

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230010183

APPLICANT REQUESTS: in effect, physical disability retirement in lieu of removal from the Temporary Disability Retired List (TDRL).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, dated 6 September 2019
- VA letter, dated 18 March 2022
- VA Healthcare, My Care Plan, dated 19 April 2023
- three statements of support/witness statements

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 separated for not accepting an overseas assignment to Korea even though he was diagnosed with a seizure disorder, was having seizures, and there was no medical facility in Korea to provide medical care if he were to continue having seizures while stationed in Korea. He requested a stateside assignment, and his request was denied.

b. At the time, he fought to remain on active duty and wanted to continue service in the Army. He was very naïve about his medical condition. If he were on active duty today, he would have been reassigned to a Warrior Transition Unit (WTU) and medically retired with full benefits. He was placed on the TDRL for 5 years then removed from the TDRL and discharged.

c. The Army did not aide him in his recovery and did not help him to either return to full active duty or transition to civilian life as occurs with the current Soldiers in the WTU.

He was not privileged to having a staff who was actively working to help him heal and his wife was not included in his healing or transition process. He was found unfit for active duty because of his seizures. He could not drive, was on profile, and took medications that literally made him incapable of fulfilling his duties. Current Soldiers have WTU clinical social workers, nurse case managers, and squad leaders working in conjunction with the Soldier Family Assistance Center staff to help them and include spouses in the Soldier's comprehensive transition plan. How is that fair that he was deprived of this assistance? He still suffers from seizures to this day and his life has changed drastically as a result.

d. He further states it is hard to put in to words how it feels to wake up in a hospital, or be awakened by your spouse or child after having a seizure. To have no bladder control during a seizure, to not recall anything prior to or during the seizure, to feel helpless and knowing that you have to take 4 or more medications to reduce or maybe control your seizures even if they make you feel dizzy, lethargic, forgetful, sleepy, drowsy and depressed. He was failed by the system, my superiors and my medical providers.

3. The applicant enlisted in the Regular Army on 6 February 1986.

4. The applicant deployed to Saudi Arabia from 30 October 1990 through 16 June 1991.

5. A DA Form 2173 (Statement of Medical Examination and Duty Status), signed by the patient administrator on 22 April 1992, shows the applicant fractured his finger while unloading equipment in Saudi Arabia in April 1991, the complete details of which are unknown, and was later seen as an outpatient at Raymond W. Bliss Army Community Hospital, Fort Huachuca, AZ.

6. 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).

7. A DA Form 3349 (Physical Profile) shows the applicant was given a permanent physical PULHES rating of 311111 on 5 May 1992, for the medical conditions of seizure disorder and pseudofolliculitis barbae. His assignment limitations included no assignment where sudden loss of consciousness would be dangerous to self or others,

such as work on scaffolding, handling ammunition, vehicle driving, or work near moving machinery. He was to save at his own discretion and keep his beard neatly trimmed.

8. A Standard Form 93 (Report of Medical History) shows the applicant provided his medical history on 16 May 1992, for the purpose of a Medical Evaluation Board (MEB). He indicated he had tendinitis in the left wrist, swollen lymph node, seizure condition, cyst removal, and a head concussion for which he was hospitalized at Walter Reed Army Medical Hospital in 1986.

9. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 16 May 1992, for the purpose of an MEB. Clinical evaluation shows his abnormal conditions as exostosis, based of proximal phalanx, right small finger; exostosis, base of proximal phalanx, right thumb; radial positive hand, left wrist; pseudofolliculitis barbae; and seizure disorder. His PULHES is shown as 311111.

10. An MEB Narrative Summary (NARSUM), dated 19 May 1992, has been provided in full to the Board for review and in pertinent part shows:

a. The applicant was referred to the Disability Evaluation System (DES) by the Medical Treatment Facility (MTF) due to the onset of seizures in October 1991. His other conditions include folliculitis barbae and recurrent tendinitis of the left wrist.

b. His past medical history includes positive for head trauma in 1986, at which time he was reportedly unconscious for 3 days; positive for history of seizures; positive for recurrent tendinitis of the left wrist.

c. His diagnoses are listed as:

- seizure disorder with questionable control; he had a total of three seizures in the last 6 months
- folliculitis barbae, controlled with erythromycin
- exostosis, base of right small finger proximal phalanx, ulnar border
- exostosis, base of proximal phalanx of the thumb, ulnar border
- radial positive hand on the left wrist with no evidence of degenerative changes
- transient liver function test elevation, etiology unclear, resolving

d. He will need to have a restrictive profile limiting his deployment possibilities as well as his operation of any kind of heavy equipment or assignment to remote locations

e. He was referred to the PEB with a recommendation that he be separated from active duty.

