

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230008238

APPLICANT REQUESTS: in effect a medical retirement vice separation with severance pay and an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 February 2016
- email (for documents), 16 February 2022
- ██████████ Army National Guard (██████ ARNG) disability counseling statement, 21 April 2022
- Sworn Statement, 22 April 2022
- Order D 152-04, 1 June 2022
- NGB Form 22 (Report of Separation and Record of Service), 1 July 2022
- Department of Veterans Affairs (DVA) letter page 1, 13 January 2023
- email (Follow up), 2 February 2023
- 180-day returned line of duty (LOD) investigation denial, 16 February 2023
- email (LOD awaiting action), 24 February 2023
- Summary of care by non-military medical provider
- Medical records (23 pages)

FACTS:

1. He was only granted an honorable discharge from the Army National Guard due to medical reasons, with a ten percent (%) percentage of disability rating. The decision, at the time, was conducted while several errors regarding his Line of Duty (LOD) determinations and medical diagnoses/records were being corrected. The National Guard has since fixed these errors; therefore, he should receive a medical retirement instead of a separation with severance pay.

b. During the medical board which directed his discharge, the only LOD injuries considered, were documented only as right hip. During the medical board process, the National Guard was working on correcting his back/radiculopathy LOD documents; however, there was a mistake in a medical system with his records not being uploaded properly, and because of this mistake, his LOD case was not reopened; his LOD case was dismissed. On the VA side of things, the VA had an administrative error which was still being corrected, regarding the appeal of his back and hip conditions.

c. Since the medical board's decision, the VA has corrected several errors regarding his injuries; his right hip is currently rated at 20%, but his attorneys are in the process of appealing for a higher rating. In January 2023, the VA corrected the administrative error, and he received the following percentage of disability ratings: Back - 10%, Right leg radiculopathy - 20%, Left leg radiculopathy - 20%.

d. Since then, the National Guard was also able to get his medical documents sorted out and corrected for the back and radiculopathy. With everything being corrected, the process of reopening the back/radiculopathy LOD cases was started in April 2022. While in the process of the medical board, he completed DA Form 2823 (Sworn Statement), Disability Counseling Statement, Right and Warning Statement, DA Form 7809 (Summary of Care), and Soldier Functional Limitations Review for the Army Combat Fitness Test. When he was conducting the exit interview, he asked where his LOD case was in the process, and he was informed it needed to be sent up for approval. With the VA having its corrections completed in January 2023, he contacted [REDACTED] National Guard 24 February 2023, to get the LOD, and was informed it was just sent. With the extended delay of sending the LOD, he received Memorandum dated Suspense: 18 March 2023 for a Denied LOD due to it being past 180 days since discharge.

e. During his time in service, he was continuing to seek medical care for his right hip and radiculopathy (back). He had an LOD for them both (excluding errors on military side causing expiration) and completed paperwork for profiles preventing him from conducting his duties due to injuries. At the start of the injury, he received diagnosis of right hip, back, and radiculopathy with trying to treat the injury. On 2 October 2020, surgery was conducted on his right hip to try to fix the hip and radiculopathy. The surgery failed to correct the radiculopathy, and he is presently still having right hip issues due to arthritis being discovered, and only a future hip replacement being able to fix it. He is still seeking medical care for his back and radiculopathy injuries, but not for his hip condition, because there are no other medical treatments available for his hip.

f. In conclusion, he contends, the 10% rating discharge should be reopened and corrected because the VA and the National Guard made all the necessary correction to his records. If his record were to be reconsidered with all the medical conditions properly listed, he contends the new percentage of disability rating would absolutely

place him over the 30% threshold, making it a medical retirement instead of an honorable discharge with severance.

2. The applicant underwent a medical examination on 30 April 2015, for the purpose of enlistment. He was assigned a PULHES of 111111. He was found qualified for service.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

3. The applicant enlisted in the [REDACTED] ARNG on 30 April 2015.

4. He entered a period of active-duty training (ADT) on 6 October 2015. He was honorably released from ADT on 23 February 2016, after completion of required active service.

5. The applicant provided a/an -

a. email subjected: (For documents), dated 16 February 2022, stating the LOD was initiated on 9 March and is pending an investigating officer.

b. [REDACTED] ARNG disability counseling statement, 21 April 2022, showing the applicant understood that to be eligible for continuance of pay and allowances while disabled from an injury/aggravation/illness/disease incurred in line of duty he must fulfill the requirements in the counseling.

c. Sworn Statement dated 22 April 2022, explaining his injuries and how they were incurred.

