

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230014749

APPLICANT REQUESTS:

- physical disability retirement in lieu of physical disability separation with severance pay
- 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

FACTS:

1. The applicant states:

a. The Medical Evaluation Board (MEB) found him unfit and the Department of Veterans Affairs (VA) awarded him a 100 percent disability rating for everything that was wrong with him and had not prevented his service. His referred MEB condition was found to be 0 percent disabling and yet he was forced out because of it instead of being allowed to reach 20 years.

b. He served for 4 years as a U.S. Marine then voluntarily came back after an 11 year break to fight in the war on terror out of patriotism. Then, when he started having unexplainable, service-connected blood clots, he was forced out and not allowed a military retirement. Instead, he was told to take a severance or get nothing. He still has the condition for which he was referred to the MEB and feels he was taken advantage of due to being under severe physical and emotional duress. It was his full intention to complete at least 20 years of active Federal service and is seeking an Army retirement.

c. In February 2021, he collapsed and was hospitalized while still serving in an Active Guard/Reserve (AGR) status, indefinitely activated under Title 10 as a member of the U.S. Army Reserve (USAR). He had been on active-duty orders in an AGR status since September 2009. After collapsing, he was admitted to the [REDACTED]. After 36 hours, he was transferred to [REDACTED].

for retirement. Instead, it was stated that his clotting disorder cannot be solved, but it is acknowledged as being service connected. He has also registered with the burn pit registry and has photos of himself at burn pits along with documentation from medical personnel regarding the dangers and toxins in the areas where he was assigned and working in Afghanistan. At this point, he was dismissed and granted a severance check which he was told to either accept or get nothing and now he gets 100 percent disability from the VA for everything that was not bad enough to separate him for before he received a 0 percent disability from the Army for what was keeping him from serving.

h. In summary, how is it that he cannot serve based on his referred condition, but he can be awarded 0 percent disability and no retirement? Granted, his other conditions from nearly two decades of military service and combat afforded him a VA categorization as being 100 percent totally and permanently disabled, but the actual condition that precludes his continued service is service-connected, unexplainable, and led the Army to separate him against his will. He is asking to be awarded an active duty military medical retirement in addition to his VA disability and that it be backdated to 15 April 2022, which was his last day of active-duty service.

i. He feels he was taken advantage of while under serious physical duress and quickly shuttled out the door, but not before assigning him to a final, high stress job while he was struggling to even eat without pain. Most people with major blood clots in major arteries were not assigned a yearlong, high stress duty while attempting to recover. Since his referred condition is service-connected and not to be service-connected by the Army, how is it that it is bad enough for him to not be able to serve, but not bad enough to award him a medical retirement? Additionally, his VA rating is already 100 percent without his clotting condition that led to his dismissal. To him, this seems very odd and almost as if, since his condition could not be explained, the Army would rather send him home and forget about him. He had received no follow-ups and honestly feels he was pushed out of the Army when he deserved to be medically retired in addition to his VA disability.

2. After 4 years of prior honorable enlisted service in the U.S. Marine Corps, an 11 year break in service, and a brief period of honorable enlisted service in the Army National Guard (ARNG), the applicant was appointed as a Reserve commissioned officer of the Army, effective 31 August 2007.

3. The applicant remained in the USAR assigned to a Troop Program Unit (TPU) from the time of his appointment until 19 September 2009, when he entered active duty in the USAR in an AGR status.

4. The applicant served in Afghanistan from 25 May 2010 through 15 March 2011.

5. 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), VA Compensation and Pension (C&P) Exam, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

6. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. An informal PEB convened on 13 January 2022, where the applicant was found physically unfit with a recommended rating of 0 percent and that his disposition be separation with severance pay.

b. The applicant's unfitting condition is superior mesenteric artery thrombosis requiring anticoagulation and superior mesenteric artery thrombosis status post thrombectomy abdominal surgery with residual abdominal pain (MEB diagnoses (Dx) 1 and 2), 0 percent.

c. The applicant first sought treatment for this condition on 23 February 2021, at [REDACTED]. He was experiencing extreme abdominal pain and went to the emergency room. He underwent emergent exploratory laparotomy and superior mesenteric artery thrombectomy. In accordance with Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the applicant is unfit because the DA Form 3349 functional activity limitations associated with this condition make him unable to reasonably perform required duties. Although the VA Code Sheet lists right hip iliac artery aneurysm and superior mesenteric artery thrombosis requiring anticoagulation status post thrombectomy abdominal surgery together, and awarded 0 percent for it, the discussion in the narrative portion of the VA Rating Decision discusses how the rating for the superior mesenteric artery thrombosis requiring anticoagulation status post thrombectomy abdominal surgery was determined. Per the applicant's DA Form 3947, his right hip iliac artery aneurysm condition meets retention standards and there is no indication that it is unfitting.

