

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230009507

APPLICANT REQUESTS:

- Upgrade of his discharge from under honorable conditions (general) to honorable
- Disability discharge in lieu of separation

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He believes his discharge to be inequitable due to undiagnosed post-traumatic stress disorder (PTSD). Prior to his deployment to Afghanistan, he had a son that was born with physical limb deformities causing additional stress on his work performance.

b. The birth of his son also made one of his noncommissioned officers (NCO) believe he could be closer to the applicant's wife with intentions of more than just a professional relationship. This NCO called his wife at all hours of the day and night, often while the applicant was at work with the NCO or when the NCO was intoxicated. The NCO made constant advances and crude comments over the phone and eventually it led to a confrontation at work. The incident was shook off as an overreaction, by the leadership, and swept under the rug.

c. When they deployed the NCO contacted his wife again and she contacted the rear detachment first sergeant. This information made it to Afghanistan, and he was ridiculed and reprimanded for it.

d. The NCO then heard about a joke that was told and coerced another Soldier to file an equal opportunity (EO) complaint against the applicant that eventually turned into an Article 15. He lost rank, pay, and was put on extra duty.

e. He worked 12 hour shifts in the Afghanistan sun with four to six hours of extra duty and was trying to figure out how to pay his bills when he was off shift and do everything else he needed to do to include showering, laundry, sometimes] he did not even get a chance to eat.

f. During his extra duty, he woke up late and missed the shuttle to the airfield, which was two miles away. He ran the two miles to the hanger and was almost a half an hour late. The NCO pushed yet another Article 15 up to the commander and he received an additional Article 15, in which he lost his rank/pay and the commander started chapter paperwork on him.

g. He continued with extra duty until the day he left Afghanistan. He returned stateside and got out. He received two Article 15s in the span of just a few weeks. Prior to deployment, he had just reenlisted. He does not believe patterns of misconduct was warranted nor an under honorable conditions (general) discharge.

h. Since his time in the Army, he has been an upstanding citizen, worked as a volunteer firefighter, and is working towards a bachelor's degree in engineering. He has been active in the Veterans community and has been the president and vice president of the SVA chapter at Jacksonville State University.

i. The applicant stated he included his 100 percent disability and summary of disability; however, they were not attached to his application. He did not respond to a request for the documentation.

3. The applicant's service record contains the following documents:

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Army on 21 June 2007 and remained in the Army through immediate reenlistments and an extension of his enlistment.

b. DA Forms 4856 (Developmental Counseling Form) show he was counseled on:

(1) 4 March 2011, the counseling form is unreadable. He agreed with the counseling and signed the form.

(2) 17 June 2011, for sexual harassment. He agreed with the counseling stating he did not mean to make the joke, he signed the form.

(3) 19 September 2011, informing him he was being considered for separation. He disagreed with the counseling stating he did not wish to be chaptered from military service. He had a family and all he wanted was what was best for them. He signed the form.

c. Memorandum for Record (MFR), 10 March 2011, states the applicant and another Soldier were accused of making a noose out of 550 cord and tried to put it around another Soldier's neck. Two other Soldiers witnessed the event. The applicant continued to make comments about Jasper, Texas and the dragging and killing of African Americans. The applicant was counseled and given corrective training.

d. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice), 29 June 2011, shows he accepted nonjudicial punishment for orally communicating certain indecent language to another Soldier on or about 5 June 2011. His punishment included reduction to private first class (PFC), forfeiture of \$975 pay per month for two months with one month suspended, and extra duty for 30 day.

e. MFR, 20 September 2021, from Sergeant First Class (SFC) B- B- states the SFC knew the applicant for 16 months. He was always motivated and willing to work. He was in good spirits and willing to talk. He lacked the understanding of rank; it had little meaning to him. He would walk up to a group of individuals regardless of rank and talk about his daily events. He took short cuts with his work, with increasing amounts of mistakes. He continually made bad choices based on poor judgement that bordered on reckless behavior. All attempts to modify his behavior had failed. The SFC felt any further attempts to train him would be a waste of Army resources.

f. DA Form 3822 (Report of Mental Status Evaluation), 20 September 2011, shows he was fit for duty, including deployment, and was cleared for administrative separation. His PTSD test was negative.

g. Memorandum 24 September 2011, shows the applicant's commander initiated action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b (Pattern of Misconduct) for failing to go to his appointed place of duty on or about 31 July 2011, leaving his weapon unattended and unsecured on or about 28 July 2011, oral communication of indecent language on or about 5 June 2011, making a noose out of 550 cord and attempting to place it around a Soldier's neck, and making comments about an incident occurring in Jasper, Texas involving the dragging and killing of African Americans on or about 2 March 2011. The commander was recommending an under honorable conditions (general) discharge, but the separation authority was not bound by that recommendation.

