

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230009911

APPLICANT REQUESTS: physical disability retirement in lieu of physical disability separation with severance pay through the inclusion of additional unfitting conditions

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

- DD Form 149 (Application for Correction of Military Record)
- Five Standard Forms 600 (Chronological Record of Medical Care), dated between 11 January 2008 and 16 July 2012
- Two DA Forms 3349 (Physical Profile), dated 11 January 2008 and 22 February 2008
- Two Consultation Reports, dated 1 September 2010 and 20 April 2012
- Department of Veterans Affairs (VA) Primary Family Caregiver Approval Letter, dated 13 April 2013

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 was medically discharged for one condition, without considering other conditions that also impacted his ability to be worldwide deployable. He wanted to stay in the military and he was assigned to a non-deployable unit. His unit was willing to keep him due to his unique skill set and being great at both his job and as a noncommissioned officer (NCO) taking care of the other Soldiers.

b. Consults were not processed or pursued for a fibromyalgia diagnosis. He was given Lyrica and medical notes state, "fibromyalgia-like pain," and show a need for a consult for Rheumatology. Another medical note while on active duty shows chronic pain creates an inability to perform basic tasks at home with small children and would indicate an inability to perform demanding tasks as a Soldier, but his back, neck, and

shoulder pain were disregarded. His generalized anxiety disorder with insomnia was also not considered, although it was noted. He had previously been on a physical profile for this condition for a total of 6 months, from 11 January 2008 through 11 June 2008.

c. His Physical Evaluation Board Liaison Officer (PEBLO) was inconsistent and unavailable during the process. Exams were not scheduled like they should have been, and his ratings came back before other exams and consults were even completed. He was found unfit for vocal cord dysfunction and medically separated with a disability rating of 10 percent. There was no mention of degenerative joint disease of the lumbar spine (rated by the VA at 10 percent) and thoracic outlet of the shoulder (also rated by the VA at 10 percent), both of which cause him a great deal of pain and impact his ability to do basic tasks and should have been found unfitting. There was also no mention of ulnar nerve paralysis, which should concern the Army and no mention of the generalized anxiety, originally rated by the VA at 10 percent and was increased to 50 percent after an appeal.

d. All of the above are unfitting conditions. If you cannot pick up your newborn child or complete basic tasks at home due to the pain from your degenerative joint disease and thoracic outlet of shoulder, aren't those tasks less strenuous than the standard requirements of military duty? Even though he was treated for fibromyalgia, and it was suspected during his time in the service, it was not diagnosed until a few months after his discharge, and he is rated 40 percent for that condition.

e. Furthermore, after reviewing his active duty records, he learned of a "tonic-clonic" seizure episode from a PPD test (tuberculosis (TB) test). It is concerning he is just learning of it and that his words were misunderstood because he had never had a reaction of passing out to a vaccination until he suddenly started to receive several at one time in Basic Combat Training (BCT), hence the statement "about 20 times in his life."

f. Additionally, a radiology scan shows there may be a tumor of some type at the base of his skull, of which he was never informed, and no one ever looked into it. As his discharge was a medical separation and there were numerous conditions and a hefty medical record following exposure to Accutane, prescribed by the Army, which caused a whirlwind of side effects he is still dealing with today, he respectfully requests a review and consideration for an upgrade to a medical retirement. He believes there is sufficient evidence to confidently meet at least the minimum requirement for the 30 percent retirement rating, being that he already has a 10 rafting or the vocal cord dysfunction alone and has substantial documentation of other conditions.

3. The applicant enlisted in the Regular Army on 12 April 2006 and was awarded the Military Occupational Specialty (MOS) 25P (Microwave Systems Operator/Maintainer).

