

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230006057

APPLICANT REQUESTS: in effect:

- honorable physical disability separation with severance pay or physical disability retirement from the Army National Guard (ARNG) in lieu of general discharge
- corrections of her National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) to show:
 - Military Occupational Specialty (MOS) 88M (Motor Transport Operator)
 - Army Appreciation Medal
 - rank/grade of specialist (SPC)/E-4

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Standard Form 600 (Chronological Record of Medical Care), dated 12 April 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 9 October 2008
- Partial NGB Form 22-5 (Addendum to DD Form 4 (Enlistment/Reenlistment Document) – Approval and Acceptance by Service Representative for Interstate Transfer in the ARNG), dated 2 April 2009
- Medical Records
- Partial DA Form 2-1 (Personnel Qualification Record – Part II)
- Two NGB Forms 23B (ARNG Retirement Points Statement)
- ARNG General Discharge Certificate, dated 15 July 2013
- NGB Form 22, for the period ending 15 July 2013
- U.S. Army Human Resources Command (HRC) Orders D-07-514268, dated 21 July 2015
- Department of Veterans Affairs (VA) Form 21-07819 (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault), dated 24 November 2022
- USAJOBS Resume
- Certificates/Diplomas

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. She wants her records corrected to show an honorable discharge, MOS 88M and 88M military education after interstate transfer to Michigan, Army Appreciation Medal, rank/grade of SPC/E-4.
 - b. She also wants disability discharge/separation for her service-related disabilities, including constant neck and back pain, scoliosis, migraines, cracked skull, Costochondral joints, difficulty breathing, hairline fracture of right hip, fractured right foot, hearing loss/tinnitus, PTSD, and sexual trauma twice.
3. The applicant's request to change the character of service received upon discharge from the ARNG and her request for administrative corrections to her NGB Form 22 are premature for the ABCMR and should be directed to the state which issued the NGB Form 22. That portion of the applicant's request related to character of service and administrative corrections to her NGB 22 should be submitted directly to the state of issuance. These portions of her request will not be considered by this Board and will not be discussed further in this record of proceedings. The Board will consider the portion of her request related to physical disability.
4. A DD Form 2808 (Report of Medical Examination), dated 20 July 2007, shows the applicant underwent medical examination on the date of the form for the purpose of ARNG enlistment and was found qualified for service with a physical profile rating of "1" in all factors.
5. The applicant enlisted in the Alaska Army National Guard (AKARNG) on 20 July 2007.
6. Anchorage Military Entrance Processing Station Orders 7020407, dated 23 July 2007, ordered the applicant to initial active duty for training (IADT) with a report date to Fort Jackson, SC, of 3 January 2008 and a follow-on report date to Fort Lee, VA, for Advanced Individual Training (AIT) on 18 March 2008.
7. The applicant's DD Form 214 shows she entered active duty training on 5 March 2008.

8. A Standard Form 600 shows the following:

a. The applicant was seen at McWethy Troop Medical Clinic (TMC), Brooke Army Medical Center (BAMC) on 12 April 2008, while in BCT, due to sternal chest pain and tenderness with questionable deformity at the manubrium. A posterior and lateral chest x-ray was taken. The impression shows a normal study. No manubrial abnormality. Normal cardio mediastinal silhouette. Clear, normally inflated lungs. No pleural abnormalities.

b. The applicant was again seen on 30 April 2008 while in training with a 5-week anterior chest wall pain, not improved with various treatment modalities/medications. On exam, focal tenderness at manubrium/sternal junction questionable mass effect which is the focal area of pain. The conclusion shows normal computerized tomography (CT) of upper chest emphasizing the sternum at the location of her discomfort.

9. The applicant's DD Form 214 shows she was honorably released from active duty training on 9 October 2008, due to completion of required active service, and transferred back to her ARNG unit. She was awarded the MOS 92Y (Unit Supply Specialist) and credited with 7 months and 5 days of net active service.

10. An NGB Form 22-5 shows on 2 April 2009, the applicant voluntarily completed an interstate transfer to the State of Michigan for the period remaining on her current enlistment with an expiration term of service (ETS) date of 19 July 2013.