h. Memorandum, 24 September 2011, the applicant waived his right to consultation of counsel. He stated he had been afforded the opportunity to consult with appointed counsel for consultation. He wanted to proceed and declined the opportunity. He waived his right for consideration of his case by an administrative separation board, waived personal appearance before an administrative separation board, and did not submit statements in his own behalf.

i. The applicant's chain of command recommended approval of the separation with an under honorable (general) discharge. On 30 September 2011, the appropriate approval authority directed he be separated from the Army, in the rank of private/E2, with an under honorable conditions (general) discharge.

j. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was separated on 25 October 2011. He had completed 4 years, 4 months, and 5 days of active-duty service. He had continuous honorable active service from 21 June 2007 through 6 July 2008. He had service in Iraq from 27 April 2009 through 19 April 2010 and service in Afghanistan from 1 June 2011 through 13 October 2011. He was discharged for pattern of misconduct with an under honorable conditions (general) discharge. His separation code was JKA and his reentry code was 3. He was awarded or authorized the:

- Afghanistan Campaign Medal with Campaign Star
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Army Service Ribbon
- Overseas Service Ribbon
- Basic Aviation Badge

k. His service record was void of documentation showing he suffered from PTSD.

5. Based on the applicant's assertion he suffered from undiagnosed PTSD, the ARBA Medical Section provided a medical review for the Board's consideration.

MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced undiagnosed PTSD that mitigates his misconduct. He is also requesting a change to the narrative reason for separation to a disability.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 21 June 2007 and reenlisted on 14 December 2010.

- The applicant deployed to Iraq from 27 April 2009 to 19 April 2010 and to Afghanistan from 1 June 2011 to 13 October 2011. On 24 September 2011, the applicant's commander initiated action to separate him under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b (Pattern of Misconduct) for failing to go to his appointed place of duty on or about 31 July 2011; leaving his weapon unattended and unsecured on or about 28 July 2011; oral communication of indecent language on or about 5 June 2011; making a noose out of 550 cord and attempting to place it around a Soldier's neck, and making comments about an incident occurring in Jasper, Texas involving the dragging and killing of African Americans on or about 2 March 2011

- The applicant was discharged on 25 October 2011 and completed 4 years, 4 months, and 5 days of active-duty service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he believes his discharge was inequitable due to undiagnosed PTSD, and he discusses stress associated with the birth of his son and issues with an NCO behaving inappropriately toward his wife prior to and during his deployment. A Report of Mental Status Evaluation, for Clearance for Administrative Separation, dated 20 September 2011 was provided and showed that the applicant was diagnosed with "occupational problems" and that he met retention standards. The applicant did not provide any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed that the applicant is 100% service connected through the VA with 50% for PTSD. Records indicated an initial visit with DoD behavioral health on 23 November 2007 when the applicant was escorted for evaluation due to having sent a text message indicating he was suicidal. The applicant stated this was a misunderstanding and "blown out of proportion." The next encounter was on 22 July 2011 while the applicant was deployed at Camp Marmal (Afghanistan), and he presented voluntarily related to arguments with his wife and frustration with problems in his unit. Documentation next shows the Mental Status Evaluation on 20 September 2011 related to separation. This note discussed some anxiety associated with worries related to finances and his family as well as some sleep difficulty. The applicant denied symptoms of depression, PTSD, or other behavioral health problems. The documentation discusses no evidence of service-

limiting or disqualifying psychiatric diagnoses that would warrant an MEB, and a negative screening for PTSD. He was diagnosed with Occupational Problems. The applicant was seen on 21 October 2011 for a Post-Deployment Health Assessment, and he reported feeling “depressed” because of his son’s condition and his belief that the child’s congenital deformity was related to his Iraq deployment. He expressed some anger and frustration and was given a referral to the Vet Center. The applicant initially engaged VA for mental health care on 7 May 2015 and complained of anger, agitation, and emotional numbing since deployment. He was started on a medication to help with anxiety and referred for psychotherapy, which he did not follow up on. In subsequent visits, the applicant complained of difficulty with sleep and was prescribed medication for this as well as difficulty concentrating. In 2016 he was trialed on an anticonvulsant medication to reduce agitation and was later started on a stimulant medication for ADHD, and in 2017 an antidepressant medication was added. The primary diagnosis was PTSD, but the documentation does not reflect symptoms meeting full criteria of PTSD. Documentation in November 2020 indicates the applicant had discontinued medications but noted he continues to be irritable and have difficulty with focusing/concentrating on school. He was diagnosed with PTSD and ADHD. At his most recent visit on 12 June 2024, the applicant complained of brain fog, anxiety, mood fluctuations, and irritability, and documentation indicated he is employed as an EMT. He was started on a different anticonvulsant medication to help with mood stability.