11. A DA Form 3947 (MEB Proceedings) shows:

a. An MEB convened on 22 May 1992, where the applicant was referred to a PEB for the following conditions:

- seizure disorder with questionable control with three seizures in last 6 months
- exostosis, base of right small finger, proximal phalanx, ulnar border (dominant)
- exostosis, base of proximal phalanx of the right (dominant) thumb, ulnar border
- radial positive hand on the left wrist with no evidence of degenerative changes
- transient liver function test evaluation, etiology unclear, resolving (not permanently aggravated by service)
- pseudofolliculitis barbae (not permanently aggravated by service)

b. His PULHES is 311111 and his assignment restrictions include no assignment where sudden loss of consciousness would be dangerous to self or others, such as work on scaffolding or handling ammunition; no work near moving machinery; no vehicle driving.

c. The applicant signed the form on 8 June 1992, indicating he agreed with the Board's findings and recommendations.

12. A DA Form 199 (PEB Proceedings) shows:

a. A PEB convened on 16 June 1992 where the applicant was found physically unfit with a recommended rating of 40 percent and that his disposition be placement on the TDRL with reexamination on or about 30 June 1993.

b. His unfitting condition was seizure disorder with questionable control, 3 seizures in the last 6 months, status post head trauma in 1986 (MEB diagnosis (Dx) 1).

c. MEB Dx 2-6 were considered by the PEB and found to be neither unfitting nor ratable.

d. The Counselor's statement shows the applicant was counseled on 18 June 1992 regarding his 40 percent TDRL disability rating and placement and that he concurred and waived a formal hearing of his case. The form also shows the applicant's signature with a date of 23 June 1993.

13. U.S. Total Army Personnel Command Orders D196-31, dated 5 October 1992, released the applicant from assignment and duty because of physical disability incurred

while entitled to basic pay and under conditions which permit his placement on the TDRL effective 30 November 1992, with a disability rating of 40 percent.

14. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably retired under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to physical disability, temporary, with corresponding separation code SFK. He was credited with 6 years, 9 months, and 25 days of net active service.

15. An Optional Form 275 (Medical Record Report) shows:

a. On 9 July 1993, the applicant underwent TDRL periodic medical examination at Fort Huachuca, AZ. The interim history shows since his initial board evaluation, the applicant had no recurrent seizure activity. His last seizure was March 1992. He did report fitful sleep. He was experiencing no significant side effects from the Dilantin and was working as an assistant registrar at Cochise Community College in a part-time position. He reported no significant pain from his hands or wrists.

b. The assessment shows:

(1) Seizure disorder, stable in spite of questionable adherence to his prescribed medical regiment.

(2) Exostosis of proximal phalanx of thumb and little finger of right hand, stable.

(3) History of increased liver function tests, currently no evidence of elevated liver associated enzymes

c. The recommendation shows the applicant had been seizure free for greater than 1 year in spite of questionable adherence to his prescribed medical regiment. It was recommended his seizure medications be withdrawn and he be observed for evidence of recurrent seizure activity with TDRL reevaluation in 1 year.

16. A memorandum from the PEB Liaison Officer, dated 13 July 1993, shows the applicant was provided with a copy of the TDRL examination on 13 July 1993, and signed the bottom of the memorandum on 16 July 1993, indicating he agreed with the findings and recommendations of the board.

17. A second DA Form 199 shows:

a. A PEB convened on 2 August 1993, where the applicant was found physically unfit for with a recommended combined rating of 10 percent and that his disposition be separation with severance pay.

b. His unfitting condition is seizure disorder, seizure free for the past year despite questionable adherence to his medical regiment (TDRL Dx 1). His condition had not improved to the extent that he was now fit for duty.

c. His condition listed as MEB Dx 3 was considered by the PEB and found to be neither unfitting nor ratable.

d. On 9 August 1993, the applicant signed the form indicating he did not concur and demanded a formal hearing with personal appearance.

18. A letter from the U.S. Army PEB, dated 19 August 1993, advised the applicant he would appear in person before a formal PEB at Fort Lewis, WA, on 30 September 1993, where he would be assisted in presenting his case by appointed military counsel.

