

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20230012006

APPLICANT REQUESTS:

- Opportunity to finish the process for placement on the Permanent Disability Retired List (PDRL)
- Retainment of his Combat-Related Special Compensation (CRSC)
- Personal appearance before the Board

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

- DD Form 293 (Application for Review of Discharge)
- Self-authored Letter
- DA Form 199 (Information Physical Evaluation Board (PEB) Proceedings)
- DA Form 5892 (PEB Liaison Officer (PEBLO) Estimated Disability Compensation Worksheet)
- Orders 058-0026 Temporary Disability Retired List (TDRL) Orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Defense Finance Accounting Service (DFAS)
- Letter from Department of Veterans Affairs (VA)
- CRSC Pay Statement
- Letter from VA Health Care

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect:

a. He would like to submit this letter in regards to allowing him the opportunity to finish his temporary disability retired list (TDRL) processing for transfer to the PDRL.

b. After he retired from the service, he went through a very rough patch where he was divorced in the first five months and lost his home and children. For the next several years, he was bouncing around, never having long term residence.

c. He contacted the TDRL several times letting them know that he was in no shape to travel to Washington State, but was wishing to complete his PDRL processing locally to no avail.

d. After several moves, he received a letter stating that his TDRL status had expired and he would be losing his benefits both medical and financial. These benefits included his CRSC and partial retirement pay, which are part of his court ordered child support allocation percentage. Without these monies, he is in a dire financial situation that is not only unfair to him but to his two boys. He hates the fact that he feels that he is groveling because this is not in his character, but the situation is only getting worse.

e. With over four years of combat as an Army Infantryman, his body is in constant pain, his back is only getting worse along with all his other joints. His post traumatic stress disorder (PTSD) makes him not sleep well and he cannot socialize with anyone. He has no friends minus his fiancé and he does not have much, if any, contact with his family members. He is proud to say he does not take any pain medication, minus Motrin, and he does not self medicate with alcohol or drugs of any kind. He is providing documentation stating he was previously awarded these benefits. If there is any additional information the Board would need to help his situation, he asks that he be contacted.

f. Considering where he is at now, as a person, with support from his fiancée, he knows he would be able to travel to Washington State if necessary to complete his TDRL assessment. He would greatly appreciate if the Board would allow him to reenter the TDRL and see it through completion and be placed on the PDRL along with retaining his CRSC allocation.

3. The applicant provides the following documents:

a. DA Form 5892 (PEBLO Estimated Disability Compensation Worksheet) shows his estimated retirement pay as \$3,709.80 and his disposition was TDRL.

b. Orders 058-0026, published by Headquarters, National Training Center and Fort Irwin, 27 February 2014, show he was transferred to the TDRL effective 12 March 2014 with a date of retirement of 13 March 2014. He was placed on the TDRL for temporary disability with a 50 percent disability.

c. Letter from DFAS, 24 March 2014, welcomed him to the retired roll of the U.S. Army. His net pay amount would be \$1,068.60 for his initial period of entitlement.

d. Letter from the VA, 26 March 2014, shows he was granted 100 percent disability and his payment start date was 1 April 2014. He had the following service connected disabilities effective 13 March 2014:

