

IN THE CASE OF [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20230010897

APPLICANT REQUESTS:

- her Line of Duty (LOD) determination be changed from Not in the LD (NLD)-not due to own misconduct to in the line of duty (ILD)
- correction of her record to show she was medically discharged/retired from the U.S. Army Reserve (USAR) due to disability
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 3349 (Physical Profile), 21 December 2010
- DD Form 3349, 24 July 2015
- Medical Questionnaire, 28 July 2015
- DD Form 2978 (Post Deployment Health Assessment (PDHA)), 28 July 2015
- Standard Form 600 (Medical Record-Chronological Record of Medical Care), 28 July 2015
- Medical Questionnaire, 8 December 2016
- DD Form 2978 (Mental Health Assessment), 8 December 2016
- Standard Form 600, 8 December 2016
- DA Form 3349-SG, Physical Profile Record, expiration date 6 February 2017
- Medical Records, 15 February 2017
- Functional Capacity Certificate Form, 10 April 2017
- Memorandum, Appeal of Separation Board Decision, 28 April 2017
- Memorandum, USAR Command (USARC), 3 May 2017
- DA Form 5501 (Body Fat Content Worksheet), 6 May 2017
- Coordination of Care Letter, 25 May 2017
- DA Form 3349-SG, 6 June 2017
- DA Form 2173 (Statement of Medical Examination and Duty Status), 21 June 2017
- Email, Subject: Status of [applicant's] Discharge Packet, 2 August 2017
- Merit Systems Protection Board (MSPB) Docket Number AT-1221-18-0334-W-1, 23 March 2018

- Orders 18-085-00006, 26 March 2018
- Email, Subject [Applicant], 13 April 2018
- MSPB Docket Number Docket Number AT-1221-18-0334-W-1, 13 April 2018
- Email, Subject: Feedback on your request for assistance, 8 July 2024
- Memorandum, Headquarters, 81st Readiness Division, 18 Jul 2024

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 indicates her request is related to post-traumatic stress disorder (PTSD). She states, in effect:

a. She requested a medical board prior to the separation board convening on 14 February 2017. During the testimony, the Headquarters and Headquarters Company (HHC) commander made several negative comments. He made it a point to state that he was NOT given a profile for her condition. The Board members told her that she should have had a profile for her condition, and if she had one, the Board would not have taken place. Instead, the Board voted for removal. The commander also stated that she had provided medical documentation for him to give to the new Commanding General. She contends this was a false statement because the medical documentation was addressed to the former Commanding General. She contends that her commander held the documents and then gave the involuntary separation packet to the new Commanding General to sign.

b. She was a single parent who was about to lose, not one but two jobs, that took care of her and her two children. The Board did not have a viable reason to terminate her on the civilian side, so they used a military action to fire her from her civilian job. She went into a massive depression. She felt the command had succeeded in their retaliation plot against her for being a Whistleblower.

c. Regarding the LOD, the command recommended NLD – due to misconduct. The USARC sent her a letter informing her she could write an appeal. She did not see the USARC's final recommendation, but in November 2018 she received a determination from the U.S. Army Human Resources Command (AHRC) of NLD – Not due to misconduct. She was given a specified time to submit a rebuttal, but she had been recently released from an intense outpatient program. At the time, she did not have the mental stability to engage. Ironically, what the organization refused her on the civilian side, they tried to pursue on the military side. They failed at their attempt.

d. She contends that she is a Whistleblower and the organization engaged in reprisal against her. She was a military technician and as a condition of employment, she had to be in the USAR. The organization could not come at her as a civilian employee because of the rights afforded to Federal workers, specifically Whistleblowers.

e. Her case is still pending a final determination with the MSPB (Merit Systems Protection Board). She has been back and forth trying to correct this issue. This is her last hope. What was done by this organization was criminal. Everyone involved should be terminated and all military should be met with military justice. She struggles with PTSD and each time she tried to take this step, she triggers. It is so difficult for her to relive this event. She lost the ability to transfer her education benefits to her kids. She was separated in April 2018 and she would have fulfilled her commitment in September 2018, roughly the same time she would had completed her 20 years.

3. The applicant's commission documents are not available in the record. Her DA Form 2-1 (Personnel Qualification Record), shows her effective date of rank to second lieutenant as 14 December 2000 and she entered active duty as a USAR officer on the same date. She was released from active duty on 19 March 2006 and she transferred to the USAR Control Group (Reinforcement), St. Louis, MO.

4. Her record contains:

a. Several Behavioral Health (BH) treatment records from civilian providers between the period 27 February 2014 to 8 August 2016 which show the applicant was suffering from increased anxiety, depression, stress, insomnia as a result of workplace issues, the care for/and death of a critically ill parent, and her treatment for multiple comorbidities which led to weight gain due to limited physical activities.

b. An undated temporary physical profile which lists severe PTSD, depressive disorder, and anxiety disorder as the reason for profiling. These BH conditions made her nondeployable, restricted her from carrying and firing her individual assigned weapon and prevented her from living and functioning, without restrictions, in any geographic or climatic area without worsening her condition.

5. A DA Form 1574-2, Report of Proceedings by Board of Officers, which shows on 14 February 2017 the applicant appeared before a Show Cause Board at the 81st Regional Support Command (RSC), Fort Jackson, SC. The Board's purpose was to determine whether the applicant should be separated from the Army under the provision of Army Regulation (AR) 135-175, Army National Guard and Reserve-Separation of Officers, for substandard performance of duty. The Board found the applicant:

- failed to meet the body composition standards on 15 August 2015

- did not fail to meet body composition standards on 22 December 2015
- failed to meet the body composition standard on 16 April 2016
- did not provide evidence of a temporary profile of a medical condition pursuant to AR 600-9, Personnel-General-The Army Body Composition Program, that directly causes weight gain or prevents weight or body fat loss
- did demonstrate an unwillingness to expend effort to maintain Army body composition standards

6. The Show Cause Board recommended the applicant be separated from the USAR with an honorable characterization of service.

7. She received a referred Officer Evaluation Report for the period 15 April 2016 through 14 April 2017 for failing to maintain the body composition requirements set forth in AR 600-9 (The Army Weight Control Program). Her rater stated that her duty performance as a Force Integration Officer was excellent and her senior rater stated she had great potential and was ready for positions of increased responsibility.

8. The applicant appealed the separation board's decision on 28 April 2017 stating that as of 6 May 2017, she met the Army Body Composition standard. The applicant stated that the separation board was invalid and a separation by a Medical Evaluation Board (MEB) was more appropriate. She further stated, in effect:

a. At the time of the board convening date, she was within the recovery period of a temporary profile for PTSD generated by Logistic Health Incorporated (LHI) because of a 2016 Physical Health Assessment (PHA) conducted in December 2016. The recovery period for a profile is twice the length of the profile, not to exceed 90 days. The Separation Board convened on 14 February 2017 and the profile ended on 7 February 2017. According to the 81st Surgeon's office, LHI does not generate profiles, unless it is for behavioral reasons. A profile appeared in Medical Operational Data System (MODS) for action by the commander. According to the Surgeon's office, commanders should check MODS at a minimum, every two weeks and notify the Soldier to see if more time is required. The HHC Commander who provided testimony during the board proceedings, did not contact her, even though he was aware of her emotional status.

b. In August 2015, the first time she did not meet height and weight, she informed the commander, with the chaplain in attendance, so he was aware that the negative environment in the Directorate of Human Resources section was having an adverse impact on her mental well-being. The commander attempted to have an assessment performed; however, the coordination failed. As a drilling reservist, she was ineligible for medical attention. The PHA performed in 2016, included three separate assessments: alcohol abuse, PTSD, and depression. According to the PTSD Checklist for Civilians (PCL-C), a PCL over 50 indicates the patient has extreme symptoms and warrants immediate referral. Her score was 56. According to the Personal Health Questionnaire

(PHQ-8) for depression, patients who score above 19 are severe. Her score was 20. In accordance with (IAW) AR 40-501, Medical Services-Standards of Medical Fitness, paragraph 7-4c, which provides regulatory guidance for temporary profiles, she did not receive due process. She did not receive proper evaluation and assessment for improvement IAW AR 40-501, paragraph 3-32 through 3-36 retention standards. The temporary profile she received was not due to a reduction in physical activity, but rather PTSD. AR 600-9, paragraph 3-10 provides regulatory guidance reference a medical evaluation initiated by the commander or the RC soldier at their own expense. The commander's attempt failed; however, she received an assessment at her own expense. IAW AR 600-9, paragraph 3-11b and 3-11c, although the individual can be flagged, he/she cannot be penalized while on the temporary profile. The statement on the Separation Board proceeding that she failed to provide medical evidence is categorically false. She was not aware her condition required translation into a profile. Even without that knowledge, her condition still resulted in a profile generated by LHI.

c. Further, she lacked proper representation by the appointed trial defense attorney (TDA). The TDS advised against inserting facts regarding her civilian capacity with the organization. Furthermore, the TDA did not provide assistance with the strategy for the rebuttal.

d. Her rebuttal included a DA Form 5501, Body Fat Content Worksheet, 6 May 2017, which shows her weight and body fat were within the Army standard.

