

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20230013859

APPLICANT REQUESTS:

- in effect, duty related physical disability retirement in lieu of transfer to the Retired Reserve due to completion of 20 or more years of qualifying service for retirement pay at age 60
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- Department of Veterans Affairs (VA) First Addendum, Service Connection for Parkinson's Disease, 30 December 2016
- [REDACTED] medical record, 1 October 2018
- [REDACTED] medical record, 1 November 2018
- Radiological Consultation, 30 November 2018
- [REDACTED] medical record, 6 December 2018
- [REDACTED] medical record, 4 February 2019
- self-authored memorandum to the Physical Evaluation Board (PEB), 20 March 2020
- Veterans Affairs (VA) Chief, Neurology Section letter, 22 March 2020
- DA Form 199-1 (Formal PEB Proceedings), 26 June 2020
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service), 1 OCT 2020
- [REDACTED] Army National Guard (ARNG) Orders 0000763859.00, 22 October 2020
- VA Rated Disabilities printout, undated
- VA letter, 4 October 2023

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. He would like his medical discharge from the ARNG reevaluated. The PEB stated his Parkinson's Disease was not incurred in the line of duty (LOD). He believes the military records and PEB decision are unjust due to the fact that his neurologist, Dr. [REDACTED] believed his Parkinson's Disease diagnosis was related to burn pit exposure in Afghanistan in 2008 and 2011. He was surrounded by burn pits at several locations during those deployments and his doctors believe they were directly connected to his Parkinson's Disease.

b. He believes the formal PEB was hasty in determining his military retirement/future in a phone call during Covid-19 restrictions in July 2020, with the decision being made in less than 10 minutes after the interview.

c. His Parkinson's Disease has greatly affected his life and well-being to the point where, not only did he have to retire from the Army, but his civilian employment as a police officer has also ended due to being unable to physically perform any longer in that capacity.

d. The PEB determined his Parkinson's Disease was not compensable because it was not diagnosed on or treated during a period of active duty longer than 30 days, that the disease was not incurred in the LOD during a period of war, and that he would not be able to live or function without restrictions in any geographic or climatic area without worsening conditions.

e. After being diagnosed with Parkinson's Disease in 2018, and learning more about the disease, he can say his symptoms began as early as 2012, with slow movement and small writing. As his symptoms progressed throughout the years until 2018, they became significantly worse, ultimately leading to his diagnosis.

f. His life has been completely altered by the disease. After the initial diagnosis, he began taking a medication called Rasagiline that affect his diet so much that there were several things he could no longer eat or drink. Another medication, Sinemet, was added and due to the nature of that medication, he could not eat an hour before or after the dosing, which took place very day at 0600, 1030, 1330, 1930, and midnight. As a result, he lost a lot of weight, became fatigued and had a difficult time sleeping. A side effect of the medication is dyskinesia, which is painful and made it difficult for him to walk, write, and affected everything he did on a daily basis.

g. He worked as a police officer for the city of [REDACTED] from 2012 to 2023, when he was medically retired. Much like when he was in the Nevada ARNG, he worked with his Parkinson's Disease until he was no longer able to function at work. On 31 March 2021, he received a VA Rating Decision stating he was to be considered totally and permanently disabled due solely to his service-connected disabilities.

e. On 29 April 2022, he went to [REDACTED] VA PADRECC (Parkinson's Disease Research, Education, and Clinical Center), where he had deep brain stimulation surgery, wherein two neurostimulator probes were placed into his brain and a battery placed into the right side of his chest. This surgery solidified his inability to ever serve as a police officer again. Even though the surgery has improved his symptoms, he will take medication for the rest of his life and need follow-up surgeries to replace the battery in his chest and be prevented from doing many activities he loved to do.

f. Parkinson's Disease is a chronic disease that he believes the PEB failed to consider when saying it wasn't treated over a 30-day period of active duty and wasn't incurred in the LOD during a period of war. After coming home from his deployment in Afghanistan in 2011, he was never on active duty again, but served in [REDACTED] ARNG for 9 more years, never missing drill duty or annual training.

g. It is his believe, along with that of his doctors, that his Parkinson's Disease is the result of wartime service in Afghanistan. He believes he would still be in the ARNG and a police officer today if it weren't for Parkinson's Disease. As you know, there is no cure. He appreciates the Board reviewing his discharge and whether his Parkinson's Disease was the result of wartime service.