19. As part of his formal PEB, the applicant provided to the board members five statements of support/witness statements from colleagues and supervisors, past and present, all dated August and September 1993, which have been provided in full to the current Board for review. They all attest to the applicant's ability to do his job duties without hinderance by his conditions and some specifically state he should be found fit for duty.

20. A third and final DA Form 199 shows:

a. A formal PEB convened on 30 September 1993 where the applicant was found physically fit with no disability rating and that his disposition be returned to duty as fit.

b. Since being placed on the TDRL, reexamination indicates his condition improved to the point that currently there is no functional impairment that precludes satisfactory performance of duty. The PEB finds the applicant fit for duty in his present grade and primary Military Occupational Specialty (MOS).

c. The applicant signed the form on 30 September 1993, indicating he concurred with the findings and recommendations of the formal PEB.

21. U.S. Total Army Personnel Command Orders D212-42, dated 5 November 1993, show the applicant was found fit for duty and removed from the TDRL effective 5 November 1993.

22. A U.S. Total Army Personnel Command memorandum to the Commander, U.S. Army 6th Recruiting Brigade, advised that the applicant had been removed from the TDRL effective 5 November 1993 and would be afforded the opportunity to reenlist in the Regular Army or U.S. Army Reserve (USAR). It further shows the applicant had a

Reserve obligation and if he declined reenlistment, he would be placed in the appropriate Reserve category until completion of the Reserve obligation.

23. An Election Relative to Enlistment memorandum, wherein he would indicate his desire to reenlist or decline reenlistment, is unsigned by the applicant. An attached Optional Form 41 (Routing and Transmittal Slip), undated, shows the applicant was found fit for duty, that he declined reenlistment, and that he had a Reserve obligation.

24. U.S. Army Reserve Personnel Center Orders D-05-544925, dated 23 May 1995, honorably discharged the applicant from the USAR Control Group (Reinforcement) effective the date of the orders.

25. The applicant's VA Rating Decision, dated 6 September 2019, shows:

a. His service-connected evaluation of seizure disorder, which is 80 percent disabling, was increased to 100 percent effective 10 July 2019.

b. His entitlement to individual unemployability was granted effective 27 April 2019.

c. His entitlement to special monthly compensation based on housebound criteria being met was granted from 27 April 2019.

26. A VA letter, dated 18 March 2022, shows the applicant has one or more service-connected disabilities with a combined service-connected evaluation of 100 percent and that he is considered to be totally and permanently disabled solely due to his service-connected disabilities, effective 27 April 2019.

27. A VA Healthcare, My Care Plan, dated 19 April 2023, shows the applicant was released from the hospital on 19 April 2023, after having episodes of seizures at home, resulting in episodes where his heart stopped momentarily. Cardiologists were concerned about the pauses and after extensive testing did not find any significant abnormalities to explain the pauses. The applicant was referred to a neurologist in the Neurology Clinic.

28. The applicant provided three letters of support/witness statements, from former colleagues of his at the Social Security Administration, all of whom attest to the difficulties the applicant experienced at work as a result of his medical conditions of seizures and migraine headaches.

29. 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.

30. MEDICAL REVIEW:

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

b. The applicant has applied to the ABCMR requesting reversal of the United States Army Physical Disability Agency's determination he was fit for duty and that he subsequently be permanently retired for physical disability. He states:

"I was separated for not accepting an overseas assignment to Korea even though I was diagnosed with seizure disorder, was having seizures and there was no medical facility in Korea to provide medical care if I was to continue having seizures if I was sent to Korea. I requested a state side assignment and my request was denied.

At the time, I fought to remain on active duty and wanted to continue serving in the Army and was very naive about my medical condition. If was on active duty today, I would have been reassigned to a Warrior Transition Unit or Medically Retired with full benefits. I was place on the Temporary Disability Retirement List (TDRL) for five years and discharged."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows the former automatic data telecommunications center operator (72G) entered the regular Army on 6 February 1986 and was placed on the Temporary Disability Retirement List on 30 November 1992 under provisions provided in paragraph 4-24e(2) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990). Orders published by the U.S. Total Army Personnel Command on 5 November 1993 state "You have been found fit for duty and on the date indicated are removed from the Temporary Disability Retired List. Effective date 5 NOV 93."

d. On 5 May 1992, the applicant was placed on a permanent duty limiting physical profile for a seizure disorder. His 16 May 1992 medical evaluation board (MEB) narrative summary states he had experienced a few seizures, his evaluation was



normal, and despite no recent recurrence, it “was felt best to proceed with a medical evaluation board (MEB):

“ This 23-year-old black active-duty male first presented to Raymond W. Bliss Army Community Hospital in Oct 91 for a single grand mal type of seizure. CT scan of the head at that time was reported as normal and EEG was also reported as normal. Since he had a single episode, it was chosen to not treat him with anticonvulsant medications and the patient did well until 2 Dec 91, when he awakened his wife from her sleep with recurrent tonic-clonic jerking-type activity lasting approximately 2 minutes and was followed by a postictal state. The patient had bitten his tongue and been incontinent of urine ...

