to behavioral health several times after leadership escorted him. He was told by their behavioral health personnel on his last appointment: "We don't have a specific program for your needs, you are welcome to

walk in to talk anytime". This never resolved his issues, and his separation only fueled his depression.

c. January 2022: After his team came back from block leave, he contracted COVID-19 as a result of poor quarantine policy across the division. He was told by the medics who tested him he would have the minimum 7 days to quarantine. It came as a surprise when 4 days later he was called by his physician's assistant (PA) to return to work the next day. That day he was forced to take an Army Combat Fitness Test because he was not on profile. He passed; however, it came at the expense of 5-7 hours of vigorous coughing to the point of throwing up, and luckily his new team chief let him go home early without the knowledge of the platoon sergeant, as he was very doctrine focused, and would not let him take care of himself without a Department of Defense (DOD) document allowing him to do so. He failed his height and weight being 1 percent over body fat allowance and enrolled in the Army Body Composition Program. He has always struggled with his weight but had been able to fall back into standard time and time again with remedial exercise and good dieting. He would try to work out and would have serious issues with his breathing at the time.

d. February 2022: He thought it was his heart and went to the emergency room at Evans Army Hospital early February. His white blood cell count was really high, and he was given heart treatment in the form of an echocardiogram and his heart was deemed good. He continued to try and exercise to no avail and went to sick call to figure out what was wrong with his breathing. At first the PA was unavailable, and he was seen by a major who thought it may be gastroesophageal reflux disease (GERD). He prescribed him medicine to treat GERD and a short profile. He went back saying it did not work. He was then presumed to have asthma even though he described to them that it was a constant problem made worse with exercise, it would not flare up such as an asthma attack. He was scheduled to do labs and a pulmonary function test and was given a rescue inhaler.

e. March-October 2022: During this time, he went to multiple fields and struggled very much with exercise as his weight problem got worse. He was becoming a liability in the platoon due to not being able to keep up with the infantry or conduct PT properly. He was not put back on a profile regardless of pleading to the medics. He went to his pulmonary functions test and it was deemed his breathing was not bad enough to diagnose asthma. During his meeting with the PA to read his results, he simply recommended to continue trying to work on his PT and to run more. No further treatment was recommended.

f. In June, the division held a PT event for D-Day. It was a two mile race over obstacles and carrying equipment. He was obviously struggling and his BN SGM stayed behind him screaming at him the whole time even though he told him he has trouble breathing. He was actively using his inhaler during the race. He told him: "you are being

weak, keep running (with some profanity).” He made it to the end of the race where he became very lightheaded and dizzy. His soldiers told him his face was pale and they offered to help him get back to his car. He was really concerned for his life at that point and went to sick call. At sick call, the medics knew who he was and rejected him from sick call and told him to schedule an appointment instead. He later went to his appointment and had an aggressive conversation with his PA as he was trying to brush off his problems and say he was just out of shape. He demanded treatment and he ordered another pulmonary test, however this one was a different test with chemicals involved to provoke breathing issues related to asthma, again he told him it is not like symptoms of asthma, but he insisted this was what he had to do. He pleaded to him to help him as he was on the verge of being kicked out for body fat. He told him there was nothing else he could do. He later requested a new PA.

g. He went to his pulmonary functions test and when the results came in, he had a conversation with the pulmonary specialist at Evans Army Hospital, an Air Force doctor. The pulmonary specialist had told him that he did have changes in his breathing that raised concern, however, it was not significant enough to diagnose asthma. The applicant told the pulmonary specialist the same thing he had told everyone, that his symptoms are not like asthma and that it is a constant that gets progressively worse with exercise and does not come in the forms of attacks. The pulmonary specialist told the applicant he has dealt with patients dealing with similar issues to his post COVID, and the honest truth is the Department of Defense does not give them guidance on what to do or how to treat service members experiencing these issues. It was followed by silence, and he told the applicant to just give it time. No further treatment or visits occurred after that day.

h. In late September, he received the information that the brigade commander signed his separation paperwork, and he would be honorably separated from the Army on 4 October for failing to meet body composition standards. He served his country and peers honorably and was on track to be promoted ahead of peers to staff sergeant before this happened, due to him making sergeant in 2020. He worked hard every day and even when feeling betrayed by his unit and medical staff, he still went to every field and led and trained as hard as he could. He served his first contract and re-enlisted when he made sergeant. Due to his separation code, he is charged with paying back the government \$27,945 because he was separated while having a bonus. He cannot afford this nor does he deserve this after 5 years of service in which he received many decorations for his rank and did many additional duties to include gate guard, salute battery, color guard, and funeral team. He deserves to feel good about his time served and cherish his memory of it, not guilty and in debt to the government as if he were a misfit. The subpar medical treatment and lack of a diagnosis resulted in getting separated and never had any help from his non-commissioned officer support channel.