d. The PEB determined the applicant is fit for the conditions in MEB Dx 3-42.

e. Section VI: (Instructions and Advisory Statements) shows the Selected Reserve Soldier with at least 15 and less than 20 years of qualifying service, who would otherwise be qualified for nonregular retirement may waive separation with or without severance pay to request early qualification for retired pay. When the Soldier is eligible for and elects acceptance of disability severance pay, the Soldier forfeits all right to a nonregular retired status based on their current qualifying status. There are no statutory provisions to repay disability severance pay to then receive nonregular retired pay.

f. The applicant signed the form on 20 January 2022, indicating:

(1) He had been advised of the findings and recommendations of the informal PEB and received a full explanation of the results of the findings and recommendations and legal right pertaining thereto

(2) He concurred with the findings and recommendations and waived a formal hearing of his case.

(3) He did not request reconsideration of his VA ratings.

(4) He elected separation with entitlement to receive disability severance pay or separation without entitlement to disability benefits, as applicable. He understood that if he elected separation with severance pay, he forfeit his rights to receive retired pay when he would otherwise be eligible to receive such pay.

7. U.S. Army Human Resources Command (AHRC) Orders 039-0001, dated 8 February 2022 released the applicant from attachment to the USARC and attached him to the Fort Bragg Transition Center for separation processing, effective 14 February 2022, and discharged him from the USAR, effective 15 April 2022, with 0 percent disability and entitlement to separation pay.

8. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows effective 14 April 2022, he completed 18 years, 10 months, and 15 days of qualifying service for retirement.

9. The applicant's DD Form 214 shows he was honorably discharged on 15 April 2022, under the provisions of AR 635-40, due to disability with severance pay, non-combat related, with corresponding separation code JEB. He was credited with 12 years, 6 months, and 27 days of net active service this period; 4 years, 11 months and 10 days of total prior active service; and 5 years and 22 days of total prior inactive service.

10. 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.

11. 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 requesting additional conditions be determined to have been unfitting for continued service, a corresponding increase in his military disability rating, and that his disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. He states:

“MEB found me unfit and VA awarded me 100% disability for everything that was wrong with me that had been wrong and had not prevented my service. My referred MEB condition was found to be 0% disabling and yet I was forced out for it instead of being allowed to continue to reach 20 years.

I served four years as a Marine then came back after an 11-year break to fight in the War on terror. Then when I start having unexplainable, service-connected blood clots I'm forced out and not allowed a military retirement. Instead, I'm told take a severance or get nothing.

I still have my referred condition and feel that I was taken advantage of due to being under severe physical and emotional duress.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former USAR Officer entered active duty on 19 September 2009 and was separated with \$299,380.20 of disability severance pay under provisions in paragraph 4-27c(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES

processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA Disability Benefits Questionnaires (DBQ – aka C&P examinations) covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

g. On 9 September 2021, the applicant was referred to the IDES for "Superior mesenteric artery thrombosis requiring anticoagulation." The applicant claimed 33 additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ) and a separate Statement in Support of Claim (VA form 21-4138).

h. A medical evaluation board (MEB) determined he had two conditions which failed the medical retention standards of AR 40-501, Standards of Medical Fitness: "Superior mesenteric artery thrombosis requiring anticoagulation" and "Superior mesenteric artery thrombosis s/p thrombectomy abdominal surgery with residual abdominal pain." On 3 November 2021,

i. On 13 January 2020, the applicant's informal PEB found his "Superior mesenteric artery thrombosis requiring anticoagulation and superior mesenteric artery thrombosis status post thrombectomy abdominal surgery with residual abdominal pain" his sole unfitting condition for continued military service. They found the 40 remaining medical conditions not unfitting for continued service.

j. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 0% and because his final rating was less than 30%, the PEB recommended he be separated with disability severance pay. His 0% disability rating from his 21 December 2021 VA Disability Evaluation System Proposed Rating:

“Proposed entitlement to service connection of right hip Iliac artery aneurysm with superior mesenteric artery thrombosis requiring anticoagulation status post thrombectomy abdominal surgery (also claimed as celiac) for Department of Veterans Affairs (VA) benefits ...