9. On 18 October 2017, Commander, Headquarters, USARC, a lieutenant general, recommended the Show Cause Board's findings and recommendation be approved. This recommendation states, in effect, that the Commander, 81st RSC had initiated an involuntary action against the applicant on 18 August 2016 for substandard performance IAW AR 135-175, paragraph 2-10i and 2-10g (failing to meet body composition standards twice within 12 months). Specifically, she failed to achieve satisfactory progress after participation in a medically established weight control program and her inability or unwillingness to expend effort.

10. Orders 18-085-00006, 26 March 2018, published by Headquarters, USARC, Fort Bragg, NC show the applicant was involuntarily discharged from the USAR, effective 16 April 2018.

11. On 18 August 2018, the Commander, Headquarters, 81st RSC authenticated/approved a DA Form 268, Report of Suspend Favorable Personnel Actions (FLAG), originally field initiated on 16 April 2016 to involuntarily separate the applicant.

12. On 1 February 2019, the applicant filed an Inspector General (IG) complaint alleging members of the 81st Readiness Division conspired to have her terminated from her civilian job through military separation. She alleged the organization pressed to fire

her for an alleged violation of condition of her employment (3-16 August 2016). She requested further investigation of this complaint by the IG due to her belief of alleged false statements made against her which resulted in the termination of her employment. She also claimed she was denied medical board due process. The IG closed the case on 29 March 2019 finding that after conducting a thorough inquiry into her request, she had received a legal review and was afforded due process. The unredacted IG Electronic Case Form shows, the investigation found, in part:

a. The applicant's temporary profile generated by "LHI" was for PTSD and not relevant and not directly related to weight gain or weight loss."

b. The applicant was upset with the HHC commander for utilizing the Sheriff's Department to check on her after she failed to show up for work or respond to phone calls. She also stated that she had combined prescription drugs with alcohol. An ambulance was called which she accepted. She initiated a LOD to cover the cost which also had due process.

c. She was a military technician and the medical board recommendation, if approved would cause her to lose both her military and civilian jobs. The [medical] board recommendation was pending at USARC for final decision.

d. The applicant had lost confidence in the 81st RSC leadership and continued to dwell on the IG complaint she initiated, and the accompanying command product which was reviewed by the Staff Judge Advocate. She had a pending case for reprisal with the Office of Special Counsel (OSC) which was pre-decisional. There was nothing that was not either IG inappropriate, pre-decisional or already conducted. When the applicant presented with suicidal gestures the HHC commander took the required action.

e. The IG notified the applicant that no further action would be taken.

13. The applicant's record is void of documents related to her LOD investigation.

14. The applicant provides:

a. A DA Form 3349, 21 December 2010, which shows the applicant was issued a permanent physical profile for a history of mild heart conditions post-delivery 2002, stable on medication with no current untoward changes and for a urinary bladder disorder.

b. A DA Form 3349, 24 July 2015, which shows the applicant was issued a temporary physical profile of an unspecified or behavioral health problem.

c. A Health questionnaire, 28 July 2015, wherein the applicant reported having mental health concerns for which she was currently taking medication.

d. A Post Deployment Mental Health Assessment, 28 July 2015. The applicant reported anxiety and depression related to the death of her mother and being in treatment at a private clinic and taking medication. Her symptoms impacted her work performance, and she was having issues with a supervisor. She also reported feeling rage at times and thought about the potential consequences of losing her temper.

e. A Health Questionnaire, 8 December 2016, which shows she reported being in biweekly counseling for depression, stress, and anxiety.

f. A Deployment Mental Health Assessment, 8 December 2016, wherein the applicant reported having filed a complaint against her unit for abuse or power and the OSC was investigating her complaint. She was also pending elimination for weight gain which would result in her losing her military and civilian jobs.

g. An undated DA Form 3349-SG, which shows the applicant received a temporary physical profile for PTSD, depressive disorder and anxiety disorder.

h. Civilian treatment records, 15 February 2017, which show she was seen for situational stress and mood disorders.

i. A Functional Capacity Certificate Form 507, 10 April 2017, which shows the applicant reported that she was diagnosed with PTSD on 16 December 2016. She further indicated that her reported limitations were not due to a duty related condition and that she had a copy of her LOD determination.

j. A USARC memorandum, 3 May 2017, wherein the Army Reserve Management Center is requesting the applicant's treatment records from her civilian provider. The civilian provider was also asked to review numerous limitations and indicate if the applicant was able to perform the listed activity without worsening her condition. The provider indicated the applicant was:

(1) Mentally unable to carry and fire an assigned weapon, explosives or ammunition without being a danger to self and others due to a current behavioral health diagnosis.

(2) Unable to live and function, without restrictions, in ANY geographical or climatic condition, i.e., desert, jungle or urban area.

k. Body Fat Content Worksheet, 6 May 2017, which show the applicant was in compliance with Army standards.

l. A Coordination of Care letter from the clinical director, a therapist, which shows the applicant began treatment on 11 November 2016. The applicant reported symptoms that were consistent with the diagnosis of adjustment disorder with mixed anxiety and depressed mood, PTSD unspecified, high expressed emotion level within the family which impacted her daily life and responsibilities.

m. A DA Form 3349-SG, 6 June 2017, which shows the applicant was issued a temporary profile for a BH condition.

n. A DA Form 2173, 20 June 2017. This document shows the applicant was admitted to a hospital on 15 February 2017 for PTSD, major depressive disorder, and stress. Item 11, Medical Opinion, of this form states that the applicant's injury was incurred in LD. The basis for this opinion was the treating physician's statement that the applicant's illness was the result of the separation board on 14 February 2017. This form further shows in:

- Item 19, Duty Station – the applicant was absent without authority on 15 February 2017
- Item 22, Individual was on - inactive duty training
- Item 23, Hour and Date of Training – 14 February 2017 to 14 February 2017
- Item 30, Details of Accident – states, in effect, the applicant was placed in an inactive duty (IDT) status on 14 February 2017 to attend an administrative board conducted by the 81st RSC; the unit informed the applicant at this board that a separation action had been initiated. The applicant completed the IDT status satisfactorily. On the following day, 15 February 2017, the previous HHC Commander, Major (MAJ) [REDACTED] 81st RSC, received word (unknown source) that the applicant (not in a military status) was in a distressed state; MAJ [REDACTED] concerned for the applicant's wellbeing, called local law enforcement to check on her at her place of residence. At approximately 1300 hours on 15 February 2017 the applicant was transported to the emergency room for evaluation. Note: The applicant was a military technician at the 81st RSC and was in a civilian leave status on 15 February 2017.
- Item 31, Formal LD investigation required – "Yes"
- Item 32, Injury is considered to have been incurred in LD – "NO"

o. Email correspondence related to the status of the applicant's Discharge Packet with the following items highlighted:

- Individual is a MILTECH
- As a condition of employment (COE), the individual must continue to serve in the Army Reserve
- The individual has about 17 years of active and reserve service

- If USARC and/or HRC wait too long, the individual may get into a “sanctuary” position for two or so years
- The 81st RSC cannot initiate separation on the civilian side for the individual’s failure to fulfill a COE unless or until the individual is separate from the Army Reserve component

p. A DA Form 3349-SG, which shows on 9 August 2017 the profiling provider issued the applicant a permanent physical profile for a mild heart condition post-delivery (2002) and urinary bladder disorder; and a temporary profile for a behavioral health condition.

q. Memorandum, Subject: Notification of Army Reserve Troop Program Unit Officers Pending Involuntary Separation, 15 March 2018. This document shows that a revision to AR 135-175, 29 December 2017 required commanders to re-notify all officers pending new involuntary separation and all exiting involuntary separation which were pending final action prior to 29 December 2017 effective date. Re-notice, although not required for officers being processed for involuntary separation based on substandard performance (AR 135-175, paragraph 2-12), should be considered by commanders, if necessary, after discussing with their supporting Staff Judge Advocate.