e. A review of VA Disability Benefits Questionnaire dated 9 September 2014 showed that the applicant was evaluated for TBI and PTSD. The findings indicated that the applicant did not have pathology for TBI. However, the applicant was determined to meet criteria for PTSD based on his report of involvement in a helicopter and power line mishap that ejected him from a window as well as symptoms of PTSD including, intrusive memories, distressing dreams, hyperarousal, avoidance of internal and external reminders of the event, and persistent negative state and mood. The applicant denied personally experiencing any combat related trauma.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. The applicant is 50% service connected through the VA for PTSD, and documentation shows treatment for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD while on active service, and

documentation from the VA attributes his PTSD to an event that occurred while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence that the applicant was experiencing a mental health condition, including PTSD, while on active service. Documentation of a Mental Status Evaluation conducted as part of the separation process showed no evidence of PTSD or any other mental health condition. While the applicant is currently service connected for PTSD, documentation does not support that the applicant had PTSD at the time of discharge. Moreover, documentation does not support that the applicant was psychiatrically unfit for any condition as he did not have symptoms requiring psychiatric hospitalization or symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Accordingly, a referral to the Disability Evaluation System (DES) for behavioral health is not warranted. Finally, even if he did have PTSD at the time of his misconduct, it would not mitigate said misconduct given that there is no nexus between his pattern of behaviors, including racially inappropriate behavior and comments and indecent language, and PTSD because 1) this type of misconduct is not part of the natural history or sequelae of PTSD; 2) PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, his assertion of PTSD is sufficient to merit consideration by the board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered counsel's statement, 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine found no nexus between his pattern of behaviors, including racially inappropriate behavior and comments and indecent language, and PTSD.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct, that led to receiving two (2) Article 15's. The Board noted the applicant's post service achievements of working towards a bachelor's degree in engineering. The Board commended the applicant's community involvement with Veterans outreach programs and serving as the president and vice president of the SVA chapter at Jacksonville State University. Liberal consideration was given to the

applicant's multiple deployments. However, the Board agreed the applicant was discharged for a pattern of misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on the preponderance of evidence, the Board determined relief was not warranted and denied relief.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or

injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribed the policy for enlisted separations.

a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case. Paragraph 14-12b provided for the separation of a Soldier due to patterns of misconduct.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKA is used for discharge for patterns of misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

6. 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs 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.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Physical Disability Evaluation System (PDES) according to the provisions of 10 USC 61 and DoDD 1332.18. It 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 or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.

a. The TDRL is used in the nature of a "pending list". It provides a safeguard for the Government, against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability, causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability. b. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his or her office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service computed under section 1208, title 10, United States Code (10 USC 1208). In addition, the condition must be determined to be temporary or unstable. c. A Soldier who is determined to be physically fit will not be placed on the TDRL regardless of the severity of the physical defects or the fact that they might become unfitting were the soldier to remain on active duty for a period of time.

b. PERSCOM will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters, or return any disability evaluation case to USAPDA for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Subparagraph b (Final disposition), based upon the final decision of USAPDA or APDAB, PERSCOM will issue retirement orders or other disposition instructions as follows:

- permanent retirement for physical disability
- placement on the TDRL
- separation for physical disability without severance pay
- separation for physical disability with severance pay
- transfer Soldier who has completed 20 qualifying years of service

- separation for physical disability without severance pay when disability was incurred as result of intentional misconduct, willful neglect, or during unauthorized absence
- return Soldier to duty determined physically fit

c. A Soldier on the TDRL must undergo a periodic medical examination and PEB evaluation at least once every 18 months to decide whether a change has occurred in the disability for which the Soldier was temporarily retired.