- PTSD with major depressive disorder and alcohol dependence, 50 percent
- Migraines (claimed as chronic headaches), 30 percent
- Thoracolumbar spine strain with thoracic scoliosis and lumbar degenerative joint disease (claimed as back condition with pain), 20 percent
- Cervical spine intervertebral disc syndrome with cervical strain and degenerative joint disease (claimed as neck condition with pain, stiffness, and popping), 20 percent
- Left ankle strain status post trauma with sinus tarsi cyst (claimed as left ankle condition with bone spur and pain), 20 percent
- Left upper extremity intervertebral disc syndrome (dominant) (claimed as bilateral arm condition with pain and numbness), 20 percent
- Right upper extremity intervertebral disc syndrome (non-dominant) (claimed as bilateral arm condition with pain and numbness), 20 percent
- Left shoulder strain with instability and os acromial (dominant) (claimed as bilateral shoulder condition with pain), 10 percent
- Right shoulder strain with instability and os acromial (non-dominant) (claimed as bilateral shoulder condition with pain), 10 percent
- Left wrist strain with instability (dominant) (claimed as bilateral wrist condition with pain and popping), 10 percent
- Right wrist strain with instability (non-dominant) (claimed as bilateral wrist condition with pain and popping), 10 percent
- Left hip strain with instability and limitations of extension of thigh (claimed as bilateral hip condition with pain, popping, and stiffness), 10 percent
- Right hip strain with instability and limitations of extension of thigh (claimed as bilateral hip condition with pain, popping, and stiffness), 10 percent
- Left knee instability (claimed as left knee condition with pain and instability), 10 percent
- Left knee strain with degenerative joint disease (claimed as left knee condition with pain, and instability), 10 percent
- Tinnitus, 10 percent
- Gastroesophageal reflux disease (claimed as acid reflux), 10 percent

e. CRSC Pay Statement effective 22 October 2014, shows he received CRSC in the amount of \$1,009.

f. Letter from a VA Mental Health Social Work Fellow, 18 November 2014, states the applicant is service connected at the 100 percent level for medical and mental health diagnoses. He sought mental health treatment in June of 2014; however, due to

an error by the VA, his request was lost. He made several phone calls to the facility attempting to enter treatment without success until he contacted his Congressman for help. He has been in treatment since October of 2014 for depression and PTSD. He is also attending the addictions group at the clinic. He has been an active partner in the treatment and appears dedicated towards that end.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 28 October 2002. He remained in the Regular Army through immediate reenlistments.

b. DA Form 199 (Informal PEB Proceedings), 11 February 2014, shows he was evaluated for PTSD, which was found to make him physically unfit for duty. The board recommended a rating of 50 percent and that he be placed on the TDRL with a reexamination in November 2014. The applicant concurred with the board's recommendation, waived a formal hearing in his case, and did not request reconsideration of his VA ratings.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged for retirement, disability, temporary (enhanced) on 12 March 2014. He was an 11B (Infantryman). He completed 11 years, 4 months, and 15 days of net active service. He had service in Iraq from 28 April 2003 through 13 July 2004 and 1 September 2005 through 1 September 2006. He had service in Afghanistan from 26 June 2008 through 19 June 2009 and from 28 March 2011 through 3 February 2012.

d. Letter from U.S. Army Human Resources Command (AHRC), CRSC, 3 June 2014 shows AHRC approved his claim in accordance with current program guidance. The following conditions were verified as combat related:

- Bilateral, right shoulder strain with instability and os acromial (non-dominant), 10 percent
- Bilateral, left shoulder strain with instability and os acromial (dominant), 10 percent
- Bilateral, left wrist strain with instability (dominant), 10 percent
- Bilateral, right wrist strain with instability (non-dominant), 10 percent
- Cervical spine intervertebral disc syndrome with cervical strain and degenerative joint disease, 20 percent
- Thoracolumbar spine strain with thoracic scoliosis and lumber degenerative joint disease, 20 percent
- Migraines, 30 percent

- Bilateral, right upper extremity intervertebral disc syndrome (non-dominant), 10 percent
- Bilateral, left upper extremity intervertebral disc syndrome (dominant), 10 percent
- PTSD with major depressive disorder and alcohol dependence, 50 percent
- Tinnitus, 10 percent
- Total combat-related disability, 90 percent

e. Order 100-16, published by U.S. Army Physical Disability Agency (USAPDA), 10 April 2019 states the applicant has failed to complete a scheduled physical reexamination required by law. Because of this, he is administratively removed from the TDRL on the date indicated without entitlement to severance pay. He was removed from the TDRL on 13 March 2019.

