

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20230006500

APPLICANT REQUESTS:

- an exception to policy to be allowed to graduate from the United States Military Academy
- a personal appearance before the Board

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum for Record, subject: Medical Separation, 27 October 2021
- Nine Character Letters
- Two Department of Veterans Affairs (VA) Letters
- Applicant Response Letter
- Medical Records

FACTS:

1. The applicant states:

a. He requests consideration of the of the circumstances he believes he was unfairly denied the opportunity to graduate from the United States Military Academy (USMA). He asks the Board to note that pursuant to the recommendation of the Superintendent, the applicant was separated from the USMA, and on 16 December 2021, he was discharged from the United States Army. He requests an exception to policy such that, although he may not be able to commission, he should still be able to graduate from the USMA. The applicant spent eight (8) full academic semesters at the USMA, and prior to that he had previously attended the United States Military Academy Preparatory School. He has satisfied all academic requirements for graduation from USMA other than the successful completion of the Indoor Obstacle Course Test (IOCT). However, through no fault of his own, despite more than five (5) years of hard work, he remains severely prejudiced in that he did not receive a diploma from USMA. In light of these extraordinary circumstances, he requests that this injustice be corrected, and he be allowed the opportunity to do so. The applicant's separation from USMA was not based

upon any misconduct or malfeasance of any sort. Instead, circumstances beyond his control, and through no fault of his own, brought about an atypical cadet experience.

b. During his time at USMA, he suffered three (3) significant injuries, and underwent two (2) surgeries. His first surgery, which occurred in April of 2019, was necessitated by an injury suffered in military movement including the Indoor Obstacle Course Test. Then, the Covid Pandemic caused the applicant prejudice since he had been scheduled to undergo a necessary MRI upon his anticipated return from spring break in 2020. Unfortunately, the Corps of Cadets did not return to USMA following that spring break, and the cadets completed that academic semester remotely. When the applicant was finally able to undergo this MRI in August of 2020, it revealed a torn labrum in his shoulder, attributable to an injury, which he had suffered in combatives class. Notably, despite the injury, he had successfully completed that class. He ultimately required a second surgery in September 2020. Following this second surgery, the applicant required a six (6) to nine (9) month recovery period. During this time, his shoulder remained too unstable to undertake the Indoor Obstacle Course Test. Recovery precluded from being able to successfully take Indoor Obstacle Course Test.

c. In the spring 2021, the applicant's mental health issues were first documented when he sought to avail himself of the Center for Enhanced Performance (CEP), and he was deemed to possess potential suicidal tendency. Then, he was referred for a consult with a psychiatrist at Keller Army Hospital, who prescribed medications.

d. In May 2021, the applicant was advised that he could not graduate without successful completion of the Indoor Obstacle Course Test. At that time, it was his understanding from communications with his chain of command that he would be allowed a year-long medical leave of absence. However, in September 2021, the brigade physician advised that, if the applicant could not successfully undertake Indoor Obstacle Course Test, he would be medically separated. At about that same time, his treating psychiatrist also recommended medical separation. Then, without undergoing an out-processing physical examination, he was separated from United States Military Academy, and he was ultimately discharged from the U.S. Army. Thereafter, the Board should note that the applicant applied for and received VA disability with a combined rating evaluation of 100% permanent and total disabled. Due to COVID restrictions at the time, the applicant was not given an out processing physical. He believes that if given a proper physical prior to departure, USMA would have been willing to give him a waiver for the Indoor Obstacle Course Test given his medical history and ailments.

2. The applicant provides:

a. A Memorandum for Record, subject: Medical Separation of the applicant, dated 27 October 2021, which shows:

(1) On or about 24 September 2021 , the United States Corps of Cadets Surgeon determined the applicant will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning; therefore, The superintendent finds the applicant is medically disqualified for military service and approve his medical separation from USMA in accordance with Army Regulation (AR) 150-1, paragraph 7-13, and Army Regulation 40-501 (Standards of Medical Fitness).

(2) The applicant will be separated from USMA and receive an Honorable Discharge pursuant to AR 150-1 paragraph 8-2 and Table 8-2 (Rule 6, Note the applicant 3). entered USMA from the United States Military Academy Preparatory School and the active United States Army.