- Soldiers who have waived retired pay to receive compensation from the VA, continue to be retired Army Soldiers, Soldiers must undergo examinations when ordered
- Soldiers recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by the Commander, USA HRC
- Soldiers who fail to complete a physical examination when ordered will have their disability retired pay suspended
- Soldiers on the TDRL will notify Commander, HQUSAPDA (AHRC-PDB) of any change in their current mailing address

d. The Army Human Resources Command (AHRC) will notify the Soldier of the forthcoming medical examination. The letter will include the information below:

- name, address, and telephone number of the appointed MTF closest to the Soldier's home
- name and telephone number of the PEBLO who will assist the Soldier during and after the medical examination
- Soldier may telephone the MTF collect to resolve any problems
- MTF will arrange for and schedule the medical examination, every effort will be made to schedule the examination for the Soldier's convenience; however, the medical examination must be carried out within the month prescribed
- at the discretion of USA HRC, an escort may accompany a Soldier who is unable to travel alone to the place of examination, one person may travel with the Soldier upon request when the record clearly shows that the Soldier is not physically or mentally able to travel without help

e. AHRC will take the actions described below when a periodic examination cannot be carried out. (1) Soldier's failure to report or reply. If a Soldier fails to respond to correspondence concerning the medical examination or fails or refuses to complete a medical examination, USA HRC will make an effort to discover the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, HRC will notify the Soldier and the Chief, Retired Pay Operations, U.S. Army Finance and Accounting Center (USAFAC), to suspend retired pay. HRC will keep the Soldier's name on the TDRL until the fifth anniversary unless it is removed

sooner by other action. (2) Unable to locate Soldier. When reasonable efforts to locate the Soldier are unsuccessful, HRC will take the action prescribed in (1), above. (3) Soldier imprisoned by civil authorities. A report by the responsible MTF commander may indicate that examination of a Soldier is not possible because the Soldier is imprisoned and civil authorities will not permit the examination. If so, HRC will take the action prescribed in (1), above. (4) Removal on fifth anniversary. Soldiers on the TDRL shall not be entitled to permanent retirement or separation with severance pay without a current acceptable medical examination, unless just cause is shown for failure to complete the examination. Six months before the fifth anniversary of placement on the TDRL, HRC will make a final attempt to contact the Soldier or proper civil authorities and arrange a final examination. If this fails and the Soldier does not undergo a physical examination, HRC will administratively remove him or her from the TDRL on the fifth anniversary of placement on the list without entitlement to any of the benefits.

f. AHRC may restore the Soldier's eligibility to receive disability retirement pay if, after failure to report for and complete the required periodic examination, the Soldier later satisfactorily meets the examination requirements. AHRC will notify the Chief, Retired Pay Division, USAFAC, to restore disability retired pay retroactive to the date the Soldier undergoes the examination provided the Soldier is still qualified for retention on the TDRL. The Soldier's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, if the soldier can show just cause for failure to respond to official notice or orders. A Soldier's name may have been removed from the list as provided in paragraph 7-11b (4). If so, the Soldier may take application to the Army Board for Correction of Military Records (ABCMR).

9. Title 38, U.S.C sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.

10. DTM 11-015, 19 December 2011, provides for the Integrated Disability Evaluation System (IDES). The IDES is the joint Department of Defense (DOD) - VA process by which DOD determines whether wounded, ill, or injured Service members are fit for continued military service and by which DOD and VA determine appropriate benefits for Service members who are separated or retired for a service-connected disability.

a. Appendix 10 to Attachment 4 states within 15 days of receiving proposed disability ratings from the (D-RAS), the PEB would apply the ratings using the diagnostic code(s) provided by the D-RAS to the Service member's unfitting conditions and publish the disposition recommendation.

b. Appendix 11 to Attachment 4 (D-RAS Procedures), in effect at the time, stated:

1) Upon receipt of the case files (request for rating and service treatment record) of unfit Service members from PEB administration, the D-RAS determines whether the VA C&P disability examination report is adequate for disability rating purposes.

2) The D-RAS will rate the service member's referred and claimed service-connected disabilities and provide a proposed rating decision, with rationale, to the PEB within 15 days of notification by the PEB administration staff that a service member is unfit.

3) Once the D-RAS has rated all unfitting conditions, the D-RAS will provide their proposed rating decision to the PEB. The D-RAS will defer rating all other conditions that require additional claim development in accordance with VA business practices and regulations.

4) Within 15 days of receipt from the PEB of a service member's written request for a one-time reconsideration of a proposed disability evaluation assigned for unfitting conditions by VA, the VA decision review officer will consider any new documentation or information from the Service member and provide the PEB updated proposed ratings, if any.

5) This is a one-time "request for reconsideration" of the rating(s) from the D-RAS. Subsequent appeals of ratings to VA must occur when the Service member has separated, attained veteran status, and has been formally notified of the rating decision

11. 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//