

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230006315

APPLICANT REQUESTS:

- in effect, duty-related physical disability separation in lieu of non-duty related separation due to medical unfitness for retention
- in effect, approval of an in the Line of Duty (LOD) determination for her grass allergy
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- partial Department of Veterans Affairs (VA) Rating Decision, dated 21 April 1997
- U.S. Army Human Resources Command (AHRC) Orders T-01-600777, 28 January 2016
- AHRC Orders T-01-600777A01, 29 February 2016
- DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 21 December 2022
- email correspondence, from 22 December 2022 – 22 March 2023
- AHRC memorandum, 26 January 2023
- Headquarters, U.S. Army Physical Disability Agency (USAPDA) memorandum, 22 March 2023
- Retirement Points Self Service, Period Points Detail printout, 24 April 2023

FACTS:

1. The applicant states:

a. She is requesting correction of her records to reflect her discharge is in the LOD, service-connected, with the proper medical board process completed. The PEB currently states that sending her case back to AHRC for a second time is unwarranted. They need to have the AHRC deny claims of duty-relation just to have the Soldier go through the non-duty related PEB process and formal non-duty related PEB to show duty relation. All of this is done just to have AHRC again deny duty relation,

disregarding the findings of the esteemed medical providers. This process dragged on for about 2 months.

b. Her grass allergy in question occurred while she was in an active duty status during Basic Officer Leader Course (BOLC) and continued during battle assemblies until she sought medical treatment. An LOD was filled out at BOLC then given to her first unit to file. Because of her first unit not filing the LOD in a timely manner, it was not completed. Even with her temporary physical profiles, her next unit would not file the paperwork. The formal non-duty related PEB found it duty-related due to the timeline. What else could she do when she did all that could be done according to the process?

2. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant enlisted in the U.S. Air Force on 22 May 1996 and was given an uncharacterized entry-level discharge after 29 days of active service on 20 June 1996.

3. The applicant provided a partial VA Rating Decision, dated 21 April 1997, which shows service connection for costochondritis (chest pain) remained denied.

4. A DD Form 2807-1 (Report of Medical History) dated 23 July 2014, shows the applicant provided her medical history in conjunction with a medical examination for the purpose of U.S. Army Reserve (USAR) commission. She indicated she had no allergies, but marked yes to having had bronchitis and underwent a tonsillectomy and adenoidectomy (T&A) in May 2003.

5. 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.

6. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 23 July 2014 for the purpose of USAR commission where she was found qualified for service with a PULHES of 1 in all factors.

7. On 2 March 2015, the applicant was appointed a Reserve Commissioned Officer of the Army.

8. AHRC Orders T-01-600777, dated 28 January 2016, ordered the applicant to active duty for training (ADT) for a period of 26 days, for the purpose of attendance at the

Army Medical Department (AMEDD) BOLC, at Fort Sam Houston, TX, effective 16 February 2016.

9. AHRC Orders T-01-600777A01, dated 29 February 2016, amended above referenced AMEDD BOLC orders to reflect the additional instructions of no release before 1400 hours on the last day of duty.

10. A DA Form 1059 (Service School Academic Evaluation Report), dated 12 March 2016, shows the applicant attended and successfully completed Reserve Component AMEDD BOLC class from 17 February 2016 through 12 March 2016, to include the field training exercise (FTX).

11. 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), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), non-duty related referral memorandum, and supporting medical documentation are not in her available records for review and have not been provided by the applicant.

12. A DA Form 199-1 shows:

a. A formal PEB convened on 21 December 2022, where the applicant was found physically unfit and that her disposition be referral for case disposition under Reserve Component regulations.

b. Her unfitting condition is severe grass allergy (non-compensable); non-duty related. The applicant first sought treatment for this condition on 1 September 2020, at Walter Reed National Military Medical Center in Bethesda, MD. The condition onset was insidious with no contributing mechanism of injury or trauma. The applicant is taking different medications and oral immunotherapy. The condition is not compensable because at the time she was diagnosed with this condition, she was not in an active duty status for more than 30 days or entitled to base pay, and there is no LOD investigation for this condition. Additionally, there is no evidence within her available case file that indicates that military service has aggravated the condition.

c. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the applicant is unfit because the DA Form 3349, Section 4, functional activity limitations associated with this condition make her unable to reasonably perform required duties. Among the documents used to arrive at this determination is the non-duty related referral memorandum, dated 7 January 2022, DA Form 7652, DA Form 3349, and medical documentation.