We have assigned a 0 percent evaluation for your right hip Iliac artery aneurysm with superior mesenteric artery thrombosis requiring anticoagulation status post thrombectomy abdominal surgery (also claimed as celiac) based on:

- A diagnosed disability with no compensable symptoms

This is the highest schedular evaluation allowed under the law for aneurysm, any small artery. (38 CFR 4.104)

Additionally, a higher evaluation of 100 percent is not warranted for aortic aneurysm: ascending, thoracic, or abdominal unless the evidence shows:

- 5 centimeters (cm) or larger in diameter; or,
- If symptomatic (e.g., precludes exertion); or,
- Requires surgery. (38 CFR 4.104)”

k. On 20 January 2022, after being counseled on the PEB’s findings and recommendation by his PEBLO, the applicant concurred with the Board’s findings, waived his right to a formal hearing, declined the opportunity to have the VA reconsider his disability ratings, and elected to receive severance pay rather than be transferred to the Retired Reserve and receive a nonregular retirement when eligible.

l. Reserve component Service Members in the DES who have a military disability rating less than the 30% required to be permanently retired for physical disability and have 15 but less than 20 years of creditable service make an additional election under 10 USC §12731b. The Service Member’s PEB liaison officer explains this election to with Service Members: The Service Member must make the irrevocable election to either be transferred to the Retired Reserve after which they will receive their non-regular retirement when eligible or choose to separate with disability severance pay.

Because the severance pay is recouped by the VA unless one or more of the disabilities is combat related, and because years or even decades of non-regular retirement pay along with other benefits like Tricare typically far outweigh the value of a single disability payment, the vast majority of Service Members in this position elect transfer to the Retired Reserves.

m. The applicant elected to receive \$299,380.20 of disability severance pay and forfeit his future non-regular retirement when he marked the election:

“I elect separation with entitlement to receive disability severance pay or separation without entitlement to disability benefits, as applicable. I understand that if I elect separation with severance pay, I forfeit my rights to receive retired pay when I would otherwise be eligible to receive such pay.”

n. Review of his PEB case file in ePEB along with his encounters in the EMR revealed no substantial inaccuracies or discrepancies.

o. His final Field Grade Plate (O4 - O5; CW3 - CW5) Officer Evaluation Report covered his final year of Service, from 6 April 2021 thru 5 April 2022 and shows he was a successful Officer. His rater opined:

“MAJ [Applicant]’s ability to both inform, influence, educate, and persuade is only matched by his ability evaluate extraordinarily complicated situations and apply sound reasoning, and effective leadership to accomplish the mission. Without question one of the most capable field grade officers I know.”

p. His senior rater marked him as “Highly Qualified” stating:

“MAJ Hughes is in the top 10% of field grade officers in the directorate. He has unlimited potential for success in his future endeavors. Select for the most challenging assignments and send to the most arduous educational opportunities.”

q. There is insufficient probative evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for a rereferral of his case to the Disability Evaluation System. Furthermore, there is no evidence that an additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his separation.

r. JLV shows was awarded numerous VA service-connected disability ratings. 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.

s. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted. The opine noted there is insufficient probative evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards.

2. The Board determined there is insufficient evidence to support the applicant's contentions for a physical disability retirement in lieu of physical disability separation with severance pay. The Board found on 3 November 2021, the applicant concurred with the PEB Board's decision and declined the opportunities to request an Impartial Medical Review and/or submit a written rebuttal. Furthermore, the applicant's record shows on 20 January 2022, after being counseled on the PEB's findings and recommendation by his PEBLO, the applicant concurred with the Board's findings, waived his right to a formal hearing, declined the opportunity to have the VA reconsider his disability ratings, and elected to receive severance pay rather than be transferred to the Retired Reserve and receive a nonregular retirement when eligible. The Board agreed, based on the preponderance of evidence and regulatory guidance, referral to DES is without merit and denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.

4/9/2025

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, 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 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.

2. AR 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.

3. 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.

4. Army Regulation 135-180 (Army National Guard (ARNG) and Reserve – Retirement for Regular and Non-Regular Service) prescribes policy and procedures governing the granting of retired pay for non-regular service to Soldiers in the ARNG, Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR).

a. Chapter 2 (Criteria for Retired Pay) provides the age and service requirements, basic qualifying service requirements, and other service requirements to receive retired pay.

b. Paragraph 2-1 (Age requirements) shows to be eligible for retired pay, an individual must have attained the minimum age prescribed by law, which is age 60.

c. Paragraph 2-2 (Basic qualifying service requirements) states to be eligible for retired pay at or after the age specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following:

(1) A minimum of 20 creditable years of qualifying service computed under Title 10, U.S. Code section 12731 (f), or

(2) At least 15 and less than 20 years of qualifying service, computed under Title 10 U.S. Code, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in Title 10 U.S. Code, section 12731 (b) exist.

d. Paragraph 2-3 (Other service requirements) shows numerous additional Army Reserve component requirements, to include an applicant must not have elected to receive disability severance pay in lieu of non-regular retired pay. Reserve personnel involuntarily relieved from active service who are not eligible for retired pay at the time of release, but who are paid readjustment pay are eligible to receive retired pay under this regulation provided they are otherwise qualified at a later date.

5. 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.

6. 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.

7. 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.

8. 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//