r. Annual Periodic Health Assessment, 21 March 2018, wherein the applicant indicated that she was on a temporary profile for behavioral health conditions and was currently receiving professional treatment. She further indicated that she had initiated a LOD or a LOD was pending for her behavioral health condition of PTSD which was incurred in 2017.

s. A MSPB (Merit Systems Protection Board), Docket Number [REDACTED] 23 March 2018. This document contains important information about the applicant’s appeal and its processing related to the jurisdictional issue and meeting the burden of proof. It defined, in part, what a nonfrivolous allegation was and how to establish whistleblower status.

t. Orders 18-085-00006, 26 March 2018, published by Headquarters, USARC, which discharged the applicant from the USAR, effective 16 April 2018.

u. Email correspondence, 13 April 2018, Subject: [Applicant], from the applicant’s Attorney-Advisor, Office of the Staff Judge Advocate to the Civilian Human Resources Agency asking for written confirmation that the applicant would not be removed from her MILTECH position because that position was identified to be converted to a Department of the Army Civilian (DAC) positions.

v. A MSPB Docket Number [REDACTED] 13 April 2018, Order finding Jurisdiction over Individual Right of Action (IRA) Appeal. The presiding official stated, in effect, that here, one of the above-referenced personnel actions (reassignment) took

place within a few months after the applicant filed her OIG complaint and during the pendency of the resulting AR 15-6 investigation which allegedly familiarized the appellant's chain of command of her claims. Accordingly, the official found that the applicant has made a non-frivolous allegation that her November 2015 disclosure was a contributing factor in a personnel action at issue in this appeal. The applicant is entitled to a hearing. Accordingly, the official found the appellant has established the Board's jurisdiction over his IRA appeal and that she was entitled to her requested hearing.

w. Memorandum, Subject: Dual Status Military Technicians (MT) and Non-Dual Status MTs Occupying a Position Identified for Conversion to DAC, 3 May 2018. This memorandum notified the applicant that she was currently occupying a MT civilian position identified for conversion to a DAC position.

x. milConnect-Transfer Education Benefits printout which notified the applicant that her current service commitment end date was 20 September 2018. The separation date from her service component was 16 April 2018 prior to fulfilling her service commitment required to maintain her transfer benefit for her eligible dependents.

y. Memorandum, Subject: LOD Determination, 27 November 2018. The Chief, Casualty and Mortuary Affairs Operations Division, informed the applicant that after completing a review of the LOD investigation in which she was diagnosed with a mood disorder on 15 February 2017 the approval authority's finding of Not ILD- NOT due to own misconduct was supported. The evidence contained in the investigation indicated she was not in a valid duty status at the time of the incident in accordance with AR 600-8-4, Personnel-General-Line of Duty Policy, Procedures, and Investigations, and Title 10, U.S. Code, section 1074a, a Soldier of the USAR must be in a valid duty status to be considered ILD.

z. Memorandum, Subject: Request for Medical Documentation, 11 July 2019, from the Management Analyst (the applicant's supervisor), Headquarters, 81st Readiness Division. He requested, in effect, that the applicant provide current medical information concerning specific medical restrictions related to her ability to perform the full range of duties of her position and any accommodations necessary in order for her to perform the essential functions of her position. Failure to report for work, to provide sufficient medical documentation to support future absences or absent without leave (AWOL) could lead to formal disciplinary action; to include her removal from Federal service. The applicant was provided a copy of her job description and questionnaire to be given by her medical provider.

aa. Email, Subject: Feedback on your request for assistance, 8 July 2024, wherein the 81st Readiness Division IG informed the applicant that they would not address her concern regarding the proper execution and process of the AR 15-6 investigation

because it was not presented in a timely manner. She was also informed that she was not named as a subject or suspect in an 81st Readiness Division investigation.

15. On 16 May 2024, the Chief, Casualty and Mortuary Affairs Operations Division, AHRC provided an advisory opinion in relation to the applicant's request for a LOD determination and medical separation. This official stated, in effect:

a. The applicant was placed on a one-day Inactive Duty Training (IDT) order on 14 February 2017 to attend proceedings for her Administrative Separation Board. After the proceeding, she returned to her residence and the IDT order ended. On 15 February 2017, she failed to report to work as a MT for the 81st RSC. Unit personnel contacted her, and she advised them that she had taken four Xanax, along with alcohol. The 81st RSC contacted local law enforcement for a welfare check and law enforcement left without action, stating the applicant appeared fine, although her speech was slurred. At some point after law enforcement departed and prior to personnel from the 81st RSC arriving, she was transported to the hospital by ambulance (to the hospital) and diagnosed with mood disorder. The applicant was not in a qualified duty status at the time she ingested the alcohol and medication or when she sought medical attention on 15 February 2017.

b. The 81st RSC initiated an LOD in July 2018, apparently for the purpose of determining whether she should be reimbursed for the cost of the ambulance ride on 15 February 2017. On the DD Form 261, Report of Investigation, Line of Duty and Misconduct Status (NOT FOUND IN RECORD), indicates that the applicant "experienced a major depressive break after the unit-initiated separation proceedings on 14 February 2017." The medical provider noted the diagnosis as "mood disorder." This form further indicated the applicant was found not to be present for duty, that misconduct or negligence was the proximate cause of her injury, and that she was mentally sound at the time of the injury. Specifically, "the proximate cause of the incident which led to the applicant's ambulance ride and subsequent treatment was due to her abuse of prescription medication and the mixing of that prescription drug with alcohol on the morning of 15 February 2017." This finding pertains to the cause of the ambulance ride and treatment, rather than the injury itself. The investigating officer (IO), appointing authority, and reviewing authority all entered a determination of NLD.

c. Authority. A military treatment facility (MTF) must identify, evaluate, and document mental and emotional disorders. Further, a Soldier may not be held responsible for her acts and their foreseeable consequences if, as a result of mental defect, disease, or derangement, she was unable to comprehend the nature of such acts or to control her actions. These disorders are therefore considered ILD unless they existed prior to service (EPTS) and were not aggravated by military service. Personality disorders by their nature are considered EPTS. On the other hand, an injury or disease

intentionally self-inflicted or an ill effect that results from the attempt, to include taking drugs, when mental soundness existed at the time should be considered misconduct.

d. Analysis. The applicant's duty status on 14 February 2017 is relevant and should not preclude a LOD finding. The IO, presumably based upon the facts and evidence acquired through investigation, found that the applicant suffered an injury stemming from a mood disorder caused by a major depressive break after the separation proceedings on 14 February 2017. This is essentially a finding that her injury, a mood disorder, was suffered while she was on IDT for the Administrative Separation Board on 14 February 2017. On the DA Form 2173, completed on 21 June 2017, much closer in time to the injury, the treating provider opined that the applicant's injury was ILD, noting that the illness was a result of the Administrative Separation Board on 14 February 2017. A LOD determination would therefore be appropriate. This cannot be determined by an IO. The applicant was on a one-day order and ended upon her arrival at her residence. If her condition worsened due to an event during this order, she should have sought treatment at that time, and should not have taken Xanax, combined with alcohol on the day after the order while in a MT/civilian status.

e. AR 600-8-4, 4 September 2008, paragraph 2-3(c), states: Investigations can be conducted informally by the chain of command where no misconduct or negligence is indicated, or formally where an IO is appointed to conduct an investigation into suspected misconduct or negligence. A formal LOD investigation must be conducted in the following circumstances:

(1) Injury, disease, death, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence;

(2) Injury or death involving the abuse of alcohol or other drugs;

(3) Self-inflicted injuries or possible suicide;

(4) Injury or death incurred while AWOL;

(5) Injury or death that occurs while an individual was enroute to final acceptance in the Army;

(6) Death of a USAR or ARNG soldier while participating in authorized training or duty;

(7) Injury or death of a USAR or ARNG soldier while traveling to or from authorized training or duty;

(8) When a USAR or ARNG soldier serving on an AD tour of 30 days or less is disabled due to disease;

(9) In connection with an appeal of an unfavorable determination of abuse of alcohol or other drugs (para 4-10a);

(10) When requested or directed for other cases. AR 600-8-4, paragraph 2-2(e), 12 November 2020, states: At no time will an LD be initiated, regardless of the circumstance(s), for a Soldier not in an authorized duty status at the time of injury, illness, disease, or death. A Soldier must be in an authorized duty status, as determined by the unit commander, before an LOD can be initiated.

f. Nature of the Injury. It is also worth noting that there seems to some inconsistency regarding the nature of her injury between the DA Form 2173 and the DD Form 261. The treating provider indicated on the DA Form 2173 that the applicant was not under the influence of any substance and did not test her Blood Alcohol Content (BAC). The provider's assessment seems to be that the injury was simply a depressive break, and not a result of ingesting Xanax and alcohol. However, the DD Form 261 seems to indicate that the injury, a mood disorder, was caused by abuse of prescription medication and alcohol, despite the fact that there does not appear to be any medical evidence to support this conclusion. AR 600-8-4 states one must have a preponderance of evidence to support a conclusion for a LD.

g. The LD investigation is not sufficient to establish that the applicant may have suffered an injury while she was in a qualified duty status, and an LOD investigation was therefore not appropriate. According to AR 600-8-4, there should have been no LOD investigation conducted without extending the applicant's orders to include 15 February 2017; thus, the finding of this LOD case becomes irrelevant.

