

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240000017

APPLICANT REQUESTS: in effect –

- correction to his Physical Evaluation Board (PEB) disability rating
- to have his injuries considered to have been incurred in the line of duty in combat with an enemy of the United States and as the result of armed conflict; or caused by an instrumentality of war and incurred in the line of duty during a period of war
- personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- DD Form 4, Enlistment/Reenlistment Document-Armed Forces of the United States, 29 June 2018
- DA Form 3340, Request for Reenlistment or Extension in the Regular Army, 26 June 2018
- DA Form 199, Informal PEB Proceedings, 13 November 2020
- Orders 349-0153, 14 December 2020
- Enlisted Record Brief, 1 March 2021
- Department of Veterans Affairs (VA) Rating Decision, 15 March 2021
- VA Rating Benefits letter, 17 March 2021

FACTS:

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

2. The applicant states, in effect, his disability rating at the time of his medical retirement does not include his bilateral hip issues (which occurred during deployment and peer training exercises throughout Europe during Operation Atlantic Resolve). His hip issues, traumatic brain injury (TBI), and anxiety were not considered to be incurred in the line of duty in combat with an enemy of the United States and as the result of

armed conflict; or caused by an instrumentality of war and incurred in the line of duty during a period of war. He further states:

a. His issues required surgery shortly after returning from deployment. Even after bilateral surgery, the hip issues resulted in him becoming physically unfit to perform his duties as the result of wear and tear on the joints incurred in the line of duty during Operation Atlantic Resolve. The PEB also did not rate, nor did they find his TBI and anxiety to be a combat related injury despite multiple improvised explosive device (IED)/explosively formed penetrator blasts and other engagements during Operation Iraqi Freedom, Iraq during the period 2006-2007, and further operations in Wardak Province Afghanistan during the period 2009-2010.

b. He believes his hip issues, TBI, and anxiety were not correctly rated and were not considered to be incurred in the line of duty in combat with an enemy of the United States and as a result of armed conflict; or caused by an instrumentality of war and incurred in the line of duty during a period of war when they should have been.

c. He is requesting rating increases for at least the hip issues and to show the TBI and anxiety are presumptively related to his combat tours. Currently he is only rated for congenital spinal stenosis with spondylolysis and left sciatic radiculopathy combined at 30%. He believes his hip issues should have been included in the rating under the belief that the condition prevents him from being able to execute security and installation law and order operations and conduct security and mobility support on the battlefield while wearing and carrying approximately 80 pounds of uniform and protective equipment in completion of his primary military occupational specialty (PMOS) duties.

3. The record shows the applicant enlisted in the Regular Army on 2 February 2006 and held PMOS of 31B, military police.

4. The applicant appeared before an informal PEB (IPEB) on 13 November 2020. The IPEB found the applicant's medical condition of congenital spinal stenosis with spondylolysis and left sciatic radiculopathy to be unfitting. The board recommended a disability rating of 30% and permanent disability retirement.

a. The IPEB evaluated several other conditions that were found to be fitting. These conditions included TBI, anxiety, chest and heart pain secondary to anxiety, left sciatic radiculopathy, right hip status post labrum tear and repair, and left hip status post labrum tear and repair, and left hip degenerative arthritis.

b. The IPEB further found:

(1) The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed

conflict or caused by and instrumentality of war and incurred in the line of duty during a period of war.

(2) The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

c. This case was adjudicated as part of the Integrated Disability Evaluation System.

d. The applicant's disability retirement was not due to a disability incurred in the line of duty in a combat zone or as the result of performing combat related operations.

e. On 25 November 2020, the applicant concurred the PEB findings and recommendations and waived a formal hearing. He elected not to request reconsideration of his VA ratings.

f. The Secretary of the Army approved the PEB proceedings on 30 November 2020.