3. After 4 years of honorable enlisted service in the U.S. Marine Corps from August 1997 through August 2001, and a subsequent period of service in the U.S. Marine Corps Reserve, the applicant enlisted in the ARNG on 26 June 2003.

4. The applicant was honorably discharged from the ARNG after 2 years, 5 months, and 20 days on 15 December 2005, for the purpose of accepting appointment as a commissioned officer.

5. The applicant was appointed a Reserve commissioned officer of the Army on 16 December 2005

6. Multiple DD Forms 214 (Certificate of Release or Discharge from Active Duty) show the applicant was ordered to active duty during the following periods for the following reasons:

a. He was ordered to active duty in support of Operation Enduring Freedom on

2 January 2008, with service in Afghanistan from 10 March 2008 through 8 December 2008. He was honorably released from active duty on 21 January 2009, due to completion of required active service and transferred back to his ARNG unit. He was credited with 1 year and 20 days of net active service this period.

b. He was ordered to active duty operational support (ADOS) in support of mobilization support for Operation Enduring Freedom 11-13 on 1 May 2010, with duty location unlisted. He was honorably released from active duty on 6 January 2011, due to completion of required active service and transferred back to his ARNG unit. He was credited with 6 months and 6 days of net active service this period.

c. He was ordered to active duty in support of Operation Enduring Freedom on 7 January 2011, with service in Afghanistan from 24 February 2011 through 4 January 2012. He was honorably released from active duty on 30 March 2012, due to completion of required active service and transferred back to his ARNG unit. He was credited with 1 year, 2 months, and 24 days of net active service this period.

7. Multiple [REDACTED] medical records, dated between 1 October 2018 and 4 February 2019, have been provided in full to the Board for review and detail the applicant's symptoms of Parkinson's Disease.

8. A State [REDACTED] Office of the Military memorandum, 1 February 2019, notified the applicant of his eligibility for retired pay for non-regular service upon his application at age 60, as he completed the required years of service.

9. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), and DA Form 199 (Informal PEB Proceedings) are not in his available service records for review.

10. A self-authored memorandum to the PEB, 20 March 2020, shows the applicant requested a formal PEB hearing regarding his Parkinson's Disease as it related to his military service. He requested that the findings of the MEB be reconsidered as it is his doctor's opinion that his Parkinson's Disease is the result of his exposure to toxic material during his deployments in Afghanistan. Parkinson's Disease is not an acute medical disorder, but rather a neurological disorder that is progressive, with an insidious onset of difficulty performing activities of daily living. This is not a disease that could have been noticed over a 30 day period in an active duty status.

11. A VA Chief, Neurology Section letter, 22 March 2020, shows the author of the letter strongly supported the probability of a direct connection between the applicant's Parkinson's Disease and his exposure to burn pits during his deployments in

Afghanistan in 2008 and 2011. He provided a VA board remand award of service-connection for Parkinson's disease as a result of burn pit exposure pertaining to another veteran for reference.

12. A DA Form 199-1 shows:

a. A formal PEB convened on 26 June 2020, where the applicant was found physically unfit and that his disposition be referral for case disposition under Reserve Component Regulations.

b. His unfitting condition is Parkinson's Disease (non-duty related) and not ratable.

c. During the formal board, the applicant requested his Parkinson's Disease be found duty-related or referred for an LOD determination. He presented testimony and exhibits. He testified he deployed to Afghanistan in 2008 and again in 2011 and while delayed, he was exposed to burn pits, burning tires, near-by sewage ponds and incinerator use by the Afghans. He testified he noticed his right hand was very fatigued in 2012 with cramping and numbness and gradual worsening on the right side of his body. He was eventually diagnosed in 2018. He testified that he had not had a period of active duty since his deployment in 2011.

d. After reviewing all available evidence, the formal board found the preponderance of the evidence supports sustaining the decision of the informal board finding that his Parkinson's Disease is unfitting and non-duty related. This condition is not compensable because it was not diagnosed or treated on a period of active duty longer than 30 days.

e. The PEB made the findings that the disability disposition is not based on disease or injury incurred in the LOD in combat with an enemy of the U.S. and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war and the disability did not result from a combat-related injury.

f. On 7 July 2020, the applicant signed the form indicating he concurred with the findings and recommendations of the formal PEB.

