

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230006551

APPLICANT REQUESTS:

- correction of her DA Form 199 (Formal Physical Evaluation Board (PEB) Proceedings) to show her right knee injury/pain was found in the line of duty
- a line of duty determination (LOD) for her right knee pain showing her injury is combat related

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 689 (Individual Sick Slip), 26 February 2010
- DD Form 2697 (Report of Medical Assessment), 9 March 2010
- Letter of Support, 4 March 2022
- Memorandum, subject: Official Contention, 30 March 2023
- Memorandum, subject: Non-Duty Related Case, 28 April 2023
- Memorandum, subject: Rebuttal to PEB Findings, 28 April 2023
- medical records (360 pages)

FACTS:

1. The applicant states her individual sick slip from Iraq and her post-deployment medical assessment show that she had knee issues while deployed in Iraq.
2. The applicant underwent a medical examination for enlistment on 5 June 2008. Her DD Form 2808 (Report of Medical Examination) shows she was qualified for service once her overweight status was resolved. She was assigned a physical profile of 111111.

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.

3. The applicant enlisted in the Mississippi Army National Guard (MSARNG) and as a Reserve of the Army on 22 July 2008. She completed initial active duty for training (IADT) from 8 October 2008 to 8 April 2009.

4. The applicant was ordered to active duty in support of Operation Iraqi Freedom effective 5 May 2009. She deployed to Iraq on 21 June 2009.

5. The applicant provided a DD Form 689 (Individual Sick Slip) showing she was treated on 26 February 2010 for:

- rash on face, breast, and thigh
- knees hurting
- eye hurting with bump on eye
- runny nose
- sneezing
- back ache

6. The applicant also provided a DD Form 2697 (Report of Medical Assessment), completed on 9 March 2010 showing she reported:

- her overall health was worse since her examination on 7 June 2009 stating her allergies have gotten worse, she is sneezing from all the sand and dust, congested and coughing with a runny nose and watery eyes
- she had back and knee injuries for which she did not seek medical care
- she was taking medication for allergies, [illegible], and asthma inhaler
- she had a dental issue with her wisdom tooth
- she intended to seek disability from the Department of Veterans Affairs (VA)

7. A DA Form 3349 (Physical Profile) shows the applicant was assigned a permanent physical profile of 221111 effective 7 February 2016. She was restricted from doing pushups due to Carpal Tunnel Syndrome surgery completed June 2015. She has a lifelong history of asthma that is controlled with rare need for rescue inhaler.

8. A DA Form 3349 shows the applicant was assigned a permanent physical profile of 123111 effective 19 April 2021, adding her right knee injury/pain.

9. The applicant was granted an extension of her enlistment on 22 January 2022 to allow her to complete the PEB process.

10. The applicant underwent an Informal PEB, however, it is not recorded in her personnel file. The applicant provided a copy of her official contention, dated 30 March 2023, stating:

a. She requests the Board affirm she is physically unfit due to her right knee injury/pain and requests an LOD finding from the U.S. Army Human Resources Command (HRC).

b. Her knee pain started when she was driving trucks during her deployment to Iraq in 2009-2010.

c. Immediately upon return from deployment she filed a VA claim for her knee condition. The VA records show x-rays done on 14 April 2010.

d. She requested treatment for her knee on 14 October 2010. The VA did not appear to have treated the knee, the applicant sought treatment from a civilian doctor and physical therapy for both her back and knee.

e. Despite treatment and physical therapy, the knee continues to swell and build up fluid requiring draining. Knee x-rays were completed by the VA on 2 July 2016 at the applicant's request due to continued symptoms.

11. A DA Form 199-1 shows a Formal PEB convened on 31 March 2023, wherein the applicant was found physically unfit with a recommendation her case be referred for case disposition under Reserve Component regulations.

a. The applicant was found unfit for Non-Duty Related (NDR) right knee injury/pain. She sought treatment for right knee pain on 22 September 2020 by her primary care provider. This condition's onset was insidious with no contributing mechanism of injury or trauma found in the case file. 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 in her case file that indicates that military service has aggravated the condition.

b. The PEB made the following administrative determinations:

(1) The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

(2) The disability did not result from a combat-related injury as defined by law.

c. The applicant appeared before the formal Board with regularly appointed counsel.

