ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20230013652

APPLICANT REQUESTS: reconsideration of her prior request for a physical disability retirement.

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) in lieu of DD Form 149 (Application for Correction of Military Record)
- 4-page counsel's statement
- Department of Veterans Affairs (VA) Rating Decision, 30 December 2021

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 AR20180013614 on 16 October 2020.

2. The applicant defers to counsel.

3. In a 4-page statement, counsel states, in part:

a. His name is Retired Special Forces Warrant Officer R.C., 27 years of active duty. He is representing his mother-in-law (the applicant) about her experience while serving in the military. It appears that the military mishandled her injuries and sicknesses while conducting advance individual training (AIT) on active duty at Fort Huachuca, AZ. He is writing to request a review of her military discharge, which took place on 26 October 1979. Her discharge characterization was honorable, and the reason cited was expeditious. She respectfully submits this letter to explain her case and request reconsideration of her discharge status to be medically retired.

b. The applicant entered active duty in January 1979 with training at Fort Huachuca, AZ as an Imaging Specialist for intelligence. A careful review of her medical file and records, shows she was a victim of unwanted or abusive sexual experiences due to unknown etiology of gonorrhea. She complained of muscle spasms, lower back pain,

and left knee pain which led to a diagnosis of polyarthralgias gonorrhea and passive aggressive personality disorder. She was prescribed Tolectin 400 to serve as treatment for general pain. It is noted via the Food and Drug Administration website that "Tolectin 400" is no longer administered for human consumption and is now administered for veterinary purposes only. One of the major side effects is myocardial infarction (heart attack and stroke) as it was used to treat joint stiffness.

c. The applicant suffered a stroke in 2013 which is one of the leading side effects of the prescribed medication used to treat her illness while serving in the military during active duty training. She was placed under a hypnosis by Dr. C, MD, Captain, as he explained to her that this is a way of coping with pain while she was hospitalized at William Beaumont Army Medical Center (WBAMC), El Paso, TX in March 1979. Hypnosis is not an appropriate method for a Soldier in AIT while on active duty due to time away from her training requirements. She was informed this was to serve as a coping mechanism while in the line of duty, as she was not diagnosed as mentally, psychologically, and/or emotionally ill. Furthermore, she made many complains about the multiple muscle and joint pains. She visited sick call 57 times, and 7 visits between WBAMC and Raymond W. Bliss Hospital Fort Huachuca, AZ, and Letterman Army Medical Center Presidio of San Francisco, CA which started in March and continued through September of 1979. In her final days of active duty, she was faced with yet another episode of sickness which required her to visit the hospital on 21 September 1979.

d. Her persistent complaints of pain, muscle spasm, left knee pain, lower back pain, and her frequent visit to the hospital are illustrative of the mistreatment and misdiagnosis she received and the diagnosis that were overlooked and not in line with her then present symptoms. During this visit to Raymond W. Bliss Army Hospital. Fort Huachuca, AZ, the doctor that attempted to treated her that evening stated, "I cannot treat this patient of this level since she has been w/up by orthopedics and pathology being found" and he returned her to duty. The military is responsible for her developed mental health disorders. The constant demands for help, the unfair treatment, the stigma, and the culture bias towards her condition were the responsibility of the training center and the hospital during her active-duty training while at Fort Huachuca, AZ.

e. This neglect has left the applicant with severe depressed mood chronic, mental disorder, resentment, mixed anxiety, opposition to the demands of others, isolation, prejudice and dislike towards men, anxiety, and aggravation. As she received a rating from the VA as being service-connected for adjustment disorder with mixed anxiety and depressed mood-chronic of a 100% granted in December 2020. She took an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic as she raised her right hand. The United States government has turned their back on her and has repeatedly made mistakes. She entered the service to serve her country, and the military has a fundamental duty to protect, train, and equip her to

minimize the risks that one would face during their time in the service from bias, unfair treatment, sickness, harm, and to maintain good health. This obligation stems from the moral principle that individuals who voluntarily enter military service should not be unnecessarily exposed to bias, unfair treatment, unwanted abuse of authority, harm, and their well-being should be safeguarded to the highest extent possible. She understood the ethical dilemma that the military was facing about her situation. But the military failed in their obligation to her. Her medical condition was improperly handled and misdiagnosed, which led to an honorable discharge from active duty.

