ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240000105

APPLICANT REQUESTS, in effect:

- Void and replace the entries in items 25 (Separation Authority), 26 (Separation (SPD) Code), 27 (Reentry (RE) Code), and 28 (Narrative Reason for Separation) on his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Grant a medical retirement at a disability rating of 80 percent
- Award the Army Good Conduct Medal

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- DA Form 3349 (Physical Profile)
- Separation Orders
- Department of Veterans Affairs (VA) website disability ratings
- VA Letter

FACTS:

1. The applicant states, in effect:

- On 21 January 2022, medical authority referred him into the Army's Integrated Disability Evaluation System (IDES); he went through the entire process and was told which medical conditions qualified him for a disability separation
- As he waited for VA to provide his disability ratings, he learned Major General (MG) M__ B__ had decided to cancel his IDES process after the applicant refused the COVID-19 (Coronavirus Disease, 2019) vaccine
- The applicant declares no one provided him with any guidance as to what he could do to remain in IDES, or what the proper channels were to dispute the general's decision
- He felt that he was left completely on his own, with very little time to figure out what he should do; he was not even allowed to discuss the matter with MG M__ B__

- Prior to his separation, his commander disqualified him for the Army Good Conduct Medal; the applicant believes he met the award's criteria and should have been given this award

2. The applicant provides his separation orders and the following:

a. DA Form 3947, dated 19 May 2022.

(1) The MEB found the applicant failed medical retention standards for the following disabling conditions:

- Right knee patellofemoral pain syndrome (VA/DOD Diagnosis), chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement), paragraph 3-35b(1) (General and Miscellaneous Conditions and Defects), Army Regulation (AR) 40-501 (Standards of Medical Fitness)
- Right knee baker's cyst (VA/DOD Diagnosis), chapter 3, paragraph 3-35b (1)
- Right knee chondromalacia patella (VA/DOD Diagnosis), chapter 3, paragraph 3-23e (Miscellaneous Conditions of the Extremities – Chondromalacia or Osteochondritis Dissecans)
- Right knee patellar tendonitis (VA/DOD Diagnosis), chapter 3, paragraph 3-23n (Miscellaneous Conditions of the Extremities – Tendinopathy)

(2) The MEB recommended the applicant's referral to a physical evaluation board (PEB) for a fitness determination. On 24 May 2022, the applicant concurred with the MEB's findings and recommendations.

b. DA Form 3349, showing that, on 1 March 2022, a profiling provider and approving authority issued the applicant a numerical designator of "3" (significant functional or activity limitations) for the physical factor "L" (Lower Extremities).

c. VA website and VA letter indicating applicant's combined disability rating is 80 percent.

3. A review of the applicant's service record shows the following:

- On 6 May 2019, the applicant enlisted into the Regular Army for 3 years and 25 weeks (i.e., 6 months and 1 day); upon completion of initial entry training and the award of military occupational specialty 91B (Wheeled Vehicle Mechanic), orders assigned him to Fort Drum, NY; he arrived, on or about 28 October 2019
- Effective 1 May 2021, his leadership promoted him to specialist (SPC)/E-4

- On 25 October 2021, MG M__ B__, commanding general (CG), 10th Mountain Division (Light Infantry) and Fort Drum, issued the applicant a general officer memorandum of reprimand (GOMOR) as a result of the applicant's refusal to comply with a lawful order to receive a COVID-19 vaccination
- On 27 October 2021, the applicant acknowledged receipt of the GOMOR and indicated he would not submit a rebuttal; on 15 November 2021, the GOMOR issuing authority directed the GOMOR's placement in the applicant's official military personnel file
- On 17 February 2022, the applicant's company commander completed a DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement); the commander affirmed the applicant's profile limited him from wearing combat gear and operating a military vehicle
- On 17 February 2022, the applicant's company commander advised he was initiating separation action against the applicant, under paragraph 14-12c (Commission of a Serious Offense), AR 635-200 (Active Duty Enlisted Administrative Separations)
- The commander stated the reason for his action was the applicant's disobedience of an order to be vaccinated against COVID-19; he added that he would be recommending the applicant for a general discharge under honorable conditions, but the final decision rested with the separation authority
- On 14 March 2022, the applicant's company commander disapproved the Army Good Conduct Medal for the applicant, citing the applicant's refusal to obey a lawful order to be vaccinated for COVID-19
- On 14 March 2022, after consulting with counsel, the applicant affirmed counsel had advised him of the basis for his separation action, as well as his rights and the effect of waiving those rights
- He acknowledged he was not entitled to an administrative separation board, requested counsel, and stated he was submitting a statement in his own behalf
- In his statement, the applicant contended it was unfair to administratively separate him, given that he was already pending a disability separation; he pointed out that his leadership never had to take disciplinary action taken against him, and he was selected to be the "Soldier of the Week" in February 2021
- On 14 March 2022, the applicant's defense counsel prepared a memorandum for record (MFR); she noted that, because the applicant was enrolled in IDES as of January 2022, the general court-martial convening authority (GCMCA) would need to direct whether to proceed with a PEB or an administrative separation
- On 23 March 2022, the applicant's defense counsel prepared an MFR in which she advocated for the applicant to receive an honorable character of service if the GCMCA opted to administratively separate him
- On 6 June 2022, the separation authority (also the GCMCA) stated he had reviewed the applicant's MEB results and decided the applicant should be separated with an honorable discharge