5. On 26 February 2021, the applicant was released from active duty. He completed 15 years, and 25 days of net active service. His DD Form 214 shows in –

- Block 23, Type of Separation – Release from Active Duty (should be retired)
- Block 24, Character of Service – Honorable
- Block 25, Separation Authority – AR 635-40, Personnel Separations-Disability Evaluation for Retention, Retirement or Separation, Chapter 4
- Block 26, Separation Code – SEJ
- Block 27, Reentry Code – NA
- Block 28, Narrative Reason for Separation – Disability, Permanent

6. The applicant provides:

a. His indefinite reenlistment documents executed on 29 June 2018.

b. His VA rating decision, 15 March 2021, which shows the applicant is service-connected for TBI and numerous hip conditions. He was denied service-connection for his anxiety. He was granted a disability combined rating of 90%.

7. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

8. Title 38, U.S. Code, permits the VA to award compensation for disabilities which were incurred in or aggravated by active military service. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

9. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances: as a direct result of armed conflict, while engaged in hazardous service, under conditions simulating war, caused by an instrumentality of war.

10. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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 (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/or 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 an increase in his military disability rating; to have multiple conditions - to include traumatic brain injury (TBI), Anxiety, and bilateral "hip issues" - determined to have been unfitting for continued service prior to his disability retirement; and reversal of the United States Army Physical Disability Agency's (USAPDA) determinations that none of his unfitting disabilities were combat related. He states in part:

"Applicant's disability rating at time of medical retirement does not include bilateral hip issues. Applicant's hip issues, TBI, and Anxiety was not considered to be incurred in the line of duty in combat with an enemy of the United States and as a result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war.

Even after bilateral surgeries the hip issues resulted in the applicant becoming physically unfit to perform his duties as the result of wear and tear on the joints incurred in the line of duty during Operation Atlantic Resolve. The PEB also did not rate nor find the TBI and Anxiety to be a combat related injury despite multiple IED/EFP [improvised explosive device / explosively formed penetrator] blasts and other engagements during Operation Iraqi Freedom, Baghdad, Iraq 2006-2007, and further operations in Wardak Province Afghanistan 2009-2010.

I believe my hip issues, TBI, and Anxiety were not correctly rated and were not considered to be incurred in the line of duty in combat with an enemy of the United States and as a result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war when they should have been.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of Service under consideration show he entered the Regular Army on 2 February 2006 and was permanently retired for physical disability on 26 February 2021 under provisions provided in chapter 4 of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). It shows none of his disabilities had been determined combat related.

d. A Soldier is referred to the IDES when they have one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldier’s 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 conditions they believe to be service-connected disabilities in block 8 of section II or a separate Statement in Support of Claim (VA form 21-4138).

e. Soldiers then receive one set of VA C&P examinations called Disability Benefits Questionnaires (DBQs) 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. All conditions are then rated by the VA prior to the Soldier’s discharge. The physical evaluation board (PEB), after adjudicating the case sent them by the medical evaluation board (MEB), applies the applicable VA derived ratings to the Soldier’s unfitting condition(s), thereby determining their 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.

f. On 27 May 2020, the applicant was referred to the IDES for “Spondylosis [Chronic degenerative changes] and congenital spinal stenosis [of the lumbar spine].” He claimed seventeen additional conditions, including traumatic brain injury (TBI), status post repair of bilateral hip labral tears, and anxiety. The MEB determined the referred condition and left sciatic radiculopathy failed medical retention standards and the remaining twenty-three conditions met medical retention standards. The applicant did not rebut the MEB’s decision but requested an Impartial Medical Review (IMR) of his MEB, requesting six additional conditions be found to fail medical retention standards.

g. The three conditions the applicant has referenced as written in his MEB narrative summary:

Status post repair of bilateral hip labral tears: ... “The VA examiner noted the service member has laparoscopy scars on both hips on 3 sites each approximately 1 x 1 cm. All the incisions are well healed and stable and do not interfere with function. As high impact activities exacerbate pain bilaterally these are best avoided (L2) [Non-duty limiting physical profile]. There is no evidence or documentation that these conditions have otherwise limited or interfered with the performance of duties and as a result does not cause the SM to fall below retention standards.”