6. On 17 May 2022, a Formal Physical Evaluation Board convened, and the board found the applicant physically unfit and recommended a combined rating of 10% and that his disposition be separation with severance pay.

a. The conditions determined to be unfitting were:

- right hip osteoarthritis with femoral acetabular impingement syndrome with labral tear [painful motion]; rated at 10%

- right hip osteoarthritis with femoral acetabular impingement syndrome with labral tear [extension], rated at 0%
- right hip osteoarthritis with femoral acetabular impingement syndrome with labral tear [flexion], rated at 0%

b. The applicant appeared and was represented by regularly appointed counsel.

c. The applicant contends he should be found unfit for his lumbosacral strain lower back condition (MEB Dx 4).

d. Based on the preponderance of evidence, the PEB has determined that the Soldier's lumbosacral strain lower back condition (MEB Dx 4) is not unfitting. He did not have a current profile for his lumbosacral strain lower back condition (MEB Dx 4) and has not exhausted all conservative medical treatments or higher level of care for his symptoms.

e. The applicant did not concur, nor did he request reconsideration of his VA ratings. The board proceedings were approved on 1 June 2022.

9. Order D 152-04, issued by Headquarters, United States Army Physical Disability Agency, Joint Base San Antonio, TX, on 1 June 2022, shows he was to be discharged on 1 July 2022. He was to be authorized disability severance pay at 10% rate.

10. Accordingly, he was honorably discharged from the ■■■ ARNG on 1 July 2022 under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35I (8), due to medically unfit for retention per AR 40-501, chapter 3. He completed 6 years net service this period.

11. The applicant provides a/an:

a. DVA letter page 1, 13 January 2023, showing service connection for lumbosacral strain with intervertebral disc syndrome was granted with an evaluation of 10% effective 21 July 2021. Service connection for left leg sciatic radiculopathy is granted with an evaluation of 20% effective 21 July 2021. Service connection for right leg sciatic radiculopathy is granted with an evaluation of 20% effective 21 July 2021. Combined rating of 80% effective 22 September 2022.

b. Email (Follow up) to a member of the ■■■ ARNG, 2 February 2023, wherein the applicant states the VA was able to finally get the ratings for his back and the appeal for his hip done after being discharged.

c. Memorandum, National Guard Bureau (NGB), dated 18 February 2023, subject: 180 Day Returned LOD Investigation, wherein the NGB notified the applicant his LOD

investigation was returned without action and must be forwarded to Army Human Resource Command (AHRC) for reconsideration to process. The LOD did not fall within the LOD processing guidelines issued with PPOM 17-022, Implementation Guidance for Army National Guard Line of Duty Procedures and Investigations. Effective 4 April 2017, Soldiers will have up to 180 days following the completion of their qualified duty to request consideration for a LOD determination, absent special circumstances. This LOD request exceeds that 180-day threshold.

d. email (LOD awaiting action) from a member of the [REDACTED] ARNG, 24 February 2023, notifying the applicant that his request was outside of 180 days and NGB closed his case without action.

e. Summary of care by non-military medical provider related to his injuries of chronic right hip pain and lumbar back pain and sciatica.

f. Medical records (23 pages) in support of his claim.

12. 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.

13. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

14. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

15. 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 his lumbar spine and associated radiculopathy be determined unfitting conditions for continued military service; an increase in his military disability rating; and a subsequent change of his disability discharge disposition from separate with severance pay to permanent retirement for physical disability.

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Orders published by the United States Army Physical Disability Agency show the applicant was separated with disability severance pay effective 1 July 2022 for a disability rating of 10%.

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

g. On 20 August 2021, the applicant was referred to the IDES for "Right Hip FAI [femoral acetabular impingement] Syndrome / Labral Tear" and "Left Hip Strain." The applicant claimed three additional VA Form 21-526 EZ): Lower back pain, sciatica, and depression/anxiety.

h. A medical evaluation board (MEB) determined his “Right hip Osteoarthritis w/femoral acetabular impingement syndrome with labral tear, right hip-extension and flexion” failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined five additional medical conditions met medical retention standards. His lumbar spine condition and radiculopathy as described on his MEB narrative summary:

“Lumbosacral Strain Lower back (VA DX)- Lumbar Spine MRI 20180706- IMPRESSION: Negative MRI of the lumbar spine for age. Lumbar spine x-ray 20210521-IMPRESSSION Mild convex left curvature. Otherwise, negative.

Per C&P examiner, the SM reports that this condition began in 2017. He reports that his back began to hurt after a 12-mile hike in full gear. He reports that he has used NSAIDS, has undergone physical therapy and Gabapentin with little relief. Medical record review is quiet for treating specialty providers for a back condition within the last couple of years.

Per PCP [primary care provider] note dated 20210301, there is no mention of radiculopathy in the A/P [Assessment / Plan] portion of the note. There have been no medical providers placing the SM [Service Member] on activity limitations/restrictions since 20180803 for a back condition and review of eProfile is quiet for the same. Therefore, there is insufficient evidence of interference with satisfactory performance of duty based on this condition.

Lumbosacral Radiculopathy (VA DX)/claimed as Sciatica - Per C&P examiner, the SM reports that this condition began in 2017. He reports that his back began to hurt after a 12-mile hike in full gear. He reports that he has used NSAIDS, has undergone physical therapy and Gabapentin with little relief.

