ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20230009989

APPLICANT REQUESTS: in effect, a medical retirement.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)(online)
- Self-authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical Documents

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 he was wrongfully denied a medical retirement and instead received a separation. He requests a medical retirement. When he was in the Army, he constantly had neck and back pain after someone pushed him from behind during training, and he fell. Following that incident, whenever he carried heavy loads or did rucksack marches, he would have neck and back pain lasting at least a week or up to two months. He could not sleep or properly move his neck, back, and entire body. He always complained about his body pain and his inability to work in the Army, but no one believed or listened to me. His boss, the Chaplain, always commanded him to go here and there and assist people. Following his supervisor's orders, he would often go to the warehouse where the 92As (Supply Section) were and he helped them move heavy things. He did various other tasks, like a handyman as well. One day, when his neck and back were in intense pain, he told one of his superiors that he wanted to rest because it hurt so much to turn his neck and back, but the harassment intensified. He was forced to continue training despite the pain. One day, when his neck and back pain

got so bad that he could not move at all, he shouted at his supervisor that he needed to go to the emergency room.

b. When he said he could not lift heavy things and yelled unusually, the supervisor shouted back at him not to go to the ER but took him to a regular hospital instead. Then, his primary doctor at the time, looked at his neck x-ray first and immediately ordered an MRI. His neck condition was that bad. He still vividly remembers the doctor telling him that his neck condition was similar to that of an 80-year-old. Even though the doctor told him to rest and not work, his supervisors in the Army always told him that if he did everything the doctor said, he would not be able to live in the military, so he kept working even though he was in pain. Eventually, the doctor who saw his MRI results told him he needed to go to a medical board. He scolded him, asking why he only now mentioned his pain. He repeatedly replied that he wanted to go to the ER but was prevented. He always said he was in pain and could not work, but he was always refused. He said he could not lift heavy things or even maintain a stand At Ease. He said he could not perform his military occupational specialty (MOS) due to his physical condition.

c. The neurosurgeon who analyzed the results of his MRI also said that if he continued to live in the Army without surgery, his neck would eventually be ruined. But even if he had surgery, he said there was a high chance his neck would hurt again after three years. He told him there was no point in having surgery. He was desperate. He was too young. If he had surgery, he said he would lose 50% of his strength. He had no meaningful choice. He was in a situation where he could not continue in the military. When he left the Army in 2017, his neck and back condition, according to the MRI results, was not much different from in 2023. However, after being discharged in 2017, he still could not work because of the pain. He still cannot lift heavy things. He always struggles when he goes grocery shopping.

d. Before leaving the military, he exhibited almost the same movement during the Compensation and Pension (C&P) Exam as he did during the recent C&P Exam. However, six years ago, no one believed him when he said he was in pain, whether because they did not trust him or because her rank was low. He always shouted out that he was in pain, and his condition had not changed since then. Back then, he distinctly appealed that his neck, back, right shoulder, and knee were severely painful. Every time he moved, his hands and feet were numb, tingling, and painful, keeping him from sleeping well. He always said he could not work. He distinctly remembers everyone in the military helping him passively. He also clearly remembers when he was attending a hospital in Fort Belvoir, VA, a physician assistant denied his request for a knee MRI and others. Eventually, he received a 20% rating from the Physical Evaluation Board (PEB) result, and he continued to appeal strongly after that. However, nothing changed. He clearly requested to receive appropriate rates for his neck, back, shoulder, and knee, but they only gave him a minimum rate of 10% for the neck and back. When he was in

Fort Belvoir, someone whose name he cannot remember told him negatively that if he were to appeal, it would take a long time to get the result, and there would not be a favorable outcome due to his rank. Due to the pain in his neck and back, he missed a lot of training and work, and he was already suffering from harassment from superiors and was mentally exhausted.

e. Even now, he is still struggling with the memory of being harassed in the military. He did not want to accept the 20% PEB result because he wanted to get out of the military as soon as possible, but he was persuaded by the hopeless negative words of the military staff, so he ended up signing and receiving 20%. There's been much change in my physical condition from then till now. He still believes serving in the military was meaningful, so he reentered active duty. He always respected his fellow Soldiers. However, the emotional and physical pain from his experiences still troubles me. He wants to believe that he simply did not meet the right people at that time. Please help him in receiving the treatment and care he deserves. He respectfully requests a medical retirement.

f. The applicant lists post-traumatic stress disorder (PTSD) and other mental health as related to his request.

