

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230008221

APPLICANT REQUESTS: reconsideration of his prior request for physical disability separation in lieu of honorable administrative separation due to a condition, not a disability

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

- DD Form 149 (Application for Correction of Military Record)
- Privacy Act Release, dated 2 June 2023
- numerous pages of email correspondence from the office of the applicant's Member of Congress, dated between August 2023 – March 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210015530 on 15 June 2023.

2. The applicant states:

a. During the final stages of Advanced Individual Training (AIT) at Fort Lee, VA, it was brought to the attention of the company commander that a male had sexually assaulted him. His commanding officer advised him that he should discuss the military sexual trauma (MST) with his permanent duty station after completion of Airborne school, as his duty station was unknown at the time.

b. After the completion of AIT and airborne training, he moved his wife and child to Fort Bragg, NC. Upon arrival at Fort Bragg, NC, he informed his commanding officer of the situation that occurred during AIT and was advised of the "Don't Ask, Don't Tell" policy and signed documentation regarding that policy. AS weeks go by, he met fellow paratrooper battle buddies. and he was in the barracks with several other Soldiers when the MST occurred again. He could not fight the three individuals who forced him to their behaviors. These individuals knew where he lived on post, so after the encounter he went back to his commanding officer to tell him what just happened and seek some type of protection. Again, his commander advised him of the "Don't Ask, Don't Tell" policy

and was told if he brought it up again, he would be discharged from the Army under that policy.

c. A few days go by and the individual broke into his home on post in the middle of the night, while his wife and children were upstairs getting ready for the evening, and another MST occurred. This time, the military police (MP) were called, but he did not report it to his commander at the time, because he was already informed what would happen the next time he brought up MST. The MPs advised him they would let the unit know and he left it at that.

d. His discharge from the Army was a rushed and quick process. He needed additional follow-up care that was never occurred and after his Army discharge, benefits were not provided. As an MST survivor, he can confidently say that the mental health problems he has to this day, with the recurring replay of vivid memories, is his reason for separation from the Army and is a disability.

e. Over the past 10 years, he has been attempting to have his discharge upgraded from honorable discharge due to a condition, not disability, to honorable medical discharge, as he does in fact have several disabilities amounting to a 100 percent service-connected disability rating from the Department of Veterans Affairs (VA). His previous commanding officer was upset he decided not to deploy with the unit, as he had been considered non-deployable because his older sibling was killed in Iraq in 2007. He has attempted to contact the Army Review Boards Agency (ARBA) to no avail and completed all required paperwork, with no response. When he attempts to get assistance from the VA, they refer him back to ARBA.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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 (P) or temporary (T).

4. A DD Form 2808 (Report of Medical Examination), dated 25 March 2011, shows the applicant underwent medical examination on the date of the form for the purpose of Regular Army enlistment and was found qualified for service with a PULHES of 111121, with the physical rating of 2 in factor E for vision.

5. The applicant enlisted in the Regular Army on 9 January 2012.

6. After completion of Basic Combat Training (BCT) at Fort Jackson, SC, and AIT at Fort Lee, VA, the applicant completed Airborne training at Fort Benning, GA, and was awarded the Parachutist Badge effective 10 August 2012. He then proceeded on permanent change of station orders to Fort Bragg, NC, with a reporting date of 22 August 2012.

7. A memorandum for record from the applicant's immediate commander, dated 12 April 2013, shows it was his intent to administratively separate the applicant under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, due to other designated mental condition as the result of a psychiatric condition incompatible with treatment in a military treatment facility (MTF).

8. A commander's report, dated 17 April 2013, shows:

a. The applicant's immediate commander proposed his separation under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions.

b. The specific reason for the recommended action was that Mental Health had diagnosed the applicant with adjustment disorder with anxiety and directed his separation under the provisions of Army Regulation 635-200, paragraph 5-17.

c. A Report of Mental Status Evaluation and a Report of Medical Examination were listed as attached to the commander's report, and while the documents are not attached, the commander states, in the report, in effect, Mental Health diagnosed the applicant with an anxiety disorder. None of the documents reflective of his mental health diagnosis and prognosis, are in his available records for review.

d. The commander did not consider it feasible or appropriate to accomplish another disposition because the applicant's mental state indicated he lacked the ability to be rehabilitated into a productive member of the Army and retaining him would be a distraction to the unit and its mission.

e. The applicant has not filed an unrestricted report of sexual assault within 24 months of initiation of this separation action.

9. On 17 April 2013, the applicant was notified by his immediate commander of his initiation of action to honorably separate him under the provisions of Army Regulation 635-200, paragraph 5-17, other designated physical or mental conditions, subsequent to Mental Health diagnosing him with adjustment disorder with anxiety and directing his administrative separation. He was advised of his right to consult with counsel and submit written statements in his own behalf.

10. On 17 April 2013, the applicant acknowledged receipt of the notice from his commander, informing him of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 5-17, and the rights available to him, including the right to consult with counsel prior to making his election of rights.