16. The applicant was provided a copy of the advisory opinion. In her response she stated, in effect:

a. As the board reviews her application, the fact that she was a military technician within the same command she was a Soldier cannot be overlooked or understated. She contends that the board is reviewing a case of reprisal targeted at her for filing an IG complaint in 2015 against the Director, Human Resources alleging his favoritism for a married couple, one of whom was her supervisor, who he said, "had favor with the Chief" (Chief of Staff, his rater), and allowing them to create a toxic environment in the directorate and her supervisor of a prohibitive personnel practice (PPP) by trying to use her authority to expedite a quality step increase for her husband. NOTE: The applicant's appeals are still pending or were not provided.

b. The IG office referred her allegations over to the command for investigation. She thought this was the CG, however, the Chief of Staff was the appointing and approving official. She thought the way she worded the complaint would ensure the Chief of Staff would not be involved with the investigation. The investigation confirmed her allegations but also claimed that she was creating a toxic hostile environment for her staff. The investigating officer, who worked in the command suite alongside the Chief of Staff, made their conclusion and recommendation without interviewing any of her staff. She was subsequently recommended for termination or removal from her supervisory civilian duties and issued a management directed reassignment.

c. When she asked for a copy of the investigation in accordance with AR 15-6, Boards, Commissions, and Committees-Procedures for Administrative Investigations and Boards of Officers, paragraph 1-12b and AR 690-752, Civilian Personnel-Disciplinary and Adverse Actions, paragraph 2-2a, c(e), and f; Penalty Table 3-1, offense 3a and 4d, she was told that she did not have to be given the investigation. A management directed reassignment by itself is not adverse; however, it was done based on adverse information which is why she feels her rights were violated. Since the organization refused to give her the investigation, she did a Freedom of Information Act (FOIA) request and saw that the PPP violation done by her supervisor and her branches processes were the subject of the investigation. In addition, the investigation was to "...determine whether poor and insubordinate followership exists among certain leadership personalities at DHR..." She and her supervisor were mentioned by name in the investigation, yet she was never informed that she was a subject. She later found out that her supervisor was able to get the adverse information removed because she was not given the opportunity to address allegations made against her, yet the same right has not been extended to her. The applicant provided an email from the 81st Readiness Division IG that informed her that she was not the subject of an investigation and that was beyond the time limit to file a complaint regarding the proper execution of the AR 15-6 investigation.

d. She realized that the undercurrent chatter of the Chief of Staff having a favorable, personal relationship with said married couple was true, so she filed a lawsuit. The command tried to get it dismissed but the MSPB determined that she was a whistleblower. The case was in litigation with OSC effective August 11, 2016, and is still in litigation with the MSPB as of March 21, 2018, due to a lack of quorum.

e. Her involuntary separation was a precursor to firing her from her civilian job for failure to meet conditions of employment by not maintaining an active status in the USAR. There was great irony in using this approach. MILTECHS who lose active reserve membership but stay on past their prescribed time, are considered Antideficiency Act Violations (ADA). She discovered several within the command in August 2014. If during the review, the point of retaliation is lost to the board members, simply review the email dated 2 August 2017 from the 81st's RSC SJA to the USAR

SJA where he writes, “*Individual is a MILTECH. As a condition of employment (COE), the individual must continue to serve in the Army Reserve...The individual has about 17 years of active and reserve service...The CG of the 81st RSC is the appeal authority for the separation board...If USARC and/or HRC wait too long, the individual may get into a “sanctuary” position for two or so years. The 81st RSC cannot initiate separation on the civilian side for the individual's failure to fulfill a COE unless or until the individual is separated from the Army Reserve component.” There are separate rules to address termination of civilian personnel for performance outlined in AR 690-752.

f. If the command wanted to separate her from the civilian side, they could have done so with the investigation, but they would have had to give her the evidence used against her in the investigation. As the Chief of the Full-Time Support Branch for civilians, responsible for processing civilian personnel actions, she was aware of the rights of employees. There was absolutely no basis. She was a high performer with stellar evaluations and commendations, which included quality step increases (QSIs). This was purely reprisal and the only way they could fire her. The organization had more control of the military process than they did of the civilian process. Actions regarding civilians were not handled by in house counsel but instead went to Labor Management and Employee Relations (LMER) at Civilian Personnel Advisory Center (CPAC). Since the 81st Readiness Division did not separate the civilian from the Soldier, it is her firm belief that the ABCMR should not either. The organization was primed and ready to use a military action to do to her what they could not do to her as a civilian, terminate. The ABCMR should consider the full gambit. At the time of her separation, she had 19 years, 1 month and 12 days service. She was not flagged and she had been off the program for almost a year. She lost her retirement, Montgomery GI Bill which she had transferred to her kids, and all other rights and benefits that are rewarded to military retirees.

g. The involuntary separation board was held 14 February 2017, the day before the incident in question. AHRC's Advisory Opinion letter addresses some facts but leaves out others that she believes would provide context and therefore yield a different decision. During the board, the organization presented an LHI profile she was on for behavioral health, this was the first time she found out profiles were being generated. First, the profile the organization produced expired on 6 February 2017. The Administrative Separation Board members stated she should have been on profile for her mental health condition. When she referred to the documents in her file, they stated the documents in the packet were old; over 6 months (the last set of documents she presented to the command were for mental stress dated August 2016). Second, the testimony given by the HHC commander was very derogatory. He painted her to be a poor Soldier. He made comments like “I think she may have failed a PT test, I would need to check”. He also made it seem like she didn't come to drill, by saying “when she showed up”. Comments like that were not challenged and they were categorically false. She felt the Chief of Staff made the entire organization apart of his plan to get rid of me.

The board voted to separate me. My command, both military and civilian, were fully aware of my struggles with anxiety and depression due to a hostile work environment (It is important to note that DHR processed and tracked HHC's actions, and the Chief of Staff was her senior rater on the military side. So, they were aware of when she failed height and weight.

h. She went home and got in the bed. She was devastated. She always tried to perform her job to the best of her ability. The next day she moved from her bedroom to the couch. Her head was spinning. There was a rush of emotions. She knew the command's plan. She was going to lose her job and she would have no way to take care of her family. She was a single parent with a mortgage, car note, kids that needed things, and she had no voice in any of it. Furthermore, she was losing the only way she was going to send her kids to college. She wanted to shut it all down; she wanted to stop thinking about it, so she took a half of Xanax. She felt it didn't work, so she took another half. Still nothing, so she took another with a glass of wine. She poured herself another glass of wine and took another half of Xanax. The organization had been trying to call her, but she did not want to speak to anyone, so she did not answer the phone. They had one of her old staffers call her. She recognized the number and answered. The command chaplain was with the caller, and she spoke to him. She had spoken to him in the past about what was going on. She contends that she was aware of her condition and had already sought help. She was actively in treatment since 2014. This is why she had a prescription for the drug the LOD claimed she abused. She told the chaplain what she had done. He asked if an ambulance came, would she get in. Authorities arrived at her door. Shortly, an ambulance arrived, and she was taken to the emergency room.

i. In March 2017, she received the bills for the emergency room and the ambulance. Her private insurance covered a portion, but there was still a \$1000.00 remaining balance. She sent an email to the HHC Commander because the unit commander, had called in the health and welfare check and she thought the bills would be submitted to them. The civilian side turned to the military side for assistance because it was a military action that set the incident into motion.