2. The applicant underwent a medical examination on 23 September 2016 for the purpose of enlistments. The applicant's DD Form 2807-1 (Report of Medical History) shows he reported he was in good health with no significant defects. The corresponding DD Form 2808 (Report of Medical Examination) shows he 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.

3. The applicant enlisted in the Regular Army for a period of 3 years and 26 weeks on 1 August 2017

4. The applicant completed his required training and was assigned military occupational specialty (MOS) 13F (fire support specialist) effective 1 February 2018.

5. A DA Form 1059 (Service School Academic Evaluation Report) shows the applicant attended the Basic Leader Course (BLC) from 14 April 2020 to 8 May 2020. It shows he was within height and weight standards and had passed his last APFT conducted 20 February 2020 prior to attending the course. No APFT or Height/Weight was conducted during BLC due to COVID-19.

6. The applicant's Enlisted Record Brief (ERB) shows the applicant was promoted to sergeant/E-5 effective 1 July 2020.

7. The applicant indicates he reenlisted at this point; however, the applicant's official military personnel file (OMPF) is void of his reenlistment documents.

8. A DA Form 2166-9-1 covering the period 1 July 2020 to 30 June 2021 shows the applicant was within height and weight standards but did not complete an APFT due to COVID-19. He was rated most qualified from his senior rater (a sergeant first class) with the following comments:

[The applicant] is number 1 out of 3 Sergeants I have senior rated in my 20 years of Army service. [The applicant] possesses unsurpassed proficiency as a manager of personnel; promote to staff sergeant ahead of peers and send to advance leadership course (ALC) ahead of peers. [The applicant] possesses sergeant major potential; continue to groom and place in positions of greater responsibility.

9. A DA Form 2166-9-1 covering the period 1 July 2021 to 25 August 2022 shows the applicant was within height and weight standards but did not complete an APFT due to Army Directive 2022-05. He was senior rated (first lieutenant) qualified with the following comments:

[The applicant] is in the top 20 percent of SGTs I currently work with. He retains knowledge and displays his comprehension by instructing others. Send to ALC when available.

10. The applicant's separation package is also not available in his OMPF. However, Orders 270-0026, show he was reassigned to the Army transition point for transition processing, following which he would be discharged.

11. The applicant's DD Form 214 shows he was honorably discharged on 4 October 2022 for weight control failure. His separation code was LCR and his reentry code was 3. Block 18 (Remarks) states:

- regular reenlistment bonus paid: \$41,600.00, 20200812
- member has not completed first term of service

12. The applicant's ERB shows his last his expiration of term of service as 6 July 2026.

13. The applicant provided a DFAS In/Debt and Claims letter, dated 6 December 2022, showing a debt of \$27,945.19. Debt is due to recoupment of the unearned portion of his (re)enlistment bonus in accordance with his separation program designator (SPD) code LCR found in block 26 of his DD Form 214.

14. 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.

15. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting a change in his separation authority or, in essence, a referral to the Disability Evaluation System (DES). He states:

“The correction I'm requesting regards my separation code due to health issues at the time of my separation. I request my separation code to be amended to either a regular end of service code or a medical separation code that reflects no bonus recoupment and grants separation pay eligibility.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 1 August 2017 and was honorably discharged on 4 October 2022 under provisions in AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Failure to Meet Weight Control Standards.

d. In his self-authored letter, the applicant states he contracted covid-19 in January 2022. The EMR shows the applicant was diagnosed with covid on 26 January 2022. He goes on to state that he continued to have breathing problems, was not diagnosed with asthma, and not treated due to the newness of the illness:

March-October 2022: During this time, I went to multiple fields and struggled very much with exercise as my weight problem got worse. I was becoming a liability in the PLT [platoon] due to not being able to keep up with the Infantry or conduct PT [physical training] properly. I was not put back on a profile regardless of me pleading to the medics.

