

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20230005422

APPLICANT REQUESTS: change her character of service from uncharacterized to medical retirement

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

- DD Form 293 (Application for the Review of Discharge)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- Orders 257-1328 Release from Active Duty
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Department of Veterans Affairs (VA)

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 states:

a. Please change her current DD Form 214 (Certificate of Release or Discharge from Active Duty) character of service from uncharacterized to medical retirement. She believes the character of her discharge on her DD Form 214 is inappropriate.

b. She asks the Board to review her VA decision letter that rated her 100 percent permanent and totally disabled. The document acknowledges the initial injury occurred when she was an Army National Guard (ARNG) Soldier activated during basic training.

c. While stationed at Fort Jackson, South Carolina, on 9 September 2012, she fell from the top bunk, while sleeping. The injuries caused profound and permanent damage to her body that medically ended her military career. The Army rushed her discharge as if she was a new recruit instead of a military member with prior U.S. Navy rank and experience, therefore neglecting their duty to medically ensure she was able to continue her military training and not just cast her aside within a week of her being injured.

d. She believes the Army also neglected to provide her with appropriate medical care, both the initial stabilization and they failed to consider any follow-up medical care. The reason for the discharge was because the accident left her physically unable to perform the "required medical/physical/procurement standards." Due to the extensive physical and cognitive disabilities she now lives with, she has been unable to find employment.

e. She asks the Board to please consider her request to change her DD Form 214 character of service from uncharacterized to medical retirement. Her particular Women's Health, neurological, and so many other medical needs cannot be met by her local VA. Having Tricare access will ensure she and her families medical needs are met.

3. The applicant provides the following documents:

a. DA Form 2173 (Statement of Medical Examination and Duty Status) shows the date of the accident was 9 September 2012. The nature and extent of her injury was headache, open wound, contusion with intact skin surface - knee, and left wrist sprain. She stated she injured her head, left knee, and left wrist when she fell out of the top bunk at basic combat training. She was transported to the hospital the night of the injury for a laceration to her head. Based upon review of the applicable medical documents, there was no evidence to suggest that alcohol, drug usage, or misconduct contributed to the listed injuries. Therefore, the presumption of in line of duty applies.

b. Letter from the VA, 10 January 2020, shows she had the following disabilities:

- Tinnitus, 10 percent
- Post-traumatic stress disorder (PTSD) and major depressive disorder and insomnia disorder with traumatic brain injury (TBI) with vertigo and antalgic gait with balance issues claimed as head injury 70 percent
- Migraine and tension headaches 50 percent
- Generalized contraction of the visual field 30 percent
- Anosmia 10 percent

The VA granted her service connection for her TBI injury claimed as head injury because they requested a medical opinion and the examiner opined the claimed condition was at least as likely as not incurred in or caused by the claimed in-service injury, event, or illness. Her history of a fall documented in 2012 for which she received treatment at Providence Hospital. She sustained a head injury as documented in records from that hospital.

4. The applicant's service record contains the following documents:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she served in the U.S. Navy from 20 November 2007 through 5 August 2011, when she was honorably discharge due to a reduction in force. She completed 3 years, 8 months, and 16 days of active duty service.

b. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the ARNG on 29 June 2012.

c. DA Form 4707 (Entrance Physical Standards Board Proceedings), 8 August 2012 shows:

(1) HISTORY OF EXISTED PRIOR TO SERVICE (EPTS) CONDITION: She is prior service Navy. She was honorably discharged due to reduction of force. She reports an extensive history of mental health treatment for PTSD, depression, and anxiety. She received individual outpatient counseling and group therapy for PTSD and depression from June 2008 until August 2011, as a result of being sexually assaulted in April 2008. She was hospitalized twice, for depressive symptoms, PTSD relapse, and ideations of harm to self or others.

(2) SUBJECTIVE FINDINGS: She reports she is currently unable to adjust to the basic combat training environment. According to her, she is not quite mentally prepared to be back in a military setting. In addition to the stress of basic combat training, she reports having marital problems and is contemplating a divorce. She states she is currently experiencing depressive and anxious symptoms such as mood swings, poor concentration, flashbacks, anxiety, intrusive thoughts, hypervigilance, feelings of sadness, increased irritability, sleep difficulties, and low motivation. She states she desires to be discharged so she can return home to her daughter.

