IN THE CASE OF: [redacted]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230005971

APPLICANT REQUESTS: in effect, reconsideration of that portion of his prior request pertaining to the inclusion of sleep apnea as an unfitting condition on his DA Form 199 (Physical Evaluation Board (PEB) Proceedings.

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form 515 (Medical Record-Tissue Examination), dated 19 August 1992
- DA Form 3647 (Inpatient Treatment Record Cover Sheet), dated 20 August 1992
- Standard Form 502 (Medical Record-Narrative Summary (NARSUM)(Clinical Resume), dated 20 August 1992
- Standard Form 516 (Medical Record – Operation Report), dated 27 August 1992
- Standard Form 93 (Report of Medical History), dated 14 July 1995
- Standard Form 88 (Report of Medical Examination), dated 14 July 1995
- Clinics of [redacted], Otolaryngology Department Ear Nose and Throat (ENT) History Form, dated 27 July 2000
- [redacted] Surgi-Center Operative Report, dated 19 September 2000
- Otolaryngology Progress Notes, dated 5 October 2000
- Department of Defense Instruction (DODI) 6490.07, dated 5 February 2010
- Department of Veterans Affairs (VA) Rating Decision, dated 5 January 2018

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 AR20210006433 on 13 December 2021.

2. The applicant states:

a. He is requesting correction to his record to show he is service-connected for sleep apnea. The sleep apnea was discovered and rated by the VA during a Compensation and Pension (C&P) exam and linked to when he was on active duty.

b. He was unfit to deploy with this issue. It is not possible for a Field Artillery Soldier to use continuous positive airway pressure (CPAP) ventilation during deployment or training exercises. His sleep apnea was not evaluated when he was medically boarded out of the Army, so he needs it added now.

c. According to DODI 6490.07, DODI 1332.38 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 40-501 (Standards of Medical Fitness), "any medical condition that requires durable medical equipment must have electrical power in theater." As a Field Artillery officer, he regularly deployed and trained in the field. Electrical power in the field is not readily available, which would cause serious negative effects on his health. He recently discovered the VA submitted his initial request shortly after their discovery.

3. The applicant enlisted into the Regular Army on 19 January 1988.

4. A Medical Record - Tissue Examination, shows on 19 August 1992, a nasal bone and cartilage specimen was obtained at Fitzsimons Army Medical Center (AMC) based on the applicant's history of snoring and septal deviation. The diagnosis shows clinically deviated nasal septum.

5. An Inpatient Treatment Record Cover Sheet shows the applicant was admitted to Fitzsimons AMC on 19 August 1992, with the diagnoses of deviated nasal septum and snoring.

6. A Medical Record – Operation Report, shows on 19 August 1992, the applicant underwent septorhinoplasty (surgical procedure to improve both the appearance and breathing function of the nose) for the preoperative diagnoses of deviated nasal septum and cosmetic nasal deformity with deflection of the nose to the right, with indications of chronic nasal congestion, snoring, and cosmetic nasal deformity.

7. The Inpatient Treatment Record Cover sheet shows the applicant was released from Fitzsimons AMS on 20 August 1992.

8. A NARSUM, dated 20 August 1992, shows the following:

a. The applicant's chief complaint was deviated nasal septum with symptoms of loud, disruptive snoring. He had a long history of disruptive snoring which had been getting progressively worse. He presented at this time for septoplasty to attempt to treat his snoring. He had no symptoms of obstructive sleep apnea, no noticeable fatigue, and no apparent sleep disorder aside from snoring.

b. The applicant was admitted at preoperatively counseled for a septorhinoplasty. He was taken into the operating room on 19 August 1992 and underwent a

septorhinoplasty, which he tolerated without any difficulty. Septal splints were placed at the time of surgery. He was observed overnight on the ward, did well, and was discharged to local quarters, where he would remain until 26 August 1992. He was to return to the ENT Clinic for splint removal.

c. He was expected to be air evacuated back to his duty station on 28 August 1992 and should be given unit convalescent leave through 2 September 1992. Upon return to duty, he should have light duty for 4 weeks, at which time he should return to the ENT Clinic for follow up and then return to full active duty without a physical profile at that time.

9. A Report of Medical History, dated 14 July 1995, shows the applicant provided his medical history in conjunction with a medical examination for the purpose of Reserve Officer training Corps (ROTC) entry. He stated he was in excellent health and did not use any medications. Among the conditions he indicated he then currently or ever had were snoring, tonsillectomy, adenoids removal, and septoplasty.

