

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20230004620

APPLICANT REQUESTS: the applicant defers to counsel for submission of his request, statement, and evidence.

COUNSEL'S REQUEST, STATEMENT, AND EVIDENCE: correction of the applicant's NGB Form 22 (National Guard Report of Separation and Record of Service), 20 May 2015, by amending item 23 (Authority and Reason) to reflect "Disability, Permanent" vice "Expiration of Term of Service" (ETS). In addition:

- Service-connected disability rating of 100 percent (%)
- Referral to the Disability Evaluation System (DES)
- Retroactive disability pay and allowances
- Combat-Related Special Compensation (CRSC)
- A personal appearance before the Board

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

- DD Forms 149 (Application for Correction of Military Record)
- Supplemental statement in concern of the applicant
- Eight self-authored letters
- E-Benefits disability rating
- DD Forms 214 (Certificate of Release or Discharge from Action Duty)
- Three DA Forms 638 (Recommendation for Award)
- Orders 351-181, 17 December 2013
- Orders BL-076-0110, 17 March 2014
- Army Achievement Medal (AAM) certificate, 15 December 2014
- Orders 357-0014, 23 December 2014
- National Guard Bureau (NGB) Form 22
- Four letters issued by the Department of Veterans Affairs (VA)
- Two Character References
- Marriage certificate, 3 June 2017
- Massachusetts (MA) State Police Review, 19 June 2019
- Medical Records

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. Counsel states in his legal brief that is available in its entirety for the Board's review, in effect: the medical errors made during the applicant's service are substantial, significantly prejudicial and warrant relief.

a. He requests for the applicant to be placed on the permanent disability retired list (PDRL) in an amount consistent of her VA disability rating of 100%, along with backpay of all pay and allowances. In addition, for the applicant to be referred to the DES, and CRSC for benefits.

b. The applicant was psychiatrically unfit at the time of discharge due to post traumatic stress disorder (PTSD), military sexual trauma (MST) and traumatic brain injury (TBI).

c. The applicant was still on active duty when she reported the aforementioned conditions along with multiple other physical injuries. Regular Army and the Army National Guard (ARNG) medical personnel were aware of these conditions, yet she was still released from active duty.

3. Regarding counsel's request that the applicant receive CRSC, there is no evidence that the applicant exhausted her administrative remedies by applying to the U.S. Army Human Resources Command (HRC), prior to submitting a request to the ABCMR Board. Therefore, this issue will be administratively closed. If HRC denies the applicant her request, she may request a reconsideration and if still denied, she may submit an appeal to HRC. If her request is still denied, she may reapply to the ABCMR Board and submit all relevant documents, to include the denial letters from HRC.

4. Counsel provides:

a. Applicant's self-authored letters, which states, in effect, she is looking for justice. Although she tried, she was never referred to a Medical Evaluation Board (MEB), the Army failed her. She believes this is possible fraud or error on the Army's behalf, as she documented and notified medical personnel of her ongoing behavioral health and medical conditions during her service. The entire letter has been provided to the Board for their complete review.

b. E-Benefits website document that shows her VA service-connected disability rating of 100%.

c. Multiple DA Forms 638 and an Army Achievement Medal Certificate, that highlight her achievements and accomplishments and successes during her service. These documents are available for the Board's review.

d. Orders 351-181, 17 December 2013, show she was ordered to active duty in support of Operation Enduring Freedom (OEF) with a report date of 30 January 2014.

e. Orders BL-076-0110, 17 March 2014, show she was deployed in a Temporary Change of Station (TCS) status in support of OEF Guantanamo, with a report date of 20 March 2014.

f. Orders 357-0014, 23 December 2014, show she was released from active duty with an effective date of 12 February 2015.

g. Two-character references that reflect the following:

(1) On 22 October 2015, Sergeant (SGT)/E5 D. V. states, in effect, he served with the applicant in Guantanamo Bay, Cuba and was assigned to the same platoon as her. During this time, he witnessed multiple forms of disrespect, verbal abuse, and belittlement towards her, from superior, peer and subordinate Soldiers alike. Since those incidents she has not been the same person and has displayed behavioral changes.

