

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230003797

APPLICANT REQUESTS, in effect:

- correction of her DA Form 199-1, Formal Physical Evaluation Board (FPEB) Proceedings, to include a review of all the medical conditions that have been determined to be service-connected by the Department of Veterans Affairs (VA)
- retirement due to disability vice separation with severance pay
- personal appearance before the Board via video or telephone

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

- DD Form 149, Application for Correction of Military Record
- DD Form 214, Certificate of Release or Discharge from Active Duty, 13 February 2008
- DD Form 214, 7 February 2019
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits
- VA Summary of Benefits
- Medical Records
 - Emergency Department Medical Record, 26 April 2019
 - My HealtheVet-Personal Information Report, 11 December 2020
 - My HealtheVet-Personal Information Report, 6 January 2023 (75 pages)
 - My HealtheVet-Personal Information Report, 6 January 2023 (568 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant indicates her request is related to post-traumatic stress disorder (PTSD) and sexual assault/harassment. She states, in effect:

a. She should have been medically retired for the following conditions which can be found in her military medical records and for which she is currently receiving disability compensation from the VA:

- PTSD with depressive disorder, 70%
- degenerative disc disease, degenerative arthritis, and lumbosacral strain, 20%
- cervical strain and degenerative arthritis 20%
- greater trochanter bursitis left hip with limitation in flexion, 10%
- greater trochanter bursitis, left hip with limitation in extension 0%
- greater trochanter bursitis left hip, impairment of the thigh, 0%
- neuropathic pain, right upper shoulder strain, rotator cuff tendonitis and acromioclavicular joint osteoarthritis, 20%
- fibromyalgia, 40%
- allergic rhinitis, 10%
- medical collateral ligament tear, right knee 10%
- tinnitus 10%
- iliotibial band syndrome and degenerative arthritis, left knee, 10%
- right shoulder strain, rotator cuff tendonitis, bursitis and acromioclavicular joint osteoarthritis condition (VA did not find this condition was service-connected)
- plantar fasciitis (VA verified that she was treated for this condition while in service)

b. While some conditions were not diagnosed while in service, she states that these conditions were bothersome to her, and that she did receive treatment for them during her period of service. She further states that she reported these conditions to several physicians' assistants (PA) and was told that everyone had those issues. One PA told her "The VA would take care of her after she got out of the Army." The following conditions were reported during her period of service:

- having difficulty getting up after doing sit-ups
- being unable to hold the legs of a Soldier during the Army Physical Fitness Test (APFT)
- having to use her weapon to help her get up from the prone position while on the firing range
- not being able to sit on her leg to fire her weapon
- having trouble turning her neck when driving
- experiencing pain in her right shoulder when shaking someone's hand
- being unable to stand at parade rest and or render a salute

c. She also told the PEB Liaison Officer (PEBLO) about several of her medical conditions and was told "at least you are getting out of the military with something."

d. Since getting out of the Army she tried unsuccessfully to fix these errors and believes these ailments should have been addressed during her Medical Evaluation Board (MEB). As a Soldier she was unable to make her medical providers diagnose her conditions. However, the evidence can be found in her medical records, MRIs, and x-rays, all of which should have been included in her MEB.

3. The applicant served in the Regular Army from 30 July 2008 to 13 February 2012 and held military occupational specialty (MOS) 92Y, unit supply specialist.

4. After a break in service, she enlisted in the Regular Army on 20 March 2013 and served in MOS 92Y. The highest rank held was sergeant (SGT/E-5).

5. Her Enlisted Record Brief, 8 February 2019, shows the applicant:

- completed deployments to Cameroon, Afghanistan, and Germany
- passed the APFT with a score of 291 in September 2017
- had a "PULHES" of "113111" which indicates she had one or more medical conditions or physical defects that may require significant limitations in the lower extremity (PULHES - Physical Condition, Upper Extremity, Lower extremity, Hearing-Ears, Eyes, Neuropsychiatric-Stability)

6. The available record is void of a permanent physical profile record or her MEB proceedings; however, a review of her DA Forms 2166-9-1, Noncommissioned Officer Evaluation Reports (SGT), for the periods 1 February 2016 through 30 January 2017 and 31 January 2017 through 30 January 2018, found no deficiencies in her duty performance. Further, her senior raters rendered her a rating of "HIGHLY QUALIFIED" for potential compared to others in the same grade rated by the official in his/her career.