Per C&P exam, the SM has negative SLR’s bilaterally, reports moderate paresthesia/dysesthesia and numbness. He also reports “constant moderate pain”. Medical record review is quiet for treating specialty providers for a back condition within the last couple of years. Per PCP note dated 20210301, there is no mention of radiculopathy in the A/P portion of the note. There have been no medical providers placing the SM on activity limitations/restrictions for radiculopathy and review of eProfile is quiet for the same. Therefore, there is insufficient evidence of interference with satisfactory performance of duty based on this condition.”

i. The applicable VA Disability Questionnaires (aka VA C&P) were reviewed. A notable request by the applicant on his Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire:

“Patient also is requesting for me to sign a preemployment medical release for him to apply to the South Dakota Highway Patrol. Patient reports he has an Interview with them tomorrow. He does feel that he can complete the tasks outlined in his paperwork without concerns.”

j. On 4 November 2021, the applicant concurred with the MEB’s decision and his case was subsequently forwarded to a physical evaluation board (PEB) for adjudication.

k. On 18 January 2022, the applicant’s informal PEB found his right hip condition to be the sole unfitting for continued military service. They found the remaining five medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay. The applicant non-concurred with the PEB, submitted a written appeal, demanded a formal hearing with regularly appointed counsel, and declined to request a VA reconsideration of his ratings.

l. A 16 May 2022 email from the applicant’s Soldiers’ MEB Counsel to the PEB shows he appealed the findings that his lumbar spine condition had been found not unfitting for service.

m. The applicant was present for and represented by regularly appointed counsel at his formal PEB. The Formal Physical Evaluation (PEB) Proceedings (DA Form 199-1) shows the board maintained the informal PEB’s findings and recommendation:

“The Soldier contends that he be found unfit for his lumbosacral strain lower back condition (MEB Dx 4). Based on the preponderance of evidence, the PEB has determined that the Soldiers lumbosacral strain lower back condition (MEB Dx 4) is not unfitting.

The Soldier does not have a current profile for his lumbosacral strain lower back condition (MEB Dx 4) and has not exhausted all conservative medical treatments or higher level of care for his symptoms. The Soldier testified that he joined the Army National Guard seven years ago and started experiencing back pain when he attended MOSQ school two years afterwards during a ruck march.

The Soldier stated his back pain persisted and he sought treatment in October 2017. The Soldier testified he started physical therapy in December 2017 - January 2018 and did not experience improvement. The Soldier also testified he denied back Injections during that time. The Soldier testified that he received a magnetic resonance image (MRI) for his back in March 2022. The MRI revealed mild degenerative changes with no significant pathology.

Despite the Soldiers testimony, there remains insufficient objective medical evidence that the Soldiers lumbosacral strain lower back condition currently falls

below retention standards. IAW AR 40-501, Chapter 3 and the FPEB decision is the condition is not unfitting. This case has been adjudicated based upon a review of the objective evidence of record, including the Soldiers testimony and exhibits provided during Formal Board proceedings.”

n. On 22 May 2022, after being counseled by his PEB Liaison Officer (PEBLO) on the PEB’s findings and recommendations, the applicant non-concurred with the formal PEB and submitted a written appeal to the United States Army Physical Disability Agency. The Agency reconfirmed the formal PEB findings and recommendation as seen in their 1 June 2022 memorandum:

“We completed a thorough review of the case file, eProfile, and the Joint Legacy Viewer records. Of note, the Soldier was placed on a temporary profile for his back condition from 5 May 2018 to 3 August 2018 (90-day profile) and has not been profiled for his back condition since. The “Summary of Care by Non-Military Medical Provider”, DA Form 7809, was completed on 6 May 2022 and provided to and considered by the PEB prior to the convening of the FPEB on 17 May 2022. DA Form 7809 notes that further evaluation is planned for this condition and follow up is on an as needed basis.

After reviewing the complete case file and the evidence submitted with the appeal, we are unable to conclude differently than the FPEB as summarized on DA Form 199-1 dated 17 May 2022. In the absence of a complete medical work up, trial of treatment and current DA Form 3349 profile restrictions for the back condition, we agree with the FPEB that the Soldier’s lumbar condition is not unfitting.

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.”

o. Review of his PEB case file in ePEB along with his encounters in AHLTA revealed no substantial inaccuracies in or discrepancies.

p. His records in JLV show he has been awarded multiple service-connected disability ratings, including several relating to his lumbar spine. However, the DES compensates an individual only for service incurred 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 during or permanently aggravated by their military service. These roles and authority are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

q. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating, a change of his disability discharge disposition, nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

5/14/2024

X █

CHAIRPERSON
█

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation (AR) 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 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.

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 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.

3. 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.

4. 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 AR635-40 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.

5. 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.

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.

//NOTHING FOLLOWS//