

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230006459

APPLICANT REQUESTS: a physical disability discharge with an honorable characterization of service in lieu of his discharge for good of the service under other than honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- counsel's cover letter, 27 March 2023
- applicant's statement, undated
- Infantry Armor Noncommissioned Officer Basic Course (11B) Diploma, 20 December 1972
- Intermediate Leader Course Certificate of Training, 18 August 1972
- DA Forms 2166-4 (Enlisted Efficiency Report), ending 26 October 1973, 18 December 1973, 10 May 1974, 31 August 1974, 9 May 1975, and 24 September 1975
- DD Form 214 (Report of Separation from Active Duty), 19 February 1974
- Request for Discharge for the Good of the Service (approval memo and indorsements 1, 2 and 3), 29 June 1976
- DA Form 20 (Enlisted Qualification Record - Part II) - partial - page 3 only
- Medical Record (4 pages)
- NA Form 13038 (National Archives Certification of Military Service), 3 June 2011

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, in part:

a. He enlisted in the Army on 10 November 1971 and was honorably discharged on 19 February 1974.

b. His Enlisted Efficiency Report dated 26 October 1973 states he is an excellent Soldier with good initiative and supports the Equal Opportunity Program.

c. His Enlisted Efficiency Report dated 18 December 1973 states he performs as a very good Soldier which reflects greatly upon his job performance, he also shows a lot of respect to the EOT program.

d. He reenlisted and his Enlisted Efficiency Report dated 10 May 1974 states he is one of the most outstanding Soldiers within his ranks his dedication to duty as well as his professional attitude are far and beyond his rank. He displays a professional attitude toward his job and his superiors.

e. His Enlisted Efficiency Report dated 31 August 1974 states he is a very capable security guard and can be depended on to accomplish assigned missions in a professional manner.

f. His Enlisted Efficiency Report dated 9 May 1975 states he is one of the most outstanding individuals that ... had the pleasure of working with and consistently displays both leadership and performance in his duty ... he is a great asset to his unit and the Army.

g. In August 1975 he began to experience backaches, dizziness, severe headaches, weakness and loss of appetite. He went to sick call and told his symptoms were caused by the severe heat. He was ordered back to duty, but his symptoms continued and he continued to go to sick call. In October 1975 he was in the hospital for observation without results. About 10 days later he experienced a seizure. The doctors documented his condition as psychosomatic. He was harassed by his company for going to sick call so much and began to feel depressed and resentment towards the Army for inadequate treatment and failure to diagnosis his condition.

h. He lost interest in his appearance and uniform. He was prescribed antidepressants by Mental Hygiene. In January 1976 command changed and his new First Sergeant began to harass him, presumably because he is black, while white Soldiers were not. He resented the Army for being discriminated against.

i. His record was spotless until August 1975 when his unexplained backaches, dizziness, headaches and weakness started. He was placed on profile but was forced to engage in restricted activities. He was charged with disrespect for questioning his platoon sergeant.

j. He asked to see a doctor and his First Sergeant took him to the aid station but would not let him see a doctor. He left and went to the Battalion Commander to explain his problems. The commander called Mental Hygiene, but they could not see him at that

time. He didn't want to go back to his unit to face the harassment, so he went to the bus station and went home. The 7 months prior to him going absent without leave (AWOL) were like a prison; he felt depressed, miserable and sick, and emotionally broken.

k. He was diagnosed with mixed character and behavior disorder by the Army's doctors. They blamed his history and strong homosexual tendencies recommending him for discharge for unsuitability. He does not believe he received proper examination or care and was discriminated against by his command based on race.

3. The applicant enlisted in the Regular Army on 10 November 1971.

4. A DA Form 2627-1 (Record of Proceedings Under Article 15, UCMJ) shows on 5 May 1973 the applicant was reported to have been posted as sentinel on arms room guard, Combat Support Company, left his post before he was properly relieved and was found sleeping in the day room.

5. The applicant's Enlisted Efficiency Report covering September 1972 to August 1973 reflects he was an excellent Soldier with good initiative.

6. The applicant's Enlisted Efficiency Report covering June 1973 to November 1973 reflects he performs very good as a Soldier.

7. The applicant was honorably discharged on 19 February 1974 for immediate reenlistment on 20 February 1974. His DD Form 214 shows he was credited 2 years 3 months 10 days total active service.

8. The applicant underwent a medical examination on 1 May 1974 for permanent change of station. His Report of Medical Examination shows he was qualified for duty with the only defect in his distance vision.

9. The applicant's Enlisted Efficiency Report covering January 1974 to May 1974 reflects he was an outstanding Soldier.

10. The applicant's Enlisted Efficiency Report covering June 1974 to August 1974 reflects he is a very capable security guard and can be depended on to accomplish assigned missions.

11. A DA Form 3349 (Medical Condition - Physical Profile Record) shows the applicant was placed on a temporary profile of 11T3111 on 16 October 1974 for a partial tear, medial collateral ligament for a period of 60 days.

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.