(3) The applicant will receive a separation history and physical examination that meets all the requirements of the Department of Defense Instruction 6040.46 and Headquarters, Department of the Army Executive Order 162-15, attachment 3, paragraph 3.

b. He was honorably discharged on 15 December 2021. His DD Form 214 shows he was discharged under the provisions of AR 150-1 for medical reasons. His separation code is 328-0001/24 November 2021 and reentry code not applicable. He completed 4 years, 5 months, and 13 days active service. He completed 2 years, 11 months, and 27 days prior active service.

c. Character letters that attest to the applicant not using his injuries as an excuse. Under better circumstances he would be happy to have the applicant as a member of his unit and serve alongside him. He is a considerate individual who seems to genuinely care for others. He is well spoken, intelligent, and reliable. He has demonstrated some notable resilience and optimism while handling the challenges he has faced as a cadet and he spreads that positivity throughout the team. His potential to serve is limited only with respect to his ability to remain in good health and in good physical condition. The applicant would be welcome into any organization. It is unfortunate that the applicant is being medically separated from USMA because he is believed to be of exemplary character with prior service experience that would have suited him well as a second lieutenant. It is asked that the academic board reconsider their decision and allow him to graduate even though he will not commission.

(1) His injuries were sustained in the pursuit of graduating honorably from the Academy, he will carry on this ethos when in pursuit of future endeavors. When the applicant had to miss several lessons owing to being placed in quarantine, he reached out in advance and took personal responsibility for ensuring he did not fall behind. His contributions to class discussion and the positivity he brings to each of his relationships leads to a good impression of the applicant. He is a student of exemplary character. His course grades ranged from a very solid "B" to a high "B". Without fail, he demonstrated

an authentic commitment to learning in his three courses. He always demonstrated the core elements of good character, including a strong work ethic, a willingness to take responsibility, and a collegial manner with his fellow cadets. The applicant worked hard to succeed under tough circumstances but persisted in his efforts. He showed an excellent ability to adapt amid changing and confusing circumstances following spring break.

(2) From one's understanding, the applicant has completed all requirements to graduate apart from the Indoor Obstacle Course Test, and that he has not taken the Indoor Obstacle Course Test since April 2019 for medical reasons-the same reasons that have led to his medical separation from the Army. He has done everything he is medically able to do in order to graduate. He has essentially been on profile for three years due to persistent shoulder injuries. That means that he has not even had the opportunity to attempt to meet the graduation requirement of passing the Indoor Obstacle Course Test during the Second Class or First-Class year. Despite his medical setbacks, the applicant worked hard to complete all other requirements. He remained committed to USMA, demonstrating the loyalty and dedication that we would all expect from an Army officer.

d. VA rating decision letter, 19 September 2022, shows the applicant's benefits information service connection for:

- unspecified depressive disorder-70%
- lumbosacral strain-40%
- left lower extremity radiculopathy-10%
- right lower extremity radiculopathy-10%
- cervical strain-20%
- left shoulder labral tear-20%
- right shoulder labral tear-20%
- left foot strain-10%
- left knee strain limitation of flexion-10%
- right foot strain-10%
- tinnitus-10%
- alopecia-directly related to military service

e. VA decision letter, 21 September 2022, shows the applicant's benefits information service connection for:

- unspecified depressive disorder-70%
- lumbosacral strain-40%
- left lower extremity radiculopathy-10%
- right lower extremity radiculopathy-10%

- cervical strain-20%
- left should labral tear-20%
- right shoulder labral tear-20%
- left foot strain-10%
- left knee strain limitation of flexion-10%
- right foot strain-10%
- tinnitus-10%
- alopecia-evaluation not available for review

f. VA letter, 25 May 2023, shows a combined service-connected evaluation is 100% and honorable service from 21 July 2014 to 2 July 2017.

g. The applicant's medical documents, which will be reviewed and discussed by the mental health staff at the Army Review Boards Agency (ARBA).

3. A review of the applicant's service records show:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 21 July 2014.

b. He was honorably released from active duty on 2 July 2017 and transferred to the United States Army Reserve. His DD Form 214 shows he completed 2 years, 11 months, and 27 days net active duty.

