

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20230008108

APPLICANT REQUESTS: through counsel:

- change his honorable discharge to a physical disability retirement
- placement on the Permanent Disability Retired List (PDRL) with 100 percent disability effective 8 June 2020
- approve eligibility for Combat Related Special Compensation (CRSC)
- or alternatively, entry into the Disability Evaluation System (DES)
- award of back pay and entitlements to the effective date of his medical retirement
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief/Power of Attorney
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)(3)
- Medical Documents/Information and photos
- DA Photo
- Department of Veterans Affairs (VA) Letter
- Service Documents
- Memorandum for Record (MFR): Statement on Behalf of the Applicant

FACTS:

1. On 3 May 2023, Counsel provides a legal brief which states, the applicant requests the above and that during his Army career he suffered severe lower and upper extremity issues that should have been referred to a medical evaluation board (MEB). He also began to manifest post-traumatic stress disorder (PTSD) and PTSD related symptoms while still on active duty. The Department of Veterans Affairs (VA) diagnosed him with chronic PTSD. His physical and mental health disabilities, individually and collective, affected his ability to perform his duties to the point that he decided to separate from the Army. He asks the Board to consider his medical records and either retire him from the Army or process him through the DES for possible retirement from the service. He also lists other mental health as related to his request.

a. Although the applicant explained his extensive injuries and illnesses (physical and mental) at this separation physical in 2020, it still cleared him for separation. He received a 100% disability rating from the VA upon discharge. The applicant attended the U.S. Military Academy in 2008. He participated in intramural sports and suffered injuries to his ankle and meniscus. While at West Point, he completed airborne training, but his body paid for it with an ankle sprain and damage to both knees. He never “sucked it up” in the sense that he refused or failed to receive medical care. In fact, he reported injuries to Army medical providers, followed treatment and medication plans, and documented his visits and reports.

b. The applicant separated on his own accord. Like many Soldiers, he was unfamiliar with MEBs and physical evaluation boards (PEB) as well as temporary disability and the permanent disability retirement list (PDRL) eligibility. It was not until after he separated that he realized that his medical conditions demanded greater attention while he was in the service. Even though the Regular Army may have committed error in not referring the applicant to the DES, the Board has the legal authority to correct this error and grant him the relief he has requested.

c. Counsel states the Soldiers are referred to the DES when they no longer meet medical retention standards in accordance with Army Regulation (AR) 40-401 (medical Fitness), Chapter 3. An MEB may determine that a Soldier is no longer fit or suitable for service. Soldiers may also enter the DES if they receive a permanent medical profile rating of 3 or 4 in any factor and referred by a military occupational specialty (MOS) medical retention board. A final pathway is through command referral for a fitness for duty medical examination.

d. The applicant incurred or aggravated physical disabilities while in the Army that should have warranted his referral into the Army’s DES, for upper and lower extremities, behavioral health, his best friend and fellow Soldier committed suicide, he had increased anxiety, poor sleep and “excessive worry” and a head injury.

e. The Board should grant the applicant CRSC if it decides to medically retire him. The applicant realizes he would have to submit the Board’s decision to the Army Human Resource Command.

f. The applicant accepted his limitations and separated from the service. While in the Army, though medical providers should have referred him to an MEB and then into the DES. He should be receiving full retirement benefits for the injuries he sustained fighting for his country. At a minimum, though, the Board should refer his case to the Office of the Surgeon General for DES processing.

2. Counsel provides:

a. The applicant's sworn letter, 2 March 2023, reiterates the above and he in effect, states he should have been referred to a MEB for his accumulation of injuries and medically retired. He developed a throbbing headache each day from being in close proximity to the firing of thousands of 7.62mm rounds from machine guns. He slipped and fell down a hill in the dark during a mission while leading his platoon, the rucksack hit him in the back of the head, and he had balance problems the rest of the mission. He has deployed to Afghanistan and Iraq where he carried 70 pounds plus of combat gear and developed pain in his feet. He completed combative training and was punched in the face multiple times at full force which gave him a headache and a bloody nose. He sought help from Dr. M__ in 2017 for severe swelling in his lower legs that made his knees and ankles throb, and he had foot pain. In 2019 he was diagnosed with a partial tear in his Achilles tendon and varicose veins and recommended surgery. He had hammer toe surgery on his right 4th toe in 2019. The surgery was unsuccessful. Shortly after his discharge physical, COVID-19 locked down the world and he was unable to continue treatment for his injuries in the Army. These injuries were rated 100% service connected and permanently and totally disabling at discharge by the VA. After separation from the Army, he was diagnosed with Morton's neuromas for pain in his feet and received cortisone shots. He was diagnosed with chronic PTSD associated with the shame, guilt, and responsibility of his best friend's suicide and the loss of most of his Soldier's hand. He believes that his primary care provider and command team should have referred him to a MEB because he was unfit to continue to be a Soldier in his MOS.