13. The applicant's NGB Form 22 shows he was honorably discharged from the ARNG effective 1 October 2020 and transferred to the U.S. Army Reserve (USAR) Control Group (Retired Reserve), with the reason unlisted. The remarks show the applicant elected retirement and transfer to the Retired Reserve.

14. [REDACTED] ARNG Orders 0000763859.00, 22 October 2020, honorably discharged the applicant from the ARNG and transferred him to the Retired Reserve effective 2 October 2020, due to completion of 20 years' service.

15. An undated VA Rated Disabilities printout, presumably pertaining to the applicant although his name is not listed on the document, reflects a combined service-connected disability rating of 100 percent for the following conditions:

- speech impairment, left side nerve impairment, 10 percent effective 31 March 2021
- impaired chewing and swallowing, right side nerve impairment, 10 percent effective 31 March 2021
- Parkinson's facies, left side nerve impairment, 10 percent effective 31 March 2021
- speech impairment, right side nerve impairment, 10 percent effective 31 March 2021
- right shoulder impingement syndrome with labral tear, including SLAP, 20 percent effective 12 August 2017
- nerve impairment of the right upper extremity with reduced grip, dyskinesia and bradykinesia, 40 percent effective 31 March 2021
- nerve impairment of the left upper extremity with reduced grip, rigidity, dyskinesia and bradykinesia, 30 percent effective 31 March 2021
- stooped posture with back rigidity, right side nerve impairment, 10 percent effective 31 March 2021
- erectile dysfunction, 0 percent effective 31 March 2021
- Parkinson's facies, right side nerve impairment, 10 percent effective 31 March 2021
- major depressive disorder, 70 percent effective 31 March 2021
- hearing loss, left ear, 0 percent effective 23 January 2018
- balance impairment, 30 percent effective 30 November 2018
- constipation, 10 percent effective 30 November 2018
- dysarthria with speech changes, 10 percent effective 30 November 2018
- right lower extremity nerve impairment including rigidity, dyskinesia and bradykinesia, 20 percent effective 30 November 2018
- impaired chewing and swallowing, left side nerve impairment, 10 percent effective 31 March 2021
- stooped posture with back rigidity, left side nerve impairment, 10 percent effective 31 March 2021
- tinnitus, 10 percent effective 23 January 2018
- left lower extremity nerve impairment including rigidity, dyskinesia, and bradykinesia, 20 percent effective 31 March 2021

16. A VA letter, 4 October 2023, shows the applicant has a combined service-connected evaluation of 100 percent and is considered totally and permanently disabled due solely to his service-connected disabilities effective 31 March 2021.

17. Title 38, USC, 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.

18. 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 a reversal of the physical evaluation board's finding that Parkinson's disease had existed prior to service (EPTS) and that his disability discharge disposition be changed from separated without benefits to permanent retirement for physical disability. He states:

"I believe these military records and PEB decision is unjust due to the fact my Neurologist, Dr. [REDACTED] believed my Parkinson's Disease diagnosis was related to burn pit exposure in Afghanistan in 2008 and 2011.

I believe the Formal Physical Evaluation Board was hasty in determining my military retirement/future in a phone call during Covid-19 restrictions in July of 2020; where the decision after the interview was made in less than 10 minutes.

My Parkinson's Disease has greatly affected my life and well-being to the point where not only did I have to retire from the Army, but my civilian employment as a police officer has also ended due to being unable to perform physically any longer in that capacity."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by [REDACTED] Army National Guard show the applicant was transferred to the United States Army Retired Reserve effective 2 October 2020

d. The applicant received his notification of eligibility for retired pay for non-regular service (aka 20-year letter) on 1 February 2019.

e. The applicant was diagnosed with Parkinson's disease in December 2018 and placed on a permanent duty limiting physical profile for "Parkinson's" on 17 April 2019.

f. In a 9 July 2019 memorandum from the Nevada ARNG, the applicant was informed he was medically disqualified for further service due to his Parkinson's. He was given his options of either transferring to the Retired Reserve because he already had his 20-year letter or a non-duty related physical evaluation board. He elected for the board.

