

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230012538

APPLICANT REQUESTS:

- physical disability retirement in lieu of honorable administrative discharge due to weight control failure
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- four self-authored statements
- 28 pages of service medical records, dated between June 1991 – July 1995
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 17 January 1996
- Department of Veterans Affairs (VA) letter, dated 8 September 2004
- VA Dashboard printout, undated
- VA letter, dated 17 February 2017
- VA eBenefits printout, dated 30 January 2023
- U.S. Department of Health and Human Services information sheet, titled, "Sickle Cell Trait and Damage to the Spleen: Get the Facts!"

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:

a. His discharge due to the overweight program should be changed to medical retirement because he has the sickle cell trait. While at Fort Carson, CO, he never acclimated to the climate and had trouble breathing. No one ever knew what his issue was. A medical board was never mentioned or initiated because his commander was so

set on kicking him out. It seems there were racial issues involved in getting him out of the service.

b. He has the following service-connected disability ratings from the VA:

- sleep apnea with asthma, 100 percent, effective 2 August 2017
- folliculitis, 60 percent, effective 15 July 2011
- fracture, right hand, right finger, 10 percent, effective 18 June 2004
- unspecified anxiety disorder, 30 percent, effective 16 March 2017
- tinnitus, 10 percent, effective 4 May 2001
- bilateral hearing loss, 0 percent, effective 4 May 2001

c. The military life had always been a dream of his ever since he was a little kid. So, when he joined the military in 1989, it felt like he had accomplished something great. He served with all his heart, day in and day out. However, things changed when he made a permanent change of station (PCS) move to Fort Carson, CO.

d. Doctors informed him he had the sickle cell trait from birth, but assumed he would not have any trouble living a regular life. He found out he has the sickle cell trait because his oldest son suffers from sickle cell illness. He never experienced any problems in the service until he was assigned to Fort Carson, CO. He began to have severe respiratory difficulties, whether he was doing physical training or anything else. Being a sickle cell trait patient, he found it hard to acclimate to the altitude and was advised he just needed to adjust to the elevated altitude. He visited the hospital and was on sick call numerous times during that period, but he never seemed to understand what was wrong until later. Every day he would feel his body struggling to keep up, but his commander was too stubborn to listen to him. All he cared about was putting him out under Army Regulation 600-9 (The Army Body Composition Program), and nothing else. No one talked to him about medical boards or any other solution. Based on his research, those who have the sickle cell trait do not fare well at high elevations, which is something he wants documented.

e. As if things were not bad enough, he also had to deal with his asthma and a skin condition. The physical training became too much for him to handle and he knew he had to seek medical help. Yet, no one ever talked to him about medical retirement, despite the health issues he was facing. Years went by and he left the military in 1996. Little did he know the battle was far from over. For 20 years he struggled to get VA benefits for the medical issues he faced while serving in the military.

f. To this day he still carries the physical scars of those tough years. But it is not just about the physical scars; it is also the emotional scars and the battles that still rage within him. All he wanted was to service his country, but the system failed him. Even through all the pain and struggles, he knows one thing for sure, he will not give up. He

will not stop fighting for the recognition that he deserves. He will continue to tell his story in the hopes that others do not have to go through what he went through. He will be a voice for all the veterans who have faced discrimination and for all those who have been let down by the very system they pledged to serve. He will never forget the sacrifices that were made and that should have been acknowledged.

g. Medical records from 1996 through 2007 could not be located, but he has supplied his VA ratings and other paperwork.

3. The applicant enlisted in the Regular Army on 4 May 1989, and was awarded the Military Occupational Specialty (MOS) 13B (Cannon Crewmember).

4. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

5. The applicant provided numerous pages of service medical records, dated between June 1991 – July 1995, which have been provided in full to the Board for review, and in pertinent part show:

a. A DA Form 5181-R (Record of Acute Medical Care) shows the applicant was seen by medical professionals at Fort Sill, OK, on 14 June 1991, for spots/rash on his back he had for the last 3 months that have gotten worse despite treatment.

b. A DA Form 5181-R shows the applicant was seen by medical professionals at Fort Sill, OK, on 31 January 1992, for a rash on his back

c. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 14 April 1992, at Fort Sill, OK, for a chronic rash on his back. He was found qualified for retention with a PULHES of 111111.

d. A DA Form 5181-R shows the applicant was seen by medical professionals at Fort Sill, OK, on 2 August 1994, for a chief complaint of shaving bumps/lesions on face and was referred to a physician's assistant for further evaluation.

e. A DA Form 5181-R shows the applicant was seen by medical professionals at Fort Carson, CO, on 19 July 1995, for a chief complaint of shortness of breath and chest pain while doing physical training. He states he could not catch his breath and his

chest was tight while doing physical training, feeling like he was going to fall out. He has a history of asthma. His lungs sound clear, and he does not display shortness of breath while resting. He has been at Fort Carson's altitude for 9 months. He was prescribed an inhaler and advised to run at his own pace for 10 days.

6. On 26 July 1995, the applicant was notified by his immediate commander that he had been determined to be overweight, was flagged, and entered into the Army Weight Control Program.

a. He was advised a goal of 3-8 pounds of weight loss per month was considered satisfactory progress. Failure to make satisfactory progress or attain the body fat standard, or failure to lose weight for 2 consecutive months, could result in his separation from the service. The applicant acknowledged notification and indicated he understood his responsibilities to achieve the body fat standards and to have his weight recorded periodically or his body fat percentage reevaluated.

b. The applicant was determined to exceed both the screening table weight and the body fat standards, and his unit commander requested that a medical evaluation be conducted. The applicant was evaluated and found fit for participation in a Weight Control Program/Physical Exercise Program. The Division Nutritionist provided him with nutrition and weight reduction counseling.

7. A DA Form 268-8 (Report to Suspend Favorable Personnel Actions (Flag) shows a nontransferable flag was initiated on 26 July 1995 due to the applicant's entry into the Army Weight Control Program.

8. Multiple DA Forms 4856 (General Counseling Form) show:

a. The applicant was counseled on 26 July 1995 regarding his failure to meet the Army height and weight standards. He was advised he would be required to attend special physical training until he was disenrolled from the weight program and that he could be discharged from the Army.

b. He was counseled on 31 August 1995 after his most recent weigh in on 29 August 1995 showed he had gained weight and body fat since his previous weigh in. He had been advised that he must make progress (3-8 pounds weight loss per month) and that failure to lose weight for 2 consecutive months could result in his separation. He was advised he had 1 months remaining and if he did not make progress in the coming month he might be separated.

c. He was counseled on 28 September 1995 regarding the fact he had made no progress on the overweight program since his enrollment on 26 July 1995 and he

remained both overweight and over the body fat percentage. It was recommended he be barred from reenlistment based on his lack of progress in the overweight program.

9. A Radiological Examination Report, dated 10 October 1995, shows views of the chest showed satisfactory inspiration with no evidence of active pulmonary disease. The cardiac silhouette was normal with no evidence of enlargement. The mediastinum, great vessels, pleura, diaphragm, and bony thorax were unremarkable. The interpretation shows a normal chest x-ray.

10. A physician's assistant memorandum for the applicant's commander shows the applicant underwent medical examination on 1 November 1995. The results of the medical examination show:

- his PULHES was 111111
- he did not require a MOS Medical Review Board (MMRB)
- he was overweight and failed the tape test
- he was qualified for separation

11. A DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation on 21 November 1995, where he was found to meet the retention standards of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3 and there was no psychiatric disease or defect warranting disposition through medical channels. He was cleared for any administrative action deemed appropriate by his command.

12. The applicant's DA Forms 5500-R (Body Fat Content Worksheet (Male)), dated 26 July 1995, 29 August 1995, 28 September 1995, 2 November 1995, and 5 December 1995, have been provided in full to the Board for review. They show the applicant made no progress throughout the period, was discernibly outside the Army standards for weight and body fat percentage on each date and had documented increase in weight and body fat throughout the period.