At that time the patient was started on Dilantin and a therapeutic dose was achieved at 300 mg daily. The patient was discussed with Neurology Service, Dr. M., William Beaumont Army Medical Center, and was transferred there for an MRI of the head and repeat EEG. These tests were performed later in Dec 91. The MRI with temporal lobe images was read as normal and a sleep-deprived EEG was negative.

It was felt at that time that the patient should be continued on his Dilantin and monitored for 6 months. If no recurrent seizures were noted, he would be considered fit for duty.

However, the patient did have a recurrence of an apparent delirious episode on 15 Apr 92 and appeared to be postictal, although it was unclear whether he actually, had tonic-clonic type activity, incontinence or tongue biting at that point ...

He was sent back for follow-up and has had no further recurrence of this type activity; however, due to the apparent seizure-type activity in lieu of a therapeutic Dilantin level, it was felt best to proceed with a Medical Board on this patient. Subsequent to the last episode on 15 April, he has had no further activity.

e. This condition was found fail medical retention standards, the applicant concurred with the MEB’s findings and recommendation on 2 June 1992, and case was referred to a PEB for adjudication.

f. On 16 June 1992, his informal physical evaluation board (PEB) determined his “Seizure disorder with questionable control” was an unfitting for continued service. Because the condition had not stabilized, placement on the TDRL is appropriate. Using the VA Schedule for Rating Disabilities (VASRD), they derived and applied a 40%

disability rating and recommend he be placed on the TDRL with a combined disability rating of 40%.

g. The applicant underwent his TDRL reevaluation examination on 9 July 1993 at which time it was noted he had not experienced a seizure since placement on the TDRL.

“Since the initial board evaluation, SPC [Applicant] has had no recurrent seizure activity. His last seizure was in Mar 92. The patient does report fitful sleep, which he reports bothers his wife more than it does himself. He is experiencing no significant side effects from the Dilantin and is currently working as an assistant registrar at Cochise Community College in a part-time position ...

Initial Dilantin level was undetectable. The patient was called back in and questioned about his compliance with medications. He admitted to having missed only one dose of Dilantin prior to the initial test. The test was repeated and the Dilantin level was 9.36 mcg/ml with the therapeutic range being 10 to 20.”

h. Missing one dose of his medication would not have led to an undetectable level of the drug. The plasma half-life in man after oral administration of phenytoin averages 22 hours. So, if he had been within the therapeutic range of 16 - 20, it could not have gone to zero in 24 hours. For example, if a patient had a level of 16 at 0800 on day 0 and had ceased taking the medication, it would be 8 at 1000 on day 1, 4 at 1200 on day 2, 2 at 1400 on day 3, and 1 at 1600 on day 4.

i. The examining provider opined:

“SPC [Applicant] has been seizure free for greater than one year in spite of questionable adherence to his prescribed medical regimen. Recommend SPC [Applicant]’s seizure medications be withdrawn and he be observed for evidence of recurrent seizure activity with TDRL reevaluation in one year.”

j. The applicant concurred with the examination, and it was forwarded to a PEB for adjudication.

k. At his 2 August 1993, his TDRL re-evaluation PEB determined the applicant’s “Seizure disorder, seizure free for the past year despite questionable adherence to his medical regimen,” though improved, was still unfitting but was not stable. They derived and applied a 10% rating and recommended he be separated with disability severance pay.

l. The applicant non-concurred a formal PEB was scheduled and appears to have desired to be found fit for duty as evidenced by the five letters of support submitted as evidence to the formal PEB.

m. His former First Sergeant submitted a 31 August 1993 memorandum stating the applicant was Fit for Active Duty. This document was labeled Soldier's Exhibit 4 for the formal board. It read in part:

"During this time, he performed his duties as a Noncommissioned Officer who was very dedicated to his duty and contributed greatly to the missions to which he was assigned. He was an exceptional leader with a strong desire to succeed. Soldiers of his caliber are rare in the Army today ...