3. The applicant provides:

a. Self-authored letter-unsigned, 5 July 2023 reiterates the above. He could not sleep or properly move his neck, back and entire body. He always complained about his body pain and his inability to work in the Army, but no one believed or listened to him. His doctor told him his neck condition was similar to that of an 80-year-old. Even though the doctor told me to rest and not work, my supervisors in the Army always told me that if he did everything the doctor said, he would not be able to live in the military. After being discharged in 2017, he still could not work because of the pain. He believes serving in the military was meaningful, so he reentered active duty. He always respected his fellow Soldiers. However, the emotional and physical pain from his experiences trouble him. He wants to believe that he simply did not meet the right people at that time.

b. Medical Evaluation Board Proceedings, 28 September 2016 show cervical spine strain and cervical spondylosis without myelopathy failed to meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The board recommended that the applicant be referred to a PEB. The findings and recommendation of the board were approved. The applicant did not agree with the board’s findings and recommendation. His appeal was not attached.

c. The applicant provides medical documents regarding his medical issues and PTSD. Medical documents will be reviewed by the medical/mental health staff.

4. Review of the applicant's service records show:

a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of the United States) shows the applicant enlisted in the U.S. Army Reserve (USAR) on 20 November 2013.

b. He entered active duty on 10 February 2014. He was honorably released from active duty on 3 July 2014 and transferred to the USAR. His DD Form 214 shows he completed 4 months and 24 days net active service this period.

c. He enlisted in the Regular Army on 16 July 2015.

d. An informal PEB, convened on 22 November 2016 shows the board found the applicant was physically unfit and recommended a disability rating of 10% and that the applicant's disposition be separated with severance pay. The applicant was physically unfit for duty for cervical spine strain with spondylosis without myelopathy. The onset occurred in 2014 while he was in the Continental U.S. He developed back pain due to no specific mechanism of injury. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES). The applicant concurred and waived a formal hearing of his case. He did not request reconsideration of his Department of Veterans Affairs (VA) disability rating.

e. Orders 357-0007, 22 December 2016 reassigned him to the U.S. Army transition point for transition processing and discharged him form the Regular Army. He was authorized disability severance pay in pay grade specialist/E-4.

f. He entered active duty on 22 February 2015. His DD Form 214 shows he was honorably discharged from active duty on 26 February 2017. He was discharged under the provisions of Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation) Chapter 4 for disability, severance pay, non-combat (enhanced) with separation code of JEB and reentry code of 1. He completed 1 year, 7 months, and 11 days net active service. His severance pay amount: $13,888.80. This document does not show any combat service.

5. Title 26 U. S, Code, section 104 states, in pertinent part, that for purposes of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

6. 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%. 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%.

7. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting additional conditions, notably mental health lumbar spine condition, be determined unfitting for continued service with a corresponding increase in his current military disability rating and subsequent change in his disability discharge disposition from separated with disability severance pay to permanently retired for physical disability. He states in part:

> "Back then, I distinctly appealed that my neck, back, right shoulder, and knee were severely painful. Every time I moved, my hands and feet were numb, tingling, and painful, keeping me from sleeping well. I always said I could not work. I distinctly remember everyone in the military helping me passively. I also clearly remember when I was attending a hospital in Fort Belvoir, a PA denied my request for a knee MRI and others.
>
> Eventually, I received a 20% rating from the PEB result, and I continued to appeal strongly after that. However, nothing changed. I clearly requested to receive appropriate rates for my neck, back, shoulder, and knee, but they only gave me a minimum rate of 10% for the neck and back."

c. 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 22 February 2015 and was separated with $13,888.80 of disability severance pay on 26 February 2017 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