(2) On 25 October 2015, Mr. M. C. states, in effect, he also served with the applicant in Guantanamo Bay, Cuba and dated her for about a year. The two are no longer involved due to the applicant's extreme behavior of violent outbursts, alcohol abuse and memory loss. He witnessed multiple instances of her superiors making derogatory sexual comments towards women, along with many other inappropriate and disrespectful comments made by Soldiers of all ranks. These events are the cause of her behavior and the reason why he and her family avoid her. She tends to keep things bottled up in fear of repercussions that could be damaging to her career. She has been deployed three times and was forced to be in the same environment every time.

h. On 3 June 2017, the applicant and Mr. M. C. were married, resulting in her last name to change from S. to C.

i. On 19 June 2017, the applicant was found not suitable for any employment with the MA Department of State, due to her psychological assessment that showed she was diagnosed with PTSD.

j. Letters issued by the VA show the following:

(1) 21 November 2018, reflects her evaluation for PTSD due to combat and MST, to include TBI, is found to be 100% disabling.

(2) 22 March 2018, reflects her conditions are service connected due to her service during Operation Iraqi Freedom (OIF) and OEF. Her diagnosis of PTSD and TBI are related to her experiences in participating in military contingency operations, while serving in Iraq.

(3) 18 June 2018, reflects her PTSD and associated symptoms emerged in response to MST and combat she experienced during her three deployments. Her impaired functioning resulting from these symptoms have been chronic and have affected both her personal and professional life.

(4) 1 December 2023, shows she is totally and permanent disabled due solely of her combined service connected disability rating of 100%.

k. Medical records that will be reviewed and discussed by the Medical and Behavioral Health staff at the Army Review Boards Agency.

5. The applicant's service record reflects the following:

a. She enlisted in the MA Army National Guard (MAARNG), on 21 September 2004, followed by multiple extensions to her Oath of Enlistment.

b. DD Forms 214 provide the following:

(1) She was ordered to active duty for Active-Duty Training (ADT) on 4 January 2005 and was honorably released on 12 May 2005. She completed 4 months, 9 days of active service. Her grade at the time of release was private (PV2)/E2. During this period, she earned the following awards:

- National Defense Service Medal
- Army Service Ribbon

(2) She was ordered to active duty in support of OIF on 10 July 2007 and was honorably released on 21 July 2008. She completed 1 year, 12 days of active service and 8 months, 22 days of foreign service. Her grade at the time of release was specialist (SPC)/E4. During this period, she earned the following awards:

- Army Commendation Medal
- Army Achievement Medal

- Army Good Conduct Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Iraq Campaign Medal with one bronze service star
- Overseas Service Ribbon
- Armed Forces Reserve Medal

(3) She was ordered to active duty in support of OIF on 5 July 2009 and was honorably released on 9 September 2010. She completed 1 year, 2 months, 5 days of active service and 10 months, 5 days of foreign service. Her grade at the time of release was SGT/E5. During this period, she earned the following awards:

- Iraq Campaign Medal with two bronze service stars
- Army Commendation Medal (second award)
- Overseas Service Ribbon (second award)
- Armed Forces Reserve Medal with M device

c. Enlisted Record Brief (ERB), reflects the following awards in Section VIII (Awards and Decorations):

- Army Commendation Medal
- Army Achievement Medal
- Meritorious Unit Commendation
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Noncommissioned Officer Professional Development Ribbon (NOPDR)
- Army Service Ribbon
- Overseas Service Ribbon
- Armed Forces Reserve Medal with M device

d. DD Form 214, shows she was ordered to active duty in support of OEF on 30 January 2014 and was honorably released on 12 February 2015. She completed 1 year, 13 days of active service and 8 months, 29 days of foreign service. Her grade at the time of release was staff sergeant (SSG)/E6. During this and all previous periods of service, she earned the following awards:

- Iraq Campaign Medal with two bronze service stars
- Army Commendation Medal (second award)
- Army Achievement Medal (second award)
- Meritorious Unit Commendation (second award)

- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Noncommissioned Officer Professional Developmental Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (third award)
- Armed Forces Reserve Medal with M device
- Military Outstanding Volunteer Service Medal (MOVSM)

e. Orders 166-016, 15 June 2015, show she was to be honorably discharged from the ARNG and as a Reserve of the Army with an effective date 20 May 2015.

f. NGB Form 22 reflects she was honorably discharged for the MAARNG, on 20 May 2015. She completed 10 years, 8 months of service.

