

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230005202

APPLICANT REQUESTS:

- reconsideration of her prior request for physical disability discharge or retirement in lieu of administrative discharge due to failed medical/physical procurement standards
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 74 pages of service medical records dated between 6 March 2017 – 30 October 2017
- U.S. Court of Appeals for Veterans Claims Order, dated 30 October 2020
- marriage certificate, dated 12 December 2021
- Appellant's Brief, Before the Board of Veterans' Appeals, dated 3 March 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210008481 on 28 February 2022.

2. The applicant states:

a. She believes she deserves a medical discharge or medical retirement. Although she had a disability prior to service, that disability was aggravated by service. Also, unbeknownst to her, she had severe asthma and the military released her, repeatedly telling her she had bronchitis. She is requesting reconsideration by the Board based on all the evidence that was not previously submitted from her military medical record and not considered.

b. Although her time in the service was brief, she was repeatedly, incorrectly diagnosed with bronchitis. While serving, she was coughing up blood and had severe difficulty breathing but was still forced to be discharged 11 days later. She found out she

had asthma after being home for 5 months, during which time she repeatedly had a dry cough and chest pain. The Army discharged her knowing she was sick and kept saying if she took her medicine, she should be fine. This was not true because when she got home, she was diagnosed with asthma, which is a disabling and disqualifying condition. They told her if she did not sign her discharge paperwork, she would receive a dishonorable discharge.

c. Her post-traumatic stress disorder (PTSD) and depression was aggravated by her brief period of service due to a particular drill sergeant withholding her inhaler from her. Although he did let her use her codeine syrup for her cough, he would not let her hold on to her inhaler, which they kept locking in a cabinet. Because of this, she had to be rushed to the emergency room (ER) with tightness in her chest and being unable to breathe.

d. This drill sergeant also read her medical records aloud to other enlisted members in the company and told everyone she was raped in her first period of service. All of this has taken a huge toll on her mental and physical health and was reported to the chaplain and the company first sergeant.

3. The applicant initially enlisted in the Regular Army on 10 January 2011.

4. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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.

5. Records from the applicant's initial period of service show:

a. A DD Form 2808 (Report of Medical Examination) shows she underwent medical examination on 14 June 2011, for the purpose of separation and was found qualified for separation with PULHES of 111111.

b. A DA Form 4856 (Developmental Counseling Form) shows she was counseled on 22 June 2011, to advise her she was being recommended for separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 13-2, for unsatisfactory performance based on academic failure and failing to display the behavior expected of a Soldier.

c. A DA Form 3822 (Mental Status Evaluation) shows she underwent a mental status evaluation on 8 July 2011, for the purpose of administrative separation. She was found to meet medical retention requirements and was given no diagnoses.

d. She was appropriately formally notified of the initiation of her separation, acknowledged receipt, advised of her rights, and made her rights election.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 22 July 2011, after 6 months and 13 days of net active service, under the provisions of Army Regulation 635-200, chapter 13, due to unsatisfactory performance with corresponding separation code JHJ and a reentry code of 3.

7. A DD Form 2807-1 (Report of Medical History) shows the applicant provided her medical history on 30 March 2017, for the purpose of Regular Army enlistment. She listed Tylenol as her current medications and marked "no" on all listed conditions and "yes" to having been treated in an ER or hospital. The comments and explanation sections show she is in good health and had an ER visit for strep throat, bacterial infection, and high fever from which she fully recovered with antibiotics.

8. A DD Form 2808 shows the applicant underwent medical examination on 30 March 2017 for the purpose of Regular Army Enlistment and was found qualified for service with a PULHES of 111111.

9. Records indicate the applicant was to report to the Military Entrance Processing Station for transportation to her training location on 19 September 2017 for a Basic Combat Training (BCT) reservation start date of 25 September 2017 at Fort Leonard Wood, MO.

10. The applicant's Enlisted Record Brief (ERB) shows she arrived at the 43rd Adjutant General Reception Battalion at Fort Leonard Wood, MO, on 19 September 2017.

11. A U.S. Army Medical Department Activity (USAMEDDAC) Form 980 (Medical Moment of Truth), shows on 20 September 2017, the applicant indicated there were serious medical conditions she felt they should be aware of before she started training and indicated she took prazosin and sertraline for anxiety and depression.

12. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings, dated 2 October 2017, and approved by the medical approving authority on the same date shows:

a. The applicant was sent to Embedded Behavioral Health (EBH) provider secondary to treatment for depression and PTSD with Zoloft and Prazosin for 1 year,

reported by the Post Immunization Team who found the history on her electronic medical records while processing her Medical Statement of Truth (which she stated she did not report the information on, but was told to add it. She receives services through the Department of Veterans Affairs (VA) and has a 10 percent rating for her knee; so, medication through the VA were in her records. She also appears to have an L3 profile. Sleep is reported to be 2 hours per night. She reported sleeping 8-9 hours per night prior to coming here. Loss of interest and guilt are denied. Energy level is reported to be low. Concentration and appetite are fair. The applicant does not wish to remain in the service.

b. Her past mental health history shows the applicant was in the Army for 7 months but failed her Advanced Individual Training (AIT) and was given a chapter 13 discharge in 2011. She reported trauma at age 21 and stated she was treated for depression for over 1 year with Zoloft and Prazosin at that time. She also has Fluoxetine and Zoloft in her prescriptions for 2015 and 2016. She reported she was receiving medication through the mail but denied taking it in 2016. She reported she was going to group therapy 1-2 times per week for 9 weeks. She was in individual therapy for 3 months after her trauma. EBH provider confirmed this history with her mother. Current or previous suicidal and homicidal ideations are denied. Suicide attempts or self-harming behaviors are denied.

c. During her Mental Status Exam, she voiced understanding of the purpose of this evaluation, limits of confidentiality, and the right to a second opinion. Her general appearance and hygiene were average. She presented in a calm and engaged manner. Motor behavior and speech were normal. Eye contact was adequate. Her affect was mildly dysphoric and irritable, congruent with her stated mood. She reported her mood to be bad and irritated. Thought content and mood were congruent and focused on the purpose of the evaluation. Thought process was logical and linear. She did not report or present any delusions, hallucinations, or mania. She did not report or present with any obsessional ideations or compulsive behaviors. Concentration appeared adequate. She was oriented to time, place, and person. Comprehension, general fund of knowledge, and abstract ability appeared average. Judgment and impulse control seemed fair. Psychological insight appeared adequate.

d. The applicant's listed diagnoses were major depressive disorder (by history, per patient report) and PTSD (by history, per patient report); existed prior to service (EPTS); phase of training: Reception.

e. The recommendations show the condition was EPTS. If the applicant's mental health problem had been detected at the time of enlistment, it would have prevented her enlistment in the military in accordance with Army Regulation 40-501 (Standards of Medical Fitness), paragraph 2-27. The applicant should be expeditiously separated from active duty in accordance with Army Regulation 635-200, paragraph 5-11. She should

be immediately removed from all training. She should not have access to weapons or sensitive information. She should follow-up with Behavioral Health for any safety concerns and follow all recommendations, including unit watch as needed.

f. A temporary 90-day profile was issued for major depressive disorder (by history, per patient report) and PTSD (by history, per patient report) (EPTS). Function limitations include: cannot carry and fire individual assigned weapons and cannot live in an austere environment without worsening her medical condition.

13. A DA Form 3349 (Physical Profile) shows on 2 October 2017, the applicant was given a temporary physical profile with a PULHES of 111111 for major depressive disorder (by history, per patient report) and PTSD (by history, per patient report), EPTS. She was limited from performing all functional activities.

14. A USAMEDDAC Fort Leonard Wood, MO memorandum, dated 2 October 2017 identified for the applicant's chain of command the findings of the EPSBD, wherein it was found she had a medical condition which if identified at the time of initial entry into the U.S. Armed Forces would have precluded her current enlistment. Based on clinical review, the applicant was recommended for administrative separation.

15. A DA Form 4856 shows the applicant was counseled by her immediate commander on 3 October 2017, regarding her recommendation for separation under the provisions of Army Regulation 635-200, paragraph 5-11, based on her EPTS diagnoses of major depressive disorder and PTSD. The applicant signed the form on 3 October 2017, indicating she agreed and did not wish to be retained in the Army.

16. On 18 October 2017, the applicant indicated she had been advised of her right to consult with an attorney regarding her administrative separation and speak with an attorney who will advise her of her rights, options, and keep all communication confidential. Knowing that, after arriving to the Trial Defense Service field office, she elected to waive those rights. She also indicated she did not file an unrestricted report of sexual assault within 24 months of initiation of this separation action.

17. The applicant's DA Form 4707 further shows:

a. The applicant signed the form on 18 October 2017, indicating she concurred with the EPSBD proceedings and requested to be discharged from the U.S. Army without delay.

b. Her immediate commander signed the form on 19 October 2017, indicting his recommendation that the applicant be discharged.