f. The United States Army at Fort Huachuca failed in addressing her complaints as a form of lack of due care as she visited multiple hospitals and was hospitalized for lower back pain, left knee pain, and diagnosed with polyarthralgias etiology gonorrhea and her passive aggressive personality as she spent 120 days away from training. Fact: According to the Army Training and Doctrine Command training standards, she should have been scheduled to be recycled to the next available class. But instead, she was sent to the medical evaluation board (MEB) for termination of service. This action appears to be unfair as she was placed on two profiles and not once did the leadership acknowledge her sickness nor did they recommend her for recycle. She should have been place in an out of training status until she healed from her injuries. *The complete 4-page statement was provided to the Board for their review and consideration.*

4. The applicant enlisted in the U.S. Army Reserve (USAR) on 30 March 1977. She entered initial active duty for training (IADT) on 20 May 1977 and she was awarded military occupational specialty (MOS) 91C (Clinical Specialist) upon completion of IADT.

5. The applicant was discharged from the USAR-Ready on 12 December 1978 for enlistment in the USAR Delayed Entry Program and in the Regular Army. She enlisted in the Regular Army on 29 January 1979 for training in MOS 96D (Image Interpreter).

6. A Standard Form 502 (Clinical record – Narrative Summary), dated 27 July 1979, shows the applicant complaint of multiple muscle and joint pain.

7. The applicant's MEB Proceedings, dated 17 August 1979, shows the applicant was evaluated for arthritis, post infectious, suspected, not proven; manifested by complaints of pain in multiple peripheral joints and the low back but without objective physical findings or substantiating laboratory or radiologic abnormalities. The MEB found her fit for duty and recommended her return to duty without limitations.

8. The applicant did not agree with the MEB's findings and recommendations and submitted an appeal expressing the reasons for her disagreement. She also indicated that she wanted to remain on active duty but at the time, she did not feel she could effectively perform her duties due to the constant pain and discomfort. *The complete applicant's appeal was provided to the Board for their review and consideration.*

9. On 9 October 1979, the applicant's commander recommended her separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31 (Expeditious Discharge Program) due to her demonstrated substandard performance of duty. The commander stated the following:

> Since being assigned to this unit on 30 January 1979, [the applicant] has had a long history of medical problems which have prevented her from performing normal duties. These problems caused her to spend excessive time at sick call, prevented her from performing normal physical fitness training and caused her to receive. special casual duty assignments which were compatible with her medical complaints. During this period, she was examined by two major Army Medical Centers, and she was medically boarded for discharge, The medical board returned [the applicant] to duty, with no profile on 10 September.
>
> Since being assigned for duty with no profile on 10 September, [the applicant] has been on sick call six times for varying reasons. She has attempted to participate in physical training only three times. She was recommended by her platoon sergeant to receive Article 15 punishment when, after being put on quarters after a dental appointment, she violated her platoon sergeant's orders and left her barracks fourth floor to spend an evening with a visitor on the company's second floor. I feel that she has avoided many other situations in which she could have been punished for her substandard duty performance but was not due to compassion for her problems with pain.
>
> After extensive medical examination, nothing can be found wrong with [the applicant]. She complains of back pain and has trouble even sitting at a classroom light table. I feel that if medical judgement is accepted [the applicant's performance of duty during the eight months is clearly substandard and intolerable. In my opinion, [the applicant] could not perform normally in any unit in the Army.
>
> [The applicant] recently asked to leave the Army. I believe it in the best interests of the Amy to discharge [the applicant].

10. On 9 October 1979, the applicant was informed by her commander that he was initiating action to separated her under the provisions of Army Regulation 635-200, paragraph 5-31, with an honorable character of service. The applicant was also advised of her right to decline the separation. However, if she declined and her subsequent conduct indicated that such action was warranted, she could be subjected to disciplinary or administrative separation procedures under other provisions of laws or regulations. She was further advised of her rights to consult with legal counsel and to submit statements in her own behalf.