4. On 4 June 2024, an advisory was completed in the processing of this case from the United States Military Academy, Office of the Staff Judge Advocate, which states:

1. Summary of the applicant's application. He asserts that he was denied the opportunity to graduate from USMA. Although he did not meet commissioning and graduation standards, he should receive an ETP to graduate from USMA. He asserts that he could not pass the indoor obstacle course test (IOCT) because of the injuries he suffered during his time at USMA, so he should have received an ETP.

2. Summary.

a. He acknowledges that he did not meet all the graduation requirements in his application. [Applicant] did not pass the IOCT, a graduation requirement.

b. In his application, he claims he could not pass the IOCT due to injuries he sustained during his time at USMA. His shoulder was too unstable to take the IOCT. He was put on medical leave to recover from his injuries and allowed to retake the IOCT to meet all his graduation requirements. [Applicant] never returned to USMA from his medical leave to retake the IOCT.

c. During his time at USMA, the applicant sought medical attention for mental health concerns. On or around 24 September 2021, a doctor from USMA contacted him regarding returning to USMA and taking the IOCT. He stated that he was not prepared for the IOCT and stated that returning to USMA would not be positively conducive to his mental health.

d. Considering his inability to pass the IOCT and his ongoing mental health concerns, the doctor suggested medical separation. He was medically separated from USMA and the Army. After his separation, [Applicant] petitioned the Academic Board for a certificate of completion to graduate from USMA without completing the IOCT.

e. During his separation from USMA and the Army, he was provided with all the due process rights to which he is entitled in accordance with all applicable regulations. He was allowed time to recover from his surgery and was given the opportunity to return and retest on the IOCT. He was also given the opportunity to return for a separation physical. Finally, after his separation, [Applicant] had the opportunity to apply for an ETP to graduate without passing the IOCT. His application was considered and denied.

3. Factual Background and Authority.

a. The applicant's medical history during his time at USMA.

(1) He attended USMA for four years and also attended the U.S. Military Academy Preparatory School for a year. During his time here, he suffered three significant injuries and underwent two surgeries. In April 2019, he required surgery for an injury he sustained during one of his classes.

(2) The applicant was also scheduled to undergo an MRI upon his return from spring break in 2020, but that was postponed due to COVID. [Applicant] was finally able to undergo the MRI in August 2020. The MRI revealed a torn labrum that was attributed to an injury he sustained during a combative class. He underwent a second surgery due to the shoulder injury in late 2020. [Applicant's] shoulder was reportedly too unstable to undertake the IOCT after his surgery, as stated in his application.

(3) Our records indicate that the applicant was put on medical leave on or about 12 May 2021 due to his injuries. USMA's medical team recommended that he be placed on a medical leave of absence until early September 2021 so that he would have had one complete year to recover from his surgery. The medical team suggested that he receive a final chance to complete the IOCT after his recovery.

(4) In the spring semester of 2021, the applicant also sought medical attention for his mental health. He was deemed to have suicidal tendencies and was put on

medication. Enclosure 1. USMA's behavioral health started his on medication, but he reportedly did not respond appropriately, according to his doctor's note on 12 May 2021.

b. Graduation requirements for USMA.

(1) The IOCT is a full-body functional fitness test administered by the Department of Physical Education (DPE). USMA requires that all Cadets pass the Second-Class IOCT to graduate. Cadets will retake the IOCT until they have a passing score. The IOCT is a graduation requirement.

(2) In accordance with AR 150-1 para. 5-3 (a), First-class Cadets who have successfully completed the graduation requirements, including the academic, military, physical, and character development programs, may receive a diploma signed by the Superintendent, USMA, the Commandant of Cadets, and the Dean of the Academic Board. These Cadets will have earned a Bachelor of Science degree and will be designated as graduates of USMA.

(3) In accordance with AR 150-1 para. 5-3 (b), Cadets who are separated from the Academy or discharged for any other good cause will not graduate, be awarded a diploma, or be commissioned through the Academy. This provision includes Cadets who are medically separated.

c. The applicant's separation from USMA and the Army.

