

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230010546

APPLICANT REQUESTS:

- A personal appearance before the Board (via video/phone)

Correction of the following documents:

- DA Form 3947 (Medical Evaluation Board Proceedings (MEB), 31 August 2006, by adding missing diagnosis and by amending his history of illnesses
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 October 2006, by amending his disability description, his disability rating, and the inaccurate evaluation
- Permanent Disability Retirement
- Retroactive disability pay and allowances
- Higher service-connected disability rating

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

- DD Form 149 (Application for Correction of Military Record)
- A letter issued by the Reserve Officers Training Corps, 29 July 2002
- Medical records
- DA Form 3349 (Physical Profile), 19 April 2006
- DA Form 3947, 31 August 2006
- DA Form 199, 24 October 2006

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, in effect, he requests correction of his DA Form 199, by amending his disability description, his disability rating, and the inaccurate evaluation. In

addition, correction to his DA Form 3947, by adding missing diagnosis, and by amending his history of illnesses. He believes that during his evaluation, his history of illnesses was incorrectly depicted, and three of his conditions were entirely omitted from the DA Form 3947. He further states, he was incorrectly evaluated during his PEB proceeding, which resulted in a false disability description and subsequently the inaccurate rating of 0 percent (%). The applicant's statement is available in its entirety for the Board's review.

3. The applicant provides the following:

a. Medical records that will be reviewed and discussed by the Medical staff at Army Review Boards Agency (ARBA).

b. DA Form 3349, 19 April 2006 reflects the following information:

- he was issued a permanent profile on 19 April 2006, due to chronic left knee\ pain
- he received a "3" in "L" lower extremities reflects significant limitations
- he could not preform the army physical fitness test (APFT)
- a MEB was recommended

c. DA Form 3947, 31 August 2006, reflects the following concerning his medical condition:

- Diagnosis: chronic left knee pain with torn menisci
- Approximate Date of Origin: 2004
- Incurred while entitled to basic pay
- Did not exist prior to his service
- He was referred to a PEB
- He did not desire to continue on active duty
- The Board approved the recommendations and findings on 26 September 2006
- The applicant agreed with the board's findings and recommendation on 2 October 2007

d. DA Form 199 shows a PEB was convened on 24 October 2006, wherein the applicant was found physically unfit with a recommended combined disability rating of 0%, and that the disposition be separation with severance pay if otherwise qualified, for chronic left knee pain with torn medial menisci since 2000. The applicant concurred with the findings and waived a formal hearing of his case. This document further shows the PEB made the following administrative determinations:

(1) The Soldier's retirement is not based on disability disease from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurring in the line of duty during a period of war as defined by law.

(2) Evidence of record reflects the Soldier was not a member or obligated to become a member of an Armed Force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(3) The disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

4. The applicant's service record shows the following:

a. He has prior enlisted service in the Army National Guard (ARNG) and was honorably discharged on 2 May 2003.

b. DA Form 71 (Oath of Office), 3 May 2003, reflects he was appointed as a Reserve Commissioned Officer, in the rank/grade of 2LT/O1.

c. NGB Form 22 does not reflect an entry date, but shows he was honorably discharged for the North Carolina ARNG (NCARNG), on 17 November 2006, due to a medical disqualification. He completed 3 years, 5 months and 19 days of service, 5 years, 3 months, and 19 days of prior Reserve Component service, and 3 months and 17 days of prior active federal service.

5. On 26 January 2004, U. S. Army Physical Disability Agency (PDA), provided an advisory opinion, which found the applicant's claim legally sufficient based on the following:

a. There is no dispute that the condition is service connected.

b. On 24 October 2006, the PEB found the applicant unfit for his left knee with a 0% rating. According to the evidence he produced, his initial injury was in 1999 with corrective surgery on 30 November 1999. In February 2002, he reinjured his knee by slipping on ice at FT Leonard Wood, MO. He further injured his knee in 2004 during a ruck march. The DA Form 199 lists the onset in 2000.