11. The applicant acknowledged notification of the proposed separation and voluntarily consented to the separation. She also acknowledged she had been provided the opportunity to consult with counsel and that prior to the date the separation authority approves her discharge, she could withdraw her voluntary consent to this separation. She elected not to submit statements in her own behalf.

12. On 23 October 1979, the separation authority approved the applicant's separation and directed issuance of an Honorable Discharge Certificate. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 26 October 1979 under the provisions of Army Regulation 635-200, paragraph 5-31.

13. The applicant provided a VA Rating Decision, dated 30 December 2021, showing she was granted service-connected disability compensation for adjustment disorder with mixed anxiety and depressed mood, chronic, with an evaluation of 100% effective 16 December 2020.

14. 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.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 reconsideration of their prior denial of her request for a referral to the Disability Evaluation System (DES)

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows she entered the regular Army on 13 December 1988 and was honorably discharged on 26 October 1979 under the separation authority provided by paragraph 5-31 of AR 635-200, Personnel

Separations - Enlisted Personnel (15 August 1979): Expeditious Discharge Program. The military separation code of JGH denotes expeditious discharge.

d. The mental health aspects of this case with be addressed by an ARBA behavioral health advisor in a separate advisory.

e. This request was denied by the ABCMR on 16 October 2020 (AR20180013614). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

f. The only new document submitted with the case if a letter from her son in law. It reviews her career and what he asserts were mistakes by the Army.

g. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

h. Submitted medical documentation contains a medical evaluation board summary. It goes into depth about the applicant's evaluations and treatment for diffuse joint pains.

i. It states that despite multiple evaluations, labs, and no cause was found, and the only abnormal lab was a positive culture for gonococcus and "Therefore the presumptive diagnosis of disseminated gonococcemia and gonococcal arthritis was made." However, her physical examination was normal:

> "Head and neck examination are within normal limits. The lungs are clear to auscultation and percussion. The cardiovascular examination reveals no murmurs, rubs or arrhythmias. The abdomen is soft and without organomegaly. There is a small midline abdominal surgical scar, which is well healed and without evidence of hernias.
>
> Comprehensive neurologic examination reveals no abnormalities. There is no muscle atrophy. Range of motion of all joints in all four limbs is normal. Examination of the back shows a full range of motion and no apparent muscle spasm."

j. Upon completion of this evaluation, she was presented to the MEB (medical evaluation board) with the provider concluding:

> Prognosis: Member's condition is considered to be stable.

Diagnosis: 1. Arthritis, post infectious, suspected, not proven; manifested by complaints of pain in multiple peripheral joints and the low back but without objective physical findings or substantiating laboratory or radiologic abnormalities.

Recommendation: Private [Applicant] is considered to be fit for retention on active duty without profile limitations."

k. The applicant was present for but did not make a comment at her 17 August 1979 MEB. The MEB determined she was medically fit and recommended she be returned to duty without limitations, stating:

"Arthritis, post infectious, suspected, not proven; manifested by complaints of pain in multiple peripheral joints and the low hack but without objective physical findings or substantiating laboratory or radiologic abnormalities."

l. The applicant appealed the findings stating she wanted to remain on active duty but did not feel she could perform effectively given her pain. Her appeal was denied.

m. On 9 October 1979, her company commander recommended she be separated under paragraph 5-31 of 635-200. He stated "PFC applicant recently asked to leave the Army. I believe it is in the best interests of the Army to discharge PFC [Applicant]." On 9 October 1979, the applicant voluntarily consented to the proposed discharge action and declined to make a statement or submit a rebuttal on her behalf.