11. A partial medical record of unknown source, signed by Dr. H____ E____, and dated 8 September 2011, shows the following:

a. The applicant reported relief of her pain on reexamination. Later on in her stay, when he entered, two friends were in the room and the applicant was playing on her phone, not in tears. Her chest x-ray was normal; however the blood work revealed an abnormal D-Dimer and a chest CT was ordered to rule out a clot. The chest CT was normal.

b. Her urinalysis showed elevated leuko, elevated blood urine, and elevated WBC, with trace bacteria, consistent with a urinary tract infection (UTI).

c. He discharged the applicant to home in good condition with prescriptions for Bactrim and Percocet. He instructed her to follow up with the Army TMC and to return to the emergency department for any uncontrollable pain, worsening shortness of breath, syncope, or any new worsening concerns. She was then currently on orders for active duty ARNG and could get care at the TMC. Given her negative exam results, he felt her right upper chest pain was either secondary to pleurisy or chest wall pain.

d. The final impressions show diagnoses of pleurisy (inflammation of the pleura, the membrane lining the outside of the lungs and the inside of the chest cavity) and UTI. The applicant was discharged to home.

12. A second NGB Form 22-5 shows On 6 June 2012, the applicant voluntarily completed an interstate transfer to the State of Alaska for the period remaining on her current enlistment with an ETS date of 19 July 2013.

13. A partial medical record of unknown source, signed by Dr. C____ M____ and dated 13 June 2012, shows the following:

a. The applicant underwent elbow x-ray that appeared normal with no fat pad and no evidence of healing or elbow fracture.

b. The applicant had long term pain in the right radial head area. It is possible she may have an occult fracture, but there are no signs of healing or a fracture on her x-ray. Given the persistent pain, she will be referred to Dr. A____ R____ and prescribed Tramadol for pain.

c. The final impression shows the diagnosis that is still under consideration is possible radial head fracture and the final diagnosis is persistent elbow pain.

14. A DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows on 27 September 2012, the applicant voluntarily extended her current enlistment agreement in the AKARNG, dated 20 July 2007, with an original ETS of 19 July 2013, by 1 year, rendering her new ETS as 19 July 2014.

15. 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.

16. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) and she has not provided one.

17. The applicant's available service records do not show:

- she was issued a permanent physical profile rating

- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by her MOS and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)
- she was diagnosed with a condition that failed retention standards and/or was unfitting

18. A review of the HRC Soldier Management System (SMS) shows the following:

- the date of the applicant's last physical was 1 December 2012
- her PULHES was 111111
- she had no limitations in all factors
- her MRCC (Medical readiness classification code) was 4 (Medically non-deployable) with a listed reason that she was not medically ready; status was unknown; commander determines deployability

19. A DA Form 4187 (Personnel Action) shows the applicant was reduced in rank/grade to private first class (PFC)/E-3) effective 15 April 2013, under the provisions of Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions).

20. The complete facts and circumstances surrounding the applicant's discharge from the ARNG are unknown, as her discharge packet is not in her available records for review.

21. Alaska ARNG Element, Joint Forces Headquarters Orders 291-009, dated 18 October 2013, discharged the applicant from the ARNG and assigned her to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve (IRR)), effective 15 July 2013, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-35j, due to continuous and willful absence. Her service was characterized as general.

22. The applicant's NGB Form 22 shows she was given a general discharge under honorable conditions on 15 July 2013, under the provisions of National Guard Regulation 600-200, paragraph 6-35j, due to unsatisfactory participation. She was credited with 5 years, 11 months, and 26 days of net service.

23. HRC Orders D-07-514268, dated 21 July 2015, honorably discharged the applicant from the USAR Control Group (Reinforcement) effective 21 July 2015.

24. The applicant completed a VA Form 21-07819, dated 24 November 2022, which shows the following:

a. She provided a statement in support of a claim for service-connection for PTSD secondary to personal assault. The form shows the applicant indicated she was sodomized by a Soldier, J____ F____, from her unit in Wyoming, Michigan. As she was homeless, he offered his couch for her to sleep on. She woke up to him sodomizing her after she was drugged unconscious. She reported it to a higher up named Sergeant (SGT) J____ D____, the unit supply sergeant and he allowed her to sleep in an office in the armory and she was placed on full time Active Duty for Special Work (ADSW) orders. She focused on work for a couple months until she quickly initiated an interstate transfer back to Alaska.

b. She provided a statement indicating she was assaulted by her father and his girlfriend on 18 August 2012, tackling her and pressing her throat with a forearm. She told her company commander and they moved her into the barracks. To this day she still has problems properly swallowing and her neck is pushing on her windpipe.