7. On 26 September 2018, a FPEB evaluated her left knee chondromalacia and her left hip greater trochanter bursitis. The PEB found the applicant's conditions made her physically unfit to perform the duties required of her rank and specialty. The PEB recommended separation from the service with a 20-percent rating and severance pay.

a. Section IV, Medical Conditions Determined Not to be Unfitting, of the DA Form 199-1, contains the entry:

DURING THE FORMAL BOARD the Soldier requested that the following conditions be added as unfitting: right shoulder, cervical spine and bilateral radiculopathy... Shoulder and neck: ...The MEB reviewed the records and did not find the condition to fail retention standards. Bilateral radiculopathy: ... In reviewing all available evidence, the Formal Board finds the preponderance of the evidence supports sustaining the decision of the Informal Board and does not add any additional conditions as unfitting... In full consideration of DoDI 1332.18, Enc. 3, App. 2, to

Include combined, overall effect, the following listed conditions are not unfitting. This is because the MEB indicates these conditions meet AR 40-501, Ch. 3. Medical Fitness Standards; none are listed on the DA Form 3349, physical profile, as preventing the Soldier from performing one or more section 24 (a - f) functional activities; and there is no evidence to indicate that performance issues, if any, are due to these conditions. The Soldier is fit for MEB Dx 3-5 (unspecified anxiety disorder; chondromalacia patella, right knee; and degenerative osteophytic changes of the acromioclavicular joint, right shoulder).

b. Section VII, Instructions and Advisory Statements, of the DA Form 199-1, includes the statement – “During formal proceedings, the PEB reevaluated all available medical and performance records to include sworn testimony and exhibits provided by the Soldier.” In the same section the following statement reads “As documented in the Department of Veterans Affairs (DVA) memorandum dated 26 July 2018, DVA determined the specific VASRD codes to describe the Soldier’s conditions. The PEB determined the disposition recommendation based on the proposed DVA disability ratings and in accord with applicable statutes and regulations.”

c. Section X, Soldier’s Election, shows the applicant did not concur with the FPEB findings and recommendation. She indicated that her written appeal was attached. She further requested the VA reconsider her disability ratings and provided the VA a written request for reconsideration. She acknowledged her understanding that the VA would only reconsider ratings if new medical evidence was received or she was able to provide sufficient justification to warrant reconsideration. She further understood that this was a one-time request for reconsideration of the rating(s) from the [Disability Rating Activity Site] DRAS for the conditions the PEB determined to be unfitting. Lastly, she acknowledged her understanding that counsel was available to represent her with a request for VA reconsideration and that if she request a formal hearing, her request for reconsideration of her VA rating would be processed after the formal hearing.

d. The record is void, and the applicant did not provide, the results of the VA reconsideration.

8. On 7 February 2019, she was discharged due to combat related injury (enhanced) disability with severance pay. Her DD Form 214 shows she was honorably discharged under the provisions of chapter 4-19 of AR 635-40. She was assigned Separation Code JEA and Reentry Coe 3. She completed 5 years, 10 months, and 18 days of net active service for the period, with 3 years, 6 months, and 14 days of prior active service.

9. The applicant provides her:

a. VA Summary of benefits, 22 December 2022, which shows the applicant is receiving service-connected disability compensation from the VA based on a 100%

combined rating. Her service-connected medical conditions are not listed on the document.

b. VA treatment records for the period from 2019 to 2022 which contain a list of medications, allergies, health screenings, vaccinations, physicals, laboratory results, pathology reports, radiology reports, a list of service-connected disabilities, and a consolidated problem list. The following conditions are recorded on the problem list:

- PTSD
- anxiety
- bilateral shoulder joint pain
- pain in right hip joint
- pain in right knee
- fibromyalgia
- hemoglobinopathy
- menorrhagia
- fallopian tube, occlusion

10. The applicant's personnel record is void of information, and the applicant did not provide information related to sexual assault/harassment.

11. Title 38, United States Code, permits the Department of Veterans Affairs (DVA) to award compensation for disabilities which were incurred in or aggravated by active military service. The DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

12. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR in essence requesting additional medical conditions be determined to have been unfitting for continued military service and that her disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. On her DD form 149, she indicated

that PTSD and Sexual assault/harassment are issues related to her request. She states in part: "I am asking to be medically retired for the following conditions which were in my medical records and I am being compensated for at the VBA [Veterans Benefits Administration] ... While some conditions were not diagnosed while I was in service, they were bothersome to me and I received treatment for them during service."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her first DD 214 shows she entered the regular Army on 30 July 2008 and was honorably discharged on 13 February 2012 under the separation authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (4 September 2011), after having completed her required active service. It shows the former unit supply specialist served in Afghanistan from 16 June 2010 thru 20 April 2011. The reentry code of 1 signifies she was fully eligible to reenlist.