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

h. His informal Physical Evaluation Board (PEB) proceedings were not available for review. The applicant's appeal letter makes it clear the PEB found his Parkinson's was unfitting for continued service, found it had not been incurred in the line of duty and was therefore non-compensable, he had requested a formal PEB.

i. The Soldier was telephonically present for and represented by regularly appointed counsel at his formal PEB on 26 June 2020. Following the applicant's testimony and presentation of evidence, the formal PEB maintained the condition had not been incurred in the line of duty:

"DURING THE FORMAL BOARD the Soldier requested Parkinson's disease (PD) [non-duty related] be found duty-related, or referred for line of duty determination, and presented testimony and exhibits. The Soldier testified that he deployed to Afghanistan in 2008 and again in 2011. While deployed, he was exposed to burn pits, burning tires, near-by sewage ponds and incinerator use by the Afghanis.

In 2012 he testified he noticed that his right hand was very fatigued, especially with handwriting, and he experienced cramping, numbness, and gradual worsening on the right side of his body. In 2016, he sought treatment for shoulder pain, had surgery on his right shoulder, but continued to experience worsening on the right side of the body which eventually led to the diagnosis of PD in 2018.

The Soldier testified that he has not had a period of active duty since the deployment in 2011.

The Board notes that the most definitive investigation on this putative connection was conducted by the Institute of Medicine, now the National Academies of Science, Engineering and Medicine. "Long-term health consequences of exposures to burn pits in Iraq and Afghanistan (2011) <http://nap.edu/13209>" is the result of the Department of Veterans Affairs (VA) asking for an investigation to determine the long-term health effects from exposure to burn pits in Iraq and Afghanistan. Page 90 of 193 states "Based upon its review of the literature, the committee concludes that there was inadequate/insufficient evidence for an association between combustion products and nervous system disease or neurobehavioral effects in the populations studied."

Other literature has looked at the effects of other environmental factors including exposure to hydrocarbon solvents, particularly trichloroethylene (TCE). Dr. [REDACTED] exhibit annotates that while the Soldier was at Camp Lejeune, the levels were lower than they had been previously. The conclusion from current literature ("Etiology and pathogenesis of Parkinson disease" UpToDate MAY 2020) is "The evidence is inconclusive" for putative risk factors including TCE. "Parkinson's disease: evidence for environmental risk factors. (Kiebertz, et al, SO Mov Disord. 2013 Jan;28(1):8-13.)

Epub 2012 Oct 24" (online) stated the evidence for other environmental exposures causing Parkinson disease is "limited or conflicting". It is noted that the Soldier does not have a line of duty for this condition and it was not diagnosed while on a period of active duty greater than 30 days. After reviewing all available evidence, the Formal Board finds the preponderance of the evidence supports sustaining the decision of the Informal Board finding Parkinson disease unfitting and non-duty related."

j. On 7 July 2020, the applicant concurred with the PEB's finding and recommendation.

k. The onset of applicant's Parkinson's disease was between periods of service and therefore was essentially found to have existed prior to service (EPTS) Paragraph 4-8e(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 April 2004) states:

"(1) The term "EPTS" {existed prior to service} is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying

condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly precludes a determination that it started during short tours of authorized training or duty."

I. The AR 600-8-4 glossary definition of existed prior to service:

"Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training, or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)"

m. It is the opinion of the ARBA medical advisor there is insufficient probative evidence to warrant a reversal of the formal PEB's findings or a referral of his case to the DES.

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, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official. Based on this, the Board determined the applicant's PEB decision at the time of separation was appropriate and a change in his retired status or change to a physical disability retirement is not warranted.

2. 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.

4/15/2025

X

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CHAIRPERSON

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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. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

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

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise 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.

3. Army Regulation 635-40 (Disability 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.

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

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

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

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

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

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

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

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

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

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

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

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

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be

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

9. 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//