

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230010903

APPLICANT REQUESTS: duty-related physical disability retirement in lieu of transfer to the Retired Reserve due to completion of 20 or more years of qualifying service for retirement at age 60

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4187 (Personnel Action), 8 July 2005
- Headquarters, 42nd Infantry Division (M) Permanent Orders 301-07, 28 October 2005
- DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)), ending October 2005
- Theater Medical Data Store (TMDS) Patient Outpatient Record, 5 April 2011
- DA Form 2173 (Statement of Medical Examination and Duty Status), 26 October 2011
- DA Form 2173, 15 December 2011
- Department of Veterans Affairs (VA) Form 21-0960L-1 (Respiratory Conditions (Other than Tuberculosis and Sleep Apnea) – Disability Benefits Questionnaire), 16 March 2017
- VA letter, 12 June 2019
- VA letter, 4 October 2019
- VA letter, 24 July 2020
- VA letter, 22 December 2020
- VA letter, 2 March 2021
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 14 May 2021
- VA Rating Decision, 16 November 2021
- Headquarters, 81st Readiness Division (U.S. Army Reserve (USAR)) Orders 22-046-00023, 15 February 2022
- Headquarters, 81st Readiness Division (USAR) Orders 22-047-00046, 16 February 2022
- Department of the Treasury – Internal Revenue Service Form W-2 (Wage and Tax Statement), 2022

FACTS:

1. The applicant states:

a. He was found unfit for duty by the Physical Evaluation Board (PEB) and was forced to retire as a non-duty related case. He should have received a duty-related disability retirement.

b. The PEB was well aware of his duty-related injuries and illness of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), back injury, sleep apnea, asthma, bronchitis, and post-traumatic headaches, but failed to take these conditions into consideration. The PEB based their decision on only one illness, diabetes. His other duty-related conditions warrant a disability retirement.

2. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows he enlisted in the USAR on 17 June 1991.

3. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty training (ADT) on 10 June 1992, released from ADT on 3 September 1992, due to completion of ADT, and transferred back to his USAR unit on 3 September 1992. He was awarded the Military Occupational Specialty (MOS) 12B (Combat Engineer) and credited with 3 months and 3 days of net active service this period.

4. A second DD Form 214 shows the applicant was ordered to active duty on 15 February 2003, in support of mobilization for Operation Enduring Freedom, without foreign service. He was honorably released from active duty on 10 April 2004, due to completion of required active service and transferred back to his USAR unit. He was credited with 1 year and 26 days of net active service this period.

5. A third DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom on 10 November 2004, with service in Iraq beginning on 31 December 2004.

6. Headquarters, 42nd Infantry Division (M) Permanent Orders 301-07, dated 28 October 2005, awarded the applicant the Combat Action Badge for actively engaging or being engaged by the enemy on 9 April 2005.

7. The applicant provided a copy of his NCOER covering the period from November 2004 through October 2005 (the period of service reflecting his deployment to Iraq), which shows:

a. He was rated in his principal duty as team leader in duty MOS 21B (Combat Engineer).

b. He was rated in Part IV (Rater) Values/NCO Responsibilities as "Success" in all sections aside from C (Physical Fitness and Military Bearing), where he was rated as "Needs Improvement." The remarks for this rating include that he failed to meet Army Physical Fitness Test (APFT) standards for the 2-mile run and continues to make improvements on the 2-mile run.

8. The applicant's third DD Form 214 additionally shows he remained in Iraq through 6 December 2005, and was honorably released from active duty due to completion of required active service and transferred back to his USAR unit on 3 January 2006. He was credited with 1 year, 1 month, and 24 days of net active service this period.

9. A fourth and final DD Form 214 shows the applicant was ordered to active duty in support of Operation New Dawn on 31 December 2010, with service in Iraq beginning on 6 February 2011.

10. A TMDS Patient Outpatient Record shows:

a. The applicant was seen at the Combat Support Hospital (CSH) Tallil, Iraq, on 5 April 2011. His primary diagnosis is listed as backache with lower back pain and muscle spasm, acute on chronic presentation. No evidence of neurological compromise.

b. He reported back pain on and off since a car accident in 2001 and was in good health until about 2 weeks ago when he strained his back lifting weights.

c. The plan was to start Ibuprofen and Flexeril for 10 days and refer to physical therapy for further evaluation and treatment. He was given a temporary physical profile for no running or heavy lifting for 2 weeks, with exercise on the elliptical or bike.

