

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230006932

APPLICANT REQUESTS: in effect a medical retirement or service-connected disability reason for retiring. She also requests a personal appearance hearing via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Centromed letter, 7 June 2022
- Centromed (Virtual visit), 24 May 2022
- Brooke Army Medical Center General Instructions with ExitWriter, 15 December 2021

FACTS:

1. The applicant states, while going through a medical board for mental health she sustained more injuries while on duty. The lawyer asked for all injuries to be reviewed but it was disregarded and not considered or acknowledged. She was determined (medically disqualified). She is requesting a change of separation to medical retirement or service-connected disability reason for retiring. While going through the process before a decision was made, she sustained another injury that was never considered. A line of duty was completed, and her injuries are life altering. While in the hearing her lawyer explained her conditions that she received while waiting to go to the board. She just needed her conditions to be reviewed and acknowledged and the information was not.

2. The applicant underwent a medical examination for the purpose of enlistment and was found qualified for service with no physical limitations.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 25 August 2017.

4. She entered a period of active-duty training (ADT) on 8 January 2018. She was released from ADT on 23 May 2018 and returned to her USAR unit.

5. Brooke Army Medical Center General Instructions with ExitWriter, 15 December 2021, show she was seen for Acute nontraumatic lumbar back pain associated with muscle strain and a single contusion to the anterior chest and right knee.

6. On 29 April 2022, Formal Physical Evaluation Board (PEB) Proceedings convened and found the applicant was physically unfit and that her case be referred for case disposition under reserve component regulations.

a. The medical condition determined to be unfitting was bipolar disorder and post-traumatic stress disorder (PTSD) (non-compensable).

b. Non-duty related (NDR). The applicant was diagnosed with this condition in March 2019. This condition was caused by personal stressors that existed prior to her joining the military. 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 Line of Duty investigation for this condition. Additionally, there is no evidence within the applicant's available case file that indicates that military service has aggravated the condition. In accordance with (IAW) Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation), the applicant is unfit because the DA Form 3349, Physical Profile Record, Section 4, functional activity limitations associated with this condition make the applicant unable to reasonably perform required duties. No legal or medical authority deemed the Soldier incompetent to make legal, financial, or medical decisions.

c. The checked blocks showing she elected "not to appear and" "did appear." She also checked a block showing she was represented by regularly appointed counsel.

d. This case was adjudicated as a non-duty related case.

e. The Formal Board was held without the board members, applicant's counsel, and the applicant physically present due to required social distancing preventive measures in response to the COVID-19 virus pandemic. The board proceeded via telephone and/or other information technology means in an otherwise normative manner.

f. Formal: The applicant's case was adjudicated based upon a review of the objective evidence of record, including her testimony and exhibits provided during Formal Board proceedings; and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of Department of Defense Instructions 1332.18, Enclosure 3, Appendix 2 and AR 635-40, to include combined, overall effect.

g. The applicant did not concur. Her complete rebuttal, dated 13 June 2022, is attached in documents for the boards review.

h. In consideration of the applicant's appeal the PEB affirmed its initial findings and recommendations.

7. The applicant provides a/an:

a. CentroMed (Virtual visit), 24 May 2022, showing a virtual visit for headaches. The applicant complained of chronic headaches, states she has been having headaches since December 2021. Taking Tylenol and Ibuprofen PRN (pro re nata) daily.

b. CentroMed letter, 7 June 2022, related to her injuries of right knee pain. The letter is attached in documents in full for the boards review.

c. Orders 22-223-00046, issued by Headquarters, 63d Readiness Division (USAR), on 22 August 2022, show she was honorably discharged from the USAR on 18 August 2022, under the provisions of AR 135-178 (Army National Guard and Reserve - Enlisted Administrative Separations). The orders also state she was found unfit for retention IAW AR 40-501 (Standards of Medical Fitness). The orders further state the applicant elected separation IAW AR 135-178, chapter 14-1 (k). Medically disqualified – not result of Soldier's own misconduct.

8. The applicant's available records do not contain, nor did she provide a DA Form 3349 (Physical Profile) or DA Form 2173 (Statement of Medical Examination and Duty Status).