6. There were no documents in the applicant's record that reflects she received a physical profile, was referred to a MEB or received a PEB.

7. On 12 October 2023, the Criminal Investigation Division (CID), conducted a search of the Army criminal file indexes, which revealed no Sexual Assault records pertaining to the applicant.

8. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

9. Due to the applicant's claim of PTSD, MST and TBI, the case is being forwarded to the Medical and Behavioral Health staff at the Army Review Boards Agency.

10. 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 in essence requesting a referral to the Disability Evaluation System (DES) and Combat Related Special Compensation (CRSC). She states:

“Placement on the Permanent Disability Retired List at 100% with all back pay and allowances and CRSC. See supplemental statement. The Army was on notice that military sexual trauma had occurred in Guantanamo Bay, Cuba .”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows she was mobilized from 30 January 2014 thru 12 February 2015 with Service at Guantanamo Bay, Cuba, from 20 March 2014 thru 18 December 2015.

d. Her National Guard Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows she enlisted into the Army National Guard on 21 September 2004 and received an honorable discharge on 20 May 2015 under the separation authority provided by paragraph 6-35a of NGR 635-200, Enlisted Personnel Management (31 July 2009): ETS (expiration – term of service).

e. From counsel’s brief:

“a. First, she was psychiatrically unfit at the time of discharge from actively duty for PTSD, Military Sexual Trauma, and Traumatic Brain Injury. All injuries were documented, and both the active duty and guard components were aware of such injuries. Not only were they aware, but referrals and subsequent evaluations were requested.

b. Second, she had persistent or recurring symptoms that interfered with her duty performance, created occupational impairments, and necessitated duty limitations under Army Regulation 40-501, para. 3-33 (c) ...

On 29 December 2014, she had her MEDCOM Medical Phase II letter that identified joint pain in her fingers, feet, and back issues possibly secondary to the PTSD and MST. Within a 10-day period, the Army was on notice of sexual assault and musculoskeletal issues secondary to the sexual assault.

On 13 January 2015, Applicant was still on active-duty orders when she filed with the Department of Veteran Affairs. She filed with Mark Allen who was the State Service Officer for the VFW at the JFK Building in Boston, Massachusetts at the time. She claimed PTSD due to memory loss, depression, anxiety, hypervigilance, indecisiveness. Symptoms included stuttering, slurring words, insomnia, and others.

Additionally, there was residual of her right-hand middling finger injury, back pain, foot numbness, shortness of breath, joint pain, athletes' foot, bilateral hearing loss, rashes in the upper and lower extremities and neck, acne, tinnitus, flat feet, allergies, bilateral leg scars.

She was released from active duty on 12 February 2015 and from the Massachusetts National Guard on 20 May 2015 as evidenced by TAB C her NGB Form 22. She continued to report in her VA Compensation and Pension Exam significant PTSD symptoms as well as attempted sexual assaults and sexual harassment."

f. Her final NCO Evaluation Report is not available for review. However, a Recommendation for Award dated 18 November 2014 shows she had performed well during her tour in Guantanamo Bay, Cuba:

"Outstanding meritorious service while assigned as a team leader, 747th Military Police Company ... Staff Sergeant [Applicant]'s dedication to duty, personal sacrifice, and knowledge were instrumental to the overall success of the JTF-GTMO mission."

g. Supporting documentation shows she filed a claim with the Veterans Benefits Administration prior to her release from active duty in February 2015. This is a common practice and typically part of the demobilization process offered to demobilizing Reserve Component Soldiers.

h. She completed her Post Deployment Health Assessment (PDHA) on 19 December 2014 and her Post Deployment Health Re-Assessment (PDHRA) on 11 April 2015. On both assessments, she marked in the affirmative for multiple symptoms of PTSD/mental health conditions as well as several physical complaints and expressed interest in evaluation and treatment for same.

i. No permanent physical profiles, the document which initiates a referral to the DES, were submitted with the application or found in the EMR.

