

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011377

APPLICANT REQUESTS:

a. Reconsideration of a previous request in ABCMR Docket Number AR20130001880, dated 3 September 2013 to amend his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- Item 24 (Character of Service): General or Honorable
- Item 27 (Reentry Code): RE-4 to something better

b. As a new request, he is requesting a correction to his DD Form 214 to show the following due to his disability rating of 100 percent (%) due to post-traumatic stress disorder (PTSD) and physical injuries sustained in combat:

- Item 23 (Type of Discharge): Medical Retirement
- Item 26 (Separation Code): "KFS" to something better
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial to something better

c. A personal appearance before the Board.

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- DD Form 149 (Application for Correction of Military Record)
- A letter from the applicant to the Department of Veterans Affairs (VA) dated 17 July 2023
- Five character references
- DD Form 214 for the period ending 5 March 2010
- Behavioral health (BH) and medical records

FACTS:

1. Incorporated herein by reference are military records which were summarized in the

previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130001880 on 3 September 2013.

2. Applicant provides medical documentation to support his claim for PTSD and other medical conditions; therefore, this request will be reconsidered by the Board based on new evidence.

3. The applicant states, in effect, he believes that his discharge was improper and that the military made an error as his medical and BH conditions that were sustained in combat were not taken into consideration. He should be medically retired with a disability rating of 100% due to his suffering from severe PTSD, a blood infection due to shrapnel, and chronic muscle pain. After months of dealing with PTSD, he finally reached his breaking point, which led to the incident that ultimately caused his separation from the Army. He was not offered any support, treatment, or care by any Army medical facility as he was separated after sacrificing his youth and body to defend his country.

4. The applicant provides the following:

a. A letter to the VA in which he provides evidence for his BH condition and medical concerns that were attributed to his military service. He shares the care that he has been receiving from the local VA hospital and further explains that the treatments have been helping with his overall well-being. He asks that this evidence be taken into consideration during the review of his case. His complete letter is available in its entirety for the Board's review.

b. 5 character references, which reflect the following statements:

(1) Mr. A. M. states, in effect, he was an exceptional employee with a team-oriented mind set and a military like discipline. He was able to efficiently prioritize tasks, was always helpful with passengers and kind to his colleagues.

(2) Ms. S. H. (applicant's mother) states, in effect, although he suffered from discrimination and the horrors of war, he has a passion for justice and fairness. He has sought out care through the VA and has since improved his demeanor.

(3) Mr. L. G. states, in effect, he served in the same unit as the applicant during the deployment, he witnessed him being stressed and wanting to return to base safe. He also observed signs of PTSD and mental instability.

(4) Mr. P. S. states, in effect, while deployed their company suffered the loss of multiple service members (SM) in action. This was traumatic to witness and something that the company as a whole could not overcome.

(5) Mr. E. L. states, in effect, he shares an event in which he was racially profiled, and even while he was being assaulted, he maintained his composure and calmly explained to the officers that he had just returned from the movies and was innocent of any wrongdoing.

c. The applicant provides BH and medical documents, which will be reviewed and discussed by the Medical and Behavioral Health Staff at the Army Review Boards Agency.

5. The applicant's service record reflects the following:

a. He had prior service in the Regular Army from 12 April 2007 to 15 May 2007, a period of 1 month and 4 days. He was discharged with an Entry Level Performance and Conduct and received an uncharacterized discharge.

b. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows he enlisted in the Regular Army on 24 January 2008 for 3 years and 16 weeks, followed by one reenlistment.

c. DA Forms 4856 (General Counseling Form) shows he was counseled dates for the following issues on:

- 26 October 2009: missing formation
- 27 October 2009: failure to follow instructions
- 7 December 2009: disrespecting a noncommissioned officer (NCO)
- 7 December 2009: missing movement

d. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) is incomplete and undated. However, it reflects that the applicant was pending an Article 15 for:

- failing to go at the prescribed time to his appointed place of duty, on or about 26 October 2009
- disrespect of an NCO on or about 29 October 2009
- missing movement on or about 30 October 2009

e. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 17 December 2009, present for duty (PDY) to absent without leave (AWOL)