(1) On or about 24 September 2021, while he was on medical leave, a doctor from USMA contacted him. During their conversation, the doctor inquired about his condition and whether he would retake the IOCT. He indicated that he did not feel prepared to take the IOCT. He also stated that returning to USMA may worsen his behavioral health issues.

(2) Considering his continuing behavioral health concerns, shoulder injury, and inability to pass the IOCT, the doctor recommended medical separation.

(3) On 27 October 2021, the Superintendent signed a memorandum stating that the applicant would not meet commission standards due to his medical history. The Superintendent approved his medical separation. On 15 December 2021, the applicant was medically separated from the Army with an honorable service characterization.

d. The applicant's application for consideration for completion.

(1) In accordance with AR 150-1 para. 5-3 (c), in appropriate cases, when the Academic Board determines that a first-class Cadet, who the USMA surgeon has determined does not meet the fitness requirements to perform all duties as a member of

the Corps of Cadets or who will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning, successfully completed all requirements of the academic, military, physical, and character development programs, the Superintendent, USMA may approve graduation and the award of a diploma with a Bachelor of Science degree.

(2) The Academic Board discusses and votes on whether to provide a Cadet with an ETP for an academic deficiency. Per AR 150-1 para. 1-22, the Academic Board advises the Superintendent of USMA on all matters concerning the academic aspects of the academic, military, physical, and character development programs at USMA, including standards, Cadet performance evaluations in the academic, military, physical, and character development programs, and graduation requirements. The Academic Board will provide recommendations to the Superintendent regarding the disposition of deficient Cadets and determine the eligibility of Cadets to receive diplomas.

(3) He applied for consideration for completion, requesting an ETP so that he could graduate from USMA without completing the IOCT. Enclosure 3.

(4) The Academic Board met on 3 August 2022, and during the meeting, reviewed his request for consideration for completion. The record shows that the Board unanimously voted to deny his request for a certificate of completion. Enclosure 3.

e. The applicant's separation physical.

(1) In accordance with DoDI 6040.46, all Service members completing a period of active duty must get a separation physical. For Service members filing disability claims with the Veterans Affairs (VA) hospital, the separation exam performed by the VA may be used to meet the separation physical requirements.

(2) USMA records indicate that he was given the opportunity to receive a separation physical at USMA, but he felt that returning to USMA would negatively affect his mental health. Considering that he did not feel comfortable returning to USMA, he was advised that he should conduct a separation physical with a local VA.

(3) The applicant received a physical from the VA in addition to a disability rating of one hundred percent. He received his rating due to a combination of his mental health issues and his physical injuries.

4. Analysis.

a. The applicant could not pass the IOCT, which is a graduation requirement. He suffered numerous physical injuries during his time at USMA. Due to his injuries, he received a medical leave of absence to recover and retake the IOCT.

b. In September of 2021, a year after his shoulder surgery, he still did not feel prepared to retake the IOCT. The applicant also had mental health concerns and believed that returning to USMA to take the IOCT would worsen his mental health. After discussing his medical concerns with a USMA doctor, the medical professional stated that a medical separation was in his best interest.

c. In his application to ARBA, the applicant stated that if he had received a physical, the Academic Board may have approved an ETP so that he could graduate. This is highly speculative, and the regulation does not support the argument.

d. The applicant received all the due process available under AR 150-1. He was given a year to recover from his surgery and the option to retake the IOCT. He also had the opportunity to request an ETP to graduate without completing the IOCT. The Academic Board reviewed [Applicant's] application for completion and voted against it. He was provided with and exercised all available due process rights under our regulations.

e. It is speculative to state that the applicant would have received an ETP if he had received a separation physical. Additionally, Mr. Markose was given the opportunity to conduct a separation physical. At the time of his separation, he was on medical leave and decided against returning to USMA due to mental health concerns.

f. The applicant was notified that he could receive a separation physical from the VA. He eventually received a physical that could be viewed as a separation physical per DoDI 6040.46.

5. Recommendation. USMA provides no positive or negative opinion on Army Review Boards Agency's determination. ARBA may consider that the applicant received and exercised all available due process rights under our regulations. Once his medical separation was initiated, he received the opportunity to receive a separation physical at USMA. After separating, he had the opportunity to apply for an ETP to graduate, which the Academic Board considered and denied his application for completion.