10. A Report of Medical Examination, dated 14 July 1995, shows the applicant underwent medical examination on the date of the form for the purpose of entry into ROTC. He was found qualified for commissioning/ROTC with a physical profile rating of "1" in all factors. The only listed condition in the summary of defects and diagnoses is hypercholesterolemia.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 18 August 1995 for the purpose of entering an Officer Training Program. He was credited with 7 years and 7 months of net active service this period.

12. The applicant was appointed a Reserve Commissioned Officer of the U.S. Army in the branch Field Artillery, effective 10 May 1997.

13. A Clinics of [redacted], Otolaryngology Department ENT History Form, dated 27 July 2000, shows the following:

a. The applicant was examined on the date of the form for a chief complaint of snoring. He presented with a long history of snoring and obstructive breathing pattern. He had some daytime somnolence and reported awakening, gasping for air at night. He previously had various surgical procedures to try to help him with his snoring. He had a tonsillectomy and adenoidectomy at age four. Several years later he had a revision adenoidectomy. At the age of 24 he had some nasal surgery for an airway obstruction and reported he did not feel much improvement.

b. Upon physical examination it was noted his septum remains moderately deviated. There was a dorsal deviation impacting into the middle turbinate on the right side. There was some caudal deflection on the left side. Turbinates (bony structures inside the nose) remained moderately hypertrophic (enlarged). He had persistent adenoids, even after two apparent adenoidectomy procedures. He had a large uvula (the small, fleshy, teardrop-shaped tissued hanging from the back of the roof of the mouth) of approximately 1 inch in length with moderate posterior displacement of the soft palate, which is likely the source of his snoring.

c. He was diagnosed with obstructive sleep pattern, secondary to hypertrophic soft palate and uvula and nasal airway obstruction, secondary to deviated septum and hypertrophic turbinates, on a patient who has previously had a least a septoplasty and perhaps partial rhinoplasty.

14. A[redacted]Surgi-Center Operative Report, shows the applicant underwent revision septoplasty and uvulopalatopharyngoplasty on 19 September 2000.

15. Otolaryngology Progress Notes, dated 5 October 2000, show the applicant was seen 2 weeks and 2 days post-surgery. He was not doing quite as well as the doctor would have liked in that he was sensing irritation in the back of his throat and still had moderately noisy breathing. He felt some restriction in the nasal airway on the right side as well. The examining doctor felt the applicant's overall nasal airway looked much improved from preoperative levels and he thought he would get significantly better over the next 4 to 5 weeks, at which point he should return for a follow-up.

16. U.S. Total Army Personnel Command Orders A-08-005165, dated 14 August 2001, ordered the applicant to active duty effective 10 September 2001, for the purpose of fulfilling his active army requirement of 3 years.

17. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), and DA Form 3947 (MEB Proceedings) are not in his available records for review and have not been provided by the applicant.

18. A DA Form 199 shows the following:

a. An informal PEB convened on 16 October 2002, where the applicant was found physically unfit with a recommended combined rating of 20 percent and that his disposition be separation with severance pay.

b. The applicant's unfitting conditions are as follows:

- diabetes mellitus requiring oral hypoglycemic agent and restricted diet, MEB diagnosis (Dx) 1; 20 percent
- chronic pain, left knee, rated as slight/occasional, MEB Dx 2, 0 percent

c. On 21 October 2002, the applicant concurred with the findings and recommendations of the informal PEB and waived a formal hearing of his case.

19. The applicant's second DD Form 214 shows he was honorably discharged on 25 December 2002, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to disability with severance pay. He was credited with 1 year, 3 months, and 16 days of net active service this period, 8 years and 9 days of total prior active service, and 4 years and 22 days of total prior inactive service.

20. The applicant's available service records do not contain the dates or locations of any of his referenced deployments or field duty.

21. The applicant's available service treatment records do not reflect he received a Physical Profile for sleep apnea or was treated with a CPAP during his periods of service.

22. In June 2013, the applicant applied to the Physical Disability Board of Review (PDBR), requesting a review of his service disability rating with regard to the conditions of type II diabetes, renal insufficiency secondary to diabetes, left knee meniscus tear repair, degenerative arthritis lumbar spine, and blurred vision secondary to diabetes. Sleep apnea is not among the conditions in the applicant's request for review.