j. It is important to note at this point that the appointing and approving authority of the LOD investigation was the Chief of Staff. In addition, the same legal office that co-signed on her rights being violated in the civilian investigation, advised and co-signed on this investigation. Paragraph 3b cites the organization synopsis of DD Form 261: "Specifically, "the proximate cause of the incident which led to [the applicant's] ambulance ride and subsequent treatment was due to her abuse of prescription medication and the mixing of that prescription drug with alcohol on the morning of 15 February 2017." However, even AHRC brings attention to the unit's finding citing: "It should be noted that this finding pertains to the cause of the ambulance ride and treatment, rather than the injury itself."

k. In the Analysis-Duty Status paragraph of the advisory opinion, AHRC cites: The IO, presumably based upon the facts and evidence acquired through investigation, found that [the applicant] suffered an injury stemming from a mood disorder caused by a major depressive break after the separation proceedings on 14 February 2017. This is essentially a finding that [the applicant's] injury, a mood disorder, was suffered while she was on IDT for the separation board on 14 February 2017. On the DA Form 2173, completed on 21 June 2017, much closer in time to the injury, the treating provider opined that [the applicant's] injury was ILD, noting that the illness was a result of the separation board on 14 February. An LOD determination would therefore be appropriate. This cannot be determined by an IO."

l. The AHRC's conclusion: "According to AR 600-8-4, there should have been no LOD investigation conducted without extending [the applicant's] orders to include 15 February 2017...". The applicant contends the command did not have, nor had it ever been presented with information that she abused drugs. The command did, however, have information that she was under extreme stress due to a hostile work environment and was experiencing anxiety and depression as documented in several email correspondence to her senior rater. Furthermore, the command did nothing to resolve the issue. The command should have extended the order since it is indisputable that the nature of the injury was the separation board and for her, the realization that the command would be able to do what the investigation could not, terminate her employment with the organization. Past LHI reports, documentation provided to the command, as well as email, clearly reflected depression and extreme anxiety. The separation board aggravated and exacerbated conditions that lead to a mental breakdown.

18. The applicant provided a Sequence of Events which she contends verifies her statements and other information regarding the hostile environment. THIS INFORMATION IS PROVIDED FOR CONTEXT BUT IS NOT DIRECTLY RELATED TO HER LOD DETERMINATION REQUEST OR HER REQUEST FOR MEDICAL RETIREMENT.

February 2013 – Assumed position as the Full-Time Support Branch Chief for the civilian branch. She was directed to move to this position; it was not a position she applied for. She was completely untrained. This was during sequestration. They were experiencing a hiring freeze and budgetary cuts. All discretionary funds were pulled so this meant no awards. As the chief of the FTS-Civ branch, she got all the complaints from the workforce. Some awards made it through, and it just happened to be the awards for individuals who were rated and senior rated by the chief of staff. The entire workforce felt it was unfair.

March 2013 – Had knowledgeable staff leaving or retiring because they felt the organization was blocking promotion to the position. They had a point. She was the

second GS12 they laterally transferred into the position. The first one was her supervisor.

April 2013 – Reported to Force Management School at Fort Belvoir, Virginia, to get her ASI. During the course she had to drive back to [REDACTED] to finalize her divorce (April 23) and then drive back to the school to finish which was 26 April 2013.

May – August 2013. She was issuing furlough notices and was being furloughed.

1 Oct 2013 – Government Shutdown.

January 2014 – Mass realignment of over 800 positions.

February 2014 – Position decrements. She was bombarded with inquiries by employees who thought they were going to lose their job.

March 2014 – More position decrements.

June 2014 – Attended ILE. She let the command know that she was working under extreme stressful conditions and that it was starting to take a toll.

July 2014 – Hiring Surge.

August 2014 – Discovered several ADA violations. A flash report had to be submitted up to the Assistant Secretary of the Army.

October 2014 – Had one of the most challenging cases yet in a list of employees she had to assist him with being reinstated because the organization removed him erroneously. This employee was extremely disgruntled. It consumed a lot of her time, but given the environment in the organization, she felt it important to be a good listener and to help him in any way she could. She mentions this because the DHR director alluded to the time she was giving this employee in his statement against her. She was helping an employee and he spoke negative about it. That employee was one of the employees who made a statement on her behalf. *Enclosure 1*

March 2015 – Went home to Alabama to see about her mother. Her son had been diagnosed as being on the spectrum and she couldn't keep up with the work environment and family life. Had to ask her ex-husband to move back in the to help with the kids. She was back and forth on the road to see about her mother who had been diagnosed with cancer. She and her siblings started rotating in and out to be with her.

5 May 2015 – Mother passed away from cancer.

26 May 2015 – Informed Chief of Staff of board irregularities and potential prohibitive personnel practice by my supervisor. She used her authority over her branch to expedite a quality step increase (QSI) for her husband. (She was unaware the Chief of Staff was involved). *Enclosure 2*

27 May 2015 – Received retaliation in the form of a counseling statement from her alleging bad performance.

June 2015 – More retaliation from the command. This time in the form of an admonishment. Her supervisor claimed she was guilty of preselection. She had to write up one of her employees for poor and borderline unethical conduct (She is submitting the whole packet because this is one of the employees who claimed, she was toxic in the DHR investigation. When she made her statement in the investigation, it had almost been a year since she had worked for her. Please note what another supervisor and her coworker said about her). *Enclosure 3*

Aug 2015 – Failed height and weight.

November 2015 – Filed IG complaint against the DHR director after continued retaliation. *Enclosure 4*

December 2015 – Had to meet with CofS and DHR director over tracking civilian education. This was an area where she was receiving retaliation. Was working with SGS on a separate command project and broke down and confided in her. See attached memorandum that was submitted in the investigation. Later in the month, she had to write up another staffer for poor work performance (She is providing the full packet from him as well. He was solicited to make a statement against her in the investigation claiming she was a toxic leader. In fact, he wrote he wanted to file an IG complaint in his statement. But note, she moved him from the section effective January 2016, before the investigation even started. By the time he made his statement in the investigation, it had been almost 6 months since he had worked for her). *Enclosure 5*

January 2016 – Asked IG the status of complaint. Initially they stated that the legal office and the CofS had spoken to them and their appeared to be no basis. She wrote up a separate statement and provided email documentation. Her staffer also wrote up a statement. Sent a note to meet with the CG.

15 January 2016 – NDAA 17 came down with the provision of converting no less than 20 percent of the military technician position. This is the key and nexus between the civilian side and military side. The civilian branch chief position was on the roster to be converted. *Enclosure 6*

25 January 2016 – Requested open door with the CG. Note the COS inquiring about the meeting. *Enclosure 7*

February 2016 –Met with the CG. The CG was normally very pleasant. Her demeanor had changed. The applicant felt the COS and the DHR director had spoken to her. She was full, and she broke down and cried. CG stated she would look into allegations of harassment. However, somehow, it was the COS. He appointed an IO for the investigation, and he was the approving authority of the investigation. See attached for scope of the investigation. She was never informed that she was a subject. The applicant's father was diagnosed with prostate cancer. *Enclosure 8*

March 2016 – Went home to Alabama to visit her father.

April 2016 – Failed height and weight. The applicant was asked by HHC commander to provide any documentation that would support. She provided him with medical documentation. The documentation was addressed MG [REDACTED]. She contends that she is bringing out this point because during the trial he stated he asked me for documentation and he gave them to him, MG [REDACTED] a male commander. The strategy became to get me terminated by military action. Unknown to her, she would now be targeted in the investigation as a toxic leader, not looking out for her staff. That was not even apart of the scope. No other junior staffers were solicited to make statements about their supervisors. *Enclosure 9*

25 April 2016 – We had battle assembly. During one of the training sessions with the CG, the topic was command climate and suicide prevention. The topic strayed to mental illness and stressors, and she shared what she had been going through. That evening, she was informed by the director, DHR, that the CG was trying to contact me. The CG contacted the applicant to give her support. *Enclosure 10*

From April to August she heard nothing more from the HHC commander. The applicant assumed the documentation took care of the issue. She was still subject to hostile and toxic work environment. All of DHR was waiting for the results of the investigation.