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

c. VA Rating Decision letter, 29 July 2020 reflects service connection for:

- bilateral flat foot with plantar fasciitis 50%
- 3rd toe, frostbite 20%
- left shoulder strain (claimed as both shoulders pain) 20%
- right shoulder strain (claimed as both shoulders pain) 20%
- left ankle strain (claimed as both ankles fractures pain) 10%
- left leg iliotibial band syndrome (ITBS) (claimed as both knees pain ITBS) 10%
- left leg varicose veins (claimed as both lower extremity varicose veins) 10%
- right ankle strain (claimed as both ankle fractures and right Achilles pain) 10%
- right leg ITBS with right calf muscle strain (claimed as both knees pain ITBS and right calf pain) 10%
- right leg varicose veins (claimed as both lower extremity varicose veins) 10%

d. VA letter, 30 July 2020 reflects information to guide him through the steps he may take now that the VA made a decision about his benefits.

e. The MFR: Statement on Behalf of the Applicant, 22 March 2023, reflects MC___ provides information pertaining to the injuries in the applicant's feet, ankles, knees, Achilles, and shoulders for the purposes of upgrading his honorable discharge to a medical retirement. He served as an Infantry Officer and company commander and had multiple Soldiers medically retire during his service. He deployed. He has known the applicant since they went to West Point together. MC___ was chosen to take command from the applicant. The applicant was not participating in physical training due to pain and the people in his command knew he was in pain. The applicant was unable to be on the range due to his profile for his shoulder where he could not wear body armor or be on his feet all day. This pain in his feet, ankles, and knees prevented him from simple activities. The applicant is known by everyone to be a hard worker who is one of the best officers that they know. He is committed to getting better so he can stay physically active. He volunteered to teach business classes in the prison system. And to help other veterans get into graduate schools. In his experience, MC___ believes the applicant would have been medically retired if he had stayed in the Army.

3. The applicant's service record shows the following information:

a. DA Form 71 (Oath of Office) shows the applicant was appointed as a Regular Army Infantry officer in the grade of second lieutenant on 26 May 2012.

b. His Officer Record Brief shows in Section I-(Overseas/Deployment/Combat Duty) the applicant served in Afghanistan from 28 January 2015 to 20 May 2015 and Iraq 4 January 2016 to 29 March 2016.

c. Orders 252-0134, 9 September 2019, released the applicant from active duty (REFRAD). Date of release 8 June 2020.

d. An MFR: Appointment as a Reserve Commissioned Officer of the Army, 9 June 2020, shows the applicant's appointment in the U.S. Army Reserve (USAR) in the rank of captain/CPT.

e. He was honorably REFRAD on 8 June 2020 and transferred to the USAR. He was released due to completion of required active service. He had a separation code of MBK and reentry code not applicable. He completed 8 years, and 13 days of net active service this period. His DD Form 214 shows:

- item 23 (Type of Separation): REFRAD
- item 25 (Separation Authority): AR 600-8-24 (Officer Transfers and Discharges)
- item 26 (Separation Code): MBK
- item 28 (Narrative Reason for Separation) Completion of Required Active Service

f. Orders D-01-100257, 7 January 2021, honorably discharged the applicant from the USAR with an effective date of 5 January 2021.

g. The applicant's available record is void of any documentation to show he received a physical profile, medical evaluation board, physical evaluation board, a referral to the DES, that he submitted an application for CRSC under Title 10, United States Code (USC), section 1413a (CRSC) from the Department of the Army ("CRSC Board") or received a separation board due to a medical condition. In addition, his record is void of his separation packet containing the specific facts and circumstances surrounding his separation.

4. 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.

5. 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, 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 referral to the Disability Evaluation System (DES). On his DD Form 149, he had indicated that PTSD and Other Mental Health conditions are issues related to his request. Counsel states in part:

“Although Mr. [Applicant] explained his extensive injuries and illnesses at his separation physical in 2020, the provider still cleared him for separation. Mr. [Applicant] received a 100% disability rating from the Department of Veterans Affairs upon his discharge. The government compensates him for the toll that the military service placed on his physiology and psychology. But the Army should have recognized earlier - before he separated - that his injuries rendered him unable to perform the preponderance of his duties as an infantry officer and commander.