11. A U.S. Army Human Resources Command (AHRC) memorandum, dated 21 July 2011, notified the applicant he completed the required years of qualifying Reserve service and was eligible for retired pay upon application at age 60 (20 Year Letter).

12. A DA Form 2173, dated 26 October 2011, shows:

a. The applicant was seen as an outpatient at the CSH at Contingency Operating Base (COB) Adder, Iraq, on 5 April 2011, after injuring his back muscles while lifting weights for physical training (PT).

b. He was placed on a 2-week profile stating not to do sit-ups or run and received physical therapy.

c. On 26 October 2011, the unit advisor or commander signed the form indicating a formal line of duty (LOD) investigation was not required and the injury was considered to have been incurred in the LOD.

13. The applicant's fourth DD Form 214 shows he remained in Iraq through 30 November 2011, after which he returned Stateside and was retained on active duty at a Warrior Transition Company at Fort Polk, LA, beginning 20 December 2011.

14. A second DA Form 2173, dated 15 December 2011, shows:

a. The applicant was seen as an outpatient at [REDACTED] on 5 December 2011, for restrictive lung disease, exercise intolerance, and gas exchange abnormalities that were exacerbated while deployed to Iraq from February through December 2011. He requires further examination at a Military Treatment Facility (MTF).

b. On 15 December 2011, the unit commander or advisor signed the form indicating a formal LOD investigation was not required, and the injury was considered to have been incurred in the LOD.

15. AHRC Orders A-12-128261, dated 21 December 2011, retained the applicant on active duty at the Fort Polk Warrior Transition Battalion effective 20 December 2011, for the purpose of participating in the Reserve Component Warriors in Transition Medical Retention Processing (MRP) Program for completion of medical evaluation.

16. Headquarters, Joint Readiness Training Center and Fort Polk Orders 076-0311, dated 16 March 2012, released the applicant from active duty, not by reason of physical disability effective 21 May 2012, and reassigned him to his USAR unit.

17. The applicant's final DD Form 214 likewise shows he was honorably released from active duty on 21 May 2012, due to completion of required service and transferred back to his USAR unit. He was credited with 2 years, 4 months, and 21 days of net active service this period.

18. A VA Form 21-0960L-1, signed by a physician on 16 March 2017, shows:

a. The applicant was diagnosed with constrictive bronchiolitis on 20 June 2016, and restrictive lung disease secondary to bronchiolitis on 11 February 2016.

b. The Medical History section of the form shows he has dyspnea on exertion that started after deployment to Iraq in 2011 for 12 months. Dyspnea has been progressive.

c. On 4 March 2016, high resolution computed tomography (CT) diagnostic imaging was done to evaluate interstitial lung disease such as asbestosis and the result shows centrilobular nodules.

d. Total lung capacity (TLC) on Pulmonary Function Tests (PFT)s is 68 percent predicted consistent with mild restrictive lung disease. The functional impact is he is unable to walk up stairs or walk distances required at work due to dyspnea. The remarks show the applicant's respiratory condition started shortly after deployment and in the doctor's opinion, was a result of airborne exposures in theater.

19. The applicant provided two VA letters dated between June 2019 and October 2019, which show:

a. The VA letter dated 12 June 2019, pertains to VA dependency benefits, including minor child adjustment, school child adjustment, and cost of living adjustment.

b. The VA letter dated 4 October 2019, shows his service-connection for supraglottic tissue obstructing vocal cord was granted with an evaluation of 10 percent effective 18 April 2019; service-connection for hemorrhoids was denied; his combined evaluation was 60 percent effective 22 May 2012 and 18 April 2019.

20. A DA Form 5016 (Chronological Statement of Retirement Points), dated 14 October 2019, shows the applicant was credited with 28 years of qualifying service for retirement effective 16 June 2019.