c. She provided a statement indicating she was raped by J____ B____ C____, 2 weeks after a very traumatic birth experience where she nearly ruptured her cervix and bled to death. J____ B____ C____ was dishonorably discharged from the Army on unrelated circumstances prior to meeting her. She developed Pelvic Inflammatory Disease (PID) and adenomyosis after she was raped. He also passed sexually transmitted diseases and chlamydia on to her while she was pregnant.

d. She also listed the following conditions, how incurred, and dates on the form:

- adenomyosis, sexual assault trauma, sodomized by J____ F____, September 2011
- irritable bowel syndrome, sexual assault trauma, sodomized by J____ F____, September 2011
- hemorrhoids, sexual assault trauma, sodomized by J____ F____, September 2011
- carpal tunnel syndrome, overuse AIT, June 2008
- osteoarthritis, overuse AIT, June 2008
- traumatic brain injury (TBI) and dyslexia, vehicular accident, ADSW for recruiting and retention, September 2007
- hypertension, PTSD and military sexual trauma (MST), September 2011
- asthma, sports induced AIT, October 2008

25. A Medical Examination document of unknown source, dated 14 January 2023, shows the applicant completed the medical history questions indicating the following:

a. She was involved in a vehicular accident in September 2007, resulting in neck and back pain, headaches/migraines, difficulty breathing and swallowing, with her neck pushing on her trachea. She also suffers from sharp chest pain, tinnitus, and PTSD.

She was treated for these conditions with massage, chiropractic care, pain medication, diet change, hot/cold hydrotherapy, massage, yoga.

b. These conditions impact her ability to perform occupational functioning, by limiting the activities of sitting, breathing, lifting, twisting, bending, eating, swallowing.

26. In the adjudication of this case, the U.S. Army Criminal Investigation Division (CID) searched for sanitized copies of law enforcement reports pertaining to the sexual assault of the applicant. A 21 August 2023 CID memorandum shows a search of the Army criminal file indexes utilizing the information provided by the applicant revealed no sexual assault records pertaining to the applicant.

27. 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.

28. 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.

29. 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.

30. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting a discharge upgrade and, in essence, a referral to the Disability Evaluation System (DES). On her DD form 149, she notes that PTSD, TBI, and Sexual Assault / Harassment are related to her requests.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The National Guard Report of Separation and Record of Service (NBG Form 22) for the period of service under consideration shows she enlisted in the Army National Guard on 20 July 2007 and was discharged from the Alaska Army National Guard (AKARNG) on 15 July 2013 under the separation authority provided by paragraph 6-35j of NGR 635-200, Enlisted Personnel Management (31 July 2009): Unsatisfactory Participation. It shows she has 2 years, 8 months, and 8 days of total service for retired pay.

d. No probative medical evidence was submitted with the application. The EMR shows the applicant was treated for costochondritis, rhinitis, and allergies while in initial entry training from 5 March 2008 thru 9 October 2008.

e. She completed a Periodic Health Assessment (PHA) on 1 December 2012. It is noted she had sustained a high right ankle sprain in the past year and was now "doing physical training and tolerating runs," and that she had a history of asthma but was not using her inhaler. Her behavioral health screening was negative for behavioral health concerns/issues. The provider declared her fit for duty and deployable to an austere environment.

f. The one VA encounter in JLV is a 20 September 2023 administrative note stating that because she had failed to respond to phone calls and a letter to allow for the scheduling of appointments, her VA Form 21-2507 (Report of General Information, used to collect information that is relevant to the VA claims process) was being canceled and returned to the Veterans Benefits Administration.

g. There are no duty limiting physical profiles or other probative evidence indicating the applicant had a permanent service incurred medical condition that failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her voluntary discharge; or which prevented her from attending inactive duty for training and/or maintaining contact with her chain of command prior to her voluntary discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims sexual assault / harassment

(2) Did the condition exist or experience occur during military service? Applicant claims the sexual assault / harassment occurred while she was in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No.

h. There was no probative evidence submitted, found in AHLTA or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As there is an association between MST and avoidant behaviors, there is a nexus between her experience of MST and her unsatisfactory performance.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board reviewed and concurred with the medical advisor's review finding no probative evidence was submitted. The Board determined there was no error or injustice in the applicant's separation proceedings.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[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, 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. 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, 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.

3. 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 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 (Disability 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.

4. 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.

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

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

6. 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.

7. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign, utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 6-35j in effect at the time, provides for the separation of Soldiers for unsatisfactory participation.

8. 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.

9. 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.

10. 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.

11. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//