9. 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 a reversal of the United States Army Physical Disability Agency's (USA PDA) determination that her unfitting mental health condition was not incurred during or permanently aggravated by her military Service, i.e., duty related; that additional medical conditions be found unfitting for continued service and duty related; and that her disability discharge disposition be subsequently be changed from separated with severance pay to permanently retired for physical disability. She states:

“While going through a med board for mental health, I sustained more injuries while on duty. The lawyer asked for all injuries to be reviewed but it was disregarded and not considered or acknowledged. I received (medically disqualified). I am requesting change of separation to medically retired for service-connected disability as the reason for retiring.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Orders published by the 63<sup>rd</sup> Readiness Division (USAR) show the applicant was honorably discharged from the USAR effective 18 August 2022 under provisions provided in paragraph 14-1k of AR 135-178 (18 March 2014): “Medically Disqualified - Not Result of Soldier’s Own Misconduct.”

d. While a drilling Soldier in the USAR, the applicant was placed on a duty limiting permanent physical profile effective 19 March 2021 for “Bipolar Disorder” and “PTSD.” She was informed in a 9 April 2021 memorandum that she no longer met the medial retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness and was provided with an elections memorandum. The applicant elected for a non-duty related physical evaluation board.

e. 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 may 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.

f. Her condition as described in the narrative summary sent to the PEB showed a history of non-military related mental health issues and traumatic events prior to and after her entering the military on 25 August 2017:

“Review of HRR, AHLTA, and JLV revealed the original behavioral health profile was initiated on 20200122 after a PHA was performed on 20200117 (located in HRR) ... She reported the presence of Bipolar disorder with treatment with Lurasidone. A provider letter dated 20201209 (located in HRR) stated "The patient was a patient in our clinic, starting 3/12/19, for bipolar disorder, posttraumatic stress disorder, and borderline personality disorder."

A CDBHE [command directed behavioral health evaluation] was completed 20210329 (located in AHLTA). The provider indicated a history of legal trouble (for assaulting her boyfriend) in 2019 resulting in an arrest, a history of physical

and emotional abused during childhood by her mother. She also reported being the victim of a sexual assault at age 25, prior to joining the military.

The CDBHE also indicated they reviewed her civilian records and this revealed an admission into a partial hospitalization program (FEB-MAR 2019) where she was diagnosed with Bipolar Type 1 and probably PTSD and subsequently started medication. The provider recommended referral into the DES process for not meeting retention standards.

There are no psychotropic medications documented in the JLV medications list. There are no BH diagnoses documented in the JLV Problem list.

This SM [Service Member] does not qualify for an IDRM [Integrated DES Referral Memorandum] for either condition because she was not diagnosed while serving on a period of active duty of more than 30 days. A LOD [line of duty] was not initiated because the Soldier was not in a duty status when this condition was diagnosed.”

g. On 26 August 2021, her informal NDR PEB determined her “Bipolar disorder and posttraumatic stress disorder” was an unfitting condition for continued military service, that there was insufficient evidence the disability was duty-related and had actually existed prior to service, and was therefore non-compensable:

“The Soldier was diagnosed with this condition in March 2019. This condition was caused by personal stressors that existed prior to her joining the military. 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.”

h. The Board referred her for appropriate disposition under reserve component regulations.

i. On 10 September 2021, after being counseled by her PEB liaison officer on the PEB’s findings and recommendation, the applicant non-concurred with their findings and requested a formal hearing with regularly appointed counsel and she submitted a written appeal.

j. In her written appeal, she stated that both these conditions were duty related because they were due to a noncommissioned officer sharing her private information with junior enlisted Soldiers during a battle assembly (BA) weekend which led to her depression and anxiety:

The reason I am appealing the decision that was made is because during a BA weekend, one of the NCOs went to a bar with some junior enlisted soldiers and told them my personal legal business. The information was only provided to the NCO because she was a part of my chain of command. On the next day still within the BA weekend soldiers came up to me and told me what happened.

I immediately notified the 1st Sgt of 79th Quartermaster MSG Solis. He then called the NCO and I to his office to gain a better understanding of the situation at hand. That experience caused me to go into a deep depression from the humiliation and defamation of character that was brought on to me from my superior. It also caused me to have sever anxiety among my peers.