5 August 2016 – She received an email from the chief of staff, stating the DHR investigation revealed that she was a toxic leader and that she did not look out for the well-being of her staff. No current employee of her was questioned; just the two employees that she had written up in the past. The applicant asked him for the evidence against her and stated that she had a right to defend herself. He said the command didn't have to give her the investigation but that he would send her the findings and recommendation. (Note: not the evidence). *Enclosure 11*

8 August 2016 – She was put on R&R by her attending physician due to stress. She missed battle assembly. MG ■ retired and we had a new commander come on board. *Enclosure 12*

11 August 2016 – Filed a complaint with the Office of Special Counsel.

16 August 2016 – MG ■ signed off on her packet shortly after he got there. She believes that the command deliberately held the packet for the incoming commander. It was the DHR Director who informed her that MG ■ wanted to speak to her and she believes they felt she would have been sympathetic towards her.

22 August 2016 – She returned from R&R on Monday and was served with the involuntary separation.

25 August 2016 – Sent email to administrative support services regarding her missing statements in the DHR investigation. She is submitting her statement as well as another colleges statement. The scope was about processes within her branch. She was a subject, but she was never asked the question. *Enclosure 13*

23 September 2016 – The COS responded to her inquiry regarding the email stating that a correction needed to be made to the Management directed reassignment. She was placed in a DAC position, but she was being made to work it in a MILTECH status, while the employee she was double slotted with worked in it as a DAC. Note: the reason they wanted her to work it as a MILTECH was so they could remove her for violation of COE. *Enclosure 14*

October 2016 – She had been working with one attorney from trial defense services regarding her separation, but he became unavailable, so she was linked with another one. There was a request to have the board moved back from its original date. In her opinion he was less engaged. She tried to inform him of how she felt the board was reprisal, but he did not focus on it.

January 2017 – She was served with Assistant of the Army investigation for the ADA violations she discovered in August 2014, as the person being responsible for the ADAs. She was told that she was being served because she was the next person in line after the Mr. ■. The next person was the supervisor she had been having trouble with in DHR. She sent an email to MG ■ acknowledging receipt of the notification but also informing him that she did not understand why such great links were going in to shield her previous supervisor. Her response clearly shows everyone who should have been held responsible before coming to her. The COS, the DHR director, and her supervisor should have all been served before it coming to her. *Enclosure 15*

14 February 2017 – Separation board. Statements she felt were false or deliberately misleading by the HHC commander.

15 February 2017 – Admitted to the emergency room due to separation board.

Enclosure 16

27 March 2017 – Bills for the emergency room and ambulance come in. She inquires with HHC commander. At the time, she did not see her actions as suicidal. She just wanted to shut her brain down and not think. In therapy she was told that was a suicidal ideation. She is still in therapy and she can say, she has had some suicidal ideation since then. She just does not have faith in people to do what's right.

April 2017 – She was told that if she wanted to get those expenses taken care off, she would need to do an LOD. She turned it in to the HHC commander and he refused to sign it. It didn't get processed until the next commander came in.

May 2017 – Met with the CG for an appeal to the board's recommendation. She told him what had been taking place in DHR and the effects it had on her. She told him that she thought the board was rigged. He informed her that he was not aware and that she had a right to appeal.

July 2017 – An investigating officer was appointed for the LOD investigation.

May to Dec 2017 - She waited for her fate. She was no longer in a hostile environment because she had been moved out of the section. She was doing great in the new section and had received a couple of on-the-spot cash awards for her performance.

January 2018 – She started engaging on the status of the LOD and the separation act.
Enclosure 17

February 2018 – She received notification from USARC regarding the LOD investigation. They concurred with the command that the LOD was NIL due to Misconduct. USARC had just received the LOD. There was no way they could have reviewed it. She informed them that she felt like they rubber stamped what the organization said, despite the fact the surgeon stating it was in LOD because the injury (or in this case, aggravation to the injury) occurred on 14 February 2017 when she was in a duty status. She wrote an appeal.

15 March 2018 – A policy was created by USARC. Turns out the regulation changed in November 2017 regarding separation actions for TPU officers. The USAR, not HRC became the approving authority. Appears USARC was not even aware. The memorandum stated due to the change in the regulation all officers had to be renotified;

all except officers like her for height and weight failure. Again, bear in mind, she had come off the program and was not flagged. *Enclosure 18*

26 March 2018 – Separation order was cut and sent to the command with an effective date of 16 April 2018. Command sent order to CPAC to initiate termination from her civilian job. *Enclosure 19*

6 April 2018 – She sent an email blast to all she had coordinated with to get a status on my packet. *Enclosure 20*

10 April 2018 – Command sent follow up email to CPAC to confirm that separation would not occur because position was being converted IAW NDAA 16. *See Enclosure 19*

15 May 2018 – She engaged the Deputy SJA for the response to the appeal She submitted to the CG. They went back and forth over months discussing it. *Enclosure 21*

26 September 2018 – She informed the Deputy SJA that she would end her inquiry with him and seek external resolution. *See Enclosure 21*

10 October 2018 – The MSPB hearing was held at the headquarters. She had an ill prepared lawyer and the command lied about everything, about the prohibitive personnel practice committed by her supervisor and especially about her being a toxic leader. The emails show that she is not toxic. Her family came to support her. Her father, brother and sister. She distinctly remembers explaining how they went after her military career and breaking down. Her dad, who was a Korean War veteran approached her and put his arms around her to console her (he passed away on his birthday last year 6 September 2023). She wished he could have lived to see her get justice.

11 October 2018 – The judge issued his ruling, and it was not favorable. He quoted the IO's summary almost verbatim. She had three staff members and her supervisor after the toxic one, come in and testify on her behalf and he still went with the organization. She was devastated; inconsolable. She went to her therapist's office, and she called the ambulance. She was admitted to the hospital.

15 October 2018 – She was released from the hospital and referred to an intensive outpatient program.

17 October 2018 – She started treatment at the program. They regulated medications; she was put in group therapy as well as one on one therapy; and learned various coping mechanisms. That was her place of duty, so she had to use all her leave and request advanced sick leave. *Enclosure 22*

November 2018 – She was in the program for about 4 weeks and returned to work after the holidays. AHRC had rendered a decision on her LOD. It was NLD, Not due to Misconduct. She considered it a half win. At least they agreed that there was no misconduct on her part. She was given an opportunity to respond but She did not have the mental wherewithal to engage. She had learned about the concept of radical acceptance and gratitude in therapy, and She did not want to take her mind to reliving everything again.

January 2019 – The director in the new directorate she transferred to receive a promotion outside the command. He provided some cover for her as her senior rater. Her immediate rater was a lackey for the COS. Once he left, the organization tried to come at her again. She was not given work to do. She began slipping into a deep depression. On one occasion, she was walking up to the building and suddenly, she could not breathe. She was having a full-blown panic attack. She struggled, but her work, what little she was given, did not. She had a reasonable accommodation, and she was constantly being asked for medical paperwork.

11 July 2019 – The command issued her a fit for duty. The fit for duty was for the same condition she had requested a medical board for on the military side. She filed an Equal Employment Opportunity complaint under reasonable accommodation. Key to this action; She knew this information from her civilian personnel days, the director is the deciding official for all personnel actions within their directorate. Although the old director left and they were without a permanent director, they had a temporary director. The temporary director was approached as the deciding official to approve the fit for duty action. She refused and stated it was legal, her supervisor (COS lackey) and the COS who pursued the action. *Enclosure 23*

August 2021 – The new leadership sent her to school to learn power bi. She earned a certificate from the [REDACTED] of Business, University [REDACTED] for Advanced Business Analytics. She returned and built a dashboard for the command. The dashboard was well received at all levels.

1 June 2023 – She was awarded by the Assistant Secretary of the Army (Financial Management and Comptroller Below Army Command Level Award) for significant achievement in the Army Reserve. She was contacted by USARC G1 and G8 for her version of the dashboard so they can create their own versions. *Enclosure 24*

Oct 2023 – That director left the command, and she was moved to the G3/5/7. She is back in manpower with the COS's lackey. She has not been assigned work that relates to manpower. The command cut off her military career and has halted her civilian career. She is not competitive as a GS12 Management Analyst because she has never performed the duties of a management analyst.

May 2024 – ARBA finally responded. The MSPB case started moving again and she has another chance to plead her case. She struggles with triggers so it's hard for her to engage. Eight years is a long time to wait for justice. *Enclosure 25*.