21. Multiple additional VA letters, dated between July 2020 and March 2021, show:

a. The VA letter dated 24 July 2020, shows his combined rating evaluation effective 20 July 2020, remained at 60 percent. His evaluations for onychomycosis, bilateral feet was continued at 0 percent, lumbar spasm, back strain, and mechanical back pain were continued at 10 percent, gastroesophageal reflux disease (GERD) was continued at 10 percent, and evaluation of supraglottic tissue obstructing vocal cord, which was 10 percent disabling, was decreased to 0 percent effective 20 July 2020.

b. The VA letter dated 22 December 2020, shows the applicant's service-connection for squamous cell carcinoma of the larynx, diabetes mellitus type II, erectile dysfunction (ED) and hemorrhoids were all denied.

c. The VA letter dated 2 March 2021, shows his evaluation of obstructive sleep apnea, to include asthma and a respiratory disease, manifested by dyspnea on exertion, which was currently 50 percent disabling, was continued.

22. The applicant provided a copy of a DA Form 4836, unsigned by both himself and the commissioned or warrant officer designated to administer oaths under State law, dated 14 May 2021, which shows extension of his USAR contract by 6 months, rendering his new expiration term of service (ETS) as 16 November 2021.

23. A VA Rating Decision dated 16 November 2021, shows the following service-connected disability rating decisions were made:

- TBI with PTSD, vertigo, and dysarthria, which was 50 percent disabling, was increased to 70 percent effective 14 May 2021
- post-traumatic headaches was granted with an evaluation of 50 percent effective 14 May 2021
- scar, posterior center occiput was granted with an evaluation of 30 percent effective 14 May 2021
- painful scar, posterior center occiput was granted with an evolution of 10 percent effective 14 May 2021
- ED was granted with an evaluation of 0 percent effective 14 May 2021
- supraglottic tissue obstructing vocal cord, which was 0 percent disabling, was increased to 10 percent effective 30 August 2021
- entitlement to special monthly compensation based on loss of use of a creative organ was granted effective 14 May 2021
- eligibility to Dependents' Educational Assistance was established from 14 May 2021
- obstructive sleep apnea, to include asthma and respiratory disease, manifested by dyspnea on exertion, which was 50 percent disabling, was continued
- service-connection for bronchitis was denied
- service-connection for right arm humerus fracture was denied

24. The VA letter dated 17 November 2021 reiterates the above details from the 16 November 2021 Rating Decision.

25. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal PEB Proceedings), and VA Compensation and Pension (C&P) Exam are not in his available records for review and have not been provided by the applicant.

26. A DA Form 199-1 (Formal PEB Proceedings) shows:

a. A formal PEB convened on or about 7 January 2022, where the applicant appeared and was represented by regularly appointed counsel. This case was adjudicated as a non-duty related case, where he was found physically unfit, and that

disposition should be referral for case disposition under Reserve component regulations.

b. His unfitting condition is diabetes mellitus, type II (non-compensable); it was not incurred or aggravated in the LOD in a duty status authorized by Title 10 U.S. Code, sections 1201 or 1204.

c. This was a formal, non-duty related reconsideration. New medical evidence dated 22 October 2021 was presented to the PEB in December 2021 indicating his glycated hemoglobin (HgA1c) level was documented at 8.9 percent. A review by the MEB, dated 5 January 2022, notes his condition fails medical retention standards as his HgA1c level indicates suboptimal control; therefore, his diabetes mellitus, type II is found unfitting. He testified he was diagnosed with this condition in 2015 by a civilian provider and began treatment; however, records did not reveal any evidence the conditions were either incurred or aggravated while he was in an active duty status for more than 30 days or entitled to base pay, and there is no LOD investigation for this condition. Therefore, this condition is not compensable. He is unfit because his DA Form 3349 functional activity limitations associated with this condition make him unable to reasonably perform his required duties.

d. The formal findings were reconsidered on additional review of the medical evidence of records and the DA Form 199 (Informal PEB Proceedings), dated 1 June 2021, was superseded.

e. Under the provisions of Title 10, U.S. Code, Chapter 61, a Soldier with at least 20 qualifying years for Reserve retirement who is not entitled to disability separation may have the option of transfer to the Retired Reserve and receive Reserve retired pay at age 60.

f. On 13 January 2022, the applicant signed the form indicating he had been advised of the findings and recommendations of the formal PEB and did not concur. He did not attach a written appeal.