13. A Standard Form 93 (Report of Medical History), shows the applicant provide his medical history on 13 December 1995, in conjunction with a separation physical. He indicated he was in good health and not taking any medication. He marked "yes" next to asthma and broken bones. The notes show no history of reactive airway disease (RAD); right ring finger fracture in 1989, resolved without sequelae; review of systems (ROS) benign.

14. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 13 December 1995, for the purpose of separation. The notes and significant or interval history shows weight gain. The summary of defects

and diagnoses shows obesity. The recommendations show lose weight. The applicant was found qualified for separation with a PULHES of 111111.

15. A memorandum for record from the Office of the Staff Judge Advocate, 4th Infantry Division, shows:

a. A separation packet pertaining to the applicant was received from the unit on 20 December 1995:

b. The applicant was recommended for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 18, based on his failure to make satisfactory progress in the Army Weight Control Program.

c. The applicant had over 6 years' time in service and was entitled to review of his case by an administrative separation board, regardless of the type of discharge. The applicant intended to waive review by and/or appearance before an administrative separation board.

d. The reviewing Trial Counsel recommended the approval of an honorable discharge.

16. A final DA Form 4856 shows the applicant was again counseled on 21 December 1995, on his failure to make satisfactory progress in the unit overweight program, failure to attain the body fat standard, and failure to lose 3-8 pounds of weight for 2 consecutive months. He was advised he would be eliminated from the service under the provisions of Army Regulation 635-200 if this behavior continued.

17. On 9 January 1996, the applicant was notified by his immediate commander of his initiation of action to honorably separate him under the provisions of Army Regulation 635-200, chapter 18, for failure to make satisfactory progress in the Army Weight Control Program and failure to meet the Army body fat standards. He was advised of his right to consult with counsel, request a hearing before an administrative separation board, and submit statements in his own behalf.

18. On 9 January 1996, the applicant acknowledged having been advised by consulting counsel of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, chapter 18, for his inability to meet the body fat standards. He understood he was entitled to have his case heard by an administrative separation board and waived this right to both consideration by an administrative separation board and personal appearance before an administrative separation board. He waived representation by consulting counsel and did not submit statements in his own behalf.

19. On 9 January 1996, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, chapter 18.

20. The applicant's DD Form 214 shows he was honorably released from active duty on 17 January 1996, under the provisions of Army Regulation 635-200, chapter 18, due to weight control failure and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). He was credited with 6 years, 8 months, and 14 days of net active service this period.

21. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

22. A VA letter, dated 8 September 2004, shows the applicant's prior service-connected disability percentage of 0 percent for his fracture, right hand, ring finger, was increased to 10 percent effective 18 June 2004.

23. A VA letter, dated 17 February 2017, shows the Board of Veteran Appeals made a decision on the applicant's appeal on 9 November 2016, and granted him a service-connected disability rating of 50 percent for sleep apnea, effective 30 May 2008.

24. A VA letter, dated 10 October 2017, shows:

a. A decision was made regarding the applicant's entitlement to VA benefits and granted him the following service-connected disability ratings for the following conditions

- unspecified anxiety disorder, 30 percent, effective 16 March 2017
- sleep apnea, increased to 50 percent from 10 percent, effective 2 August 2017
- bilateral hearing loss, 0 percent continued
- tinnitus, 10 percent continued
- fracture, right hand, ring finger, 10 percent continued

b. The applicant's combined service-connected ratings were as follows:

- 0 percent, effective 18 January 1996
- 10 percent, effective 4 May 2001

- 20 percent, effective 18 June 2004
- 60 percent, effective 30 May 2008
- 80 percent, effective 30 March 2014
- 90 percent, effective 16 March 2017
- 100 percent, effective 2 August 2017

25. A partial eBenefits printout, dated 30 January 2024, presumably pertaining to the applicant despite his name not appearing on the document, shows the following additional modifications to his above-listed service-connected disabilities:

- sleep apnea with asthma, 100 percent, effective 2 August 2017
- folliculitis, 60 percent, effective 15 July 2011

26. 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.