d. Her second DD 214 shows she entered the regular Army on 20 March 2013 and was discharged with \$60,771.60 of disability severance pay on 17 February 2019 under provisions provided in paragraph 4-19 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

e. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

f. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

g. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon

discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

h. On 18 April 2018, the applicant was referred to the IDES for “Left knee patellar chondromalacia” and “Left hip trochanteric bursitis.” The applicant claimed eleven additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ), including “anxiety disorder”, “insomnia,” neck and back spasms, bilateral ankle and foot “conditions,” and a right knee condition.

i. A medical evaluation board (MEB) determined her “Left knee chondromalacia” and “Left hip trochanteric bursitis” failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined three additional medical conditions met medical retention: “Unspecified anxiety disorder,” “Chondromalacia Patella, Right Knee,” and “Degenerative Osteophytic Changes of the AC Joint, Right Shoulder.”

j. From her MEB narrative summary for these and the other claimed conditions:

“DISCUSSION OF MEDICALLY ACCEPTABLE AND OTHER CONDITIONS

1. The VA general medicine examiner found insufficient clinical evidence to support a diagnosis regarding the claims of a left or right foot condition, a left or right ankle condition, a left or right groin condition, a neck condition, a back condition, and a right knee condition.

2. SGT [Applicant] is engaged in care through behavioral health for symptoms of anxiety. She has not required hospitalization, duty limitations or a protected environment for a mental health condition. A mental health condition has not interfered with satisfactory performance of military duties. The claim of insomnia is considered a component of her anxiety condition.”

k. The applicant requested an Independent Medical Review (IMR) of her MEB noting new diagnoses of “Right Knee Chondromalacia Patella” and “Bursitis of Right Shoulder OR Degenerative Osteophytic Changes of the AC [acromioclavicular] Joint, Right Shoulder. The reviewing physician concluded these conditions warranted inclusion in the applicant’s MEB and both conditions met medical retention standards. The MEB was so modified, and on 14 June 2018, the applicant concurred with the MEB’s findings and recommendation and her case was forwarded to a physical evaluation board (PEB) for adjudication.

l. On 26 September 2018, the applicant’s informal PEB found her “Left knee chondromalacia” and “Left hip trochanteric bursitis” to be unfitting conditions for continued military service. They found the three remaining three medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and 10% respectively for a combined military disability

rating of 20% and recommended the applicant be separated with disability severance pay.

m. After being counseled by her PEB Liaison Officer (PEBLO) on the PEB's findings and recommendations, the applicant non-concurred with the PEB's finding, demanded a formal hearing, and requested a VA reconsideration of her left knee disability rating. She requested that her cervicgia (neck pain) be determined to be an additional unfitting condition.

n. The applicant was present for and represented by regularly appointed counsel at her 26 September 2018 formal PEB. The formal PEB maintained the findings of the informal PEB.

"DURING THE FORMAL BOARD the Soldier requested that the following conditions be added as unfitting: right shoulder, cervical spine and bilateral radiculopathy. The Soldier presented testimony and exhibits.

Shoulder and neck: The Soldier testified that the shoulder and neck conditions particularly became problematic during the Africa deployment. She took an APFT and was working on the computer a lot where the keyboard was elevated and she noted that her neck and shoulder were bothering her and she first sought care in AUG-SEP 2017. Subsequent care included oral and topical medications, physical therapy, and home exercises. Orthopedics evaluated the shoulder and diagnosed bursitis.

The Pain Clinic eventually saw the Soldier for these conditions with the most recent note from 06 SEP 2018 and noted that the Soldier is responding to the treatments ... The Soldier has refused more Invasive Intervention Including dry needling (06 SEP 2018 Pain Clinic note). It is also noted that the Soldier has stopped treatments including yoga after one session. The MEB reviewed the records and did not find the condition to fall retention standards.

Bilateral radiculopathy: The Soldier testified that she has significant pain that starts in her groin and lower back and shoots down to the soles and into the toes on both feet. Podiatry and the Pain Clinic have evaluated the Soldier for these symptoms as has Orthopedics and a formal diagnosis of radiculopathy has not been rendered.