I was told this [was] a non-duty related incident and that's why I am filling an appeal. What I would like to happen is for it to [be] changed to duty related because it was during a Battle Assembly weekend and I was on duty at the time of the incident. I would like the decision to reflect the decline of my mental health because of the incident."

k. After reviewing the applicant's appeal, the PEB maintained these conditions were non-duty related as noted in their 17 September 2021 appeal response memorandum to the applicant and she was subsequently scheduled for a formal PEB.

l. The applicant was electronically present for but represented by regularly appointed counsel at her 29 April 2022 formal PEB. Following her testimony and presentation of evidence, the Board reaffirmed the previous findings that both conditions were unfitting for continued military service and were not duty related; and that additional conditions presented at the formal hearing - lumbar spine, right knee, and chest conditions - reportedly the result of being struck by a car in December 2021 while in a parking lot on a BA weekend were not supported by evidence as unfitting for continued service:

Regarding the Soldier's contention that her bipolar and posttraumatic stress disorder conditions remain unfitting and the PEB request a line of duty advisory opinion from U.S. Army Human Resources Command to determine the conditions were permanently service aggravated while performing military service.

Additionally, the Soldier contends her lumbar spine, right knee, and chest conditions be returned to Army Reserve Medical Management Center for evaluation due to the injuries were incurred while on an authorized duty status.

Based on the preponderance of evidence, the PEB has determined the Soldier's behavioral health conditions remain unfitting. No additional medical evidence was provided to the board to support the Soldier's behavioral health conditions were aggravated during military service and warranted a line of duty advisory opinion be sent to the U.S. Army Human Resources Command.

Also, no medical evidence was provided to the board nor permanent P3 profiles to support the Soldier's lumbar spine, right knee, and chest conditions should be returned to Army Reserve Medical Management Center for evaluation. The Soldier testified while in a drilling status, during a drill weekend, personal matters; she only disclosed to her Senior NCO for 'need-to-know' purposes were openly discussed without her permission to fellow peers. Those peers, in turn chastised and ridiculed her based on the information.

This incident is what the Soldier directly correlates her behavioral health conditions were aggravated. Although, the Soldier testified the incident caused great embarrassment, isolation and emotional distress and caused the Soldier to participate in individual therapy, the board was not provided treatment notes to substantiate the claim.

For the Soldier's her lumbar spine, right knee, and chest conditions the Soldier testified while in a drilling status on 15 December 2021 she was struck by a vehicle in a grocery store parking lot as a pedestrian resulting in an injury to her back, right knee, and chest.

The Soldier presented medical discharge evidence from Brooke Army Medical Center Emergency Room dated 15 December 2021 with diagnoses of acute non-traumatic lumbar back pain associated with muscle strain and single contusion to the anterior chest and right knee.

Although diagnostic studies to include a chest x-ray and right knee x-ray were performed, no test results were submitted to the board. Furthermore, the Soldier testified and provided scheduling documentation for physical therapy however, no physical therapy examination nor medical diagnoses documentation was provided to the PEB. In addition, the Soldier testified under oath that an office visit to the Family Nurse Practitioner occurred on

28 February 2022 and that a knee MRI was completed 7 March 2022 however, no medical examination nor medical diagnoses documentation was presented to the PEB. The Soldier does not have a current or any previous profiles for these

conditions. The Soldier testified that these conditions have minimal impact on her ability to use stairs at her civilian employment and residence.

This case has been adjudicated based upon a review of the objective evidence of record, including the Soldier's testimony and exhibits provided during Formal Board proceedings; and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of DoDI 1332.18, Enc. 3, App. 2 and AR 635-40, to include combined, overall effect. (Contention memo with Exhibits, Sworn Testimony, Case file)

m. The applicant non-concurred with the findings and her written appeal was reviewed by the United States Army Physical Disability Agency. In their 13 June 2022 response to the applicant, the Agency maintained the formal PEB's findings: Her mental health issues were unfitting for continued military service; her mental health issues were not duty related; and there was insufficient probative medical evidence the additional conditions were unfitting for continued service:

"We completed a thorough review of the case file, eProfile, and JLV records. Of note, SPC [Applicant] has never been on and is not currently on a DA Form 3349 profile (temporary or permanent) for a lumbar spine, knee, or chest injury. The hand-written DA Form 2173 provided as evidence with the 8 June 2022 request for reconsideration memorandum, completed by [REDACTED], PA-C on 15 December 2021 was reviewed and is incomplete, lacking a diagnosis and description of the nature of the injury. It also does not show to have an approved LOD determination from the chain of command.