4. A Standard Form 600 shows:

a. On 11 January 2008, the applicant was seen at the Tripler Army Medical Center, Neurology Clinic, to rule out seizure versus fainting episode. The reason for the request shows he presented for the periodic health exam part I. When given the purified protein derivative (PPD) skin test for tuberculosis (TB), had an episode of 7 sections where the applicant fell to the floor and "blacked out." He was disoriented, questioned where he was, was seen as Tonic-Clonic (grand mal), mouth clenching for 7-10 plus seconds. He took 10-15 minutes to become aware of his surroundings. He has "fainted" in the past with bloodwork; however, he usually got a warning that he would faint, and this took him by surprise. He was sent to the emergency room and told he just fainted. Please evaluate to rule out seizure potential or activity.

b. The summary of physical exam findings shows a normal physical exam. The impression shows an episode of loss of consciousness (LOC) that was most likely a vasovagal episode followed by a brief tonic seizure. No further work up required at this time. History of these episodes in past suggests a benign nature. No evidence of primary seizure disorder. Headaches most likely tension associated with stress, sleep deprivation and anxiety, for which the applicant will start Celexa. Psychophysiological insomnia, for which he will be given Ambien. Sleep deprivation, chronic and moderate, for which he will receive a profile to report to work no earlier than 0800 and depart work no later than 1800.

5. 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).

6. Two DA Forms 3349 show:

a. On 11 January 2008, the applicant was given a temporary physical profile rating of 3 in factor H for his conditions of headaches, insomnia, and sleep deprivation, with an expiration of 11 March 2008. He was not limited in any functional activities, but was limited to an 8-hour workday, reporting no earlier than 0800 and departing no later than 1800.

b. On 22 February 2008, he was again given an extension of the above temporary physical profile rating of 3 in factor H for his conditions headaches, insomnia, and sleep deprivation, with a new expiration of 11 June 2008. He was not limited in any functional

activities, but was limited to an 8-hour workday, reporting no earlier than 0800 and departing no later than 1800.

7. A Consultation Report, dated 1 September 2010, shows the applicant highlighted that among his problems list are the chronic problems of generalized anxiety disorder, anxiety, lower back pain, and the acute problems of decreased response to pain and temperature stimulation of the leg/foot.

8. Two Standard Forms 600 show:

a. On 3 April 2012, an amended radiologist report shows incidental note of 5 millimeter (mm) hypointense T1 and hyperintense T2 signal in the clivus, most likely an enchondroma.

b. On 9 April 2012, an assessment/plan shows herniated intervertebral disc, lumbar. Profile updated to reflect limitations more completely. Referred to orthopedics spine for surgical consult regarding asymmetrical bulging disks in lumbar spine. Pain management referral at the patient's request to assist in management of daily pain that limits his functional ability with his young children. Currently only using nonsteroidal anti-inflammatory drugs (NSAIDS) infrequently with minimal improvement. Referred to Orthopedics Clinic with a primary diagnosis of chronic low back pain with asymmetric bulging discs in upper spine and referred to Pain Management. He also had an upcoming evaluation with Gastroenterology (GI) due to red blood in bowel movement.

c. On 20 April 2012, he was seen at the Pain Management Clinic for chronic low back pain. A recent magnetic resonance imaging (MRI) shows asymmetrical bulging discs in upper lumbar spine, encroaching on thecal sac at one level. He is currently undergoing medical board for an unrelated issue and would like to see pain management options. He is also being evaluated by Orthopedic Spine for surgical options. His current pain does limit his quality of life and ability to perform necessary tasks with young children at home. He was prescribed Mobic. His history and exam show probable arthritis versus myofascial pain. No indication for procedure at this time. If pain does not improve with Mobic, will try low dose Lyrica on the next visit for myofascial/fibromyalgia-like pain. He was to follow up in 2-4 weeks.

9. A second Consultation Report, dated 20 April 2012, reflects the applicant's consult at the Pain Management Clinic on that date, as reflected in the above discussed Standard Form 600, dated 20 April 2012.

10. Two additional Standard Forms 600 show:

a. The applicant was seen at the Orthopedic Clinic on 3 May 2012, for a provisional diagnosis of chronic low back pain with asymmetric bulging discs in upper lumbar spine.