23. A PDBR Record of Proceedings (ROP), shows the following:

a. The PDBR clarified the scope of its review was limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service or those conditions identified by the MEB/PEB, but not found unfitting by the PEB.

b. The applicant's MEB and PEB entries include the following, with no additional conditions listed:

- diabetes mellitus, 20 percent
- chronic pain, left knee, 0 percent

c. On 6 March 2013, the PDBR recommended the applicant's prior physical disability determination be modified to reflect a combined physical disability rating of 30 percent and that his disability discharge with severance pay be recharacterized to

reflect permanent disability retirement, effective the date of his prior medical separation, for the following unfitting conditions:

- diabetes mellitus, 20 percent
- chronic pain, left knee, 10 percent

24. On 29 April 2013, the Deputy Assistant Secretary (Army Review Boards) approved the recommendation of the PDBR pertaining to the applicant to recharacterize his physical disability separation as permanent disability retirement with the combined rating of 30 percent effective the date of his original physical disability separation with severance pay.

25. U.S. Army Installation Management Command Orders 143-1310, dated 23 May 2013, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability effective 25 December 2002, with a disability rating of 30 percent.

26. A DD Form 215 (Correction to DD Form 214), issued on 24 May 2013, corrected the applicant's DD Form 214 covering the period ending 25 December 2002, to reflect permanent physical disability retirement.

27. As a result of the finality of the PDBR's decision, the scope of the current Board's review is limited to those conditions which were not considered by the PDBR and not determined by the PEB to be unfitting for continued military service.

28. An undated letter from Dr. [redacted] shows the applicant underwent a polysomnogram on 13 September 2013, which reflects a clinical interpretation of moderately severe obstructive sleep apnea with desaturation to 77 percent, obesity, hypertension, and diabetes mellitus, type 2. The recommendation was for CPAP at 9 centimeters of water via a medium Fisher and Paykel Eson interface with heated humidification and weight loss if possible.

29. A VA Form 21-0960L-2 (Sleep Apnea Disability Benefits Questionnaire), signed by Dr. [redacted] on 19 April 2017, shows the applicant was diagnosed with obstructive sleep apnea on 13 September 2013, that is treated with CPAP. His additional diagnoses include diabetes mellitus, obesity, history of deviated nasal septum (status post-surgery) and additional conditions of diabetic peripheral neuropathy and metabolic syndrome.

30. A VA Rating Decision, dated 5 January 2018, shows service-connection for sleep apnea was granted with an evaluation of 50 percent effective 21 November 2013.

31. The applicant previously applied to the ABCMR in February 2018, requesting, in effect, correction to his DA Form 199 to reflect the following additional medical conditions as unfitting:

- tinnitus
- right thumb fracture
- sleep apnea
- erectile dysfunction

32. On 13 December 2021, the Board denied the applicant's request, determining the evidence presented does not demonstrate the existence of a probable error or injustice; therefore, determining the overall merits of his case are insufficient as a basis for correction of his records.

33. 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.

34. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

35. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. 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.

36. 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 again applying to the ABCMR requesting that his VA service-connected disabilities of sleep apnea be determined additional unfitting condition with a subsequent increase in his military disability rating. He states:

> "I'm requesting my record show me as service connected for sleep apnea. The sleep apnea was discovered and rated by the VA during a compensation & pension exam and linked to when I was on active duty. I was unfit to deploy with this issue. It's no possible for a Field Artillery soldier to use a CPAP during deployment or training exercises. The sleep apnea wasn't evaluated when I was med boarded out of the service so I need to get it added now.
>
> According to DoD Instruction 6490.07 & 1332.38, DoD Directive 1332.38, and AR 40-501 "any medical condition that requires durable medical equipment must have electrical power in theater". As a Field Artillery Officer, I regularly deployed and trained in the field. Having electrical power in the field isn't readily available which would cause serious negative effects on my health."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the United States Army Installation Management Command show the applicant was permanently retired for physical disability with a 30% disability rating on 25 December 2002 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990).

d. Submitted medical documentation shows the applicant presented for snoring in December 1991. While he had a history of snoring, it had been worse over the preceding 2 months. This was treated with a decongesting nasal spray. The condition failed to improve and he was evaluated by otolaryngology. This evaluation revealed a "deviated septum to the right with a spur along the right floor and a large spur posteriorly on the left side" for which a septoplasty was performed in August 1992.