(3) OBJECTIVE FINDINGS: She was well-groomed and oriented. She reported an anxious mood, with full-range affect. Speech was normal. Thought processes were not impaired. She did not present with perceptual disturbances. She denied current thought to harm self or others. She contracted for safety.

(4) DIAGNOSIS: PTSD, depressive disorder, and anxiety disorder.

(5) RECOMMENDATIONS: It is recommended she be separated from the U.S. Army for failure to meet medical procurement standards. EPTS: Yes. Permanently service aggravated: No. Remove from training.

(6) ACTION BY SERVICEMEMBER: She concurred with the proceedings and requested to be discharged from the U.S. Army without delay.

d. Orders 257-1328, published by Headquarters, United States Army Training Center and Fort Jackson, 13 September 2012, released her from active duty training effective 17 September 2012.

e. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was ordered to active duty, as a member of the ARNG, on 16 Jul 2012 and was released on 17 September 2012. She had completed 2 months and 2 days of active duty service with 3 years, 8 months, and 16 days of prior active duty service. She was released for failing medical/physical/procurement standards, her character of service was uncharacterized, her separation code was JFW, and her reentry code was 3.

f. Orders 115-1070, published by Joint Force Headquarters, California ARNG, 25 April 2013 discharged her from the ARNG effective 25 April 2013 with an uncharacterized discharge.

5. Based on the applicant's documentation showing she suffered from anxiety and depression and had injuries sustained from falling off bed, while in military service, the ARBA Medical Section provided a medical review for the Board's consideration.

#### 6. MEDICAL REVIEW:

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

b. The applicant is applying to the ADRB requesting an upgrade of her 17 September 2012 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). On her DD form 293, she states:

"Please change my current DD 214 Character of Service from Uncharacterized to Medical Retirement. I believe the Character of Discharge on my DD 214 is inappropriate. Please see the VA Decision letter that rated me 100 percent Permanent and Total.

Please see Page 3, Issue 1, Para 4 that acknowledges the initial injury while I was an Army National Guardsman activated during Basic Combat Training. While stationed at Ft. Jackson, SC, on 9 Sep 2012 I fell from the top bunk while sleeping.

The injuries caused profound and permanent damage to my body that medically ended my military career.

The Army rushed my discharge as if I was new recruit, instead of a military member with previous US Navy rank and experience, therefore neglecting their duty medically to make sure I was.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows the former Army National Guard Soldier entered active duty for basic combat training on 16 July 2012 and received an uncharacterized discharged on 17 September 2012 under the separation authority provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraphs 5-11a and 5-11b of AR 635-200:

“a. 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 AD [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

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 on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify the soldier for retention in the military service per AR 40–501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

e. A Statement of Medical Examination and Duty Status (DA form 4173) notes the applicant sustained injuries to her head, left knee, and left wrist when she fell out of the top bunk while in BCT 9 September 2012. She was transported to the hospital that night for treatment of a scalp laceration. The emergency department encounter is not available for review. At her follow-up visit the following morning, the applicant was treated for a headache, her laceration appears to have been redressed, and treated for a left knee contusion. Her neurological examination was normal and remained normal as seen in subsequent follow-up examinations.

f. She was first seen by behavioral health on 30 July 2012 “for acute safety-focused evaluation focused on assessing for acute safety risks, needed precautions to ensure safety, and any conditions that might require inpatient psychiatric treatment for assurance of safety.” A complete evaluation was scheduled for 6 August 2012.

g. This evaluation was completed on 8 August 2012 and the provider wrote “Soldier reports an extensive history of mental health treatment for PTSD, Depression DO NOS [disorder not otherwise specified] and Anxiety DO NOS.” She was subsequently referred to an Entry Physical Standards Board (EPSBD) IAW paragraph 5-11 of AR 635-200.

h. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently service aggravated. From the 08 August 2012 Entrance Physical Standards Board (EPSBD) Proceedings (DA form 4707):

“HISTORY OF EPTS CONDITION: Soldier is prior service Navy (Nov 2007-Aug 2011). She was honorably discharged, due to Reduction of Forces. Soldier reports an extensive history of mental health treatment for PTSD, Depression DO NOS and Anxiety DO NOS.