d. FORMAL: She contends her right knee pain should remain unfit and be referred to HRC for a LOD determination. The PEB found insufficient evidence her right knee pain was incurred in the line of duty. She testified that her knee pain began while deployed to Iraq from 2009-2010 with no prior history of injury. She does not recall any traumatic event tied to the knee pain, but attributes it to driving an RG33 Mine Resistant Ambush Protected Vehicle (MRAP) for 8-12 hours a day, 6 days per week, wearing combat gear and walking on uneven terrain. She stated she did not know of sick call but instead sought treatment through the unit medic who provided over the counter medication for her knee pain and did not examine her or document the visits. She sought treatment through the VA. Exhibits included a normal bilateral knee x-ray from her 14 April 2010 Compensation and Pension examination. Additional exhibits include physical therapy notes for her knee from August 2016 through February 2017 and back and hip from November through December 2018. She was seen by orthopedic surgery on 11 August 2020 who noted essentially no effusion, functional range of motion, and stable knee. The x-ray from that day was negative for fracture, dislocation, abnormal lesion with no significant degenerative change. The orthopedic surgeon reviewed an MRI from April 2020 that was negative for fracture, dislocation, meniscus tear, and ligamentous derangement but had effusion present. He concluded there was not surgical pathology, and she received a steroid injection. She had an injection at the beginning of the year by her primary care physician. Despite treatment and a sedentary job, she continues to have duty limiting right knee pain about 4 times a week and avoids physical activities. She testified she was able to pass an APFT after she returned from deployment but does not remember what year. History given on her Initial Physical Therapy Evaluation on 23 August 2016 states knee pain began a few months ago, she feels from running, but is unsure. She stopped running per medical advisement. The condition was not profiled until September 2016 when she received a temporary profile for bilateral knee pain.

e. The applicant did not concur and attached her appeal on 8 April 2023.

f. The proceedings were finalized on 28 April 2023.

12. The applicant was issued separation orders on 5 July 2023 which were subsequently revoked on 11 July 2023.

13. On 25 July 2023, the applicant was issued a Notification of Eligibility for Retired Pay for Non-Regular Service (15 years), entitling her to a non-regular retirement.

14. A memorandum for commander, subject: Non-Duty Related Case, dated 28 August 2023, provides the applicant's commander with the outcome of her PEB and directs she be advised of the final PEB determination.

15. A 28 August 2023 memorandum to the applicant's PEB Counsel, subject: Rebuttal to PEB Findings, notes the applicant's disagreement with the findings of the Formal PEB, request for LOD determination and in-person hearing to appeal the formal PEB determination.

a. There are no treatment records related to the applicant's right knee condition during her period of active-duty orders or during her time in Iraq. VA records dated 14 April 2010 shown an x-ray for chronic pain in her right knee was normal. The accompanying Post Deployment Health Note completed by Dr. P on the 14 April 2010 does not mention knee pain at all. A VA note dated 14 October 2010 states, she expressed concern about additional treatment for her knee and was referred to discuss this with Dr. P. She was first placed on a DA Form 3349 for knee pain/injury on 20 September 2016. She provided evidence that she had significant physical therapy treatment from 2016 to 2018, but there are no records of treatment for her knee condition prior to 2016.

b. With the Post Deployment health note on 14 April 2010, and the normal right knee x-ray not being placed on a DA Form 3349 until 2016 for a knee condition, the United States Army Physical Disability Agency (USAPDA) is unable to conclude differently than the FPEB concluded as noted on the DA Form 199-1 dated 5 April 2023. The applicant is unfit for knee injury/pain right (non-compensable). They did not find enough evidence to warrant sending the case to AHRC for a LOD determination.

c. They conclude the applicant's case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System (PDES) in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed.

16. Orders 0006634986.00, dated 22 November 2023, show the applicant was transferred to the Retired Reserve for mandatory retirement effective 22 July 2023.

17. The applicant provided a letter of support from SFC TLW, her Battle Buddy while deployed to Iraq. SFC TLW states, in pertinent part, they provided convoy escort in Iraq. During missions they wore 40 pounds of individual body armor (IBA) in addition to their regular gear in excess of 12 hours one way. While traveling in upper armored vehicles they were in a confined space with limited movement. They would need to jump out quickly to clear weapons and climb back in. They used over the counter medicines to ensure they measured up to their male peers. At that time females were considered weak for going to sick call and encouraged to continue mission despite minor aches and pains. They were required to walk about a mile 5-6 days a week bearing IBA, 40 pounds of gear, ammunition, and their M-16. The excessive weight was a lot to bear on their knees. The redundancy gradually made the pain worse.

18. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), 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 a reversal of the Not in Line of Duty – Not due to own Misconduct findings for the knee condition which lead to her involuntary separation from the Army for not meeting the medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness. She also requests this condition to be determined combat related. She states:

“The PEB [physical evaluation board] findings for my board process need to be reviewed and corrected. A LOD [line of duty] should be issued for my knees due to they are combat related. My individual sick slip from Iraq and my post-deployment medical assessment show that I had knee issues while deployed in Iraq. The sick call slip shows that my knee issues started while in Iraq.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows she was mobilized in support of Operation Iraqi Freedom from 5 May 2009 thru 25 March 2010 with service in Iraq from 21 June 2009 thru 6 March 2010. Orders published by the Mississippi Army National Guard (MSARNG) show she was involuntarily separated from same effective 21 July 2023. They do not cite a paragraph or chapter.

d. The applicant was likely separated under Paragraph 6-35l(8) of NGR 600-200, Enlisted Personnel Management (25 March 2021):

“Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36u below. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or ineligible to reclassify into a new MOS. RE 3.”

e. The applicant was placed on a duty limiting permanent physical profile for “Knee Injury/Pain (right) on ” on 19 April 2021. The MSARNG notified her of this medically disqualifying condition on 3 June 2021 and presented for with four options:

- 1) Transfer to the Retired Reserve if they have 20 qualifying years of service.
- 2) Request a 15-year notice of eligibility for non-regular retired pay and transfer to the Retired Reserve if they have 15 by less than 20 years of qualifying service.
- 3) Request an honorable discharge if they have less than 15 years of qualifying service.
- 4) Request a Non-Duty Related Physical Evaluation Board (NDR PEB).

f. She elected for a referral to a non-duty related physical evaluation board (NDR PEB) for this condition on 24 October 2021. Below her signature is that of her counseling medical readiness NCO.

g. NDR PEBs allow Reserve Component (RC) Service Members who are not on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions but desire to remain in their component to enter the Disability Evaluation System (DES) for a determination of fitness. A non-duty related physical evaluation board (NDR PEB) affords these Soldiers the opportunity to have fitness determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES for a duty related medical condition. After 2014, these boards would also look to see if the referred condition(s) were duty related, and if so, return them to the sending organization for entrance into the duty related processes of the DES.

h. The MSARNG narrative summary:

“Medical Basis for Diagnosis: SM [Service Member] diagnosed with right knee. Civilian provider unable to find anything objectively going on in the knee. MRI negative and labs were negative for any signs of hematological condition. Running aggravates her symptoms. SM has received injections to knee with some relief. Civilian providers state no running or living in austere environment. SM conditions along with his permanent profile warrants SM to be placed in a PEB per 40-501, 313.

Basis for Non-Duty Related Process: SPC [Applicant]’s medical conditions were not discovered while he was in a duty status. No connection to military duty has been identified as the cause of these conditions in the attached documentation.”

i. On 28 February 2022, the applicant’s informal physical evaluation board (PEB) determined this was an unfitting medical condition for continued military service and that it was not related to his military service:

“NDR: The Soldier first sought treatment for right knee pain on 22 September 2020 by her primary care provider. The condition onset was insidious with no contributing mechanism of injury or trauma found in the case file. The condition is not compensable because at the time the Soldier was diagnosed with this condition the Soldier was not in an Active-Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within the Soldier’s available case file that indicates that military service has aggravated the condition.”

j. The applicant non-concurred with the PEB and demanded a formal hearing with representation by regularly appointed counsel but without a personal appearance. The applicant requested to be found fit for duty.

k. The non-duty related determination was maintained at her 31 March 2023 formal physical evaluation board. The voting membership included both a Reserve Component Officer and a physician:

FORMAL: The Soldier contends that her right knee pain should remain unfit and be sent to Army Human Resources Command for a line of duty determination. Based on the preponderance of evidence, the PEB has found insufficient evidence that the Soldier’s right knee pain was incurred in the line of duty.

Regarding the right knee pain: The Soldier testified that she began experiencing pain in her knee while deployed to Iraq from 2009-2010 and states she had no history of previous injuries. The Soldier does not recall any traumatic event tied to the knee pain, but attributes it to driving an RG33 Mine Resistant Ambush Protected Vehicle (MRAP) for 8-12 hours a day, 6 days per week, wearing her combat gear and walking on uneven terrain during her deployment to Iraq.

The Soldier explained during her deployment she did not know of sick call, but instead sought treatment through the medic assigned to her unit who provided her with over-the-counter medications for her knee pain and who did not examine her or document the visits.