- 6 January 2010, AWOL to drop from rolls (DFR)
- 3 February 2010, DFR to PDY

f. DD Form 458 (Charge Sheet) dated 4 February 2010 shows charges were preferred against him as follows:

- Charge I: Violation of the UCMJ, Article 85, Specification: AWOL from 17 December 2009 to 3 February 2010
- Charge II: Violation of the UCMJ, Article 86, Specification: failing to report to his designated place of duty
- Charge III: Violation of the UCMJ, Article 87, Specification: Missing movement
- Charge IV: Violation of the UCMJ, Article 91, Specification: Disrespectful language toward an NCO
- Charge V: Violation of the UCMJ, Article 95, Specification: Fleeing apprehension

g. DD Form 2707 (Confinement Order) dated 4 February 2010, shows he was placed in pretrial confinement as requested by his commanding officer. It was believed that the applicant was a flight risk and had the potential of committing additional acts of serious misconduct.

h. DA Form 4187 reflect on 4 February 2010 his duty status changed from PDY to military confinement

i. On 7 February 2010, after a commander's 72-hour review of the applicant's pretrial confinement by a neutral and detached officer, he assessed that the applicant's confinement remained necessary to ensure his presence at trial.

j. DA Form 5112-R (Checklist for Pretrial Confinement) dated 9 February 2010, shows there was probable cause to believe an offence was committed by the applicant; this was to ensure his presence at trial; to prevent foreseeable serious criminal misconduct; lesser form of restraint was inadequate.

k. The applicant submitted a voluntary request on 10 February 2010, to be discharged in lieu of trial by courts-martial under the provisions of Army Regulation 635-200 Chapter 10 (In lieu of trial by courts-martial) for the following specifications:

- desertion
- failing to report to his designated place of duty
- missing movement
- disrespect toward an NCO
- fleeing apprehension

l. On 10 February 2010, the applicant consulted with counsel and requested a discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged that by submitting his request for discharge he was guilty of a charge against him that authorized the imposition of a bad conduct or dishonorable discharge. He indicated in his request he understood he might be discharged under conditions other than honorable and given an under other than honorable discharge, he might be ineligible for many, or all benefits administered by the Department of Veterans Affairs, he might be deprived of many or all Army benefits, and he might be ineligible for many or all benefits as a veteran under both Federal and State laws. He acknowledged he might expect to encounter substantial prejudice in civilian life because of a discharge under other than honorable conditions. He elected not to make a statement in his own behalf.

m. On 10 February 2010, the applicant's brigade legal counsel requested that the applicant be discharged in lieu of the court-martial charges pending against him.

n. DA Form 4187 shows on 19 February 2010, the applicant went from military confinement to PDY.

o. On 19 February 2010, the separation authority approved the applicant's voluntary request for discharge. He directed the issuance of an UOTHC discharge.

p. DD Form 214 for the period ending 5 March 2010, shows he was discharged with an UOTHC discharge, in lieu of trial by court-martial, pursuant to AR 635-200, Chapter 10. He received a separation code of "KFS" and a reentry code of "4". He completed 1 year, 11 months, and 9 days of net active service this period. Applicant has service in Iraq from 1 July 2008 to 28 February 2009. Lost time during this period was from 17 December 2009 to 3 February 2010 and from 4 February 2010 to 19 February 2010.

q. In a request to the Army Discharge Review Board (ADRB) Docket Number AR20100021697, dated 6 June 2011, the applicant submitted a request for a change to his characterization of service. His request was denied. The Board found that the reason for his discharge and the characterization were both proper and equitable.

r. In another prior ABCMR Docket Number AR20130001880, dated 3 September 2013, after reviewing the application and all supporting documents, the Board denied the applicant's request for a re-characterization of service. The Board found that the reason for his discharge and the characterization were both proper and equitable.

6. The applicant's DD Form 214, item 18 (Remarks) will be administratively corrected in the "Administrative Notes" section of this document to read "Continuous honorable active service from 080124 until 090930" without the need for Board action.

7. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting:

“My character discharge should be upgraded to a General Under Honorable Conditions with 100% disability due the following reasons: (1) suffering from severe combat stress and PTSD which included being afraid to leave the house; (2) battling a blood infection from shrapnel that I was injured by during combat, and (3) suffering from chronic muscle pain.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the Regular Army on 24 January 2008 and was discharged under other than honorable conditions on 5 March 2010 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Discharge in Lieu of Trial by Court-Martial. It shows Service in Iraq from 1 July 2008 thru 28 February 2009. It does show he was not awarded a Combat Infantryman Badge or a Purple Heart.

d. There is no evidence in the EMR the applicant was injured during his deployment in Iraq. On his post-deployment health assessment, the applicant did note he was shot in the back of his legs with shotgun pellets apparently from friendly fire during his deployment: “We were entering a house and when we breeched the door with a shotgun, rounds from the blast hit me in the back of both my legs. He denied all behavioral health and TBI related symptoms/issues on the accompanying behavioral health evaluation, declined referral for follow-up services, and was cleared with a release without limitations.

e. On 28 October 2009, the applicant was diagnosed with a concussion after presenting for a 4-day history of headaches following a motor vehicle accident during which he “flipped” the vehicle.

f. The applicant presented to the Weed Army Community Hospital for evaluation of a suicidal gesture on 6 December 2009, was evaluated and cleared, and instructed to follow-up with behavioral health the following day. From this behavioral health encounter on 7 December 2009 at which time he agreed to inpatient care:

20-year-old active duty single male SPC presents for triage complaining of depressed mood with suicidal ideation, admitting to suicidal gesture 2 nights ago during which he took 4-5 Tylenol #3 with a stated intent to die. Pt [patient] returned from 1st deployment to Iraq in FEB 09. Was in a serious automobile accident in which he suffered a concussion OCT 09. Pt was medically cleared in ED last night, however, states he continues to have SI [suicidal ideations].

Pt cites numerous psychosocial stressors including recent transfer to new unit, scapegoating by some NCO leadership, his mother's financial issues and battle with cancer, frequent headaches and sleeplessness since auto accident, and anxiety and panic attacks since return from deployment.

Pt states when he asked for help, many did not believe he needed it. States he does not wish to kill or seriously harm anyone, however fears that if people keep treating him poorly someday, he may lose his temper and hit someone. States he continues to have SI.

Describes family history marked by maternal abandonment, extended family with nonspecific emotional and substance related issues. Pt reports increased alcohol consumption since returning from deployment and increased social isolation. Pt states he is eager to redeploy as he does not like his life in garrison. Admits to SI during adolescence however denies previous attempts. Agrees reluctantly to volunteer for admission.”

g. The applicant was diagnosed with depression and with adjustment disorder with disturbance of emotions and conduct at subsequent post-discharge follow-up encounters.

h. In July 2011, a request for a medical evaluation board was submitted. A 13 July 2011 behavioral health encounter shows the applicant was improving with treatment and had recently been diagnosed with type I diabetes mellitus:

“SM has managed to control his anger by dismissing himself from a possible confrontational situation, coming to the Warrior Clinic or calling this provider. He appears to be putting into practice some of the actions we discussed for dealing with his command. SM has met with PCM [primary care manager] and confirmed that he has Type I diabetes and is considered 'out of control'. He was started on oral medications but will require insulin to manage his diabetes. He will also require education on how to manage his diabetes.”

i. A 4 February 2010 Charge Sheet (DD Form 458) shows the applicant was charge with:

“Article 85, Desertion (One Specification)

Article 86, Failure to Report (One Specification)

Article 87, Missing Movement (One Specification)

Article 91, Disrespect Towards an NCO (One Specification)

Article 95, Fleeing Apprehension (One Speciation)

j. On 10 February 2010, the applicant voluntarily requested discharge in lieu of trial by courts-martial under provisions in chapter 10 of AR 635-200.

k. His request was approved by the Commanding General of the 4th Infantry Division (Mechanized) and Fort Carson on 19 February 2010 with the directives he he be discharged with an under other than honorable conditions characterization of service and be administratively reduced to the lowest grade of private (E01).

l. The applicant’s misconduct made him ineligible for referral to Disability Evaluation System (DES). Paragraph 4-3a and 4-3b of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006) state:

“a. Except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

b. If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the general court-martial convening authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.”

m. Review of his records in JLV shows he had been awarded several non-VA service-connected disabilities for treatment purposes only, including combat related PTSD. He has also been awarded four 0% disability ratings.

n. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD due to combat.

