

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20230006259

APPLICANT REQUESTS: reconsideration of his previous requests:

- physical disability retirement in lieu of his transfer to the Retired Reserve awaiting pay at age 60
- personal appearance before the Board (via video/phone)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Army Board for Corrections of Military Records (ABCMR) Docket Number AR20210015607, dated 19 August 2022, with attachments
- DA Form 3349 (Physical Profile Record)
- Medical Records

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 AR20210015607 on 19 August 2022.

2. The applicant states, in effect, after he reviewed the ABCMR decision of his previous application, he noticed some valuable information was missing.

a. He received physical therapy care at a military treatment facility in Germany, during his deployment in 2003 - 2004, that was not mentioned. He was issued a permanent profile during his service in Kuwait with limitations on both shoulders, and he received physical therapy for his leg, these were also not mentioned. He was also on quarters for his diverticulitis that is at the highest secular rating of 30 percent (%). As an Army Reservist, that process was too complicated for him, as he had no liaison for problems like these.

b. He is asking, how did the Board not see any documents that show he was allowed to continue his service after the injury that occurred while he was in college,

over 10 years ago. In addition, he suffered multiple injuries while on active duty and while deployed. He has provided proof of injuries, illnesses, and treatments. He is a retired Army Reservist; he served honorably and faithfully and asks for the Boards decision to be reviewed.

c. The applicant box-checked "PTSD (Post-Traumatic Stress Disorder)" on his DD Form 149.

3. The applicant provides a DA Form 3349, as an additional document, not previously considered by the Board. This document provides the following information, not discussed in the prior case:

- he was issued a permanent profile on 27 September 2017
- due to a right shoulder injury/pain
- a 2 in "U" upper extremities indicates some activity limitations are warranted
- he should perform injury specific exercises as prescribed by medical personnel during physical training
- he was authorized to wear medically prescribed sling/tape
- he did not present any physical readiness restrictions
- he could not preform the push up event for the army physical fitness test (APFT)
- he could do push-ups, pull-ups, dips for physical training to pain and tolerance
- he may preform push-ups if needed

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

a. He enlisted in the U.S. Army Reserve on 9 January 1995, followed by multiple reenlistments.

b. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he served on active duty from 15 February 1995 to 30 June 1995, for completion of active duty training (ADT). He completed 4 months, and 14 days of active service.

c. DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was treated for a meniscus injury to his right knee, on 9 September 2003. He was conducting company physical training (PT) at Landstuhl, Germany. He was running and his knee started to hurt. He was seen at the outpatient orthopedic clinic and was issued a temporary profile. The applicant was on active duty at the time of treatment. A Formal Line of Duty Investigation (LODI) was not required. The injury was considered to have been incurred in Line of Duty (LOD).

d. In a memorandum subject: Line of Duty Investigation – Injury, dated 31 March 2004, shows In Line of Duty was reviewed for completeness.

e. Medical Records [will be reviewed and discussed by the Army Review Boards Agency (ARBA) Medical and Behavioral Staff].

f. DD Form 214 shows he was ordered to active duty on 10 March 2003, in support of Operation Enduring Freedom (OEF). He was honorably released from active duty on 18 March 2004, and transferred to 94th Medical Command, Hospital Detachment. He completed 1 year, and 9 days of active service and 11 months and 11 days of foreign service.

g. On 12 February 2015, the applicant was issued a Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter). This notification shows the applicant completed required years of qualifying Reserve service and would be eligible for retired pay on application at age 60 in accordance with Title 10, U.S. Code, Chapter 1223.

h. DD Form 214 shows he was ordered to active duty on 9 March 2017, in support of Operation Inherent Resolve (OIR). He was honorably released from active duty on 6 March 2018, and transferred to 355th Medical Command Company, Medical Area Support. He completed 11 months, and 28 days of active service and 8 months and 29 days of foreign service. This document further shows in item 18 (Remarks):

- Service in Kuwait from 14 April 2017 to 29 April 2017
- Service in Iraq from 29 April 2017 to 29 June 2017
- Service in Kuwait from 28 September 2017 to 14 October 2017
- Service in Iraq from 14 October 2017 to 29 December 2018
- Service in Kuwait from 29 December 2018 to 12 January 2018

i. Orders 20-066-00019, dated 6 March 2020, show he was released from his current assignment and assigned to the Retired Reserve for completion of 20 or more years of qualifying service for retired pay at age 60 effective 6 April 2020.