I went to my pulmonary functions test and it was deemed my breathing was not bad enough to diagnose asthma. During my meeting with the PA [physician assistant] to read my results, he simply recommended to continue trying to work on my PT and to run more. No further treatment was recommended ...

I went to my pulmonary functions test and when the results came in, I had a conversation with the pulmonary specialist at Evans Army Hospital, an Air Force Doctor. He had told me that I did have changes in my breathing that raised concern however it wasn't significant enough to diagnose with asthma. I told him the same thing I've told everyone, that my symptoms aren't like asthma and that it's a constant that gets progressively worse with exercise and does not come in the forms of attacks. He told me 'I have dealt with patients dealing with similar issues to yours post covid, the honest truth is the Department of Defense does not give us guidance on what to do or how to treat service members experiencing these issues.' It was followed by silence and he told me to just give it time. No further treatment or visits occurred after that day."

- e. An 18 January 2022 clinical encounter states: “Patient referred for nutrition counseling IAW AR 600-9 [The Army Body Composition Program (ABCP), 16 July 2019] ABCP Program or requested information on healthy eating.
- f. Several EMR encounters in February – April of 2022 confirm the applicant was presenting with breathing and chest pain concerns. The resulting evaluations revealed no significant etiology(s).
- g. The applicant underwent a chapter physical examination on 27 April 2022. The provider wrote “Patient reports no acute health concerns” and determined him fit for separation.
- h. The applicant underwent a medical evaluation for the ABCP at his company commander’s request on 5 May 2022 after which the provider “Medically cleared [applicant] to fully participate in the Army Body composition Program (ABCP).”
- i. The applicant underwent a pre-separation physical examination on 3 August 2022. The provider documented a normal examination, no defects or diagnoses, and cleared him for separation.
- j. The remainder of the applicant’ separation packet or other documents addressing his involuntary administrative separation were not submitted with the application or uploaded into iPERMS.
- k. Paragraph 2-16a of AR 600-9 lists the responsibilities health care personnel have in the execution of Army Body Composition Program (ABCP). These include ensuring the Soldier receives dietary counseling, identifying those individuals who have a pathological condition requiring medical treatment, and referring the Soldier for health coaching, weight management, sleep education, exercise prescription, and fitness/performance training, if indicated. In addition, paragraph 2-16a(4) states they will:
- “Advise Soldiers that while various medical conditions, environmental conditions, functional limitations (temporary or permanent physical profiles), and/or medications may contribute to weight gain, they are still required to meet the body fat standard established in this regulation. The DCS, G–1 is the exception to policy approval authority for special considerations (see para 3–17).
- l. Paragraph 3-11 of AR 600-9 does authorize a Soldier to exceed the allowable bodyfat standard for up to 12 months while they undergo treatment to resolve “a temporary medical condition that directly causes weight gain or prevents weight or body fat loss.” However, paragraph 3-11c reveals the applicant’s breathing issues would not have been eligible for such an exception:

“The provisions of this paragraph are not applicable to medical conditions or injuries based solely on a prescribed reduction in physical activity. The inability to exercise does not directly cause weight gain. Health care personnel will advise Soldiers to modify caloric intake when reduced physical activity is necessary as part of a treatment plan.

m. Paragraphs 3-17a – 3-17c of AR 600-9:

“3–17. Exception to policy authority

a. The DCS, G–1 is the approval authority for all exceptions to this regulation. All requests for an exception to this policy will include an endorsement from a medical professional and be processed through the Soldier’s chain of command, with recommendations as to disposition from the company, battalion, and brigade-level commanders, reviewed by the servicing staff judge advocate, and submitted directly to Deputy Chief of Staff, G–1 (DAPE–HR), 300 Army Pentagon, Washington, DC 20310–0300 for final determination.

b. The use of certain medications to treat an underlying medical or psychological disorder or the inability to perform all aerobic events may contribute to weight gain but are not considered sufficient justification for noncompliance with this regulation. Medical professionals should advise Soldiers taking medications that may contribute to weight gain, or Soldiers with temporary or permanent physical profiles that they are still required to meet the body fat standard established in the regulation; the Soldier may be referred to an appropriate specialist for nutrition and exercise counseling as indicated.

c. Chronic medical conditions will not be used to exempt Soldiers from meeting the standards established in this regulation.