He was currently undergoing a medical board for an unrelated issue but was on hold for his chronic back issues. Please evaluate and discuss treatment recommendations/options and treat as appropriate. A typed note from the applicant on the side of the form shows PEBLO did not properly had the medical board process, which is clear from the rating decision. His back was not included; as noted, his back issue was to be considered.

b. The applicant was again seen at the Pain Clinic on 16 July 2012, for lumbar radiofrequency ablation (RFA) with conscious sedation (procedure that uses radio waves to stop the lumbar medical branch nerve from transmitting pain signals from the injured facet joint to the brain). It was noted he has an extreme needle phobia with multiple episodes of syncope I the pat. He was improving after starting Lyrica and it would be refilled.

11. The applicant's DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), DA Form 199-1 (Formal PEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

12. U.S. Army Garrison, Fort Belvoir Orders 215-0003, dated 2 August 2012, honorably separated the applicant with disability severance pay and a disability rating of 10 percent effective 21 October 2012.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably separated under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, non-combat (Enhanced), effective 21 October 2012. He was credited with 6 years, 6 months, and 10 days of net active service.

14. A VA Primary Family Caregiver Approval letter, dated 13 April 2013, advised the applicant's wife that she had been designated and approved as the primary family caregiver of the applicant. She demonstrated the ability to provide assistance with activities of daily living and follow a treatment plan for the applicant and among the benefits she would receive is a monthly nontaxable stipend allowance.

15. 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.

16. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

2. The applicant has applied to the ABCMR requesting additional medical conditions be determined to have been unfitting for continued military service; a corresponding increase in his military disability rating; and a subsequent change in his current disability separation disposition from separated with disability severance pay to permanent retirement for physical disability. The applicant states:

"Was medically discharged for one condition without considering other conditions that also impacted ability to be worldwide deployable. Wanted to stay in the military, was assigned to a nondeployable unit and they were willing to keep due to unique skillset and being great at the job and as an NCO with the other Soldiers.

Consults weren't processed or pursued for fibromyalgia diagnosis, was given Lyrica and notes state "fibromyalgia-like pain" and need a consult for Rheumatology. Medical note in AD state chronic pain creates an inability to preform basic tasks at home with small children, would indicate an inability to preform demanding tasks as a Soldier; but the back, neck, and shoulder pain were disregarded.

Generalized Anxiety Disorder with insomnia was not considered, although noted. Had previously been on profile in 2008 for this, totaling 6 months - January 11, 2008 to June 11, 2008.

3. The Record of Proceedings details the applicant's service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the Regular Army on 12 April 2006 and was separated with \$40,390.00 of disability severance pay on 21 October 2012 under provisions provided in Chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012).

4. A Soldier is referred to the IDES when they have one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldier's

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 conditions they believe to be service-connected disabilities in block 8 of section II or a separate Statement in Support of Claim (VA form 21-4138).

5. 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. All conditions are then rated by the VA prior to the Soldier's discharge. The physical evaluation board (PEB), after adjudicating the case sent them by the medical evaluation board (MEB), applies the applicable VA derived ratings to the Soldier's unfitting condition(s), thereby determining their 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.

6. On 24 January 2012, the applicant was referred to the IDES for "Vocal Cord Dysfunction." He claimed 16 additional conditions on a Statement in Support of Claim (VA Form 21-4138) to include numerous musculoskeletal issues and "Anxiety and Depression." A medical evaluation board (MEB) determined the referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined twelve additional medical conditions met medical retention standards, including "Anxiety Disorder NOS" [Not Otherwise Specified].

7. The psychiatrist who performed and wrote the applicant's separate MEB narrative summary behavioral health addendum determined his Anxiety Disorder NOS met medical retention standards opining:

"Social and Occupational Functioning: The SM [service member] is at a level (5): There are manifestations and symptoms that are transient or mild and decrease work efficiency and ability to perform occupational tasks only during periods of significant stress. He has been taking medication continually and working full-time in his MOS of computer networking without difficulty. He plans to continue in this field after leaving the military. He should continue to function within a normal range in both Social and Occupational arenas.

Outline of Limitations and Prognosis: The SM's prognosis is very good. He recognizes the need to follow-up with behavioral health support, and takes medication as directed. He should continue to follow this pattern of care."