- In reaching his separation determination, the separation authority found the applicant's medical condition was not a direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation
- On 6 July 2022, the Army honorably discharged the applicant; his DD Form 214 shows he completed 3 years, 2 months, and 1 day of his 3-year, 25-week enlistment contract; the report additionally reflected the following:

    - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and a marksmanship qualification badge
    - Item 25 (Separation Authority) – AR 635-200
    - Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JKQ"
    - Item 27 (Reentry (RE) Code) – RE-3
    - Item 28 (Narrative Reason for Separation) – "Misconduct (Serious Offense)"

4. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant had multiple requests. This review will focus on his request for medical discharge processing and in effect, a request for a change in narrative reason for separation. He contends that it is unjust that after his MEB proceedings were completed, he received orders for chapter separation due to misconduct. He is requesting an 80% disability rating, his current combined rating from the VA.

2. The ABCMR ROP summarized the applicant’s record and circumstances surrounding the case. The applicant entered active service 06May2019. He was awarded MOS 91B, Wheeled Vehicle Mechanic. The record did not show deployment. He was counseled on 20Sep2021 concerning the 24Aug2021 Secretary of Defense’s directive for full vaccination of servicemembers against COVID. On 22Sep2021, he declined to receive the COVID-19 vaccine. He received a General Officer Memorandum of Reprimand on 25Oct2021 for refusing to be fully vaccinated against COVID. He was discharged on 06Jul2022 under provisions of AR 635-200 chapter 14-12c due to commission of a serious offense as a result of disobeying an order to receive the COVID-19 vaccine during the pandemic. His service was characterized as Honorable.

3. Summary of IDES process and medical records related to chapter separation

a. 14Jan2022 GAHC. He was notified his case was going to be submitted for MEB.

b. 09Feb2022 Report of Medical History (DD Form 2807-1) and 10Feb2022 Report of Medical Examination (DD Form 2808). The evaluation was completed for chapter separation. The applicant endorsed painful shoulder, back problems, neck pain and associated headaches, knee trouble, and depression or excessive worry. He also reported having been diagnosed with COVID on 24Jan2022, quarantined for 5 days and currently had a lingering cough but was afebrile the day of the exam. The chapter physical exam revealed knee abnormalities, painful right hip, cervical strain and low back pain. The examiner indicated that there was no loss of ROM. The physical profile was PULHES 113111. He was in the IDES process for Right Knee Tendinopathy. He was deemed technically qualified for separation.

c. 17Feb2022 DES Commander's Performance and Functional Statement (DA Form 7652). Command indicated that the applicant had problems completing tasks and/or duties to standards. His profile limited him from wearing combat gear and operating a military vehicle. Command also indicated that that the applicant was pending involuntary separation under chapter 14C.

d. 01Mar2022 Physical Profile Record (DA Form 3349). The permanent L3 physical profile for Knee Injury/Pain (Right) showed multiple functional activity limitations and the 2-mile APFT run was prohibited as well.

e. 01Mar2022 DoD Referral to IDES (VA Form 21-0819). Tendinopathy, Right Knee was listed as the referred condition.

f. 25Mar2022 Knee and Lower Leg Conditions DBQ. The applicant denied knee pain at the time of the exam. He reported increased pain (sharp) up to 8/10 with running, walking and sitting as well. He denied use of braces or assistive devices. The exam showed right knee flexion to 125 degrees (normal 140 degrees); and extension to 0 degrees (normal). Left knee flexion was to 130 degrees; and extension was to 0 degrees. Painful motion was present. There was no recurrent subluxation or persistent instability, tibial or fibular impairment, or meniscal conditions. Diagnoses: Right Knee Chondromalacia; Right Knee Patellar Tendonitis; Right Knee Baker's Cyst; Left Knee Strain; and Bilateral Patellofemoral Syndrome.

g. 19May2022 MEB Proceedings (DA Form 3947). The MEB listed the following conditions as not meeting retention standards: Right Knee Patellofemoral Pain Syndrome; Right Knee Baker's Cyst; Right Knee Chondromalacia Patella; and Right Knee Patellar Tendonitis. The applicant concurred with the MEB determinations.