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 liming 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 31 August 2016, the applicant was referred to the IDES for "Cervicalgia" (neck pain). The applicant claimed twelve additional conditions, including major depressive disorder, lower back pain, bilateral knee pain, and right shoulder pain. A medical evaluation board (MEB) determined his cervical spine condition was the only condition which failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined the remaining ten additional musculoskeletal conditions met medical retention standards.

h. The four conditions listed by the applicant but determined as documented in his MEB narrative summary and a separate behavioral health narrative summary:

> "Lumbar Spine Strain and Lumbosacral Spondylosis without Myelopathy. Claimed as Lower Back and B/L Hip Numbness, especially after Running. Onset '15 / Diagnosis '16. SM [service member] reports daily low back pain in the right paraspinal area. SM endorses lower back pain is non-radiating into legs but notes occasional numbness in the right > left buttock area with running or physical fitness testing; denies flares.

ROM WNL [range of motion within normal limits] (Page 3-4); SM is able to perform repetitive use testing with at least 3 repetitions without a significant additional loss of function or ROM. Physical Examination revealed decreased sensation in the thigh/knee (L3/4), lower leg/ankle (L4/L5/S1); severe paresthesias in the BLE and decrease pinpoint (PP) over kneecaps and medial/lateral bilateral ankles. 2 Sep ’16, MRI, L-Spine noted an apparent transitional lumbosacral anatomy and mild multi-level disc and facet degenerative changes.

Per the VA Examiner “A Lumbar radiculopathy was not identified on evaluation despite patient subjective complaints. Decrease PP in kneecaps and ankles does not follow a dermatomal (radicular) or peripheral neuropathy pattern; no diagnosis established”.

Condition treated with Naprosyn and Flexeril; no assistive devices. Limitations associated with this condition should be covered with a permanent L2 [non-duty limiting] profile.

Bilateral Patellar Tendinitis. Claimed as B/L Knees, Painful Popping with Numbness. Onset ’15 / Diagnosis ’16. SM reported b/l [bilateral] knee pain and popping due to falling on his knees and then rolling on them. SM endorses knee pain is activity dependent, infrapatellar and exacerbated by prolonged sit to stand and running; denies flares. ROM WNL (Page 42-43); SM is able to perform repetitive use testing with at least 3 repetitions without a significant additional loss of function or ROM. Physical Examination revealed b/l mild patellar tenderness on palpation. 25 Aug ’16, X-ray B/L Knees WNL. SM Passed APFT [Army Physical Fitness Test] Feb’ 16, Score=214.

No current treatment on record. No formal profile on record. Condition does not significantly limit occupational functioning.

Right Shoulder Osteophyte and Supraspinatus Tendinosis. Claimed as Right Shoulder Popping with Limited ROM. Onset ’14 / Diagnosis ’16. In May ’14, SM developed intermittent posterior right shoulder pain and popping due to carrying equipment. SM denies injury. SM endorses posterior shoulder pain with wearing armor, reaching overhead and heavy carrying. SM states “when I rotate my neck, it causes pins and needles and sometimes tingling”.

ROM WNL (Page 30-31); SM is able to perform repetitive use testing with at least 3 repetitions without a significant additional loss of function or ROM. Physical Examination WNL. 2 Sep ’16, MRI, Right Shoulder showed acromioclavicular joint

arthrosis with inferior osteophyte causing mass effect on the subjacent supraspinatus tendon where there is mild tendinosis. SM is right hand dominant. SM Passed APFT Feb' 16, Score=214. No current treatment on record. SM referred to physical therapy; currently pending evaluation. No formal profile on record. Condition does not significantly limit occupational functioning.

Major Depressive Disorder, Single Episode, Mild (F32.0). Medically Acceptable.

a. Treatment Summary: 18Mar16 AMH: SM was being seen by neurosurgery for chronic cervicalgia and stressed that a possible MEB would leave him unemployed. His extended family relied on him for income. "He reports not having any friends and feeling lonely." Self-screens: PHQ-9=27 (severe depression), PCL-C=67 (severe PTSD), including nightmares. SM was referred to Psychology 30 Mar16 where he reported stressors of caretaking for sick elderly parents in Korea, along with his wife's refusal to move to Korea with SM. He also had difficulty with his roommate due to SM's snoring (sleep study scheduled).