11. On 17 April 2013, the applicant signed the form, acknowledged having been advised by his consulting counsel of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 5-17 for other designated physical or mental conditions, the rights available to him, and the effect of any action taken by him in waiving his rights. He did not submit statements in his own behalf and waived consulting counsel. He also indicated he did not file an unrestricted report of sexual assault within 24 months of initiation of the separation action and did not believe this separation action was a direct or indirect result of the sexual assault itself or of the filing of the unrestricted report.

12. On 18 April 2013, the applicant's battalion commander recommended approval of the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions. This endorsement indicates the applicant did not file an unrestricted report of sexual assault within 24 months of initiation of this separation action.

13. On 18 April 2013, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions. The approval memorandum reflects the applicant did not file an unrestricted report of sexual assault within 24 months of initiation of this separation action.

14. U.S. Army Installation Management Command Orders 113-0277, dated 23 April 2013, discharged the applicant effective 9 May 2013.

15. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:

- his duty status was changed from present for duty (PDY) to absent without leave (AWOL) on 23 April 2013
- his duty status was changed from AWOL to PDY on 24 April 2013

16. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)

- he was diagnosed with a condition that failed retention standards and/or was unfitting

17. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharge on 9 May 2013, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability (Separation Code JFV, Reentry Code 3). He was credited with 1 year, 4 months, and 1 day of net active service.

18. A VA letter, dated 4 August 2021, informed the applicant he had one or more service-connected disabilities with a combined evaluation of 100 percent. He is considered totally and permanently disabled solely due to his service-connected disabilities effective 30 November 2020.

19. A printout of the applicant's VA disability ratings, dated 3 March 2022, shows his combined service-connected disability rating of 100 percent includes the following conditions:

- radiculopathy, left upper extremity, C5/C6 nerve roots, 20 percent, effective 29 November 2020
- radiculopathy, right lower extremity sciatic nerve, 20 percent, effective 5 September 2013
- radiculopathy, left lower extremity sciatic nerve, 20 percent, effective 5 September 2013
- radiculopathy, right lower extremity, femoral nerve, 10 percent, effective 29 November 2020
- post-traumatic stress disorder (PTSD), 70 percent, effective 19 May 2021
- right hip strain, limitation of abduction, 20 percent, effective 29 November 2020
- right hip strain, limited extension of the thigh, 10 percent, effective 29 November 2020
- left hip strain, limited extension of the thigh, 10 percent, effective 29 November 2020
- patellofemoral pain syndrome, left knee, 20 percent, effective 29 November 2020
- irritable bowel syndrome, 0 percent, effective 29 November 2020
- patellofemoral pain syndrome, right knee, 20 percent, effective, 29 November 2020
- left hip strain, limited flexion of the thigh, 40 percent, effective 29 November 2020
- migraines, including migraine variants, 30 percent, effective 13 December 2020
- lumbosacral strain, 40 percent, effective 29 November 2020
- chronic fatigue syndrome, 60 percent, effective 29 November 2020
- cervical strain, 30 percent, effective 29 November 2020
- left hip strain, limitation of abduction, 20 percent, effective 29 November 2020

- right hip strain, limited flexion of the thigh, 40 percent, effective 29 November 2020
- left ankle strain, 20 percent, effective 29 November 2020

20. The applicant previously applied to the ABCMR in 2021, requesting physical disability separation in lieu of honorable administrative separation under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability. In the adjudication of that case, an advisory opinion was obtained from the ARBA medical advisor, who opined referral of the applicant's case to the Disability Evaluation System was not warranted.

21. On 15 June 2022, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

22. In the adjudication of the applicant's current request, the Criminal Investigation Division (CID) provided a memorandum, dated 23 October 2023, which shows a search of the Army criminal files revealed no MST records pertaining to the applicant.

23. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

24. 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/or 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, in essence, a referral to the Disability Evaluation System (DES). He states:

During the final stages of AIT [advanced individual training] in Ft. Lee, VA it was brought to the attention of the CO [commanding officer] that a male had sexually

assaulted me. CO at the time advised after airborne school I discuss the MST with my duty station as it was unknown at the present time.

Upon arrival of Ft. Bragg, I advised my CO of the situation that occurred during AIT and was advised "Don't Ask, Don't Tell policies and signed documentation regarding that policy.

I was in the barracks in 2nd Brigade with several other joes with MST occurred again. I couldn't fight the three individual that forced me to their behaviors. These individuals knew where I lived on post, so after the encounter I go back to my CO and tell him what just happened and I was seeking some type of protection.