19. She includes numerous correspondence and medical documents related to her DAC employment and complaint.

20. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

21. By regulation –

a. An injury, illness, or disease diagnosed while serving on active duty or in a duty status does not mean that the injury, illness, or disease was incurred while serving on active duty or that an existed prior to service condition was service aggravated. An expert medical opinion from an appropriate provider is required and must address when the condition was incurred, if the condition existed prior to the current military service, and whether the condition was service aggravated.

b. At no time will an LOD be initiated, regardless of circumstance(s), for a Soldier not in an authorized duty status at the time of injury, illness, disease, or death. A Soldier must be in an authorized duty status, as determined by the unit commander, before an LOD can be initiated.

c. For RC personnel not on active duty only, if the individual has not obtained an evaluation from his or her personal physician under the provisions of this regulation and cannot demonstrate that the overweight condition results from an underlying or associated disease process, the individual may be separated under appropriate regulations without further medical evaluation by health care personnel.

d. 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 or request additional evidence or opinions. Applicants do not have a right to a hearing.

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change in her Line of Duty (LOD) determination from Not in the LD (NLD)-not due to own misconduct to in the Line of Duty (ILD) and a correction of her record to show she was medically discharged/retired from the U.S. Army Reserve (USAR) due to disability. She indicates a mental health condition, including PTSD, as a mitigating factor in her discharge.

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

- The applicant's commission documents are not available in the record. Her DA Form 2-1, Personnel Qualification Record, shows effective date of rank to second lieutenant was 14 December 2000, and she entered active duty as a U.S. Army Reserve (USAR) officer on the same date. She was released from active duty on 19 March 2006, and she transferred to the USAR Control Group (Reinforcement), St. Louis, MO.
- A Report of Proceedings dated 14 February 2017 showed that the applicant appeared before a Show Cause Board and should be separated for substandard performance of duty with findings of: failure to meet body composition standards on 15 August 2015 and 16 April 2016, not providing evidence of a profile for a medical condition that would cause weight gain or prevent weight loss, and demonstrated unwillingness to expend effort to maintain Army body composition standards. Separation with an honorable characterization of service was recommended.
- On 18 October 2017, Commander at Headquarters USARC recommended the Show Cause Board's findings and recommendation be approved. This recommendation states, in effect, that the Commander, 81st RSC had initiated an involuntary action against the applicant on 18 August 2016 for substandard performance IAW AR 135-175, paragraph 2-10i and 2-10g (failing to meet body composition standards twice within twelve months). Specifically, she failed to achieve satisfactory progress after participation in a medically established weight control program and her inability or unwillingness to expend effort.
- Orders 18-085-00006, 26 March 2018, published by Headquarters, USARC, Fort Bragg, NC show the applicant was involuntarily discharged from the USARC, effective 16 April 2018.
- An IG complaint was filed by the applicant alleging that members of the 81st Readiness Division conspired to have her terminated from her civilian job through military separation. She also requested further investigation alleging false statements made against her resulted in the termination of her employment. The IG closed the case on 29 March 2019 finding that after conducting a thorough inquiry into her request, she had received a legal review and was afforded due process.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that she should have been separated via a medical board instead of an involuntary separation, and she contends she was the victim of reprisal. She also indicates PTSD as a factor in her discharge. The application includes:

- Documentation from Associates in Behavioral Health dated in February and September 2014 showed that her therapist recommended medication for ADHD and recommended to her employer that she be allowed to work out of her home two days a week to mitigate her inattentiveness and anxiety. Additional records in 2015 and 2016 show documentation of missed work or accommodations related to her mental health and situational stressors.
- Annual Periodic Health Assessment (PHA) signed by the provider on 28 July 2015 showed that the applicant indicated symptoms of depression, and the provider's documentation noted work stress, death of her mother, and anger problems were attributed to her symptoms. It was also noted that she was taking an antidepressant, an anxiolytic, and a stimulant medication.
- Another post-deployment health assessment signed by the provider on 8 December 2016 showed symptoms of PTSD and depression were endorsed, and an antidepressant, an anxiolytic, and a stimulant medication were noted. The provider documented that the primary stressor was related to an investigation at work and threat of losing her job.
- A Physical Profile Record, which showed an expiration date of 6 February 2017 and number of days on profile as 48.
- Medical documentation from a civilian facility dated 15 February 2017 showed that the applicant was seen for situational stress related to a mood disorder, and bupropion and alprazolam were noted as active prescriptions.
- An evaluation by a doctoral level therapist dated 25 May 2017 discussed the applicant's presenting problem as related to work stressors, death of her mother two years prior, and difficulty managing anger. It is noted that she began mental health treatment in 2014, and she reported "my whole life" as her trauma history (some information is redacted). She was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood and PTSD.
- A Statement of Medical Examination and Duty Status dated 20 June 2017 showed that the applicant experienced "a major depressive break" following the separation proceedings on 14 February 2017 and was evaluated at the ER.
- A PHA dated 21 March 2018 showed the applicant indicated she was experiencing major life stressors, including a legal situation at work as a result of filing a complaint against a director, and she was taking antidepressant and anxiolytic medications. She endorsed several symptoms of PTSD and depression, and she reported being treated by Thriveworks of Columbia South Carolina for PTSD. The document was reviewed by a contract LHI provider.
- A behavioral health profile was extended on 5 April 2018 with expiration date of 4 July 2018.
- A memorandum dated 27 November 2018 with the subject "line of duty determination," which stated that evidence contained in the investigation indicated the applicant was not in a valid duty status at the time of the incident, resulting in a "Not in Line of Duty- NOT due to Own Misconduct" determination.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed the applicant initiated mental health treatment on 20 December 2007 and reported a history of “stress” since 2002 after the birth of her second child. She indicated she was on active duty from 1998 until 2006 and left the Army secondary to health problems and family responsibilities. She expressed being unhappy and having anger problems, but she denied a history of trauma exposure or deployments. She was diagnosed with Adjustment Disorder with depressed mood, but she cancelled a follow up appointment and declined further services.

e. A Report of Investigation Line of Duty and Misconduct Status dated 20 March 2018 was reviewed and concluded that the applicant was not in a qualified duty status at the time of the event, which occurred on 15 February 2017, but she asserted that the hearing on 14 February 2017 caused the following day’s mental health event. However, the approving authority indicated that “if this were true, then the SM engaged in misconduct by taking more prescription medication than prescribed and combining medication with alcohol.” Notably, the only mental health related documentation included in the LOD investigation was a Mental Health Assessment (MHA) signed by an LHI contractor on 17 January 2018 and case management (CM) documentation. On 15 March 2018, CM noted a conversation with the applicant discussing that she had been profiled for behavioral health “at 283 days (and) MRDP status is 365 days. At this time you can request a 90 day restriction to have the profile expired or to work towards going to a Med-board.” CM contact on 9 April 2018 noted that the applicant had been given the packet to send to her provider and was waiting for a response, and she discussed the involuntary separation. She was told she could “still get the documentation back to us for review for a possible med-board, however with the temporary profile in place this does not at this time mean automatic disqualification from military service.” There is no indication that documentation from her provider was received.

f. VA documentation showed that the applicant is 70% service connected for physical health conditions. A PTSD Compensation and Pension (C&P) examination dated 11 April 2019 concluded a diagnosis of Adjustment Disorder with mixed anxiety and depressed mood. Documentation noted a history of inpatient mental health treatment in 2018 and current private psychiatric and psychotherapy treatment along with medications for mood, anxiety, and ADHD. She denied a history of deployment and indicated that the 2017 “hostile work environment” and subsequent discharge were her primary stressor associated to the symptoms of PTSD that she endorsed. The evaluator did not consider this stressor to meet criteria for a PTSD diagnosis.

g. A review of MedChart and HRR was conducted, and in addition to the documents contained in the application, there was a behavioral health (BH) profile dated 24 July 2015 with an expiration date of 22 September 2015. an AHRC Form 4123-10 signed by the applicant’s behavioral health provider on 30 August 2017 showed that a 90-day, duty limiting, temporary profile was recommended due to the applicant’s severe anxiety

and anger associated with her belief of unfair treatment at work. There was a diagnosis of Adjustment Disorder with anxiety and PTSD “evidenced by significant distress.” Documentation from MedChart showed that an initial case for PTSD and Adjustment Disorder was opened on 31 May 2017 following a BH profile that was initiated by an LHI provider but expired on 6 February 2017. The documentation tracks contacts with the applicant through 9 April 2018, and it was noted on 15 March 2018 that a temporary BH profile was set to expire in 20 days and that the applicant was at 283 days on profile. Her BH profile was continued on 5 April 2018 for an additional 90 days while awaiting documentation from her BH provider.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a change in the LOD determination or a referral to IDES for medical disability determination. Although the applicant’s mental health history showed evidence of symptoms of anxiety and ADHD dating back to 2014, the available BH profile history showed an initial profile in July 2015 and a BH profile that indicated the applicant had been profiled for 48 days with an expiration date of 6 February 2017. Additionally, [REDACTED] documentation noted the applicant had not reached MRDP in March 2018 and at that time when additional records were requested, she had been profiled for BH for 283 days. Regarding the LOD determination, this advisor concurs that the applicant’s ER visit on 15 February 2017 would not be considered to be not in line of duty. Additionally, the applicant’s report of her primary stressor being her work-related stress does not qualify as a traumatic event (i.e. threat to one’s own life or witnessing the loss of life of another); therefore, she does not meet criteria for a diagnosis of PTSD.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for change in line of duty determination and change to narrative reason for separation to medical disability.