TBI: ... “The examiner noted that he had a complaint of mild memory loss and subjective symptoms including difficulty with word finding and stuttering. The remaining parameters were normal. There is no evidence or documentation that this condition has limited or interfered with the performance of duties and as a result does not cause the SM to fall below retention standards.”

Anxiety: “SM [Service Member] was evaluated by the VA psychiatrist and found to have inadequate symptomatology to be a specific DSM 5 diagnosis for anxiety disorders. SM did report some symptomatology. No specific diagnosis appeared appropriate.”

h. The IMR physician determined all conditions reviewed met medical retention standards. The applicant’s IMR was reviewed and the findings and recommendations of the MEB confirmed. His case, along with his IMR, was then forwarded to a physical evaluation board (PEB) for adjudication.

i. The applicant’s Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199) dated 13 November 2020 show the board determined his “Congenital spinal stenosis with spondylolysis” and “Left Sciatic Radiculopathy” were unfitting conditions for continued military service. They determined the remaining 23 medical conditions were not unfitting for continued military service.

j. The PEB made the administrative determination that neither of the disabilities was combat related: They found no evidence that one of these disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war; or that he was a member of the military on or before 24 September 1975.

k. The onset of these disabilities as written on the DA 199 was the same:

“The clear and unmistakable evidence that this condition existed prior to service is diagnostic imagery dated 21 January 2020 which indicated that this condition is congenital in nature ... The Soldier first sought treatment for this condition on 23 October 2019 while stationed at Fort Carson, Colorado for back pain due to no known injury or trauma. The Soldier reportedly has a history of back pain which has worsened since 2017 with exertion such as moving in a combat load, lifting heavy weight, bending, and sitting/standing for prolonged periods.”

l. Though the onset of these conditions was while the applicant was serving in Iraq, this per se does not make them combat related. Section b(3) of 26 U.S. Code § 104 requires there be a cause-and-effect relationship in order to establish the finding that a medical condition is combat related:

(3) Special rules for combat-related injuries: For purposes of this subsection, the term “combat-related injury” means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extra-hazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

m. There was no evidence submitted or identified showing one or both conditions met one of the above criteria.

n. On his DD 149, the applicant asserts his disabilities were “incurred in the line of duty in combat with an enemy of the United States and as a result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war.” No evidence was submitted or identified showing the conditions were the result of armed conflict or caused by an instrumentality of war.

o. An instrumentality of war is defined as a vehicle, vessel, or device designed primarily for military service and intended for use in such Service at the time of the occurrence or injury. For a disability to be incurred as a result of an “instrumentality of

war” under the Department of Defense’s 2004 Program Guidance, (1) the “disability must be incurred incident to a hazard or risk of the service” and (2) there “must be a direct causal relationship between the instrumentality of war and the disability.”

p. Note it states “incurred incident to risk of service” and “in such service at the time the incident occurred.” Thus, just because a Soldier was injured while in, on, around, wearing/carrying, or working on/with an instrumentality of war doesn’t automatically make it a disability caused by an instrumentality of war. The disability must be because the use of the military equipment or the circumstances surrounding the injury is uniquely military and different from the use or occurrences in similar circumstances in civilian pursuits, e.g., fire fighters.

q. The PEB applied the VBA derived rating of 20% to his lumbar spine condition and 10% to his left sciatic radiculopathy for a combined military disability rating of 30%. They recommended the applicant be permanently retired for physical disability. On 25 November 2020, after being counseled by his PEB Liaison Officer (PEBLO) on the PEB’s findings and recommendation, he concurred with the PEB’s findings, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability ratings.

r. 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 referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

s. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an 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 present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

t. JLV shows he has numerous VA service-connected disability ratings, including ratings for limited flexion of each hip (10% each) and traumatic brain disease (10%). The original ratings for his unfitting disabilities are unchanged. Thou the applicant mentions “Anxiety” on his DD 149, he does not have a VA service-connected disability

rating for or a diagnosed mental health condition. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by 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.

u. It is the opinion of the ARBA Medical Advisor that an increase in his military disability rating, the finding of additional conditions to have been unfitting prior to his separation, and reversal the USAPDA's determination his disabilities were not combat related are all unwarranted.