d. During the formal PEB, the applicant contended her severe grass allergy (MEB diagnosis 1) should be found in the LOD. The PEB has no LOD authority for Army Regulation 600-8-4 (LOD Policy, Procedures, and Investigations) determinations; therefore, the PEB cannot make a duty-related determination of her unfitting medical condition. The case has been adjudicated assuming the decision is valid. Should an unfavorable LOD determination result, the applicant will not be eligible for entitlement to benefits under the Army Disability Evaluation System (DES). Her case will be held in abeyance until the LOD decision is resolved. The case was adjudicated based upon a review of the objective evidence of record, including the applicant's testimony and exhibits provided during the formal PEB proceedings and considering the requirements for reasonable performance of duties required by rank and military specialty.

13. Email correspondence from the Joint Base San Antonio PEB dated 22 December 2022, shows the applicant's case was temporarily placed in abeyance pending the AHRC LOD determination.

14. A AHRC memorandum, dated 26 January 2023, provided an LOD determination and shows:

a. The AHRC received a request from the Joint Base San Antonio non-duty related PEB for an LOD determination pertaining to the applicant's severe grass allergy.

b. After a thorough review, and following the guidance in Army Regulation 600-8-4, which states: "Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion," the applicant's severe grass allergy was not incurred or aggravated by military service. The LOD determination is Not in the LOD – Not Due to Own misconduct and the PEB shall continue processing this claim as non-duty related.

c. The applicant has a longstanding history of allergic rhinitis and has been diagnosed with a severe grass allergy that precludes performance of duty in the field and austere environment. She has been unable to tolerate immunotherapy due to side effects and started sublingual immunotherapy without documented symptom resolution. She has been on temporary profile for extended periods of time related to environmental allergies and her treating physician has opined she is unable to function in an austere environment secondary to her condition, as well as no participating in activities that would entail exposure to grasses. The applicant may not have known she had allergies to grass prior to coming on active duty, but there is nothing the Army did to aggravate or cause this condition.

15. Further email correspondence from the USAPDA dated 10 March 2023, shows the AHRC LOD determination was provided and the applicant's signature, election, and/or appeal (if applicable) on the DA Form 199-1 was needed to enable continued

processing of her non-duty related case. Additional email correspondence dated 17 March 2023, shows the applicant's failure to elect and that the case would be forwarded for final processing.

16. A USAPDA memorandum to The Adjutant General of Maryland, 5th Regiment Armory, dated 22 March 2023, attached the applicant's PEB action for disposition. The PEB determined she is unfit for duty.

17. The DA Form 199-1 further shows:

- a. Section X (Soldier's Election) shows failure to elect.
- b. The formal PEB was approved for the Secretary of the Army on 22 March 2023.

18. Department of the Army Orders 0004693358.00, dated 10 May 2023, honorably discharged the applicant from the USAR effective 10 June 2023 with an assignment loss reason code of MG (physical or mental condition failing to meet medical retention standards). The applicable Army Regulation and chapter are not cited in the orders.

19. The applicant's DA Form 5016 (Retirement Accounting Statement), dated 11 June 2023, shows the applicant completed 8 years, 3 months, and 10 days of qualifying service for retirement.

20. In the adjudication of this case, an advisory opinion was obtained from AHRC on 17 October 2023, which shows:

- a. The Army Board for Correction of Military Records (ABCMR) requested AHRC provide an advisory opinion regarding an application to overturn an LOD determination from Not in the LOD – Not Due to Own Misconduct to in the LOD for the applicant's severe grass allergy.

- b. AHRC previously opined on 26 January 2023 to the Joint Base San Antonio non-duty related PEB for the applicant's diagnosis. AHRC determined by a preponderance of the evidence that "[The applicant] may not have known she had allergies to grass prior to coming on active duty, but there is nothing the Army did to aggravate or cause this condition."

- c. In response to the ABCMR request for advisory opinion, AHRC received a medical opinion on 17 October 2023. This medical opinion concluded the applicant's allergy condition is unique to her and despite standard of care treatment and avoiding exposure to outdoor training since 2019, her condition has progressed. This is not atypical, as the immune system changes over time. However, if the claim is training outdoors has aggravated the condition, it is not supported. Per the applicant's report

dated 13 December 2022, her condition has worsened since 2019, with that exposure, grasses omitted due to no training outdoors. Therefore, there is no preponderance of evidence to support aggravation of this allergy condition beyond its natural course.

21. On 24 October 2023, the applicant was provided a copy of the AHRC advisory opinion and given an opportunity to submit comments, but she did not respond.

22. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Armed Forces Health Longitudinal Technology Application (AHLTA), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). Essentially, the applicant requests for her grass allergy condition to be changed to duty related and then to be referred for medical board processing.

2. The ABCMR ROP provides a detailed summary of the applicant's record and circumstance surrounding her case. The applicant was a member of the Air Force 19960522 to 19960620 with MOS Basic Airman.

3. Medical records and pertinent related to Grass Allergy condition onset.

a. 23Jul2014 Report of Medical History. A history of bronchitis was noted. Sinusitis and hay fever were denied. She had undergone tonsillectomy and adenoidectomy surgery in May 2003.

b. 07Mar2016 Camp Bullis, TX. The applicant was in the Basic Officer Leader Course (BOLC). She was seen for 2 different problems. One complaint was noted as "chronic rhinitis which was exacerbated by being in the field the past 2 weeks". She reported good results with antihistamines. Her current medications were listed as Zyrtec 10mg daily and Sudafed as needed, and she reported being compliant with her medication. The HEENT (head, eyes, ears, nose, and throat) exam was "unremarkable"—the nasal mucosa appeared normal. There was no nasal discharge, swelling, redness or tenderness. Diagnosis: Other Seasonal Allergic Rhinitis. The plan included instruction to take medication as directed, return as needed, etc.

c. 19Jan2017 Internal Medicine Clinic Walter Reed NMMC. 40yo female with history of seasonal allergies here for episodes of allergic reaction characterized by eye swelling, skin pruritis, and small papular lesions on skin. Symptoms had been going on for about 6 months since she moved from Southeastern Virginia. Etiology was unknown although seafood, nuts or other etiology were under consideration. She reported having been diagnosed with season allergies when she was in training in San Antonio—she

was not taking Zyrtec and Flonase daily anymore. She says she has also had chronic postnasal drip, cough.

- d. 23Jan2017 Allergy Clinic WRNMMC Allergy Clinic. The applicant was referred for evaluation of allergy symptoms that yielded 3 diagnoses: Ocular Pain, Left Eye (etiology unknown); Allergy to Other Foods (mollusks, shrimp and cashews were under consideration); and Allergic Rhinitis, Unspecified. The Allergic Rhinitis, Unspecified condition was described as a history of itchy watery eyes, sneezing and rhinorrhea that was worse in spring and winter. She denied perennial symptoms. Symptoms were worse in TX during BOLC. The allergist planned allergy testing to clarify the allergen.
- e. 30Jan2017 WRNMMC Aeroallergen Skin Test Report. The allergist noted the applicant was experiencing allergic rhinitis due to pollen exposure. The skin test yielded a positive result to grasses only. The plan was to start SCIT (*subcutaneous immunotherapy*) to desensitize the allergic response. SCIT is a type of AIT (allergy immunotherapy). There would be 3-6 months of buildup, followed by 3-5 years of maintenance therapy. She was advised to anticipate the need for medical therapy for at least another 12 months because most patients don't see symptomatic improvement until 6-12 months. The test results of the reaction to cashews and shrimp were unclear.
- f. 10Aug1017 Allergy Clinic WRNMMC. The applicant started AIT (or desensitization) for grass allergy.
- g. 19Sep2017 Commissioning Physical (Report of Medical Exam, DD Form 2808 and Report of Medical History, DD Form 2807). She was medically qualified for commissioning. Meds: Zyrtec, Flonase and Allegra. She was receiving care by allergist.
- h. 03Mar2020 Anaphylaxis and Systemic Reaction Record. It was indicated that the patient experienced diffuse itching with the last 2-3 shots during increased outdoor exposure to grass.
- i. 14Aug2020 Allergy Clinic WRNMMC. The applicant had to go to the emergency room after an acute reaction to the maintenance dose of "grasses" on 11Aug2020.
- j. 01Sep2020 WRNMMC. She was managing symptoms with Cetirizine, Allegra, and Flonase daily; and Albuterol prior to exercise outdoors or other significant outdoor exposure. AIT was continued at monthly maintenance dose with plan to continue for 3-5 years.
- k. 18Sep2020 Allergy Clinic WRNMMC. She reported continued watery/itchy eyes whenever she was near grass. She didn't feel SCIT had been as effective at controlling her symptoms as she had hoped. She also developed these symptoms with changes in

temperature or humidity. Testing showed she was only sensitized to grasses. Avoidance of grass with PT indoors during peak grass seasons primarily between May-July, was recommended. She was still deemed worldwide deployable.