8. Paragraph 3-33 of AR 40-501, Standards of Medical Fitness (4 August 2011) list the criteria which would cause an anxiety disorder to fail medical retention standards:

"3-33. Anxiety, somatoform, or dissociative disorders

The causes for referral to an MEB are as follows:

- a. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- b. Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- c. Persistence or recurrence of symptoms resulting in interference with effective military performance.”

No probative evidence demonstrated the applicant’s anxiety disorder met one or more of these criteria.

9. The applicant non-concurred with the MEB and requested an Impartial Medical Review (IMR) to address his lumbar spine and temporomandibular joint (TMJ) conditions. The physician who completed the IMR found that neither condition failed medical retention standards and reviewed these findings with the applicant on 4 April 2012:

“Specific areas requested by the IMR for review include the following:

- a. Degenerative disease of the lumbar spine/chronic low back pain. 2009. This condition is medically acceptable per chapter 3-39 h of AR 40-501 based on findings of minimal degenerative changes at L4-5 and L5-S1 on imaging studies dated 1 Feb 2012 {page 27}, normal lumbar spine range of motions (page 24), no additional limitations after repetitive motions (page 24), normal lower extremity motor, DTRs and sensory exam (25-26), adequate response to treatment with NSAIDs, muscle relaxants and chiropractic therapy as documented on multiple AHL TA Encounter notes for low back pain (12 Feb 09, 26 Apr 10, 19 Jul 11, 22 Jan 12 and 9 Mar 12) and absence of significant duty related impacts.
- b. Temporomandibular joint disease. This condition was not claimed by the Service Member on his VA Form 21-0819 or VA 21-4138 dated 30 Jan 2012. A handwritten SFC 513 Consultation Sheet, without any identifying patient information, was attached to reference 1f (MEB Legal Counsel Memo). The SF 513 is dated 12 Mar 2012 and appears to be written by Dr. J.P.B., COL, DC to Oral Maxillofacial Clinic Bethesda with a provisional diagnosis of "Right TMJ dysfunction."

Assuming this consult is for this Service Member, this condition is considered medically acceptable per chapter 3 and 7 of AR 40-501 based on the fact that this condition is only a provisional diagnosis, the condition has not met MRDP,

and the condition does not appear to have caused significant duty or functional related impacts such as chronic pain, weight loss etc.”

The applicant’s case, along with his appeal and IMR, was forwarded to a physical evaluation board (PEB) for adjudication.

10. On 25 June 2012, the applicant’s informal PEB found his “Vocal cord dysfunction” to be the sole unfitting medical condition for continued service. They determined the remaining twelve medical conditions were not unfitting for continued military service. The PEB applied the VBA derived rating of 10%, and because the applicant’s combined military disability rating was less than 30%, the PEB recommended the applicant be separated with disability severance pay. On 3 July 2012, after being counseled on the PTB’s findings and recommendation by his PEB Liaison Officer, the applicant concurred with the board, waived his right to a formal hearing, and declined an opportunity to have the VA reconsider his disability rating.

11. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

12. His final NCO Evaluation Report covered 8 January 2011 thru 7 January 2012 and shows he continued to be outstanding Soldier and NCO. His rater top-blocked him as “Among The Best.” His senior rater top-blocked him with 1’s on a scale of 1 to 5 for both Overall Performance” and Overall Potential” stating:

- “promote to Staff Sergeant now
- send to ALC immediately
- performed his duties above and beyond all expectations
- top performing and highly motivated Noncommissioned Officer who is
- committed to accomplishing the mission and taking care of Soldiers
- unlimited potential; excellent candidate for the Warrant Officer program”

13. Review of the DES case file in ePEB and his records in the EMR show the findings throughout his DES process are consistent with the medical evidence in the case file. No material errors, discrepancies, or omissions were identified.

14. There is no significant probative evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3 of AR

40-501, Standards of Medical Fitness, prior to his discharge; or which prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

15. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for anxiety disorder, fibromyalgia, and degenerative arthritis of the spine. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined an increase in the applicant's rating decision at the time of separation was appropriate and referral of his case to the Disability Evaluation System (DES) is not warranted.

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.

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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. 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 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. 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. 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.
6. 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.
7. 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.
8. 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//