18. The applicant provided multiple service medical records, which have been provided in full to the Board for review, and in pertinent part show:

a. She was seen as an outpatient in the General Leonard Wood Army Community Hospital (GLWACH) ER on 20 October 2017, with complaints of pain all over, a productive cough for 1.5 weeks, sputum that tastes like blood, and the onset of vomiting the night prior. She was diagnosed with bronchitis, not specified as acute or chronic and released on 24 hours quarters.

b. She was seen at the GLWACH Troop Medical Clinic (TMC) ER Module on 23 October 2017, with complaints of bronchitis, vomiting, and knee and hip pain. This was a follow-up to her 20 October 2013 visit. She continued to have a dry cough, and runny nose and sternal pain with coughing fits and deep inhalations. She was diagnosed with acute bronchitis, unspecified and given prescriptions for Albuterol and Ipratropium.

c. The applicant was again seen at the GLWACH ER on 24 October 2017. The notes show she was being discharged from the military in 3 days' time and presented to the ER after having an episode of difficulty breathing while raking leaves. She stated she was diagnosed with bronchitis and treated with antibiotics. She was overall improving, but today was out in the cold and started raking leaves when she felt as if she suddenly could not breathe. She took her Albuterol inhaler and was now back to baseline. She multiple times coughed to the point of vomiting. Difficulty breathing was resolved. Bronchospasm was suspected. She was diagnosed with bronchitis and was not having chest pain or fevers. Her symptoms seem to resolve with albuterol inhaler, and she would be treated with a dose of Decadron to decrease inflammation and have her follow-up in the morning. It was explained to the applicant that disease processes involved in the day's diagnosis are made based on current symptoms and should symptoms change, a new diagnosis may be substituted.

19. On 24 October 2017, the approval authority signed the DA Form 4707 EPSBD proceedings directing the applicant's discharge from the Army.

20. A second DD Form 214, covering the applicant's period of service from 19 September 2017 through 30 October 2017, shows she was given an uncharacterized discharge on 30 October 2017, under the provisions of Army Regulation 635-200, paragraph 5-11, due to failed medical/physical procurement standards, with a corresponding separation code of JFW. She was credited with 1 months and 12 days of net active service this period and not awarded a Military Occupational Specialty (MOS).

21. The applicant previously applied to the ABCMR requesting medical discharge. The agency medical adviser opined that the applicant's referral to the Disability Evaluation System (DES) was not warranted. On 28 February 2022, the Board denied her request,

determining the evidence presented did not demonstrate the existence of a probable error or injustice and that the merits of her case were insufficient as a basis for correction of her records.

22. A U.S. Court of Appeals for Veterans Claims Order, in the case of the applicant versus the Secretary of the VA, dated 30 October 2020, shows the parties filed a joint motion for partial remand to the VA, and it was ordered that the motion for partial remand was granted. The parties had requested the Court vacate the part of the 14 April 2020, VA Board decision denying the applicant entitlement to service-connection for an acquired psychiatric disorder, to include PTSD, major depressive disorder, adjustment disorder with anxious mood, and borderline personality disorder, and remand the matters for further proceedings.

23. The Appellant's Brief, Before the Board of Veterans' Appeals, dated 3 March 2022, has been provided in full to the Board for review, and in pertinent part argues the applicant is entitled to an increased evaluation for PTSD and adjustment disorder with anxious mood, currently rated at 70 percent disabling. The outcome of the applicant's case against the VA before the U.S. Court of Appeals for Veterans Claims is not in the applicant's available records for review.

24. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

25. 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 requesting reconsideration of their previous denial of her request for an upgrade of her 20 October 2017 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). She states:

"I believe I deserve a medical discharge/ medical retirement. Although I had a disability prior to service that disability was aggravated by service and also unbeknownst to be I had severe asthma and the military released me and kept saying I had bronchitis. I , [Applicant], am requesting reconsideration from the board due to all evidence was not submitted from my military medical record and was not taken into account.