5. On 17 June 2024 and 19 June 2024, via emails the applicant responded. He stated he was consulting with a lawyer but unfortunately, he had a death in the family, so he requested additional time to submit comments and materials to the Board. He followed up to see if the request for extension was approved. He is requesting an additional 15 days if that matters. Additionally, he would like to submit additional evidence to refute claims by the representatives of USMA in their address to the Board of Corrections. Acts online is down to upload documents, so he would like to know the procedure to upload documents.

6. On 8 July 2024, the applicant responded:

a. In his applicant letter he reiterates the above and shows the graduation requirements per AR 150-1 (United States Military Academy Organization, Administration, and Operation) which states the “First class cadets (those in their fourth year of instruction, also known as “seniors”) who have successfully completed the requirements of the COI (Course of Instruction), including the academic, military, physical, and character development programs; have maintained prescribed standards of conduct; and who have demonstrated proper moral-ethical qualities, leadership, and character may receive a diploma signed by the Superintendent, USMA, the Commandant of Cadets, and the Dean of the Academic Board.

(1) He discusses his bilateral shoulder injuries and his mental health diagnosis of “Other specified depressive episodes” and medical leave and Indoor Obstacle Course Test examination issues. During his time on medical leave, he was forced to move three times and, at times, lived out of his car. He communicated this situation to his command team and medical providers. Being sent on medical leave for shoulder injuries and mental health issues without having stable housing for months further demonstrates that USMA did not provide him with adequate resources or opportunity to effectively recover from his medical issues. He was not fully informed of his out-processing rights while on medical leave, and he did not receive the proper briefings. He firmly believes that a proper separation physical would have provided the USMA medical teams with the same insights observed by the VA medical teams. He provides an analysis of a previous application. He provides his medical records, and he respectfully requests that the ABCMR grant him the degree he have worked so hard to earn, in accordance with the principles of equity and fairness.

(2) He has successfully completed all the academic, military, and character requirements necessary for this degree to be conferred. His inability to successfully pass the Indoor Obstacle Course Test constitutes the soul barrier to his graduation, and the provisions of AR 150-1 concede that this one criterion, while relevant to the question of whether a Cadet should be commissioned as an officer, should not necessarily disqualify from receiving their degree. Tests shows a conversation regarding the applicants the applicant contacting the VA and the USMA finance office.

b. A Memorandum for Record, Medical Separation of the applicant, 27 October 2021 shows:

(1) On or about 24 September 2021 , the United States Corps of Cadets Surgeon determined the applicant will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning; therefore, The superintendent finds the applicant is medically disqualified for military service and approve his medical separation from the United States Military Academy (USMA) in accordance with Army Regulation (AR) 150-1, paragraph 7-13, and Army Regulation 40-501 (Standards of Medical Fitness).

(2) The applicant will be separated from United States Military Academy and receive an Honorable Discharge pursuant to AR 150-1 paragraph 8-2 and Table 8-2 (Rule 6, Note the applicant 3). entered United States Military Academy from the United States Military Academy Preparatory School and the active United States Army.

(3) The applicant will receive a separation history and physical examination that meets all the requirements of the Department of Defense Instruction 6040.46 and Headquarters, Department of the Army Executive Order 162-15, attachment 3, paragraph 3.

7. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a 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.

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.

a. The evidence of record shows the applicant could not pass the Indoor Obstacle Course Test (IOCT), which is a USMA graduation requirement. He suffered numerous physical injuries during his time at USMA. Due to his injuries, he received a medical leave of absence to recover and retake the IOCT. A year after his shoulder surgery, he still did not feel prepared to retake the IOCT. He had mental health concerns and believed that returning to USMA to take the IOCT would worsen his mental health. After discussing his medical concerns with a USMA doctor, the medical professional stated that a medical separation was in his best interest.

b. The applicant contends that if he had received a physical, the Academic Board may have approved an exception to policy so that he could graduate. The Board found this argument speculative at best; and is neither convincing nor supportive. The Academic Board reviewed his application for completion and voted against it. He was provided with and exercised all available due process rights under USMA regulations. The Board noted that the applicant does not bring up any new evidence to show the Academic Board denied him any rights or that its decision was in error. Therefore, based on available evidence, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