5. On 24 January 2024, the Legal Advisor, USAPDA provided an advisory opinion, which states:

a. The memorandum is in response to provide an advisory opinion regarding the applicant's request to "reenter the TDRL and see it through to completion and be placed on the PDRL..." Based on the evidence presented, USAPDA recommended denial of the request.

b. The applicant's Informal PEB convened on 11 February 2014. The board deemed him unfit for PTSD, which included major depressive disorder, assessed a 50 percent rating, and placed him on the TDRL with a reexamination to be completed in November of 2014. The board specifically informed him "based upon the results of a future TDRL evaluation, for each unstable condition, the PEB will determine whether the unstable condition remains unfitting (and compensable)..." He was further informed in accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), "If a Soldier fails to report [for] a scheduled periodic examination or fails to inform the USAPDA of a change in address and cannot be contacted, their retired pay could be suspended." On 12 February 2014, the applicant concurred with the Informal PEB's findings and waived a formal hearing.

c. A review of the case file reveals numerous attempts by the Agency Disability Evaluation System Operations Division personnel to contact the applicant by various means (i.e. emails, phone calls, Fed Ex, etc.) from July 2015 through March 2019, to inform him of the continuing need to conduct a medical examination as a condition to remaining on the TDRL. For instance, he was notified in writing on 21 July 2016 (sent to three mailing addresses) that multiple attempts to contact him had been unsuccessful and was reminded of the requirement to undergo medical examination(s). He was also provided additional opportunities to schedule a medical examination and offered assistance in doing so. Additionally, he was warned that the failure to contact the

Agency by 10 August 2016 may result in suspension of his retired pay and removal of his name from the TDRL. Further a similar letter was sent to him at multiple mailing addresses on 22 September 2016 with a suspense date of 13 October 2016 (this item was noted as having been delivered to at least one of these addresses). Moreover, another letter with similar verbiage, was sent 20 September 2019 (this item was also noted as having been delivered to at least one of the addresses). Notwithstanding these notifications, the applicant failed to appear for an examination, as required. Finally, after numerous unsuccessful attempts to contact him and no TDRL evaluation, he was notified he was administratively removed from the TDRL effective 13 April 2019.

d. Army Regulation 15-185 (ABCMR) paragraph 2-9 states that with respect to the allegations of errors related to military records, there is a presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Moreover, under Army Regulation 15-185 paragraph 2-4, applicants must file an application for the correction of military records within three years after an alleged error or injustice is discovered or reasonably should have been discovered. The applicant has failed to overcome the presumption of administrative regularity or otherwise demonstrate an error or injustice.

e. He states in a letter, 12 July 2023, that at the time of his discharge he was going through a "very rough patch" and had no long term residence. He states he contacted TDRL personnel several times and requested to participate "locally" but those requests were denied. He also states that he could, if necessary, travel out of state in order to satisfy the TDRL requirements. However, he provides no further details or evidence that adequately explains why he did not maintain updated contact information or failed to complete the required medical examination process over an approximate five year period. Similarly, he has failed to adequately explain his failure to seek correction of any alleged error in the more than four years that have expired since being notified of his removal from the TDRL. In contrast, the record demonstrates multiple unsuccessful attempts on the part of the Agency, in excess of regulatory requirements, to notify him of his legal obligations and to inform him of the consequences for failing to satisfy those obligations. In sum, he has failed to demonstrate sufficient error or injustice to warrant correction of his military record.

f. Based on the evidence presented, USAPDA recommends denial of the request for the forgoing reasons.