e. He again presented for evaluation of snoring in March 1995. He was evaluated by Otolaryngology on 27 July 2000. The surgeon concluded the applicant had an "Obstructive sleep pattern, secondary to hypertrophic soft palate and uvula," and recommended surgery for same:

> "DIAGNOSIS: 1. Obstructive sleep pattern, secondary to hypertrophic soft palate and uvula.
>
> 2. Nasal airway obstruction, secondary to a deviated septum and hypertrophic turbinates, on a patient who has previously had at least a septoplasty and perhaps partial rhinoplasty.

> MANAGEMENT: This patient is in need of at least a uvulopalatopharyngoplasty [UPPP]. I think opening his nasal airway would also provide him with significant nasal relief. He is unwilling to consider C-PAP.
>
> We will proceed to schedule him for a UPPP and possible septoplasty/PRIT [partial resection of inferior turbinates]. The risks of the procedure, as well as the postoperative course, is outlined to him today."

f. An uvulopalatopharyngoplasty and revision septoplasty were performed on 19 September 2000.

g. September 2013 documentation from a civilian provider shows he had been diagnosed with sleep apnea for which it appears he began treatment with CPAP at that time: The clinical summary for the encounter does not mention treatment with CPAP prior to this encounter.

h. Paragraph 3-41c of AR 40-501, Standards of Medical Fitness (30 September 2002) lists the circumstances under which sleep apnea fails medial retention standards and is a cause for referral to a medical evaluation board:

> "c. Sleep apnea. Obstructive sleep apnea [OSA] or sleep-disordered breathing that causes daytime hypersomnolence or snoring that interferes with the sleep of others and that cannot be corrected with medical therapy, surgery, or oral prosthesis. The diagnosis must be based upon a nocturnal polysomnogram and the evaluation of a pulmonologist, neurologist, or a provider with expertise in sleep medicine. A 12-month trial of therapy with nasal continuous positive air pressure may be attempted to assist in weight reduction or other interventions, during which time the individual will be profiled as T3. Long-term therapy with nasal continuous positive air pressure requires referral to an MEB.

i. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) 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 his or her office, grade, rank, or rating."

j. There is no medical evidence the applicant's sleep apnea failed the medical retention standard(s) in paragraph 3-41c of AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there

is no evidence this condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

k. JLV shows the applicant was first service connected for sleep apnea (50%) effective 21 November 2013. The rating decision states the condition was service-connected based on the surgeries he had while in service and the effective date based on his claims:

> "At the July 2016 [sic], the examiner opined that your current sleep apnea is directly related to your symptoms and treatment surrounding snoring during active duty. Service connection for sleep apnea has been established as directly related to military service.
>
> An evaluation of 50 percent is assigned from November 21, 2013, the date of your claim since you have continuously pursued entitlement from that date.
>
> We have assigned a 50 percent evaluation for your sleep apnea based on:
>
> • Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine"

l. His history of sleep apnea as noted on his Sleep Apnea Disability Benefits Questionnaire: "Severe OSA 2013 with desaturation to 77%."

m. The 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. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the Agency Medical Advisor that neither an increase in his military disability rating nor a referral of his case back 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 relief is not warranted.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not demonstrate that the applicant failed medical retention standards for sleep apnea prior to his discharge (eventually changed to retirement for disability). The

Board determined the evidence does not support correction of the record to show he had an additional unfitting condition prior to his retirement.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210006433 on 13 December 2021.

3/20/2024

X [redacted]

CHAIRPERSON

[redacted]

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, 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 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; 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.

2. 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.

3. 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.

4. Department of Defense Instruction (DODI) 6040.44 (Physical Disability Board of Review (PDBR)) designates the Secretary of the Air Force as the lead agent for the establishment, operation and management of the PDBR for the DOD.

a. The PDBR reassesses the accuracy and fairness of the combined disability ratings assigned former service members who were separated, with a combined disability rating of 20 PERCENT or less during the period beginning on 11 September 2001 and ending on 31 December 2009, due to unfitness for continued military service, resulting from a physical disability.

b. The PDBR may, at the request of an eligible member, review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

c. As a result of a request for PDBR review, the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary of the Military Department concerned.

5. 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.

6. 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.

7. 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//