Although my time in service was brief, I was incorrectly repeatedly diagnosed with bronchitis, while in I was coughing up blood and had severe difficulty breathing but still forced to be discharged 11 days later. I found out I had asthma after being home for 5 months during which time I repeatedly had a dry cough and chest pain. The Army discharged me knowing I was sick and told me if I did not sign discharge paperwork, I would receive a dishonorable discharge. My PTSD and depression were aggravated by my brief period of service due to a particular drill sergeant withholding my inhaler from me."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows she entered the regular Army on 19 September 2017 and received an uncharacterized discharged on 30 October 2017 under the separation authority provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Separation of personnel who did not meet procurement medical fitness standards.

d. The request for a discharge upgrade and a referral to the DES was previously denied by the ABCMR on 28 February 2022 (AR20210008481). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The majority of the submitted documentation are copies of her EMR records, records which were reviewed for case AR20210008481. It includes a behavioral health intake evaluation dated 24 October 2017. The provider wrote:

"SM states that she is going through an EPTS [existed prior to service] chapter and hopes to be home to Houston, TX, next week. She states that it was a mistake joining the Army a second time. She states that she is frustrated by her battle buddy whom the drill sergeants put her with because she gets in her face and creates drama. She said that she has self-control not to hurt this person because she knows that it could delay her chapter and she could end up with a chapter she doesn't want."

f. The applicant's pre-entrance Report of Medical History and Report of Medical Examination for the period of service under consideration show that other than having been previously hospitalized for strep throat, she was without significant medical history or conditions. However, when she completed her Medical Moment of Truth (USA MEDDAC Form 980) on 20 September 2017, she changed her answer from "NO" to "YES" to the question "Are there any serious medical conditions you feel we should be aware of before you start training?" She then wrote "Took prazosin & sertraline for anxiety & depression."

g. The applicant had numerous Veterans Hospital Administration (VHA) mental health encounters between her periods of service (VHA encounters May 2013 – February 2017). A VA 22 February 2014 home mental health visit encounter (between her periods of service) shows the applicant had pre-existing mental health issues:

"Veteran states that she saw someone for counseling a few times at the VA for her depression, anxiety, and poor impulse control, which really helped her. Veteran states that she uses to get very upset by other people's actions which don't bother her near as much anymore since she has realized that she can't change or control other people's actions."

h. In review, the applicant was referred to an entry physical standards boards (EPSBD) IAW paragraph 5-11a of AR 635-40 for her self-reported major depressive disorder and PTSD. The board determined that her mental health condition had existed prior to service, had not been permanently aggravated by her brief service, and failed the enlistment standards in chapter 2 of AR 40-501. From her Entrance Physical Standards Board (EPSBD) Proceedings:

"Recommendations: Condition Existing prior to service. If the Service Member's mental health problem had been detected at the time of enlistment, it would have prevented enlistment in the military in accordance with Army Regulation 40-501, Chapter 2-27 (d; k). The Service Member should be expeditiously separated from active duty in accordance with Army Regulation 635-200, Chapter 5-11. Service Member should be immediately removed from all training. Service Member should not have access to weapons or sensitive information. Service Member should follow up with Behavioral health for any safety concerns and follow all recommendations including Unit Watch as needed.

i. The applicant concurred with these findings on 18 October 2017, selecting and initialing the box which stated "I concur with these proceeding and request to be discharged from the US Army without delay." With the EPSBD's findings, the applicant was appropriately separated under the authority provided by paragraph 5-11 of AR 635-200.

j. Review of the applicant's electronic record show she was seen for a variety of minor medical issues during this period, including foot pain, an upper respiratory tract infection, abdominal pain, knee pain, and three times for acute bronchitis in her last 10 days of service. However, there is no evidence the applicant had any medical condition 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.

k. It is the opinion of the Agency Medical Advisor an upgrade of her discharge and/or a referral of her case to the DES remain unwarranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding an upgrade of her discharge and/or a referral of her case to the DES remain unwarranted. The Board noted, the opine found no evidence the applicant had any medical conditions which would have failed medical retention standards prior to her discharge. The Board agreed there is insufficient evidence that the applicant was not fit for duty and evidence in the record show she concurred with these findings on 18 October 2017, selecting and initialing the box which stated "I concur with these proceeding and request to be discharged from the US Army without delay. Based on this, the Board denied relief.

2. The Board determined DES compensates an individual only for service incurred 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.

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

BOARD VOTE:

<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:

The Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210008481 on 28 February 2022.

3/4/2024



 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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. Title 10, U.S. Code, 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) 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 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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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 Physical Evaluation Board (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.

3. Army Regulation 635-40 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.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

5. Army Regulation 635-200 (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.

a. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards), in effect at the time, shows Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

(1) would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at the time

(2) does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection will be separated.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was

aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) 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.

//NOTHING FOLLOWS//