6. On 22 March 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 1 June 2024, he responded stating, in effect:

a. His comments on the advisory opinion. Regarding the background stating that he is assessed a certain rating does not do any justice to his mental or physical ailments. During his medical separation, he was and still is very guarded about the trauma, both

mentally and physically, that he had to endure. He does not like talking about it and did not talk about all the people he had to kill in all the different ways. Calling danger close indirect fire mission on his own position are just some of the hundreds of different situations that weigh on his mind and soul. The honorable yet heart breaking ramp ceremonies he had to perform placing his friends onto the aircraft or the hundreds of funerals that he attended are just another thing that weighs heavy on his heart. Most of this was not taken into consideration, when he talked to the individuals during his Medical Evaluation Board. Just writing this he is shaking with adrenaline.

b. Carrying three days worth of water on sniper missions really takes a toll on a person's body. A doctor told him that his back looked like someone that was in their 60s and he was 33 years old, at the time. He feels nauseous now, just overwhelmed with emoting trying not to freak out with the fact he was denied. Does he need to explain in graphic details all the trauma? He served over four years of combat, years of intense training, and a deployment for eight years straight. His first born son passed away before his third deployment, his first to Afghanistan, and he was told he could stay and not deploy. As the battalion sniper squad leader, he still decided to deploy and he brought all of his men home, only one received a Purple Heart. He was recommended for two different Bronze Star Medals with "V" device and was awarded one of them. This denial drives a dagger deep in his heart for the lack of reciprocal dedication and respect from the Army. He gave the best years of his life to fight for this country and now that he is broken and cast aside, it is hurtful. This feeling reminds him of his Command Sergeant Major telling him his specialist medic, who days prior hung himself in his garage, was a pussy. Disbelief, bewilderment, pain, and sorrow to name a few of his feelings.

c. As for the timeline, his ex-wife left him the first week of October 2014. She took his two boys, the house, and all the money. He was homeless for years and broke from the lawfare. The reexamination to be completed in November 2014 was unbeknownst to him. He does not recall every getting this notification.

d. He was not able to get into any counseling from the VA and had to constantly try to get an appointment but it was impossible. California did not take too kindly to his diagnosis and did not think of him as heroic or anything positive with his combat background. He lost his drivers license and periodically he would somehow get a letter from the TDRL. It would always be well past any determined date. He would always contact them and plead for them to let him conduct any of the business they requested locally for he was not able to travel, which he made abundantly clear. He was homeless for years constantly moving from one place to the next, broke mentally, physically, and financially. He was awarded CRSC, which was factored into his child support, which was pulled after the TDRL expired. He finally received the termination letter well past the determined date. He again pleaded with TDRL and this did not happen.

e. Over the last few years and countless hours online, calling and waiting through a litany of phone prompts, he figured out the necessary means to file an ABCMR application. He would like the medical doctor to determine if he should be placed on the PDRL not a Judge Advocate General Officer. He will be enclosing his original application along with this correspondence to his Congressman. Like he said in his application, he finds himself in a better situation and has a support group that will allow him to travel and complete the proper tasks needed to finish the TDRL process. He appreciates whomever takes the time to assist him in this process. He is not looking for anything more than what he has rightly earned and looks forward to hearing back from someone in a timely manner.

7. The ABCMR may, in its discretion, hold a 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.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an opportunity to complete the process to be placed on the Permanent Disability Retired List (PDRL) and retention of his Combat-Related Special Compensation (CRSC).

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 enlisted into the Regular Army on 28 October 2002 and remained in the Regular Army through immediate reenlistments.
- The applicant's Informal PEB convened on 11 February 2014. The board deemed him unfit for PTSD, which included major depressive disorder, assessed a 50 percent rating, and placed him on the TDRL with a reexamination to be completed in November of 2014.
- After numerous unsuccessful attempts to contact him and no TDRL evaluation, he was notified he was administratively removed from the TDRL effective 13 April 2019.
- The applicant was discharged on 12 March 2014 and his DD214 showed he completed 11 years, 4 months, and 15 days of active service. He had deployments to the following: Iraq (28 April 2003 to 13 July 2004); Iraq (1 September 2005 to 1 September 2006); Afghanistan (26 June 2008 to 19 June 2009); Afghanistan (28 March 2011 to 3 February 2012).