Again, my CO advised me of the "Don't Ask Don't Tell" policy and if I brought it up again I would be discharged from the Army under those conditions. A few days go by and the individual broke into my home on post in the middle of the night, while my wife and children was home upstairs getting ready for the evening when the sexual assault occurred, this time MPs were called but I did not report to the

CO at the time because I was already informed what would happen the next time I brought up the MST. The MPs advised me they would let the unit know and I left it at that. Upon exiting the US Army, it was a rushed and quick process. I needed additional follow-up that never occurred, and after the Army benefits were not provided. As an MST survivor, I can confidently say that the mental health problems that occurs to this day with the replay of vivid memories is the reason for separation from Active Duty, a related disability by another active duty service-member.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 he entered the regular Army on 9 January 2012 and received an honorable discharge on 9 May 2013 under the separation authority provided by paragraph 15-17 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Other designated physical or mental conditions.

d. The previous request for referral to the DES was previously denied by the ABCMR on (AR20210015530). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant and mental health aspect of the case.

e. No new evidence was submitted with the case.

f. Paragraph 5-17 of AR 635 200 authorizes discharges for conditions which interfere with military service but are not service incurred disabilities. From paragraph 5-17a:

“Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

- (1) Chronic airsickness.
- (2) Chronic seasickness.
- (3) Enuresis.
- (4) Sleepwalking.
- (5) Dyslexia.
- (6) Severe nightmares.
- (7) Claustrophobia.
- (8) Other disorders manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.”

g. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show he was in good health, and without significant medical history or medical conditions.

h. AHLTA shows the applicant was first seen for a mental health concern on 3 February 2013 when he was seen in the emergency department for anxiety. Following evaluation, he was diagnosed with adjustment disorder, rule conversion disorder.

i. Conversion disorder and somatic symptom disorder are both categorized as somatic symptom and related disorders (previously termed somatoform disorders). Somatic symptom and related disorders are psychiatric conditions where patients experience distressing physical symptoms associated with abnormal thoughts, feelings, and behaviors in response to these symptoms. They may result from psychological stress that is unconsciously (without awareness) expressed somatically, though the underlying cause is not fully understood.” (<https://bestpractice.bmj.com/topics/en-us/989>)

j. The applicant continued to be seen for adjustment disorder and went on to develop headaches in February and a stutter in March 2013 for which he was referred to neurology.

k. When seen by neurology on 4 March 2013, the applicant had several physical complaints in addition to the new onset stutter:

“Pain in head is constant pressure ache; Pain in both arms is intermittent and numbness, tingling; Pain in lower back is constant stabbing; Pain in both legs and feet is constant numbness and tingling feels like they are sleep.”

I. Following the evaluation, the neurologist opined:

“STUTTERING: Patient with recent onset stuttering in setting of multiple other somatic complaints of undetermined etiology and also in setting of strong psycho-social stressor (divorce). I am concerned for a functional etiology for this (and, indeed the one finding other than tremor on his physical was strongly suggestive of a functional etiology-sensory impairment.”

m. An MRI was ordered and the applicant was referred for neuropsychological testing. The results of the MRI were not uploaded into AHLTA. Following his completion of the neuropsychological, the provider opined on 11 March 2013:

“The service member’s self-report, inadequate effort, response bias, and exaggeration in the context of current circumstances, his diagnoses to rule out are malingering of neurocognitive dysfunction vs. factitious disorder.”

n. The applicant was seen in follow-up by neurology on 5 April 2013 at which time the neurologist also diagnosed the applicant with adjustment disorder:

“Adjustment disorder with anxious mood: Patient's stutter has completely remitted. He understands that it was likely psychogenic in origin and will continue to follow-up with behavioral. Neuropsych findings and diagnosis noted. Follow-up with neurology as needed. No further interventions needed at this time.”

o. On 17 April 2013, his company commander recommended he be separated for “Mental Health has diagnosed you with adjustment disorder with anxiety and has directed you to be separated under AR 635-200 Para 5-17.” His recommendation was approved by the brigade commander on 18 April 2013.

p. While these medical issues and concerns certainly could have arisen from military sexual trauma, there is insufficient probative evidence the applicant had a mental health or any other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

q. Review of his records in JLV shows he has been awarded twenty-five VA service-connected disability ratings, including a 70% rating for PTSD awarded 19 May 2021 and a 60% rating for chronic fatigue syndrome awarded 30 November 2020. However, 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. 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 referral of his case to the Disability Evaluation System remains unwarranted.

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 evidence shows mental health professionals diagnosed the applicant with adjustment disorder with anxiety, a condition incompatible with treatment in a military treatment facility. As a result, the applicant was honorably discharged due to a condition, not a disability. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewing official finding that although the applicant's medical issues could have arisen from military sexual trauma, there is insufficient probative evidence the applicant had a mental health or any other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, the Board determined there was no cause for referral to the Disability Evaluation System then, and referral of his case to the Disability Evaluation System remains unwarranted.

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 to amend the decision of the ABCMR set forth in Docket Number AR20210015530 on 15 June 2023.



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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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, on those conditions or experiences.

2. 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) 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 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 (MMRB); 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 their 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 their 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.

3. Army Regulation 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). 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.

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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-17 states a service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or performance of duty. not amounting to disability under Army Regulation 635-40 and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) Such conditions may include, but are not limited to, the following:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

b. When a commander determines a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or a mental status evaluation in accordance with Army Regulation 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded many opportunities to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Soldier being separated under this section will be awarded a character of service of honorable, under honorable conditions, or uncharacterized if in an entry-level separation. An under honorable conditions characterization of service which is terminated under this paragraph is normally inappropriate.

6. Title 38, U.S. Code, 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.

7. Title 38, U.S. Code, 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.

8. 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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//