SM denied a history of suicidal ideation but reported self-injuring behavior (cutting x1; left arm at age 30y/o after graduating from AIT, while intoxicated) and possible overuse of alcohol (1 pint liquor/week). SM agreed to reduce his alcohol intake and denied any illicit drug use. Mood was "emotional" and SM cried throughout the session. CBT [cognitive behavioral therapy] psychotherapy was initiated. 05Apr16.

SM reported some relief in his depressed mood. He was traveling on weekends to see his father who had Alzheimer's dementia. 21Apr16 Appt. missed, declined to reschedule. 23May16 AMH medication sertraline and alprazolam for depression and anxiety. 24May16 SM returned to psychology c/o crying spells, depressed mood, somatic symptoms (frequent emesis) and anxiety.

He felt "hazed" by his 1SG due to his profile and was denied a pass. SM declined voluntary hospitalization. 23Jun16 SM requested a profile for his constant neck pain and also expressed concern for his duties as chaplain's assistant. They agreed it would be best for his mental health not to work in that setting. 27Jun16 SM was scheduled to PCS [permanent change of station] back to CONUS [continental United States], which was distressing due to his parents' needs in Korea; also SM was now going through a divorce.

23Aug16 WTU SW [Warrior Transition Unit social work] FB intake and risk assessment; no BH issues were noted.

08Sep16 WTU OT [occupational therapy]: 1st goal was to apply to online Korean school by Nov 16, register for 5-7 online classes and complete a BA degree in Japanese by summer, 2017. 2nd goal was to retire from the Army and open a Korean BBQ restaurant with his brother by 2018. 08Sep16 SW: Wife had come to visit and SM was adjusting to the WTB.
19Sep16 CM: SM was apologetic about old laceration marks on his L. forearm from last March when he was unable to get a compassionate reassignment and was depressed. He denied being suicidal or wanting to harm himself and said it wouldn't happen again ...

There is insufficient evidence in the medical record that this condition inhibits the soldier's ability to perform the required duties of his rank and MOS. Meets retention standards IAW AR 40-501 Ch. 3-32."

i. On 13 October 2016, the applicant did not agree with the MEB findings and recommendation but did not submit a written appeal and so his case was forwarded to a physical evaluation board (PEB) for adjudication.

j. On 22 November 2016, the applicant's informal PEB determined his "Cervical Spine Strain with Spondylosis [degenerative changes] with Myelopathy [spinal cord involvement]" was the sole unfitting condition for continued military service. They found the ten remaining medical conditions not unfitting for continued military service.

k. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and recommended the applicant be separated with disability severance pay. On 28 November 2016, after being counseled on the PEB's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VBA reconsideration of his disability ratings (VARR).

l. JLV shows the applicant has been awarded several VA service-connected disability ratings, including ratings for major depressive disorder, sleep apnea, and lumbosacral or cervical strain. 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 and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are

granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. Review of the submitted documentation, ePEB case file, and AHLTA record found no material errors of deficiencies.

n. 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:

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. Upon review of the applicant's petition, available military records and the medical review the Board concurred with the advising official finding that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted. The opine noted the applicant's record is absence evidence that this condition inhibits his ability to perform the required duties of his rank and MOS and he meets retention.

2. The Board determined there is insufficient evidence to support the applicant's contentions for a medical retirement. The board noted, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VBA reconsideration of his disability ratings (VARR). Based on the evidence found in the applicant record and medical review, the Board found no error or injustice and denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran

thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

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

6. Title 10, USC, Chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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

8. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

9. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA

added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

10. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

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

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

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

12. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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

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

13. 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.

14. Title 26 U. S, Code, section 104 states, in pertinent part, that for purposes of this subsection, the term “combat-related injury” means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

//NOTHING FOLLOWS//