5. In a prior ABCMR Docket Number AR20210015607, dated 19 August 2022, the applicant requested a physical disability retirement in lieu of his transfer to the retired reserve awaiting pay at age 60, and a personal appearance before the Board.

a. The Board carefully considered the applicants request, supporting documents, evidence in the records, and regulatory guidance. The Board considered the applicant's statement, the medical records, and the review and conclusions of the medical reviewing official. Based upon a preponderance of the evidence, the Board concurred with the medical reviewer's finding of insufficient evidence, the contested medical conditions failed to meet retention standards during his period of service.

b. The Board determined referral to Disability Evaluation System (DES) for consideration of a medical separation was not warranted. The evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case were insufficient as a basis for correction of the records of the individual concerned.

6. Due to the applicant's annotation of PTSD on the DD Form 149, his claim of injuries, and medical conditions he incurred while on active duty, the case is being forwarded to the Behavioral Health and Medical Staff at the ARBA.

7. 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, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations. The applicant is applying to the ABCMR requesting reconsideration or the ABCMR's prior denial of his request for a post non-regular retirement referral to the Disability Evaluation System (DES).

b. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published on 6 March 2020 by Headquarters, 81<sup>st</sup> Readiness Division (USAR) show the applicant was transferred to the Retired Reserve effective 6 April 2020 after having completed 20 or more years of qualifying service for retired pay at age 60. The applicant had received his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) five years earlier, on 12 February 2015.

c. This request was previously denied by the ABCMR on 19 August 2022 (AR20210015607). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

d. In his self-authored letter, the applicant states he was placed on a permanent physical profile for both shoulders and that he has a VA service-connected disability rating of 30% for diverticulosis and IBS (irritable bowel syndrome).

e. The Physical Profile Record (DA Form 33349-SG) submitted with the application shows the applicant was placed on a non-duty limiting permanent physical profile for "Shoulder Injury / Pain (Right)" (U2) effective 27 September 2017. The applicant was marked as capable of performing all the functional activities required of all Soldiers, including live in an austere environment. The profile simply prevented the applicant from having to perform the push-up event for his Army Physical Fitness Test (APFT).

f. The only other new evidence submitted is 79 pages of non-contemporaneous VA medical documentation from 2022 and is of no significant probative value.

g. The DES compensates disabilities when they cause or contribute to career termination. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary retirement. 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 his office, grade, rank, or rating prior to his voluntary retirement.

h. JLV shows he has been awarded multiple VA service-connected disability ratings, including a 30% rating for "Irritable Colon" effective 5 August 2021. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. It is the opinion of the ARBA Medical Advisor that referral to the DES is not warranted.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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. The evidence shows the applicant served in the USAR from 9 January 1995 until 6 April 2020. After competing at least 20 qualifying years of service and receiving his 20-Year

letter, he was transferred to the Retired Reserve, The Board found no error or injustice in his transfer to the Retired Reserve process, as he was fully qualified to do so. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical provider’s finding no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary retirement. 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 his office, grade, rank, or rating prior to his voluntary retirement. Therefore, the Board determined relief remains unwarranted.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210015607 on 19 August 2022.

[REDACTED]

[REDACTED]

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[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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 600-8-1 (Army Casualty and Memorial Affairs and Line of Duty Investigations), in effect at the time, covers Army casualty reporting, notification, survivor assistance, care, and disposition of remains of deceased personnel for whom the Army is responsible, and disposition of personal effects of deceased and missing personnel (peacetime and war). It also consolidates the policies and procedures for investigating the circumstances of the disease, injury, or death of Active Army, U.S. Army Reserve, and Army National Guard personnel. It sets forth the applicable standards, discusses the investigation process in detail, and implements the requirement to conduct a psychological investigation of the facts surrounding all suicides and attempted suicides of soldiers as directed by the Army's Suicide Prevention Plan.

a. Line of Duty Investigation, sets forth policies and procedures for investigating the circumstances of the disease, injury, or death of a service member. It provides standards and considerations used in determining line of duty (LD) status. LD findings of determinations must be supported by substantial evince and by greater weight of evidence than supports a different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of fact.

b. Reasons for conducting line of duty investigations:

- Extension of enlistment
- Longevity and retirement multiplier
- Forfeiture of pay
- Disability retirement and severance pay
- Compensation for disablement during training
- Benefits administered by the Veterans' Administration (VA)

c. Reasons for conducting formal line of duty investigations:

- Injury, disease, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence
- Injury or death involving the abuse of alcohol or other drugs
- Self-inflicted injuries or suicide
- Injury or death incurred while absent without leave (AWOL)
- Injury or death that occurs while an individual was enroute to final acceptance in the Army
- Death of a USAR or ARNG member while participating in authorized training or duty
- Injury or death of a USAR or ARNG member while traveling to or from authorized training or duty
- When a USAR or ARNG member serving on an active duty tour of 30 days or less is disabled due to disease
- In connection with an appeal of an unfavorable finding of abuse of alcohol or other drugs
- Other cases when requested or directed

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

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time



severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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

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

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

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

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

d. Permanent profiles. A profile is considered permanent unless a modifier of "T" (temporary) is added. A permanent profile may only be awarded or changed by the authority designated by Commanders of Army Military Treatment Facilities. If the profile is permanent, the profiling officer must assess if the Soldier meets the medical retention standards of this regulation, those Soldiers on active duty who do not meet the medical retention standards must be referred to an MEB. Permanent profiles may be amended at any time if clinically indicated and will automatically be reviewed at the time of a soldier's periodic examination. The soldier's commander may also request a review of a permanent profile.

e. Temporary profiles. Soldiers receiving medical or surgical care or recovering from illness, injury, or surgery, will be managed with temporary physical profiles until they reach the point in their evaluation, recovery, or rehabilitation where the profiling officer determines that MRDP has been achieved but no longer than 12 months. A temporary profile is given if the condition is considered temporary, the correction or treatment of the condition is medically advisable, and correction usually will result in a higher physical capacity. Soldiers on active duty and RC Soldiers not on active duty with a temporary profile will be medically evaluated at least once every 3 months at which time the profile may be extended for a maximum of 6 months from the initial profile start date by the profiling officer. Temporary profiles will specify an expiration date. If no date is specified, the profile will automatically expire at the end of 30 days from issuance of the profile. In no case will Soldiers carry a temporary profile that has been extended for more than 12 months.

f. A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

5. Title 38 USC (Veterans' Benefits), 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 (Veterans' Benefits), USC, 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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) in effect at the time, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. As such, this regulation implements the requirements of Title 10 (Armed Forces), United States Code, Chapter 61; DODI 1332.18, DODM 1332.18 (Volumes 1 through 3), and DOD policy memorandums to these issuances; and Army Directive 2012-22 as modified by DODI 1332.18.

a. Chapter 4 provides, Public Law 110-181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel. (See the notes to 10 USC 1171 for the Title XVI provisions.)

b. A Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the VA or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

c. The objectives of the DES are to:

(1) Maintain an effective and fit military organization with maximum use of available manpower.

(2) Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the LOD.

(3) Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

d. The DES begins for a Soldier when the Soldier is issued a permanent profile approved in accordance with the provisions of AR 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501 (see glossary). Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command's Medical Management Center before their referral into the DES.

e. The DES concludes for Soldiers as set forth below:

(1) For Soldiers determined by the MEB to meet medical retention standards and MAR2 did not refer the Soldier to the DES, the DES concludes the date the MEB returned the Soldier to duty. (If referral to MEB resulted from MAR2 evaluation, referral to the PEB may be mandatory.

(2) For Soldiers referred to the PEB and determined fit, the DES concludes as of the date of USAPDA's memorandum approving the finding of fit.

(3) For Soldiers referred to the DES under a Legacy Disability Evaluation System (LDES) process and determined unfit, the DES concludes on the date of the Soldier's separation or retirement for disability.

(4) For Soldiers referred to the DES under the IDDES process and determined unfit, the DES concludes on the date of the Soldier's notification of the VA's benefits decision. However, the Soldier's military status as a member of the Active Army or RC, as applicable, ends on the date of the Soldier's disability separation or retirement.

f. Chapter 5 addresses the standards for unfitness due to disability. A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation. In making a determination of unfitness, the following criteria may be included in the assessment:

(1) The medical condition represents a decided medical risk to the health of the Soldier or to the welfare of other Soldiers were the Soldier to continue on active duty or in an active Reserve status.

(2) The medical condition imposes unreasonable requirements on the Army to maintain or protect the Soldier.

(3) The Soldier's established duties during any remaining period of Reserve obligation.

(4) Conditions were the result of armed conflict or were caused by an instrumentality of war during a period of war.

(5) For cases in which the disposition is separate with disability severance pay whether the unfitting disabilities were incurred in a combat zone or were incurred during performance of duty in combat-related operations.

g. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

h. Combat related injuries are those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) Armed conflict. A SM may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists. Armed conflict may also include such situations as incidents involving a Soldier while interned as a prisoner-of-war or while detained against their will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under conditions simulating war. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne

operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

8. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//