c. According to the evidence, he was not diagnosed with arthritis. Nonetheless, he did have a knee condition with chronic pain as well as some apparent range of motion and stability issues. The Diagnostic Codes (DC) for range of motion and stability were not listed on the DA Form 199. Moreover, it appears the PEB erred in not applying the lowest schedular rating for a musculoskeletal condition when pain on use is established.

it appears that the PEB applied the incorrect DC and did not apply all of the possible DCs to this matter (range of motion and stability). Also, the PEB did not apply the minimum schedular rating. Additionally, it does appear that the onset was in 1999.

d. Conclusion: The case was found to be legally sufficient to have the matter reopened and submitted for a new PEB to determine the appropriate DCs, rating, and, potentially, final case disposition as well as to correct any other administrative errors.

6. On 8 February 2024, the advisory opinion was provided to the applicant, and he was given the opportunity to provide additional evidence or comments. The applicant responded with additional medical records that will be reviewed and discussed by the Medical staff at ARBA; however, the applicant did not provide any comments.

7. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

8. Due to the applicant's request for corrections to his MEB/PEB proceedings, the case is being forwarded to the Medical staff at ARBA.

9. 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/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 an increase in the military disability rating for the unfitting disability related to his left knee injury(s).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. The applicant was placed on a permanent duty-limiting physical profile for "Chronic left knee pain" effect 19 April 2006. He was subsequently referred to the Disability Evaluation System. From the medical evaluation board (MEB) narrative summary for this condition:

“ ... The patient states that currently his knee is ‘unstable all the time.’ It gives out from time to time, and he ‘stops moving (freeze).’ He has not had a fall yet. He states that the knee gives out 4 or 5 times a week. He also complains of lateral patellar movement on climbing stairs and states that It gets stuck ...

The left: knee show mild swelling with tenderness to palpation of the patella and the medial joint line. There was a positive patellar apprehension test and a negative Lachman's [Test for a torn ACL]. There seemed to be slight laxity medially on valgus stress. He was able to heel and toe walk. He was unable to squat or duck walk secondary to left knee pain ... The remainder of the physical exam was normal.”

e. On 26 September 2006, MEB determined his “Chronic left knee pain with torn menisci” failed the medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness. On 2 October 2006, the applicant agreed with the board’s findings and recommendation and the case was forwarded to a physical evaluation board (PEB) for adjudication.

f. On 24 October 2006, the applicant’s informal physical evaluation board (PEB) found “Chronic left knee pain with torn medial meniscus” to be his sole unfitting medical condition for continued service. Using the VA Schedule for Rating Disabilities (VASRD), they derived and applied a rating of 0%. With a rating of less than the 30% required for permanent retirement for physical disability, the PEB then recommended the applicant be separated with disability severance pay.

g. The VASRD is the document used by the military services to rate unfitting military disabilities. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006):

#### B–1. Purpose of the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in 10 USC 61.)

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

h. This Medical Advisor has been trained in the use of the VASRD.

i. Thought the PEB errored in determining his rating, the error did not change his disability separation disposition.

j. The PEB was correct in applying only one disability rating to his left knee condition. Within the VASRD, §4.14 of Part 4 of Title 38 states that when symptoms overlap and could be considered under multiple codes, “the evaluation of the same disability under various diagnoses is to be avoided ... and ... the evaluation of the same manifestation under different diagnoses are to be avoided.” This is known as “pyramiding,” where a Veteran would receive multiple ratings for the same symptoms, e.g. breathing treatment for asthma and obstructive sleep apnea; and concentration problems in a Veteran who has both a mild traumatic brain injury and PTSD. In this case, it was a symptomatic left knee with pain and locking.

k. The PEB rated his condition using diagnostic code (DC) 5099-5003. The DC 5099 signifies an analogous rating for which they used DC 5003 – Arthritis – to arrive at their 0% rating. There is no VASRD code for pain, and when there is no code for a given medical condition, an analogous rating is applied per § 4.20 of Part 4 of Title 38:

“When an unlisted condition is encountered it will be permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization and symptomatology are closely analogous.”