27. Headquarters, 81st Readiness Division (USAR) Orders 22-046-00023, dated 15 February 2022, released the applicant from assignment in his USAR unit and transferred him to the Retired Reserve effective 17 March 2022, due to completion of 20 or more years of qualifying service for retired pay at age 60.

28. Headquarters, 81st Readiness Division (USAR) Orders 22-047-00046, dated 16 February 2022, amended above orders to reflect the effective date of the applicant's transfer to the Retired Reserve was 1 April 2022 in lieu of 17 March 2022.

29. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

29. MEDICAL REVIEW:

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

b. The applicant has applied to the ABCMR requesting reversal of the United States Army Physical Disability Agency's (USAPDA) determination that his unfitting diabetes was not duty related; to have additional medical conditions be found unfitting for service; and that he be permanently retired for physical disability. He states:

"I was found unfit for duty by the Physical Evaluation Board (PEB) and was forced to retire as a non-duty related case. I should have been given a duty-related disability retirement.

The PEB was well aware but fail to take into consideration my documented Duty related injuries and illnesses listed below: PTSD, TBI, Back Injury, Sleep Apnea, Asthma, Bronchitis, and Posttraumatic headaches. The PEB made their decision only on one illness, diabetes. The above injuries and illnesses warrant a disability retirement."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the 81th Readiness Division (USAR) show the applicant was to be transferred to the Retired Reserve effective 17 March 2022 having completed 20 or more years of qualifying service for retired pay at age 60.

d. On 7 September 2017, the applicant was placed on a permanent duty-limiting physical profile for diabetes with sleep apnea as a non-duty limiting condition by the United States Army Reserve Command, Army Reserve Medical Management Center (AR-MMC). No other conditions, to include those noted by the applicant, were on this profile.

e. The United States Army Reserve Command's Army Reserve Medical Management Center notified the applicant in a memorandum dated 19 December 2017 that his condition was disqualifying for continued military service. The applicant was provided with four options; of transferring to the Retired Reserve if he had 20 qualifying years of service, requesting a 15-year notice of eligibility for a non-duty related medically disqualifying condition if he had between 15 and 20 years of qualifying service for retirement, simply requesting an honorable discharge, or to request a non-duty related physical evaluation board, or NDR PEB. The applicant requested an NDR PEB.

f. Reserve Component (RC) Service members who are not on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions may enter the DES for a determination of fitness. A non-duty related physical evaluation board (NDR PEB) affords these Soldiers the opportunity to have fitness determined under the standards that apply to Soldiers who have the statutory right to be referred to the Disability Evaluation System (DES) for a duty related medical condition. After 2014, these boards would also look to see if the referred condition(s) were duty related, and if so, return them to the sending organization for entrance into the duty related processes of the DES.

g. On 1 April 2020, his informal NDR PEB determined that his "Diabetes mellitus type II" was his sole unfitting condition for further service and that it was non-compensable:

"SGT Rice was diagnosed with diabetes mellitus type II in April 2015 after an abnormal Hgb A1c of 9.1 (normal 4 to 5.6). Medical records indicate Soldier was started on Metformin 500 mg. ... This condition is non-compensable because the PEB's review of available military and civilian medical records did not reveal any evidence that the condition was either incurred or aggravated while on active duty.

h. After being counseled on the PEB's findings, the applicant non-concurred, declined to submit a written appeal, and requested a formal PEB with the assistance of regularly appointed counsel but without his presence at the board. He was asking the formal PEB to find him fit for duty.

i. PEB's must adjudicate cases using the permanent physical profile submitted with the case. The applicant's profile still showed the applicant was unable to deploy to an austere environment (Item 24-f) which made him automatically unfit for service. Paragraph 5-4e(2) of AR 635-40, Disability Evaluation for Retention, Retirement, or Separation (19 January 2017) states that except for Medical Corps and General

Officers, "... the PEB will find Soldiers unfit who are medically disqualified for worldwide deployment in a field or austere environment."

j. The case was referred back to the AR-MMC for reevaluation of his permanent physical profile. The AR-MMC modified his profile so that he was now deployable.

k. The applicant was present for and represented by regularly appointed counsel at his formal hearing on 1 June 2021. The formal board, noting the change in his profile and significant improvement in his management of his diabetes, found him fit for duty.