12. A Record of Proceedings Under Article 15, UCMJ shows on 25 November 1974 the applicant conveyed a threat against Sergeant REB, a non-commissioned officer (NCO), using the words to the effect, "I will kick your [explicit]."

13. A Physical Profile Record shows the applicant was placed on a temporary profile of 11T3111 on 16 April 1975 for injured ligament (pulled) for a period of 30 days.

14. A Record of Proceedings Under Article 15, UCMJ shows on 29 April 1975 the applicant assaulted Sergeant ■ by striking him in the head and face with his fist.

15. The applicant's Enlisted Efficiency Report covering May 1974 to May 1975 reflects he is one of the most outstanding individuals to work with.

16. A memorandum, subjected Psychiatric Evaluation, dated 17 July 1975, shows the applicant was referred for psychiatric evaluation by his commander for separation from the military for homosexuality. He admitted a history of homosexual tendencies since age 12. It was recommended the applicant be separated from the military per Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) Chapter 13-5b(5).

17. A Record of Proceedings Under Article 15, UCMJ shows the applicant was AWOL from 0610 hours, 18 August 1975 to 0105 hours, 25 August 1975.

18. The applicant's Enlisted Efficiency Report covering June 1975 to August 1975 reflects he is one of the most capable and practical Soldiers in the platoon ... he performs all of his duties in an excellent to outstanding manner.

19. An undated Physical Profile Record shows the applicant was placed on a temporary profile of for right knee sprain set to expire on 12 October 1975.

20. A Record of Proceedings Under Article 15, UCMJ shows on 31 March 1976, the applicant willingly disobeyed orders to be at ease and to stand at ease from First Sergeant MFS, his superior NCO.

21. A 6 April 1976 memorandum, subjected: Addendum to Psychiatric Evaluation dated 17 July 1975 shows

a. The applicant had been seen intermittently by the Mental Hygiene Consultation Service from August 1975 until present. Medical efforts were coordinated to determine the etiology of numerous somatic complaints including anxiety, malaise and headaches. There has been no underlying medical condition found to explain these symptoms despite an extensive workup.

b. Psychiatric treatment, both counseling and chemically, has had minimal effects. He has persistent anxiety, hypochondriasis and has continued to function ineffectively in his unit.

c. His history and present complaints are consistent with a mixed character and behavior disorder.

d. Recommendation is he be discharged from service under AR 635-200, Chapter 13 for unsuitability based on his demonstrated poor potential for improvement.

22. The applicant was reported AWOL on 6 April 1976 and later dropped from the rolls on 4 May 1976. He was apprehended by civilian authorities and returned to military control on 21 May 1976.

23. The applicant's commanding officer preferred charges against him on 10 May 1976 for trail by special court-martial for being AWOL from 6 April 1976 to 20 May 1976.

24. On 7 June 1976, the applicant requested discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He indicated he understood the consequences of his request and such request was of his own free will and had not been subjected to any coercion whatsoever by any person. He acknowledged he was guilty of the charges against him and consulted with counsel prior to submitting this request. He understood that he may be discharged under other than honorable conditions. He elected to submit a statement on his own behalf. This statement recounts most of his contentions and is available to the Board for review.

25. The applicant underwent a separation medical examination on 14 June 1976. He was found qualified for separation.

26. The applicant's request for discharge for good of the service in lieu of trail was indorsed on 23 June 1976 and approved on 29 June 1976 by the Commanding General. The approval authority directed the applicant's discharge under the provisions of Army Regulation 635-200, chapter 10, his reduction to the lowest enlisted grade, and that he be issued an Undesirable Discharge Certificate.

27. The applicant was discharged on 7 July 1976 under other than honorable conditions in accordance with AR 635-200, Chapter 10. His DD Form 214 shows he

was credited a total of 4 years 6 months 6 days active service. He received a separation code of JFS and a reenlistment code of 4.

28. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

29. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 July 1976 discharge characterized as under other than honorable conditions. He states in part:

At some time beginning in August 1975, I began to experience backaches, dizziness, severe headaches, and weakness. I went to sick call describing my symptoms together with my loss of appetite. I was told by the doctor that my condition was caused by the severe heat. I was ordered back to duty but continued to experience these symptoms, was very weak and had no appetite.

I continued to go to sick call. Sometime in October 1975, the doctors put me in the hospital for observation but found nothing. Approximately 10-days after discharge from the hospital I experienced a seizure. The doctors I consistently saw began to document my condition as psychosomatic rather than as a physical condition. Because I went to sick call so much my company began to harass me, and I began to feel depressed and resentment toward the Army for what I believed to be inadequate treatment as I knew I felt lousy and couldn't understand why they couldn't diagnose my condition.

I lost all interest in my physical appearance and my uniform. I began seeing personnel at the Mental Hygiene and was prescribed antidepressants. Sometime in January 1975, our Unit received a new First Sergeant and Company Commander who immediately began shamming and harassing me which cause me to slide further and further into depression. My First Sergeant began to go out of his way to harass me, while other white soldiers, didn't receive the treatment I

received. I began to resent the Army because of the way I was being discriminated against, shamed, and harassed ...