The Soldier has never been formally profiled for any of the noted conditions which does not provide evidence of a permanent need for duty restriction. Counsel reports that the Soldier's medical work up is ongoing, "it is still unknown the extent of her injuries and whether they are permanent or not" (paragraph 3 of the 8 June 2022 request for reconsideration memorandum). Counsel also notes, "She is still in the diagnostic process and the medical provider asked to see her again in 6 weeks for lower back and left knee pain. Her preliminary diagnosis is simply lower back pain and chronic left knee pain. The injury occurred less than 6 months ago which is still early in the diagnostic process" (paragraph 4 of the 8 June 2022 request for reconsideration memorandum).

It is outside of our purview to return cases to the AR-MMC or Military Treatment Facility for conditions that a Soldier is not referred for, has never been profiled for, and has not received a complete medical work up and treatment for. If this were the practice, many Soldiers would require their cases be returned because most have ongoing medical issues unrelated to the condition they are actually referred to the Non-Duty Related (NDR) PEB process for.



Our conclusion is that this case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System 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 8 June 2022 appeal were adequately addressed by the PEB in its Formal Board proceedings and we concur with the findings.

n. There was insufficient evidence the applicant had additional unfitting conditions. While one or more of these conditions may have eventually been unfitting after failing a series of conservative treatments, therapy(s), surgery(s), or other interventions, Soldiers are referred to the DES in a timely fashion, typically when they are first permanently profiled for one or more conditions which fail medical retention standards. In this case, it was when she was profiled for her mental health conditions.

o. Paragraphs 1 and 2 of appendix 1 to enclosure 3 of Department of Defense Instruction 1332.18, SUBJECT: Disability Evaluation System (DES) (5 August 2014):

1. GENERAL. The Secretary of the Military Department concerned will refer Service members who meet the criteria for disability evaluation regardless of eligibility for disability compensation.

## 2. CRITERIA FOR REFERRAL

a. When the course of further recovery is relatively predictable or within 1 year of diagnosis, whichever is sooner, medical authorities will refer eligible Service members into the DES who:

(1) Have one or more medical conditions that may, individually or collectively, prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating including those duties remaining on a Reserve obligation for more than 1 year after diagnosis; or

(2) Have a medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members; or

(3) Have a medical condition that imposes unreasonable requirements on the military to maintain or protect the Service member.

b. In all cases, competent medical authorities will refer into the DES eligible Service members who meet the criteria in paragraph 2a 2.a. of this appendix within 1 year of diagnosis.”

p. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the

Disability Evaluation System. Furthermore, there is no evidence that any duty related medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

q. JLV shows she has been awarded a total of three VA service-connected disability ratings: Dermatophytosis (10%), Limited Motion of Ankle (10%), and Benign Skin Neoplasm (0%). She has been diagnosed with non-service-connected bipolar disorder and right knee pain. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

r. It is the opinion of the ARBA Medical Advisor that reversals of the United States Army Physical Disability Agency's determinations that her unfitting mental health condition was not duty related; and/or that additional medical conditions were not unfitting for continued service or duty related are unwarranted.

#### 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 reversals of the United States Army Physical Disability Agency's determinations that her unfitting mental health condition was not duty related; and/or that additional medical conditions were not unfitting for continued service or duty related are unwarranted. The opine noted there is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards. The Board determined there is insufficient evidence to support the applicant's contentions for a medical retirement or service-connected disability reason for retiring. Therefore, the Board denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

2/6/2024

X [REDACTED]

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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.

REFERENCES:

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

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical

Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

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

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

2. Army Regulation (AR) 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

3. AR 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in AR 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active-duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

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

member who has less than 20 years of service and a disability rating of less than 30 percent.

5. AR 135–178 (ARNG and Reserve Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Chapter 15 paragraph 15-1k for medically unfit for retention states discharge will be accomplished when it has been determined that a Soldier is no longer qualified for retention by reason of medical unfitness (AR 40–501, AR 40–3) unless the Soldier requests and is (b) determined fit for duty under a non-duty related PEB fitness determination (AR 635–40).

6. AR 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.

7. 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.

8. 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.

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

//NOTHING FOLLOWS//