Upon review, AR-MMC updated the Soldier's DA 3349 Physical Profile to reflect this condition does not restrict deployment. The formal board was reconvened on 26 May 2021. The Soldier maintains his hemoglobin A 1 Cs within the acceptable range on oral medications (metformin and glyburide) for continuation in the military. His most recent hemoglobin A1c on 4 February 2021 was 7.4, and he has maintained values of 7.1 to 7.5 over the past year which is an improvement from 9.7 to 10.5 in 2017 to 2018.

He has no known secondary complications from this condition. The Soldier also testified he has made healthy lifestyle modifications. The Soldier maintains a physical fitness plan and passes the Army Physical Fitness Test and height and weight standards. The Soldier's unit commander offers positive comments on the Soldier's abilities to complete his duties and supports his continuation in the military."

l. The applicant concurred with the board on 18 June 2021.

m. The case was subsequently reviewed as part of USAPDA's mandatory review process. As part of this review process, they requested updated medical information from the AR-MMC. The AR-MMC physician stated in his 5 January 2022 response memorandum that the Soldier's diabetes management had deteriorated and he was again non-deployable:

"Regarding: Following review of current Blood work at the formal board revealed evidence to demonstrated poor diabetic control with hemoglobin A1c values above 8% over the past since 20210716 HgA1c above 8% indicates suboptimal control and above criteria level below 8% for waivers.

Response: Following review of the medical records in the submitted exhibits, the Soldier deployment restrictions are reinstituted and 24f not deployable to all theaters.

Action: Profile was modified adding 24.f restriction [non-deployable]. The soldier does not qualify for waivers.”

n. With this change in his deployability status, USAPDA referred the case back to the PEB for review. Following their formal PEB’s reconsideration, the applicant was appropriately found unfit due to the change in his deployability:

“FORMAL NDR (RECONSIDERATION): New medical evidence dated 22 October 2021 was presented to the Physical Evaluation Board in December 2021 indicating the Soldier’s HgbA1c level was documented at 8.9%. A review by the Medical Evaluation Board dated 5 January 2022 notes that the Soldier’s condition fails medical retention standards and his HgbA1c level indicates suboptimal control. Therefore, the Soldier’s Diabetes Mellitus Type II is found unfitting.”

o. The applicant non-concurred with the formal PEB’s determination but did not submit a written appeal. Thus, there was nothing for USADPA to reconsider and the case was finalized for the Secretary of the Army on 18 January 2022.

p. The applicant’s final NCO Evaluation Report (SGT) was an annual covering 31 October 2020 thru 30 October 2021 and so 4.5 months before he was transferred to the Retired Reserve. It showed he continued to be a fully successful Soldier. He had passed the Army Physical Fitness Test on 14 August 2021 and met the height and weight standard. His senior rater marked him highly qualified and opined:

“SGT [Applicant] has shown potential to lead, take initiative and produce results. His performance has exceeded expectations and he is fully ready to take the next challenges of Platoon Sergeant.”

q. There is no probative evidence the applicant had one or more additional medical conditions which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

r. JLV shows he has been awarded several VA service-connected disability ratings, none of which is for diabetes. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions

which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

s. It is the opinion of the Agency Medical Advisor the applicant's case was correctly adjudicated and that a referral to the DES is unwarranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the applicant did not have any duty-related medical conditions the limited his ability to perform his military duties. His non-duty-related diabetes, however, rendered him undeployable, and as a result he was appropriately given the option to transfer to the Retired Reserve, which he did. Based on a preponderance of the evidence, the Board determined his transfer to the Retired Reserve was not in error or unjust.


BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

3/29/2025


XCHAIRPERSON


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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).
 - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

3. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

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

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

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

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

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the

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

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

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

//NOTHING FOLLOWS//