(2) Did the condition exist or experience occur during military service? Applicant asserts PTSD due to combat.

(3) Does the condition or experience actually excuse or mitigate the discharge? The applicant has been diagnosed with PTSD but it has not been connected to his Service. As PTSD is associated with avoidant behaviors and resistance to authority, it would mitigate his failure to repair, missed movement, period of desertion, and disrespect of an NCO. However, the condition does not interfere with one's inability to differentiate right from wrong and adhere to the right and so therefore cannot mitigate his willful fleeing of apprehension in violation of article 95 of the UCMJ.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade: Deny. The applicant was charged with commission of an offense (Desertion, failing to report to his designated place of duty, missing movement, disrespect toward an NCO, fleeing apprehension) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board found no error or injustice in the separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient medical documentation of

any behavioral health condition during military service that would mitigate his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: The applicant was discharged under the provisions of chapter 10 of AR 635-200. His narrative reason for separation as based on the fact that he violated the UCMJ and had court-martial charges preferred against him. Absent his misconduct and/or offenses, there was no reason to prefer court-martial charges and no reason for him to request voluntary discharge in lieu of court-martial. The underlying reason for his separation was his request to be discharged in lieu of trial by court-martial. Therefore, based on a preponderance of evidence, the Board determined that the narrative reason for separation the applicant received upon separation was not in error or unjust.

c. Medical Discharge: Deny. The Board reviewed and agreed with the medical reviewer's findings that the applicant has been diagnosed with PTSD but it has not been connected to his service. There is no medical condition that failed medical standards and warranted his entry into the disability evaluation system. The Board also agreed that his condition does not interfere with one's inability to differentiate right from wrong and adhere to the right.

d. Separation Code and RE Code: Enlisted Soldiers separated under the provisions of chapter 10 of AR 635-200, in lieu of trial by court-martial are assigned Separation Code KFS. This Separation Code has a corresponding RE Code of 4. The Board did not find an error or injustice in such codes. Therefore, based on a preponderance of evidence, the Board determined that the Separation Code and RE Code the applicant received upon separation 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:

1. Regarding the issues being reconsidered: 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 to amend the decision of the ABCMR set forth in Docket Number AR20130001880 on 3 September 2013.

2. Regarding the new issues; Except for the correction addressed in Administrative Note(s) below, the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he had continuous honorable active service from 24 January 2008 to 30 September 2009. As a result, amend his DD Form 214, item 18 (Remarks) to read "Continuous honorable active service from 20080124 through 20090930".

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. A soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

d. Rapid Action Revision (RAR), issued after the applicant was discharged, added a requirement to paragraph 5-17a(9) that for Soldiers who have been deployed to an area designated as an imminent danger pay area, the diagnosis of personality disorder must be corroborated by the military treatment facility Chief of Behavioral Health (or an equivalent official); the corroborated diagnosis will be forwarded for final review and confirmation by the Director, Proponency of Behavioral Health, Office of the Surgeon General; medical review of the personality disorder diagnosis will consider whether PTSD, TBI, and/or other comorbid mental illness may be significant contributing factors to the diagnosis; if PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph but will be evaluated under the Physical Disability System in accordance with Army Regulation 635-40.

e. Paragraph 5-14(d)(1) (other designated physical or mental conditions), states that Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral conditions are significant contributing factors to the basis for separation but will instead be evaluated under the Disability Evaluation System (DES) in accordance with AR 635-40.

3. Army Regulation 635-5 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge.

a. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

b. The specific instructions for item 28 (Narrative Reason for Separation) stated this is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "KFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

6. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. 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 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

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

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

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

7. Title 38 USC, section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

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

9. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (Disability Evaluation System (DES)); DoD Manual 1332.18 (DES Volumes 1 through 3) and Army Directive 2012-22 (Changes to Integrated Disability Evaluation System Procedures) as modified by DoDI 1332.18.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the DoD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of

Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. 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 Army Regulation 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) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

10. AR 40-501 (Standards of Medical Fitness), medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

11. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions

and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

12. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

13. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service 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.

14. 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//