In reviewing all available evidence, the Formal Board finds the preponderance of the evidence supports sustaining the decision of the Informal Board and does not add any additional conditions as unfitting."

o. The applicant non-concurred with the formal PEB's findings. In her counsel's memorandum, she again requested that her neck, right shoulder, and bilateral lower

extremity radiculopathy conditions also be determined to be unfitting conditions for continued service.

p. In their 29 October 2018 response to this appeal, the PEB maintained her case had been properly adjudicated and that the VA examiners had found no clinical evidence of the existence of several of these conditions:

Your neck, right shoulder and bilateral lower extremity radiculopathy conditions were not rated as the preponderance of the evidence indicates they are not unfitting. You have no permanent profile restrictions for any of these conditions. None were determined to fail retention standards by your MTF [medical treatment facility]. Your IMR request asked to have your right shoulder condition added to your medical board as meeting retention standards. This was done.

No neck condition or lower extremity radiculopathy were listed on your medical board. Your IMR request did not address this and you concurred with your medical board.

You provided no new evidence in your appeal in regard to your right shoulder and neck that was not already considered at your formal hearing. You have had minimal treatment in the past year for either condition. The most recent treatment note from your pain clinic on 6 September 2018 indicated good response to treatment.

The Board notes that while you now (after your medical board) claim to have lower extremity radicular pain that this has not been corroborated in any clinical exam. Your VA exam found normal lower extremity strength, reflexes, and sensation. The VA examiner specifically stated you have no signs or symptoms due to radiculopathy. Similarly, the 17 October 2018 back and lower extremity exam provided with your appeal noted normal lower extremity strength, reflexes and sensation, as well as normal gait, stance, and balance. If at a later date your MTF determines that you have a new condition failing medical retention standards, it may request recall of your case up until you leave the Army.”

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

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

r. The applicant's final NCO Evaluation Report shows she was a successful Soldier. She passed her final Army Physical Fitness Test in September 2017 and met height/weight standards. Her rater stated she was "rated two out of the five sergeants that I currently rate" and "competent, confident, caring leader of highest caliber. Her senior rater marked her as highly qualified opining:

"SGT [Applicant] is the number two sergeant I senior rate. Her technical proficiency makes her potential unlimited. She is an asset to the company and would serve well in any logistical capacity. Sent to Advanced Leaders Course and promote with peers."

s. The VA reconsidered her 10% left knee disability rating and maintained the 10% rating for this disability:

"The 10 percent proposed evaluation is confirmed. There is no explanation for the marked difference. No commentary was provided by the examiner and no additional medical evidence was submitted to explain the sudden and drastic worsening. Moreover, the AHLTA treatment records and Service Member in Support of Claim are less complete than the VA examination. For those reasons, greater weight has been given to the VA examination, which supports the 10 percent evaluation proposed."

t. Review of her PEB case file in ePEB along with her encounters in AHLTA revealed no substantial inaccuracies in or discrepancies.

u. There is insufficient probative evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3, AR 40-501 prior to her 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 her office, grade, rank, or rating prior to her discharge.

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

w. It is the opinion of the ARBA medical advisor that neither an increase in her military disability rating, a change of her disability discharge disposition, nor a referral of her case back to the DES is warranted.

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was separated for disability, severance pay, combat related. The Board found no error or injustice to her separation processing. The Board also reviewed and agreed with the medical reviewer's finding that there is insufficient probative evidence the applicant had any additional medical conditions which would have failed the medical retention standards prior to her discharge. Based on a preponderance of the evidence, the Board determined that correction of her DA Form 199-1, Formal Physical Evaluation Board (FPEB) Proceedings, and retirement due to disability vice separation with severance pay, 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 for correction of the records of the individual concerned.

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 38, United States Code, permits the Department of Veterans Affairs (DVA) to award compensation for disabilities which were incurred in or aggravated by active military service. The DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

3. AR 635-40, Disability Evaluation for Retention, Retirement or Separation, 21 December 2017, prescribes Army Policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. This regulation establishes the Army Disability Evaluation System (DES) and sets forth the policies, responsibilities, and procedures that apply 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. The Integrated Disability Evaluation System (IDES) is one of the three components that make up the DES. IDES features -

(1) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit.

(2) A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

b. Physical Evaluation Boards determine fitness for purposes of Soldiers retention, separation or retirement for disability under Title 10, USC, Chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, USC, Chapter 61. The PEB also makes certain administrative determinations that may have benefit implications under other provisions of law.

c. Disabilities determined to be unfitting and compensable will be rated in accordance with the VASRD. This rating will generally be determined by the Disability-Rating Activity Site. For those cases that are evaluated as an exception to IDES, the military department determines the rating.

4. Title 38, USC, section 1110, General - Basic Entitlement: 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: 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. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
7. 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//