Upon returning from deployment the Soldier sought treatment through Veterans Affairs, and the exhibits included a normal bilateral knee x-ray from 14 April 2010 from her C&P exam. Additional exhibits included physical therapy notes for her knee from August 2016 through February 2017 and for her back and hip from November through December 2018.

She was seen by orthopedic surgery 11 August 2020, who noted the right knee had a benign appearance with “essentially no effusion today”, functional range of motion, and stable knee. X-ray from that day was negative for fracture, dislocation or abnormal osseous lesion and no significant degenerative change. The orthopedic surgeon notes an MRI in April (2020) was personally reviewed

and was negative for fracture, dislocation, no meniscus tear, no ligamentous derangement but did have an effusion present.

The conclusion was there was no surgical pathology, and she received a steroid injection. It was noted she had previously had an injection at the beginning of the year by her primary care manager. Despite treatment and having a sedentary job, the Soldier continues to have duty limiting right knee pain requiring non-steroidal anti-inflammatory medication about 4 times a week and avoids participation in physical activities.

Although the Soldier testified to concerning right knee pain since returning from her deployment, the records do not show permanent service aggravation as the result of the Soldier's deployment to Iraq. The Soldier testified she was able to pass an Army Physical Fitness Test after she returned from deployment, though she did not recall the year.

History given on her Initial Physical Therapy Evaluation on 23 August 2016 states, "She states knee pain is Left > Right and began a few months ago, she feels from running, but is unsure. She states she stopped running last week, per MD advisement."

The condition was not profiled until September 2016, when the Soldier received a temporary profile for bilateral knee pain.

I. The applicant appealed the formal PEB's determinations to the United States Army Physical Disability Agency in a three-page memorandum prepared by her counsel. The Agency maintained the formal PEB's (FPEB) determinations in their 28 April 2023 response memorandum:

"SPC [Applicant] provided her DD214 which showed she was on active-duty orders from 5 May 2009 to 25 March 2010. There are no treatment records related to her right knee condition during her period on active-duty orders or during her time in Iraq. Veterans Administration (VA) records dated 14 April 2010 show an Xray that was performed on her right knee for "Chronic Pain" that was normal.

The accompanying Post Deployment Health Note completed by Dr. P. on the 14 April 2010 does not mention knee pain at all (uploaded to her case file). A VA note dated 14 October 2010 states, "Veteran expressed concern about additional treatment for her knee and was referred to discuss this with Dr. P."

She was first placed on a DA Form 3349 for "knee pain/injury" on 20 September 2016. She provided evidence that she has had significant physical therapy treatment from 2016 to 2018, but there are no records of treatment for her knee condition prior to 2016 ...

We conclude that SPC [Applicant]'s case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System (PDES) in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed. The issues raised in your 11 April 2023 appeal were adequately addressed by the FPEB in its board proceedings. If SPC [Applicant] feels that our findings are in error, any future submission for correction may be directed to the Army Board for Correction of Military Records (ABCMR)."

m. No contemporaneous medical documentation was submitted with the application other than an Individual Sick Call Slip (DD Form 689) signed by a medic on which she had written: "Rash on my face, rash on breast and thigh, knees hurting, eye hurting with bump on eye, running snooze, sneezing, back aching." As noted above, there are no corresponding clinical encounters in the EMR.

n. With no evidence submitted or identified showing the onset and mechanism of injury for the condition, a determination of combat related is not possible.

o. JLV shows the applicant has been granted seven VA service-connected disabilities, none of which is related to either knee.

p. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

q. It is the opinion of the ARBA medical advisor that her knee condition was not duty related.

BOARD DISCUSSION:

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 Board concurred with the medical advisor's review finding the evidence does not indicate that the applicant's knee condition was duty related. Additionally, the Board found insufficient evidence to support the applicant's right knee pain is combat-related.

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 (AR) 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of certain enlisted soldiers of the Army National Guard of the United States and the United States Army Reserve as directed by Department of Defense Directive 1332.14, December 1993 Subject: Enlisted Administrative Separations. Chapter 12 (Separation for Other Reasons), paragraph 12-1 (Medically unfit for retention) states separation will be accomplished by separation authorities when it has been determined an enlisted Soldier is no longer qualified for retention by reason of medical unfitness.
2. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time established standards, policies, and procedures for the management of Army National Guard (ARNG) enlisted Soldiers in several the functional areas, including Discharge.
3. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
 - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.
 - b. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.
- 4 Title 38 USC, section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military,

naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. AR 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) 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.

7. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

8. Section 1556 of Title 10, USC, 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.

9. 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.

//NOTHING FOLLOWS//