(2) Did the condition exist or experience occur during military service? NA; request is for change in line of duty determination and change to narrative reason for separation to medical disability.

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for change in line of duty determination and change to narrative reason for separation to medical disability.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant was called to active duty for one day to undergo an administrative separation board on 14 February 2017. Subsequently, and after the order ended, the applicant ingested alcohol and medication on and was transported to the hospital by ambulance for medical attention. A line of duty investigation was completed and determined the proximate cause of the incident which led to the applicant's ambulance ride and subsequent treatment was due to her abuse of prescription medication and mixing of that prescription drug with alcohol on the morning of 15 February 2017.

b. The Board majority found no reason to amend the information in the LOD in relation to the applicant's in line of duty determination and due to own misconduct factor. For these reasons, the Board majority determined it would not be proper to change her LOD determination to in line of duty.

c. The Board minority believed a nexus existed between the one day order of the administrative separation board and the incident leading to the applicant's subsequent treatment and voted to partially approve her request related to amending her LOD determination.

2. The Board considered the applicant's request for a medical discharge or retirement due to disability from the USAR; however, were not convinced by the evidence an error or injustice existed to amend the record. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support a referral to IDES for medical disability determination. Based on a preponderance of the evidence, the Board denied 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:

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.

3/28/2025

X

CHAIRPERSON

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, USC, 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 Army Review Board for Correction of Military Records (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 (AR) 40-501, Medical Services-Standards of Medical Fitness, governs medical fitness standards for retention and separation, including retirement. It states –

a. The cause for referral to a Medical Evaluation Board include mood disorders that are persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or persistence or recurrence of symptoms resulting in interference with effective military performance.

b. Soldiers receiving medical or surgical care or recovering from illness, injury, or surgery, will be managed with temporary physical profiles until they reach the point in their evaluation, recovery, or rehabilitation where the profiling officer determines that MRDP has been achieved but no longer than 12 months. A temporary profile is given if the condition is considered temporary, the correction or treatment of the condition is medically advisable, and correction usually will result in a higher physical capacity. Soldiers on active duty and RC Soldiers not on active duty with a temporary profile will be medically evaluated at least once every 3 months at which time the profile may be extended for a maximum of 6 months from the initial profile start date by the profiling officer.

(1) Temporary profiles exceeding 6 months duration, for the same medical condition, will be referred to a specialist (for that medical condition) for management and consideration for one of the following actions:

(a) Continuation of a temporary profile for a maximum of 12 months from the initial profile start date;

(b) Change the temporary profile to a permanent profile;

(c) Determination of whether the Soldier meets the medical retention standards of chapter 3 and, if not, referral to an MEB.

3. AR 135-175, Army National Guard and Reserve-Separation of Officers provides policy, criteria and procedures for separation of officers. Failure to achieve satisfactory

progress after participation in a medically established with control program authorizes involuntary separation of an officer due to substandard performance of duty.

4. AR 600-8-4, LOD Policy, Procedures, and Investigations, 4 September 2008, prescribes policies, procedures, and mandated tasks governing LOD determinations of Soldiers who die or sustain certain injuries, diseases, or illnesses. It states –

a. For soldiers who sustain permanent disabilities while on AD to be eligible to receive certain retirement and severance pay benefits, they must meet requirements of the applicable statutes. One of these requirements is that 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. Physical Evaluation Board determinations are made independently and are not controlled by LOD determinations. However, entitlement to disability compensation may depend on those facts that have been officially recorded and are on file within the Department of the Army (DA). This includes reports and investigations submitted in accordance with this regulation.

b. A Soldier of the National Guard or USAR is entitled to hospital benefits, pensions, and other compensation similar to that for Soldiers of the active Army for injury, illness, or disease incurred in the LOD, under the following conditions prescribed by law, Title 10, USC, section 1074a.

- while performing active duty for a period of 30 days or less
- while performing inactive duty training
- while traveling directly to or from the place at which that Soldier is to perform or has performed active duty for a period of 30 days or less
- inactive duty training

c. The regulation in effect as of 12 November 2020 prescribes that at no time will an LOD be initiated, regardless of circumstance(s), for a Soldier not in an authorized duty status at the time of injury, illness, disease, or death. A Soldier must be in an authorized duty status, as determined by the unit commander, before an LOD can be initiated.

d. Soldiers' training and professional values must be considered in all LOD determinations. In every formal investigation, the purpose is to find out whether there is evidence of misconduct or gross negligence and if so, whether the preponderance of the evidence rebuts the presumption of ILD.

5. AR 600-9, Personnel-General-The Army Body Composition Program establishes policies and procedures for the implementation of the Army's Body Compositions Program (ABCP). It states -

a. Soldiers found to have a temporary medical condition that directly causes weight gain or prevents weight or body fat loss will have up to 6 months from the initial medical evaluation date to undergo treatment to resolve the medical condition. The medical specialty physician may extend the time period up to 12 months if it is determined more time is needed to resolve the medical condition. During this time, the Soldier will participate in the ABCP, to include initiation of a DA Form 268, Report to Suspend Favorable Personnel Actions (FLAG)), nutrition counseling, and monthly body fat assessment, but will not be penalized for failing to show progress. However, if the Soldier meets the body fat standard during this timeframe, he or she will be removed from the ABCP.

b. . The provisions of this paragraph are not applicable to medical conditions or injuries based solely on a prescribed reduction in physical activity. The inability to exercise does not directly cause weight gain. Health care personnel will advise Soldiers to modify caloric intake when reduced physical activity is necessary as part of a treatment plan.

c. A Soldier enrolled in the ABCP is considered to be failing the program if: (1) He or she exhibits less than satisfactory progress on two consecutive monthly ABCP assessments; or (2) After 6 months in the ABCP he or she still exceeds body fat standards, and exhibits less than satisfactory progress for three or more (nonconsecutive) monthly ABCP assessments. Approximately every 30 days (or during unit assembly. A monthly loss of either 3 to 8 pounds or 1 percent body fat are both considered to be safely attainable goals that enable Soldiers to lose excess body fat and meet the body fat standards. Soldiers that meet either of these goals are considered to be making satisfactory progress in the ABCP.

d. For RC personnel not on active duty only, if the individual has not obtained an evaluation from his or her personal physician under the provisions of this regulation and cannot demonstrate that the overweight condition results from an underlying or associated disease process, the individual may be separated under appropriate regulations without further medical evaluation by health care personnel.

6. AR 635-40, Physical Evaluation for the Retention, Retirement, or Separation, establishes the Disability Evaluation System (DES) and sets forth policies,

responsibility, and procedures that apply in determining whether a member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating.

a. The DES begins for a Soldier when either of the events below occurs: (1) The Soldier is issued a permanent profile approved in accordance with the provisions of AR 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command’s Medical Management Center before their referral into the DES. (2) The Soldier is referred to the DES as the outcome.

b. The non-duty related process applies to RC Soldiers who are not on active duty and who do not meet medical retention standards because of non-duty related impairments.

c. A Soldier whose disability results from intentional misconduct or willful negligence or was incurred during a period of unauthorized absence or excess leave may be subject to administrative separation under AR 135-175, as applicable, without referral to the DES for a fitness determination.

7. National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management, states paragraph 6-35 lists additional reasons for involuntary separation from the State ARNG. It states -

a. All involuntary administrative separations require commanders to notify Soldiers concerning intent to initiate separation procedures.

b. Separation for failure to meet Army body composition standards in accordance with AR 600-9. A reasonable opportunity to comply with weight reduction goals must be provided. Administrative separation board procedures are required. Initiation of separation proceedings is required for Soldiers who do not make satisfactory progress as defined in AR 600-9, and those who reenter a weight control program within twelve months.

8. 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 at less than 30 percent.

9. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

10. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

11. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

12. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

13. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//