I asked to see a doctor and my First Sargent took me to the aid station and wouldn't let me see a doctor. I left the orderly room and went to the Battalion Commander and explained to him my problems. The Battalion Commander called Mental Hygiene, but they couldn't see me at that time. I was in a predicament because I couldn't go back to my Unit and face the harassment from my First Sergeant, so I went to the bus station and went home.

Before going AWOL I had been in the Army for 4 years and 7 months, but the last 7 months had been like a prison to me. I was severely depressed, miserable, and physically sick. I was emotionally broken and couldn't take the harassment.

I was a model soldier until something happened. Now the doctors say I am depressed and diagnosed me with a mixed character and behavior disorder. If I do have such a disorder, I don't believe the Army's doctors understood the causes of my personality disorders and knew how to treat it. Instead, they blame my history, and strong homosexual tendencies recommending me for a discharge based upon unsuitability."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he re-entered the regular Army on 20 February 1974 and was discharged under other than honorable conditions on 7 July 1976 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 December 1975): Discharge for the Good of the Service – Conduct Triable by Court Martial. It lists two periods of lost time (52 days total) under 10 USC § 972 15-24 August 1975 and 6 April 1976 – 20 May 1976.

d. The applicant underwent a command directed psychiatric evaluation on 17 July 1975 "for separation from the military for homosexuality. He has an admitted history of homosexual tendencies since the age of 12." Following this evaluation, the psychiatrist recommended he be separated under paragraph 13-5b(5) of AR 638-5-200: Homosexuality.

e. The applicant was hospitalized from 18-29 October 1975 for an evaluation of numerous symptoms. His evaluation included several specialty consults which resulted in failing to find an etiology for his symptoms. The psychiatrist "felt the patient had a character and behavior disorder. He suggests that the basis of the patient's symptoms was probably psychosomatic. The patient unfortunately refused psychiatric treatment." He was discharged and directed to follow-up with psychiatry.

f. A military clinical encounter show he was evaluated on 5 March 1976 for a constellation of symptoms. The provider documented a normal examination and opined “No pathology to account for symptoms.”

The applicant received several Article 15’s:

MAY 1973 Leaving his post at as the arms room guard to go sleep in the day room.

NOV 1974 Verbally threatening a noncommissioned officer.

APR 1975 Assaulting a noncommissioned officer.

AUG 1975 Absent without leave (AWOL) 18 -25 August 1975.

MAR 1976 Failure to obey the lawful orders of a noncommissioned officer.

g. On 7 June 1976, the applicant voluntarily requested discharge for the good of the Service under provisions provided in chapter 10 of AR 635-200.

h. The applicant underwent a pre-separation medical examination on 14 June 1976. The provider documented a normal examination and determined the applicant was qualified for separation.

i. On 29 June 1976, the Commanding General of the 24th Infantry Division and Fort Steward directed the applicant be discharged with “an Undesirable Discharge Certificate (DD Form 258A).”

j. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA. JLV shows he has undergone several C&P examinations but remains a non-service-connected veteran with no service-connected disabilities and no diagnosed conditions on his patient medical problem list.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims a mental health condition.

(2) Did the condition exist or experience occur during military service? Applicant claims a mental health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: However, as per Liberal Consideration guidance, the applicant’s self-assertion alone merits consideration by the board.

It the applicant had a mitigating mental health condition, it would only partially mitigate his misconduct while in the Army. As these mitigating mental health conditions are associated with resistance to authority and avoidant behaviors, it/they would mitigate his periods of AWOL and failure to obey the lawful orders of a noncommissioned officer. However, it would not have affected his ability to differentiate right from wrong and adhere to the right and so could not mitigate his separate actions of verbally threatening a noncommissioned officer and his assault of a noncommissioned officer.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding no medical documentation was submitted by the applicant with his application. The opine noted due to the period of service under consideration, there are no encounters in AHLTA. JLV shows he has undergone several C&P examinations but remains a non-service. The Board found insufficient evidence that would mitigate the applicant's periods of AWOL and his ability to differentiate right from wrong. Based on the preponderance of evidence and the medical opine, the Board denied relief.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions of a physical disability discharge with an honorable characterization of service in lieu of his discharge for good of the service under other than honorable conditions.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

2/6/2024

X [REDACTED]

CHAIRPERSON

[REDACTED]

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

ADMINISTRATIVE NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 30 June 1995. As a result, amend his DD Form 214 by adding the Korea Defense Service Medal.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 635-200 (Personnel Separations - Enlisted Personnel) provides for separation of enlisted personnel prior to and upon expiration of term of service.

a. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge, may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is

authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Chapter 13 contains policy and outlines procedures for eliminating enlisted personnel found to be for unqualified for further military service because of unsatisfactory performance.

c. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

d. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

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

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

4. 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,

under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES 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, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the 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 are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments 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.

5. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

7. 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.

8. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

9. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//