l. 03Mar2021 Internal Medicine Clinic WRNMMC. Applicant needed profile update. She had a known chronic history of grass allergy with reactive airway disease (severe exacerbation (January 2021) for which she was undergoing oral immunotherapy as well as taking numerous medications. Despite this, she could not exercise outdoors. Diagnosis: Other seasonal allergic rhinitis. Plan: Given the severity of her reported symptoms, she appeared to be non-worldwide deployable. She was given a temporary profile. Post consult with allergy and command, the condition may require a P3.

m. 13Dec2022 Allergy Clinic WRNMMC. The applicant was taking *Oralair*, a sublingual mixed pollens extract used to treat symptoms of allergies to the grass pollens. She had not tried exercising outdoors for the last several years, ~2019.

n. 21Dec2022 Formal PEB found Severe Grass Allergy unfitting for continued military service, and not duty related. Recommended disposition was referral for case disposition under RC regulations. The applicant did not concur with the PEB findings.

o. 26Jan2023 US Army Human Resources Command determined the applicant's allergic rhinitis was longstanding in that it was present prior to entering active duty and was not aggravated by her service. LOD Determination: Not in Line of Duty-Not Due to Own Misconduct.

4. JLV search showed the applicant has not been service connected by the VA for a disability. Review of records revealed the applicant had a positive family medical history of allergies: Sister (strawberry, chocolate, sugar) and brother (tomato). Record review also showed the applicant reported allergy type symptoms to multiple allergens: Cashews, shellfish and grass were among these. Based on records available for review, it appears Seasonal Allergic Rhinitis was diagnosed 07Mar2016 while the applicant was attending BOLC. At the time of the applicant's first presentation in March 2016, she was not on active orders for greater than 30 days (Orders T-01-600777, dated 28Jan2016). At the time she reported a history of "chronic rhinitis". Chronic in medicine generally implies duration of 3 to 12 months or longer. She was already taking Zyrtec and Sudafed for her symptoms. She began seeing allergy specialist in January 2017 who noted the applicant experienced allergic rhinitis due to pollen (a general term which can include grass, tree, weed and flower pollen). The 30Jan2017 skin testing revealed the applicant was sensitized to grass pollen allergen only. The test does not indicate *when* the applicant became sensitized to grass pollen. Sensitization begins with exposure to the allergen. It is unknown when the applicant became sensitized to grass pollen. Symptoms persisted despite AIT for grasses August 2017 through August 2021, and later sublingual therapy. Allergist noted she had mixed allergic/non-allergic rhinitis. The Severe Grass Allergy condition required limitations on training environment and was found to not meet retention standards of AR 40-501

chapter 3. The record did show that the applicant's Grass Allergy condition worsened while in service (required more medication to control symptoms); however, the medical record did not show evidence the condition had worsened beyond its natural course.

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 applicant served in the USAR as a commissioned officer from 2 March 2015 to 10 June 2023. She was discharged from the USAR for failing to meet medical retention standard. She contends that her "severe grass allergy" is duty related.
 - a. A formal PEB convened in December 2022, and found the applicant physically unfit and that her disposition be referral for case disposition under Reserve Component regulations, as her unfitting condition was deemed non-duty related and therefore non compensable. The PEB found no evidence this condition was incurred while on active duty or that her military service aggravated the condition. HRC thoroughly reviewed the non-duty related PEB for an LOD determination pertaining to the grass allergy, and after review, HRC determined her severe grass allergy was not incurred or aggravated by military service. The LOD determination is Not in the LOD – Not Due to Own Misconduct and the PEB should continue processing this claim as non-duty related. She has had a longstanding history of allergic rhinitis and has been diagnosed with a severe grass allergy that precludes performance of duty in the field and austere environment.

 - b. The Board reviewed and agreed with the HRC advisory official's finding that determined by a preponderance of the evidence that the applicant may not have known she had allergies to grass prior to coming on active duty, but there is nothing the Army did to aggravate or cause this condition. Her allergy condition is unique to her and despite standard of care treatment and avoiding exposure to outdoor training her condition has progressed. The claim that training outdoors has aggravated her condition is not supported. The Board also reviewed and agreed with the medical reviewer's finding that there was no preponderance of evidence to support aggravation of the applicant's allergy condition beyond its natural course.

BOARD VOTE:

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| : | : | : | 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.

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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 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.

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.

3. 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.

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

5. Army Regulation 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any 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 a fact.

6. 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//