n. While the applicant’s post-covid breathing issues may have prevented him from fully engaging in aerobic exercising, it neither mitigated, excused, or authorized the applicant to exceed height and weight standards.

o. There is no 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 his discharge. 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 his discharge.

p. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including a 10% rating for bronchial asthma. 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. 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.

q. It is the opinion of the ARBA medical advisor that neither a change in his separation authority nor a referral to the DES is warranted.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence confirms the applicant was properly discharged under the regulatory authority governing weight control failure, and the evidence does not support a referral to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge and the associated codes are not in error or unjust.
3. A majority of the Board noted the applicant's otherwise exemplary service and his claim that the debt he incurred as a result of his involuntary separation is causing financial hardship. A majority of the Board concluded that, though the evidence does not support changing the reason and authority for his discharge, it does support relief regarding his debt. A majority of the Board determined his record should be corrected to show he was allowed to retain the unearned portion of his reenlistment bonus.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show collection of the debt he incurred as a result of his discharge was cancelled.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to the reason and authority for discharge and the associated codes.

2/16/2024

X 

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. Army Regulation (AR) 635-200 (Personnel Separations-Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance. Chapter 18 (Failure to Meet Weight Control Standards) provides for Soldiers who fail to meet the body fat standards set forth in

AR 600–9 are subject to involuntary separation per this chapter when such condition is the sole basis for separation.

a. Separation proceedings may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to meet the body fat standards, as reflected in counseling or personnel records.

(1) Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter.

(2) If there is no underlying medical condition and a Soldier enrolled in the Army Weight Control Program fails to make satisfactory progress in accordance with (IAW) AR 600–9, separation proceedings will be considered.

(3) Initiation of separation proceedings is required for Soldiers who fail to meet body fat standards during the 12–month period following removal from the program, provided no medical condition exists.

b. Separation action under this chapter will not be initiated against a Soldier who meets the criteria for separation under other provisions of this regulation. For example, a Soldier beyond entry-level status who, wholly apart from failure to meet body fat standards, is an unsatisfactory performer, will be processed for separation under the provisions of chapter 13.

c. The notification procedure (see chap 2, sec I) will be used for separation under this chapter.

d. The provisions of chapter 1, section VII, will govern whether the Soldier will be released from AD with transfer to IRR or be discharged. See paragraph 1–11 for additional instructions on ARNGUS and USAR personnel.

e. The service of those separated per this chapter will be characterized as honorable unless an uncharacterized description of service is required for Soldiers in entry-level status.

f. Except as provided in paragraph 1–19f, commanders specified in paragraph 1–19 are authorized to order separation under this chapter.

2. Army Regulation 635-5-1 (Personnel Separations-Separation Program Designator Codes) prescribes the specific authorities (statutory, regulatory, and Department of Defense (DOD)/Army policy) and reasons for separating Soldiers from active duty. Also,

it prescribes when to enter separation program designator (SPD) codes on the DD Form 214 (Certificate of Release or Discharge from Active Duty).

3. 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 IAW 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.

4. 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.

5. 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.

6. AR 635-40 (Personnel Separations-Disability 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.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty.

Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

7. 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.

8. 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.

9. Army Regulation 601–210 (Personnel Procurement - Regular Army and Reserve Components Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). It provides policies and procedures to process applicants for enlistment in the RA Delayed Entry Program (DEP) and on delayed status, and the USAR Delayed Training Program (DTP).

a. Paragraph 9–7 (Enlistment Program 9A, U.S. Army Training Enlistment Program) states this program is available to qualified NPS, PS, and glossary NPS applicants enlisting for the minimum term of enlistment authorized by Request. Applicants be

advised that this program may be combined with an incentive program if the applicant meets the requirements of the incentive program and then enlists for an MOS under such program.

b. Paragraph 9–9 (Enlistment Program 9C, U.S. Army Incentive Enlistment Program (Enlistment Bonus, Army College Fund, Loan Repayment Program)) states persons who do not complete their term of enlistment for which the enlistment bonus was paid, or persons who are not technically qualified in the skill for which the enlistment bonus was paid, may be required to refund the unearned portion of such enlistment bonus (refer to the most recent HQDA incentives guidance and AR 601–280 for RA; and chapter 10 of this regulation for RC or former RC entering the RA).

10. 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 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//