l. DC 5099 signifies this was an analogous rating for which why used DC 5003. 38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. In these circumstances, painful motion of the joint or joints is assigned the minimum compensable evaluation of 10 percent. The PEB should have derived a 10% rating for pain as 10% is the rating for a painful joint without other significant findings.

m. The applicant should have received a more favorable 20% rating using DC 5258 - Cartilage, semilunar, dislocated, with frequent episodes of ‘locking,’ pain, and effusion into the joint. This rating still yields a disposition of separate with disability severance pay as it remains below the 30% required for the disposition of permanent retirement for physical disability.

n. On 30 October 2006, after being counseled on the PEB’s findings and recommendation by his PEB liaison officer, the applicant concurred with the Board and waived his right to a formal hearing of his case.

o. It is the opinion of the ARBA Medical Advisor the correct rating for applicant’s military disability is 20% and that his disability separation disposition remains separate with disability severance pay.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered 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 request, available military records and U. S. Army Physical Disability Agency (PDA) advisory opinion and medical review, the Board concurred with the advising official finding the applicant request for correction legally sufficient. The advisory opines noted based on the new PEB the applicant's case warrants reconsideration regarding his rating, and potentially final disposition. Furthermore, the medical opine noted the correct rating for the applicant's military disability is 20% while his disability separation disposition remains separate with disability severance pay.
2. The Board determined there is sufficient evidence to support the applicant's contentions for correction to his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 October 2006, by amending his disability description, his disability rating, and the inaccurate evaluation, a higher service-connected disability rating, retroactive disability pay and allowances and correction to his DA Form 3947 (Medical Evaluation Board Proceedings (MEB), 31 August 2006, by adding missing diagnosis and by amending his history of illnesses. The Board agreed based on the medical opine, the applicant's military disability should reflect 20%, however the applicant's disability separation disposition remains separate with disability severance pay. As such, the Board granted partial relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

█                █                █                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show

- a rating for the applicant's military disability as 20% while his disability separation disposition remains separate with disability severance pay
- his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 24 October 2006, as being amended for his disability description, his disability rating, and the inaccurate evaluation
- his DA Form 3947 (Medical Evaluation Board Proceedings (MEB), 31 August 2006, being amended by adding missing diagnosis and by amending his history of illnesses
- a higher service-connected disability rating and retroactive disability pay and allowances

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a permanent disability retirement.

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 (Armed Forces), 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 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Title 10, United States Code (USC) (Armed Forces), chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 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 MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the Medical Evaluation Board (MEB) and the Informal Physical Evaluation Board (PEB) Proceedings. 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.

4. Title 10, United States Code (USC) (Armed Forces), 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, United States Code (USC) (Armed Forces), 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%.

5. Title 38, United States Code (USC) (Veterans' Benefits), 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, United States Code (USC) (Veterans' Benefits), 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. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or

Separation), establishes the Army Physical Disability Evaluation System according to the provisions of Title 10, United States Code (USC), Chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower, provide benefits for eligible Soldiers whose military service is terminated because of a service-connected disability, provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

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 an MEB, when they receive a permanent physical profile rating of "3" or "4" in any functional capacity 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 or directed by medical providers.

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 or 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 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 whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. 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 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 Veterans Affairs 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 his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her 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. Physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of Title 26, United States Code (USC), section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

e. Combat related: This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat-related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result of armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war, because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war.

8. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides that a profile is considered permanent unless a modifier of "T" (temporary) is added.

a. A permanent profile may only be awarded or changed by the authority designated by Commanders of Army Military Treatment Facilities. If the profile is permanent, the profiling officer must assess if the Soldier meets the medical retention standards of this regulation, those Soldiers on active duty who do not meet the medical retention standards must be referred to an MEB. Permanent profiles may be amended at any time if clinically indicated and will automatically be reviewed at the time of a soldier's periodic examination. The Soldier's commander may also request a review of a permanent profile.

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

c. Reservists who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reservists with nonduty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with this regulation.

d. USAR or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed as follows. Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 or discharged from the USAR per Army Regulation 135–175 (Separation of Officers) or Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

9. Title 10, United States Code (USC) (Armed Forces), USC, section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

10. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//