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 former Officer entered Regular Army on 26 May 2012 and was honorably

discharged on 8 June 2020 at the completion of his required active service under the provisions of AR 600-8-24, Officer Transfers and Discharges. It shows he served in Afghanistan from 28 January 2015 thru 20 May 2015 and Iraq from 4 January 2016 thru 29 March 2016.

d. The EMR shows the applicant was evaluated and treated for a variety of temporary conditions during his Service, to include a right fibular stress fracture, epistaxis (nose bleeds), melena (blood in his stool), and metatarsalgia (foot pain) treated with inserts and a fusion of a joint in his right 5th toe. The three behavioral health encounters were post-deployment screenings with no diagnosed conditions or follow-up encounters.

e. The applicant underwent his pre-separation examination on 10 February 2020. The applicant documented many of the above noted conditions on his Report of Medical History. Except for the applicant's congenital pes cavus (high arch) and history of foot pain with the fusion of a right toe, the provider documented a normal examination on the accompanying Report of Medical Examination and found the applicant qualified for separation.

f. The applicant's final two Officer Evaluation Reports (OER) cover 13 April 2019 thru 8 June 2020. They show he passed his Army Physical Fitness Tests and was a successful Officer. The senior rater comments from his final OER:

"CPT [Applicant] ranks in the top third of Captains that I currently senior rate. Dave demonstrated a higher level of understanding of the military decision-making process and planning operations at the battalion level. He is an intelligent and confident leader who drastically improved the battalion's readiness and will be a valuable asset to his next organization. Promote to Major and select for resident ILE [Intermediate Level Education]. CPT Junta will be a successful field grade officer."

g. There is no probative evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary separation; or which prevented him from continuing his military career. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition permanently prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his voluntary separation.

h. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for Flat Foot Condition, Limited Left Ankle Motion, and Varicose Veins. He does not have a service-connected behavioral health condition.

i. 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.

j. It is the opinion of the ARBA medical advisor that referral of his case to the Disability Evaluation System is 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 through counsel 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 through counsel of the applicant's petition, available military records, and medical review, the Board concurred with the advising official's determination that referral to the Disability Evaluation System (DES) was not warranted. The advisory opinion indicated that there was no evidence suggesting the applicant had a medical condition that permanently prevented him from reasonably performing the duties associated with his office, grade, rank, or rating prior to his voluntary separation.

2. The Board also found insufficient evidence to support the applicant's and counsel's request for back pay and entitlements dating to the effective date of a claimed medical retirement. Notably, the applicant's records did not reflect any documentation of a physical profile, Medical Evaluation Board (MEB), Physical Evaluation Board (PEB), or DES referral. Additionally, there was no evidence of an application for Combat-Related Special Compensation (CRSC) under Title 10, U.S. Code, Section 1413a, nor any indication that the applicant underwent a separation board due to a medical condition. Given the absence of probative evidence to indicate the presence of a disqualifying medical condition or failure to meet medical retention standards, and in line with the advisory opinion, the Board concluded that relief was not warranted and therefore denied the request.

3. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XXX	XXX	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.



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. 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.

2. 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.

3. 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.

4. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states 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.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

5. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

6. 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 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 a Military Occupational Specialty 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 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.

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.

7. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. Army Regulation 635-8 (Separation Processing and Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty

service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. item 23 (Type of Separation): enter the appropriate term for officer personnel: REFRAD, Discharge, Retirement, REFRAD to continue on active duty in another status, Release from Active-Duty Training, Dismissal, Dropped from rolls of the Army and Release from custody and control of the Army.

b. item 25 (Separation Authority): enter the regulatory or other authority cited in the directives authorizing the separation.

c. item 26 (Separation Code): Obtain correct entry from AR 635–5–1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. item 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

9. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code MBK (is to be used for Soldiers discharged for completion of period of active duty).

10. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as “MBK” for the completion of period of AD.

11. Department of Defense Financial Management Regulation, Volume 7B:

a. Section 630301 states, a member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860 (Claim for CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

b. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The

Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

c. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

d. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

12. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

13. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to

develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

14. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

15. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

16. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

17. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless

of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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

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

18. Army Regulation 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//