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts, in summary, that he did not complete the TDRL to PDRL process because he had no long-term residence and was unable to travel to

Washington state for the evaluation. He states he made several attempts to request a local evaluation but was denied, but he is now in a position to travel, if necessary, for the evaluation. He indicated PTSD as a mitigating factor in his situation. An advisory opinion from the Army Physical Disability Agency dated 24 January 2024 provided information about the attempts to reach the applicant and recommended denial of the request. An Informal Physical Evaluation Board (PEB) Proceedings document dated 11 February 2014 showed the applicant was placed on the TDRL for PTSD with a disability rating of 50%. A VA decision letter stamped 26 March 2014 showed the applicant is 100% disabled with indication that PTSD, Major Depressive Disorder, and Alcohol Dependence accounted for 50% of his disability. A CRSC Pay Statement was also included as well as a letter dated 18 November 2014 documenting the applicant's engagement in mental health services through the VA. A CRSC decision letter dated 3 June 2014 documented the conditions for which he was considered and indicated 50% for PTSD based on his PEB findings. Orders dated 19 April 2019 showed the applicant had failed to complete a scheduled physical reexamination required by law and was being administratively removed from the TDRL. There was sufficient evidence that the applicant was diagnosed with PTSD while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated mental health treatment on 16 January 2008 reporting distress associated with his son's terminal illness. There was no indication of follow up, and the applicant next engaged care in July 2012 due to sleep problems, anger, and concentration difficulty. Through September 2013 he routinely engaged in mental health treatment, including individual therapy and medication management, and he was diagnosed with PTSD. His last encounter with DoD mental health was on 27 February 2014. A review of the documentation related to his mental health treatment did not show a history of multiple profiles or duty limitations, and it appears his PEB was likely brought on by his physical problems.

e. The applicant initiated mental health treatment through the VA in June 2014, and his treatment plan included continuing previous medications and referral for psychotherapy. However, due to his slow response to scheduling efforts and cancelled appointments by VA, he was not seen again until 14 October 2014 following a call to the Veterans Crisis Line by his wife. Documentation showed that the applicant was struggling with reintegration and transition to civilian life, separation from his wife and children, severe PTSD symptoms, and financial concerns. He declined medications and utilized individual and group therapy until he moved to a new area, requiring a change of VA systems. His last contact was on 12 December 2014, and he discussed having relocated to Gustine, CA, improved mood, and engagement in Vocational Rehabilitation Services. His primary diagnosis was PTSD. An encounter on 8 February 2016, entered by a different VA medical system, showed a voicemail message was left following a missed new patient appointment.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the applicant experienced significant deployment related trauma and had a diagnosis of PTSD at discharge. He engaged the VA for mental health treatment in the first year he was on the TDRL, but there are no mental health records available in JLV or provided by the applicant that show continued treatment beyond 2014. There is an absence of evidence to support the presence of any extenuating circumstance or mental health condition that would prohibit the applicant from completing the necessary PDRL evaluation within the required timeframe.

#### 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.
2. The Board carefully considered the applicant's contentions, his record of service, the MEB and PEB proceedings that resulted in his placement on the TDRL, the absence of evidence follow-up evaluations, the USAPDA's removing him from the TDRL and the applicable law and policy. The Board considered the applicant's statement and timeline regarding his inability to participate in follow-on exams, the documents he signed upon entry on to the TDRL, the absence of VA treatment records beyond 2014, the USAPDA advisory opinion with the applicant's response and the review and conclusions of the Agency Medical advising official. The applicant did not provide supporting documentation in support of his statement. The Board did not find sufficient evidence of an extenuating circumstance of mental health condition that would have precluded him from completing the necessary PDRL evaluation within the required timeline. Based on a preponderance of evidence, the Board determined that the applicant's removal from the TDRL was not in error or unjust.
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.

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to

a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Title 10, 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 Army Regulation 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 an 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.

4. 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.

5. 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.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states 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. Paragraph 3-4 states 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.

7. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.
8. Section 1556 of Title 10, USC, 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.
9. 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 UOTHC 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.
10. 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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, 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.
11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal

sentence. BCM/NRs 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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.

12. Department of Defense (DoD) Directive-Type Memorandum (DTM) 11-015 (Disability Evaluation System) explains the Integrated Disability Evaluation System (IDES). The version in effect at the time defined the IDES process and procedures. The guidelines within the DTM were incorporated in the DoD Manual Number 1332.18 (DES Manual: General Information and Legacy DES Time Standards).

a. The IDES is the joint DoD-VA process by which DoD determines whether wounded, ill, or injured Service members are fit for continued military service and by which the DOD and the VA determine appropriate benefits for Service members who are separated or retired for a Service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by the VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures promulgated in DOD Directive 1332.18 (Disability Evaluation System (DES)) and the Under Secretary of Defense for Personnel and Readiness Memoranda. All newly-initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the Service member due to special circumstances. Service members whose cases were initiated under the legacy DES process will not enter the IDES.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA compensation and pension (C&P) standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist the VA in ratings determinations and assist military departments with unfit determinations.

d. Within 15 days of receiving the proposed disability ratings from the Disability Rating Activity Site (D-RAS), the PEB will apply the rating using the diagnostic code(s) provided by the D-RAS to the Service Member's unfitting conditions and publish the disposition recommendation. For example, if the PEB identifies a condition to the D-RAS as "schizophreniform disorder", but the D-RAS rates the condition as "psychotic disorder NOS (VASRD 9210)", the PEB will apply the rating as "schizophreniform disorder rated as psychotic disorder NOS (VASRD 9210).

e. Upon separation from military service for medical disability and consistent with Board for Corrections of Military Records (BCMR) procedures of the Military Department concerned, the former Service member (or his or her designated representative) may request correction of his or her military records through his or her respective Military Department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals the VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the Service member may request correction of his or her military records through his or her respective Military Department BCMR.

13. Department of Defense (DOD) Financial Management Regulation 7000.14-R Volume 7B (Military Pay Policy – Retired Pay) provides in Chapter 63 (Combat Related Special Compensation (CRSC)) that CRSC is special compensation to members of the Uniformed Services who have retired pay reduced because of receiving U.S. Department of Veterans Affairs (VA) disability compensation where a portion of such VA disability compensation is the result of disabilities that are combat-related as determined by the Military Department. The CRSC program became effective 31 May 2003. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat-related by the Military Department.

a. CRSC is a monthly entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member has applied for and elected CRSC under these provisions, meets preliminary CRSC criteria, and meets final CRSC criteria.

b. With regard to the effective date, payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat-related by the Military Department. A member may submit an application for

CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

c. Disability ratings by the Secretary of the Military Department concerned (or designee), as of the date on which the member retired, may be used to help make determinations of whether the member meets preliminary CRSC criteria. The actual computation of the amount of CRSC payable to an eligible retiree is based solely on VA disability determinations and the amount of VA compensation paid, without regard to any disability that is not combat-related.

d. When the VA makes a retroactive increase in a member's VA disability compensation pertinent to a member's combat-related disabilities under CRSC, DFAS and VA will exchange data to determine the additional retroactive amount that the member is entitled to receive as the result of CRSC. DFAS will compute the additional entitlement and advise VA in order for VA to pay the member the appropriate additional authorized VA disability compensation. Any increase affecting CRSC qualified disabilities in the current month requires that CRSC be re-computed.

e. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

f. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

g. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand,

if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

14. Title 38, USC, sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

15. Title 26, USC, section 104, authorizes special rules for combat-related injuries for compensation for injuries or sickness. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness (A) which is incurred (1) as a direct result of armed conflict, (2) while engaged in extra-hazardous service, or (3) under conditions simulating war; or (B) which is caused by an instrumentality of war.

//NOTHING FOLLOWS//