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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. Army Regulation 150-1 (United States Military Academy Organization, Administration, and Operation), provides policy and procedures for the command and control of the United States Military Academy (USMA), the United States Military Academy Preparatory School (USMAPS), and the West Point Military Reservation (WPMR).

a. Chapter 5–3 (Graduation and conferring of degree) shows that First class cadets (those in their fourth year of instruction, also known as “seniors”) who have successfully completed the requirements of the COI, including the academic, military, physical, and character development pro-grams; have maintained prescribed standards of conduct; and who have demonstrated proper moral-ethical qualities, leadership, and character may receive a diploma signed by the Superintendent, USMA, the Commandant of Cadets, and the Dean of the Academic Board. These cadets will have earned the Bachelor of Science degree and will be designated as graduates of USMA.

b. A cadet who is separated from the Academy or discharged under the provisions of this regulation or for any other good cause, will not be graduated, awarded a diploma, or commissioned through the Academy.

c. In appropriate cases, when the Academic Board determines that a first class cadet, who the USMA surgeon has determined does not meet the fitness requirements to perform all duties as a member of the Corps of Cadets or who will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning, successfully completed all requirements of the academic, military, physical, and character development programs, the Superintendent, USMA may approve graduation and the award of a diploma with a bachelor of science degree. Notwithstanding the fact that said cadet may not be commissioned. If medical separation is subsequently not approved by a medical review board, the cadet will be commissioned under paragraph 5–4.

d. Notwithstanding any other provision of this regulation, a cadet, found by the Academic Board to have success-fully completed all requirements in the academic, military, physical, and character development programs, may receive a diploma and graduate with the Bachelor of Science degree, without being commissioned, provided the Secretary of the Army determines that it is in the best interest of the Government.

e. When a cadet is separated and is not awarded a diploma, but the Academic Board determines that the cadet has successfully completed all requirements in the academic program, the Superintendent, USMA may authorize the award of a Certificate of Completion of the academic program. The Dean of the Academic Board will sign the certificate.

f. The 7–13, Chapter 7 (Other grounds for separation shows medically disqualified cadets 7-13) (Medically disqualified cadets) shows that whenever the USMA surgeon determines that a cadet does not meet the fitness requirements to perform all duties as a member of the Corps of Cadets during the current academic term or summer training period, or will not meet the medical fitness standards for appointment on active duty at the expected time of commissioning, the Super-intendent, USMA will review the case and, at his discretion, take one of the following actions:

- (1) Afford the cadet an opportunity to resign.
- (2) In the case of the medical disqualification under cadet retention standards as provided in AR 40–501, separate the cadet.
- (3) First class cadets, retain and graduate the cadets, either as provided in paragraph 5–3, or, if otherwise qualified, by being granted a waiver and commissioned.
- (4) If physically disqualified for any military service, discharge the Cadet (see para 5–3).
- (5) Permit the cadet, upon the cadet’s written request, to complete the academic year in which the defect is noted, and in those cases in which it appears that the disqualifying defect is clearly remediable, to continue for an additional period of time beyond the current academic year for the purpose of further observation or treatment. This additional period will not go beyond the end of the academic year following that in which the defect is noted unless the physical disqualification is removed.
- (6) Grant leave to the cadet in accordance with chapter 9 for an appropriate period of time, not to exceed 1 year or final adjudication of a medical evaluation board or physical evaluation board. At a time designated by the USMA surgeon, the cadet will be reexamined to determine if the medical disqualification has been remedied. If so, and if otherwise qualified, the cadet will be permitted to return to USMA. In the event that the medical disqualification continues to exist, the case will be reevaluated consistent with this regulation.

b. The Superintendent, USMA, will take final action on medical waivers, following consultation with the USMA surgeon.

c. Under the provisions of 10 USC 1217, cadets whose medical disqualification may be permanent and disabling will be processed in accordance with Army Regulation 635–40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation). A cadet determined to be unfit for service because of physical disability is not eligible for continuation on active duty or in active Reserve status. Cadets who fail to

meet retention standards will be referred to medical evaluation board and must be permitted.

2. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//