27. 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 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 in essence requesting a referral to the Disability Evaluation System (DES). On his DD 149, he has indicated that PTSD and other mental health issues are conditions related to request. He states:

“Change AR-600-9 overweight program to medical retirement, because I have the sickle trait while in Fort Carson CO. Never acclimated to the climate, had trouble breathing. No one never knew what my issues was. Medical board was never mentioned because my commander so set on kicking me out. Seems more racial issues to get me out of the service.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 4 May 1989 and was honorably discharged on 17 January 1996 under provisions in



chapter 18 of AR 635-200, Personnel Separations – Enlisted Personnel: Failure to Meet Body Fat Standards. There are no AHLTA encounters for this period of service and there are no documents in iPERMS.

d. There are no encounters in the EMR. Contemporaneous medical documentation shows he was treated for a rash, sprain of the patellar ligament, and pseudofolliculitis barbae. In July 1995 he was evaluated for chest pain and shortness of breath with running. The physician assistant's working diagnosis with exercise induced bronchospasm and he was provided with a Proventil inhaler and directed to return as needed. There was no further contemporaneous medical documentation for this issue.

e. Paragraph 2-3d(4) of AR 600-9, The Army Weight Control Program, states:

“The use of certain medications to treat an underlying medical disorder or the inability to perform all aerobic events may contribute to weight gain but are not considered sufficient justification for noncompliance with this regulation.”

f. Paragraph 2-3e of AR 600-9:

“If the underlying medical condition does not require referral to an MEB/PEB and a Soldier is classified as overweight, these facts will be documented and the Soldier will be entered into the AWCP except as described in paragraph 3-2b.”

g. Undated memorandums show the applicant was found to exceed the body fat standard by 3.38%; and that from the medical provider stated “SPC [Applicant] has been evaluated and found fit for participation in a Weigh Control Program/Physical Exercise Program.

h. Counseling statements show that because he failed height and weight standards, he was entered into a special physical training program in July 1995, and that he gained 3 pounds over the next month. He was informed that continued failures to improve could lead to his involuntary separation.

i. He underwent a mental status evaluation on 21 November 1995. The provider documented a normal examination, opining the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, met the retention standards of AR 40-501, Standards of Medical Fitness, and he was cleared for any administrative action deemed appropriate by command. There are no other mental health related encounters.

j. The applicant underwent his pre-separation physical examination on 13 December 1995. On his Report of Medical History, the applicant wrote “As of this point of time, I am in good health. I am not on any medication.” It was noted he had a history of

reactive airway disease. The provider documented a normal examination, listed the only defect/diagnosis as "obesity," and cleared the applicant for separation.

k. On 9 January 1996, he was notified by his commander that his progress in the Army Weight Control Program was unsatisfactory and action to separate the applicant had been initiated. The applicant waived his right to an administrative separation board.

l. There is no evidence the applicant had a medical condition failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness prior to his discharge. This is a requirement for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

m. JLV shows he has been awarded multiple VA service-connected disability ratings, including sleep apnea (100%), eczema (60%), and anxiety disorder (30%). However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

n. It is the opinion of the Agency Medical Advisor that neither a referral of his case to the DES is not warranted.

#### 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. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that there is no evidence indicating the applicant had any medical conditions that would have been a basis for referring him to the Disability Evaluation System prior to his release from active duty in 1996. Based on a preponderance of the evidence, the Board determined the applicant's release from active duty by reason of weight control failure was not in error or unjust.

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.

12/9/2024

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, 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. 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.

3. 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 (DES) 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 (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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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 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. 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Chapter 18 (Failure to Meet Body Fat Standards) provides that Soldiers who fail to meet the body fat standards set forth in Army Regulation 600-9 (The Army Body Composition Program) are subject to separation per this chapter when such condition is the sole basis for separation.

b. Separation action may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to comply with and meet the body fat standards. Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter. If no medical condition exists, initiation of separation proceedings is required for Soldiers who do not make satisfactory progress in the program after a period of 6 months, unless the responsible commander chooses to impose a bar to reenlistment.

c. The service of Soldiers separated per this chapter will be characterized as honorable.

7. 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.

8. 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.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//