n. JLV shows she has been awarded three VA service-connected disability ratings: 100% for chronic adjustment disorder effective June 2014; 10% for degenerative arthritis of the spine effective December 2020; and 10% for limited flexion of the right knee effective May 2017. However, the DES only compensates an individual for permanent 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

o. It is the opinion of the ARBA medical advisor there is not enough probative medical information with which to identify a particular condition which failed medical retention standards and for which to refer her to the DES.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his mother-in-law's prior request for a physical disability retirement. On the DD Form 293, the applicant indicated Other Mental Health Issues and Sexual Assault/Harassment are related to the request. More specifically, the applicant contends the Service Member (SM) was the victim of unwanted sexual experiences due to unknown etiology of gonorrhea. Furthermore, it was documented that she complained of muscle spasms, lower back pain, and left knee pain which led to a diagnosis of polyarthralgia's, gonorrhea, and passive aggressive personality. 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: 1) the SM enlisted in the U.S. Army Reserve (USAR) on 20 March 1977. She entered IADT on 20 May 1977. The SM was discharged from the USAR Ready Reserve on 12 December 1978, 2) The SM enlisted in the Regular Army on 29 January 1979 for training in MOS 96D (image interpreter), 3) A Standard Form 502 (Clinical record – Narrative Summary) dated 27 July 1979 shows the SMs chief complaint as multiple muscle and joint pains, 4) The SM's MEB Proceedings dated 17 August 1979 shows the SM was evaluated for arthritis, post infectious, suspected, not proven; manifested by complaints of pain in multiple peripheral joints and the low back but without objective physical findings or substantiating laboratory or radiologic abnormalities. The MEB found her fit for duty and recommended her return to duty without limitations. The SM did not agree with the MEB's findings and recommendations and submitted an appeal expressing the reasons for her disagreement, 5) On 9 October 1979, the SM's commander recommended her separation under the provisions of AR 635-200, paragraph 5-31 (Expeditious Discharge Program) due to her demonstrated substandard performance of duty. In effect, the commander noted that the SM had a long history of medical problems that prevented her from performing normal duties, spent excessive time at sick call which prevented her from performing normal physical fitness training, and caused her to receive special causal duty assignments which were compatible with her medical complaints. It was also noted that since being returned to duty without profile on September 10, 1979, she had been to sick call for varying reasons, attempted to participate in physical training only three times, and was recommended by her Platoon Sergeant to receive and Article 15 for violating her Platoon Sergeant's orders, 6) the SM was honorably discharged on 26 October 1979 under the provisions of AR 635-200, paragraph 5-31.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the SM's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the SM's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records included as part of the SM's application were reviewed. The Narrative Summary dated 27 July 1979 shows the SM's chief complaint as multiple muscle and joint pains. The evaluating provider documented the course of the SM's health concerns, noted to have begun in 1977 for knee pain, which appeared to resolve and then presented again in February 1979, to which her knee pain was associated with all of her joints except the neck. The SM was air evacuated for a comprehensive evaluation on 31 March 1979. It was noted that a throat culture revealed gonococcus and thus a presumptive diagnosis of gonococcal arthritis was made. She was discharged to duty on 13 April 1979. She returned to the hospital on 11 May 1979 for further evaluation. The provider documented that a psychology consult "felt the patient had a mild passive, aggressive personality and felt that emotional factors were playing at least an interacting role in this patient's complaints." It was further documented that psychological testing showed a tendency towards a "passive dependent individual with mild depression" but there was no evidence to support a psychological component to the SM's complaints. The provider documented that hypnosis was used to try to control the SM's pain which produced no favorable response. She was discharged with a diagnosis of polyarthralgia's of undetermined origin. It was documented that she continued to report joint pains and report to sick call on multiple occasions and on 21 July 1979 was evacuated to WBAMC for an additional evaluation. The psychologist performed repeat testing and felt there was no support for the diagnosis of a passive aggressive personality. Her diagnosis was noted as Arthritis, post infectious, suspected, not proven; manifested by complaints of pain in multiple peripheral joints and the low back but without objective physical findings or substantiating laboratory or radiologic abnormalities. She was determined to be fit for retention on active duty without profile limitations. The MEB Proceedings form dated 17 August 1979 shows the SM was found fit for duty and was returned to duty without a profile. On 31 August 1979, as part of her rebuttal, the SM noted that the MEB proceedings mentioned that she had requested to go on pass during her hospital stay. In her response, the SM stated that she requested to go on pass to "get away from the hospital environment to put her mind at ease" and that "being confined usually brings on depression, and I'm trying my best not to let it get the best of me."