j. From a 1 October 2015 "To Whom It May Concern" memorandum from her treating clinical social worker:

"This letter is to verify that my client, [Applicant], is diagnosed with post-traumatic disorder and military sexual trauma. She is currently being treated in individual counseling with this clinician at the Springfield VA Outpatient Clinic. This Veteran is currently exhibiting symptoms of irritability, hypervigilance, difficulty interacting with the public in her customer service position, easily startled, avoidance of public areas."

k. Thou she did have symptoms of PTSD prior to her separation from the Army and was later diagnosed with PTSD, there is insufficient probative evidence the condition failed medical retention standards as asserted by counsel. Paragraph 3-33 of AR 40-501, Standards of Medical Fitness (4 August 2011) lists the criteria used to determine when an anxiety disorder, of which PTSD is one, fails medical retention standards:

The causes for referral to an MEB are as follows:

- a. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- b. Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- c. Persistence or recurrence of symptoms resulting in interference with effective military performance.

l. There is insufficient probative evidence the applicant's had a medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to her voluntary discharge; or that prevented her from reenlisting. 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 her office, grade, rank, or rating prior to her essentially voluntary discharge.

m. 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."

n. JLV shows she has been awarded numerous VA service-connected disability ratings, including a rating for PTSD. However, the DES compensates disabilities when they cause or contribute to career termination, compensating 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.

o. The applicant is currently ineligible for CRSC as the first criteria for eligibility is that the Veteran be in receipt of military retirement pay.

p. It is the opinion of the ARBA medical advisor that neither a referral of her case to the DES or the awarding of CRSC is warranted.

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 through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither a referral of her case to the DES or the awarding of CRSC is warranted. The opine noted, there is insufficient probative evidence the applicant's had a medical condition which would have failed the medical retention standards prior to her voluntary discharge; or that prevented her from reenlisting.

2. Th Board found there is insufficient evidence to support the applicant's counsel's contentions for correction of the applicant's NGB Form 22, by amending item 23 (Authority and Reason) to reflect "Disability, Permanent" vice "Expiration of Term of Service" (ETS). The Board noted, the applicant's record is absence evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her essentially voluntary discharge. Furthermore, the Board found retroactive disability pay and allowances and service-connected disability rating of 100% are without merit. Therefore, the Board denied relief.

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 (Armed Forces), 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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the

burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Title 10 (Armed Forces), 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.

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

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (Disability Evaluation System (DES)); DoD Manual 1332.18 (DES Volumes 1 through 3) and Army Directive 2012-22 (Changes to Integrated Disability Evaluation System Procedures) as modified by DoDI 1332.18.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501. Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

b. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

c. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board

may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

d. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

e. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

f. Chapter 4 provides that Public Law 110–181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel. Soldiers may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the VA or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code “1” applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code “2” Applies to persons not eligible for immediate reenlistment
- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

7. Army Regulation 600-8-7 (Retirement Services Program), prescribes policies governing military personnel retirement services, the Survivor Benefit Plan, the Career Status Bonus, and the Chief of Staff, Army Retired Soldier Council. This regulation

implements DODI 1332.42. It applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to all retirement services officers and Survivor Benefit Plan counselors.

a. ARNG Soldiers who are found eligible for a disability retirement or disability separation with transfer to the Re-tired Reserve (15 or 20 year NOE) will be processed by the State JFHQ using the current regulatory guidance and policy for the ARNG.

b. Soldiers being considered for medical retirement will receive information when they are notified, they are being considered for a medical retirement.

8. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. USAR or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed as follows. Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 or discharged from the USAR per Army Regulation 135-175 (Separation of Officers) or Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

b. Reservists who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reservists with nonduty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with this regulation.

c. Reserve Component Soldiers with nonduty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of Reserve Component Soldiers with nonduty related medical conditions, MEBs are not required, and cases are not sent through the PEBLOs (Physical Evaluation Board Liaison Officers) at the military treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB by the USARC Regional Support Command or the U.S. Army Human Resources Command Surgeon's office and will

include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

9. Title 10 (Armed Forces), USC, section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

10. Title 31 (Money and Finance), USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

11. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

12. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

13. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a

court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//