AHLTA notes were reviewed and indicated that the Soldier received individual outpatient counseling and group therapy, for PTSD and depression, from June 2008 until August 2011, as a result of being sexually assaulted, in Apr 2008. Soldier was hospitalized twice, for depressive symptoms, PTSD relapse, and ideations of harm to self and others: 15 July 2011 (1st week) and 26 July 2011 (3 days). Soldier was

prescribed Celexa (January 2011 - March 2011) and Zoloft (July 2011- February 2012).

**SUBJECTIVE FINDINGS:** Soldier reports that she is currently unable to adjust to the BCT [basic combat training] environment. According to her, she is not quite mentally prepared to be back in a military setting. In addition to the stress of BCT, the Soldier reports having marital problems and is contemplating a divorce. She states that she is currently experiencing depressive and anxious symptoms such as mood swings, poor concentration, flashbacks, anxiety, intrusive thoughts, hypervigilance, feelings of sadness, increased irritability, sleep difficulties, and low motivation. She states that she desires to be discharged so that she can return home to her daughter.

**OBJECTIVE FINDINGS:** Soldier was well-groomed and oriented x4, Soldier reported an anxious mood, with full-range affect Speech was normal. Thought processes were not impaired. Soldier did not present with perceptual disturbances. She denied current thoughts to harm self or others. She contracted for safety.

**DIAGNOSIS:** AXIS I: Posttraumatic Stress DO (EPTS),

Depressive DO NOS (EPTS)

Anxiety Disorder NOS (EPTS)

**RECOMMENDATIONS:** It is recommended that this soldier be separated from the US Army for failure to meet medical procurement standards AR 40-501, Chapter 2, paragraph 2-27 (K) & (D 1&2).

EPTS: Yes.

Permanently service aggravated: No.

Soldier does meet medical retention standards IA W Chapter 3, AR 40-501.

Remove from training."

i. Paragraph 2-27d and 2-27k of AR 40-501, Standards of Medical Fitness (4 August 2011):

“d. Current mood disorders including, but not limited to, major depression, bipolar, affective psychoses, depressive not otherwise specified, do not meet the standard.

(1) History of mood disorders requiring outpatient care for longer than 6 months by a physician or other mental health professional (V65.40), or inpatient treatment in a hospital or residential facility does not meet the standard.

(2) History of symptoms consistent with a mood disorder of a repeated nature that impairs school, social, or work efficiency does not meet the standard.

k. Current or history of anxiety disorders (anxiety or panic), agoraphobia, social phobia, simple phobias, obsessive-compulsive, other acute reactions to stress, and posttraumatic stress disorder do not meet the standard.”

j. On 9 August 2012, the EPSBD determined her behavioral health conditions had existed prior to service, had not been permanently aggravated by her military service, failed medical enlistment standards, and recommended the applicant be discharged from the Army. The applicant concurred the EPSBD’s findings on 15 August 2012, marking and initialing the election “I concur with these proceedings and request to be discharged for the US Army without delay.”

k. JLV shows he has been awarded multiple VA service-connected disability ratings, most of which were awarded on 6 August 2011 so prior to her enlistment into the Army. These include ratings for PTSD, Migraine Headaches, and limited motion of the jaw. She does not have a rating for traumatic brain disease.

l. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, she simply had a preexisting medical condition which was, unfortunately, not within enlistment standards.



n. It is the opinion of the Agency Medical Advisor neither an upgrade of her discharge nor a referral of her case to the DES 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 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 reviewing the applicant's petition, available military records, and medical evaluation, the Board concurred with the advising official's assessment that neither an upgrade of the applicant's discharge nor a referral to the Disability Evaluation System (DES) is warranted. The advisory opinion indicated that the applicant was recommended for separation from the U.S. Army due to failure to meet medical procurement standards in accordance with AR 40-501.

2. The Board concluded there was insufficient evidence to support the applicant's request to change her character of service from uncharacterized to a medical retirement. It was noted that the Entrance Physical Standards Board (EPSBD) determined her behavioral health conditions preexisted military service, were not permanently aggravated by service, and failed to meet medical enlistment standards. Based on the preponderance of evidence, the Board denied relief.

3. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
  - a. A separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.
  - b. A separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:
    - (1) A discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or
    - (2) The Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of

unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. 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 entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFW is used for failure to meet procurement medical fitness standards.

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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.

6. 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 DRBs and 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

9. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty 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 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 or 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 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 are either 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 onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

10. Title 10, USC, 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, USC, 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.

11. AR 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

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

12. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

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

Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//