The medical board that convened in November of 1992, found SGT [Applicant] unfit for active duty and recommended that he be medically retired from the Army. I know that decision was made based on his medical condition at the time but I strongly believe that SGT [Applicant] was and still is fit for duty.

Not only did he receive a perfect score of 300 on his last physical training test but he also received a perfect score of 36 on his weapons qualification. I would like to ask the medical board members to conduct a full study or evaluation on SGT Phillips medical condition before making any decisions."

n. Four additional letters of support were submitted for the applicant's formal board.

o. On 30 September 1993, the formal PEB determined the applicant was FIT for duty:

"Since being placed on the TDRL, re-examination indicates that your condition has improved to the point that currently there is no functional impairment that precludes satisfactory performance of duty. The PEB considers you fit for duty in your present grade and primary MOS.

Your condition has improved to the extent that you are now fit for duty."

p. On 30 September 1993, after being counseled on the board's findings and recommendation by his PEB liaison officer, he concurred with the Formal PEB.

q. The applicant declined the opportunity to reenlist but was placed in a reserve status to complete his previously incurred reserve obligation. He was discharged from the USAR effective 23 May 1995.

r. JLV shows the applicant was awarded a 20% rating for seizure disorder effective 1 October 1995. 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.

s. It is the opinion of the ARBA Medical Advisor that neither the granting of a permanent retirement for physical disability nor a referral of his case to the DES for another reevaluation 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was found unfit, rated at 40% combined disability, and retired on 30 November 1992 due to temporary disability. He was placed on the TDRL because his medical condition(s) was/were not stable enough for final adjudication. Upon reexamination, a PEB convened in August 1993, and found the applicant remained physically unfit. The TDRL PEB recommended combined rating of 10 percent and that his disposition be separation with severance pay. He did not concur. A formal PEB convened in September 1993 and found him physically fit with no disability rating and that his disposition be returned to duty as fit. The formal PEB found since being placed on the TDRL, reexamination indicates his condition improved to the point that currently there is no functional impairment that precludes satisfactory performance of duty. The PEB found him fit for duty in his present grade and primary MOS. He was allowed to reenlist and continue his service; he chose not to do so. Accordingly, he was honorably discharged.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical reviewing official finding the applicant was counseled on the PEB's findings and recommendation by his PEB liaison officer, he concurred with the Formal PEB. Additionally, the applicant declined the opportunity to reenlist but was placed in a reserve status to complete his previously incurred reserve obligation. He was discharged from the USAR effective 23 May 1995. The Board was not convinced

by the applicant’s argument and was not persuaded by the evidence provided that an error or an injustice exists. As such, the Board determined that neither the granting of a permanent retirement for physical disability nor a referral of his case to the disability evaluation system for another reevaluation is warranted.

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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

d. The Temporary Disability Retired List (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 them 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.

e. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of their office, grade, rank, or rating at the time of the evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service. In addition, the condition must be determined to be temporary or unstable.

f. Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next 5 years so as to result in a change in rating or a finding of fit. The Army Disability Evaluation System will re-evaluate each Soldier placed on the TDRL at least once every 18 months. Evaluation may be sooner. Once the PEB finds each condition is stable upon evaluation, the PEB will assign a final rating that includes the ratings for the disabilities determined to be permanent and stable when the Soldier was placed on the TDRL or during preceding TDRL adjudications.

g. A final determination of the case of each Soldier on the TDRL will be made at the latest upon the expiration of 5 years after the date when the Soldier was placed on the TDRL. If, at the time of that determination the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable. Placement on the TDRL confers no right to remain on the TDRL for the entire 5-year period.

h. If upon reexamination, Soldiers whose disabilities have stabilized and who are not determined fit for duty and meeting medical retention standards for the conditions for which they were placed on the TDRL will be removed from the TDRL and placed on the PDRL if the physical disability rating remains 30 percent or greater. If upon reexamination, the Soldier is found unfit for duty and not meeting medical retention standards but the stabilized physical disability percentage is rated at below 30 percent, the Soldier will be removed from the TDRL and separated with severance pay if the Soldier has less than 20 years of active Federal service.

i. When the recommendation of the PEB is placement or retention on the TDRL, failure to report for a scheduled periodic examination or to inform U.S. Army Human Resources Command of a change in address will result in the suspension of retired pay.

3. 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.

4. 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.

5. 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//