d. A VA Rating Decision letter dated 30 December 2021 shows the SM was granted 100% service-connection for Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic, effective 16 December 2020. Review of JLV shows she is also service-connected for Degenerative Arthritis of the Spine (10%) and Limited Flexion of the Knee (10%). There were two VA Compensation and Pension (C&P) examinations available for review dated 13 November 2021 and 19 October 2023. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood-Chronic at the time of her initial evaluation. During her second evaluation her diagnoses were noted as Adjustment Disorder with Depressed Mood and Possible Major Vascular Neurocognitive Disorder without Behavioral Disturbance (due to a stroke in 2012).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the SM met criteria for a psychiatric condition that failed medical retention standards IAW AR 40-501, Chapter 3-33 while in the military. Thus, a referral to the Disability Evaluation System (DES) is not warranted.

f. The SM was diagnosed with Passive-Aggressive Personality in-service, which falls under the purview of administrative separations and does not require disposition through medical channels. It is also of note that the diagnosis was later determined to be unsupported. It is acknowledged that the applicant asserted the SM was a victim of Military Sexual Trauma (MST), and under Liberal Consideration, the SM's self-assertion of MST alone is sufficient to establish that the SM was a victim of MST; however, there is insufficient evidence that the SM was diagnosed or treated for a psychiatric condition secondary to MST that caused her to fail medical retention standards from a behavioral health perspective IAW AR 40-501, Chapter 3-33.

g. Since being discharged from the military, the SM has been diagnosed and 100% service-connected through the VA for Chronic Adjustment Disorder. However, it is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of Chronic Adjustment Disorder through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even an in-service diagnosis of Chronic Adjustment Disorder is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Per AR 40-501, Chapter 3-33, a referral to the DES is required when the condition results in: 1) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, and/or 2) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. Review of the available medical documentation shows the SM sought medical treatment and was hospitalized on several occasions for persistent physical health concerns. There is insufficient documentation that she met criteria for a psychiatric condition that was of such severity she required a BH profile to document duty limitations or required extended or recurrent hospitalization due to a BH condition. Thus, although it is acknowledged that she was likely experiencing symptoms of anxiety and depression due to her ongoing medical conditions, the preponderance of the available evidence suggests her frequent medical visits and hospitalizations were due to physical health concerns and were not BH-related. As such, there is insufficient medical evidence that the SM failed medical retention standards due to Chronic Adjustment Disorder or Other Mental Health Issues IAW AR 40-501, Chapter 3-33 while in service and thus a referral to DES for BH reasons is not warranted.

h. Kurta Questions:

(1) Did the SM have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, medical advisory opinions, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board noted the applicant was present on 17 August 1979, when the MEB determined she was medically fit and recommended she be returned to duty without limitations. The Board concurred with the advisory official there is insufficient evidence the applicant was diagnosed or treated for a psychiatric condition secondary to MST that caused her to fail medical retention standards from a behavioral health perspective IAW AR 40-501, Chapter 3-33. Upon review of the applicant’s petition and available military record, the Board determined there is insufficient evidence to amend the previous Boards’ decision and show a medical retirement was warranted during her period of active service.

2. The Board considered the Kurta Questions:

(1) Did the SM have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

3. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

4. The Board agreed that the VA provides post-service support and benefits for service-connected medical conditions. The VA operates under different laws and regulations

than the Department of Defense (DOD). In essence, the VA will compensate for all service-connected disabilities. Variance in ratings does not indicate an error on the part of either entity.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 to amend the decision of the ABCMR set forth in Docket Number AR20180013614 on 16 October 2020.

//SIGNED//

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-31 of the regulation in effect at the time provided for the discharge of enlisted personnel who had completed at least 6 months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of

enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. It provided for the expeditious elimination of substandard, nonproductive Soldiers before board or punitive action became necessary. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge.

2. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the DES 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 or her office, grade, rank, or rating. It provides that a medical evaluation board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.

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 service.

b. A mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability presents with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the DES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty.

4. Title 38, United States Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

5. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

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

//NOTHING FOLLOWS//