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 finding the Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

a. The evidence shows an informal Physical Evaluation Board (PEB) convened on 13 November 2020 and determined two medical conditions were unfitting for continued military service; congenital spinal stenosis with spondylolysis and left sciatic radiculopathy. The PEB then applied the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) derived ratings of 20 percent and 10 percent respectively to these conditions. The PEB recommended a combined rating of 30% and the applicant's disposition be permanent disability retirement. After being counseled on the informal PEB findings, he concurred and waived his right to a formal hearing and did not request reconsideration of his VA ratings.

b. The Board noted the applicant's contention of a non-included condition. However, found VA rating does not establish prior error or injustice. A military disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service. The rating derived from the VASRD reflects the disability at the point in time the VA examinations were completed. The military's Disability Evaluation System (DES) does not compensate service members for anticipated future severity or potential complications of conditions incurred during or

permanently aggravated by their military service. The VA has those roles and authorities according to their laws. Therefore, the Board found no error or injustice in his military disability rating. The Board determined an increase in his military disability rating or referral to the DES was not warranted. Additionally, the Board concurred with the medical advising official and U.S. Army Physical Disability Agency's official finding his disabilities were not combat related. The evidence of record does not support and the applicant did not provide documentation which would show his disabilities were combat related.

2. Prior to closing the discussion, the Board determined an administrative error occurred in the processing of his DD Form 214. As a result, the Board concurred with the amendment annotated in the analyst of record's administrative note below.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

ADMINISTRATIVE NOTE:

The applicant's DD Form 214 contains an error. The separation program designator code "SEJ" corresponds to the narrative reason retirement, disability permanent. Correct the DD Form 214 ending 26 February 2021 to show in: Block 23: "Retirement."

REFERENCES:

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

2. Army Regulation (AR) 635-5-1, Personnel Separations-Separation Program Designator Codes, prescribes the specific authorities and reasons for separating Soldiers from active duty. Table 2-1, Enlisted Personnel, states that for SPD code "SEJ," the applicable narrative reason is disability, permanent retirement.

3. Title 26, U.S. Code, section 104, Compensation for injuries or sickness, states the term "combat-related injury" means personal injury or sickness, which is incurred-

- as a direct result of armed conflict
- while engaged in extra hazardous service, or
- under conditions simulating war; or which is caused by an instrumentality of war

4. Title 38, U.S. Code, permits the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. AR 635-40, Disability Evaluation for Retention, Retirement or Separation, 21 December 2017, prescribes Army Policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. This regulation establishes the Army Disability Evaluation System (DES) and sets forth the 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.

a. The Integrated Disability Evaluation System (IDES) is one of the three components that make up the DES. IDES features -

(1) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit.

(2) A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

b. Physical Evaluation Boards (PEB) determine fitness for purposes of Soldiers retention, separation or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The PEB also makes certain administrative determinations that may have benefit implications under other provisions of law.

c. Combat related covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result following armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under conditions simulating war. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

c. Armed conflict. The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability resulted from armed

conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

(1) To be considered incurred as a result of armed conflict does not require the armed conflict to have been occurred during a period of war.

(2) Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists.

(3) Armed conflict may also include such situations as incidents involving a Soldier while interned as a prisoner-of-war or while detained against their will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(4) Normally Soldiers who sustain injuries while assigned to administrative, supply, or other support duties in the rear area are not considered to be in the area of combat operations unless the injury is actually incurred during an enemy attack in the immediate area.

d. Disabilities determined to be unfitting and compensable will be rated in accordance with the VASRD. This rating will generally be determined by the Disability-Rating Activity Site. For those cases that are evaluated as an exception to IDES, the military department determines the rating.

6. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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: 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. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//