4. Pertinent medical records and related for the knee condition

a. 21Mar2019 Report of Medical History (DD Form 2807-1) and Report of Medical Examination (DD Form 2808). During this military entrance physical evaluation, the applicant endorsed being in good health. Hallux Valgus (bunions), scattered striae, refractive error (vision) and moderate asymptomatic pes planus (flat feet) were present. No knee issues were reported or found during examination of the lower extremities.

b. 26Nov2019 Medical In-Processing. He was medically cleared including mental health.

c. 19Nov2020 CTMC Conner-Drum. The applicant was seen for bilateral knee pain and a knot in the left shin which he believed started after he jumped off a CONEX trailer or jumped off of a shipping container during Mountain Peak. *The incident was not documented in medical records*. The exam revealed tenderness on palpation of the knee medial joint line, bilaterally. Overuse injury was suspected. His weight may be contributory. His BMI was 34. Physical therapy was planned. Imaging was considered unnecessary at the time as it was unlikely that there was any structural damage as the etiology of the pain. A profile was also deemed unnecessary at the time, as the applicant stated that he was able to do unit PT. *The record did not show that the applicant underwent physical therapy for the knees at the time*.

d. 05May2021 CTMC Conner-Drum. He endorsed bilateral knee pain for 1 year starting first with the right knee after reported patella dislocation during fire and maneuver exercises at night when he went down hard on right knee, with lateral dislocation. *The incident was not documented in medical records*. X-rays showed minimal degenerative changes of the right patella, the left knee was unremarkable.

e. 07Jun2021 MRI right knee revealed mild chondromalacia patella, patellar tendonitis and a 3 cm Baker's cyst.

f. 08Jun2021 Drum Battalion Aid Station. The applicant was initially assessed by the athletic trainer on 11May2021 for chronic bilateral knee pain. He was issued a HEP (home exercise program) at the time and instructed to try to obtain over-the-counter orthotics and new running shoes. Exam: Passive and active ROM was within normal limits and manual muscle test showed normal strength (5/5). Assessment: Patellofemoral Pain Syndrome with associated Pes Planus vs Snapping Knee Syndrome (medial hamstrings). He was seen at least monthly by the trainer in May, June, July and August 2021.

g. 03Sep2021 and 20Sep2021 Syracuse Orthopedic Specialist (outside consult). He denied having any knee injections. He endorsed having attended physical therapy for approximately 3 months. Exam: There was very minimal tenderness to the posteromedial knee. During ROM, there was a pop or click in the posteromedial knee. There was no muscle weakness. The joint was stable. Assessment: Right knee pain

of unclear etiology, chronic. The specialist did not find anything they could be definitively helped by surgery.

h. 20Aug2021 and 07Dec2021 Orthopedics Ft Drum. The applicant endorsed some improvement in symptoms with physical therapy. The exam revealed right knee pain and snapping over the posteromedial hamstring tendons. Assessment: Right knee patellofemoral disorder and symptomatic Baker's cyst. Surgical (possible release vs harvest of gracilis and semitendinosus muscles) and non-surgical options (including ultrasound guided steroid injection) were discussed. The applicant was going to consider his options. ROM and strengthening exercises were to be continued.

5. Behavioral health (BH) conditions

a. 10Feb2022 EBH Clinic-Drum. This was a visit for command directed BH Chapter Separation Evaluation. The applicant stated Command was chaptering him for not getting a COVID vaccine. He stated he refused to get vaccinated for religious reasons and tried to get a religious exemption waiver, but it was reportedly denied. He was also recently accepted into IDES and was told his chapter and his MEB will go up to the CG together. The applicant reported experiencing only minor stress associated with undergoing chapter processing. PTSD, TBI, Depression, Substance Misuse, Military Sexual Trauma/Assault and Suicide Risk screening results were all negative. Test results were consistent with no or minimum distress and no significant relationship issues. His physical pain rating was 3/10. The applicant had no history of BH treatment. There was no history of violence or psychosis. He was considered fit for full duty. From a BH standpoint, he was cleared for PCS, ETS or deployment.

b. 10Feb2022 Report of Mental Status Evaluation (DA Form 3822). He was screened for PTSD, MST, Depression, Substance Abuse and TBI. Cognition and perception were not impaired. His behavior and impulsivity were normal. No BH diagnosis was found. It was deemed that a BH condition was not likely a mitigating factor in the alleged behavior leading to the administrative separation. “He appeared to have full comprehension of moral and legal matters”. He was cleared from a psychological standpoint for administrative action including chapter separation.

c. 17Feb2022 DES Commander’s Performance and Functional Statement. He made simple decisions but usually not complex or unfamiliar decisions. He did not make frequent decision-making mistakes. The applicant had effective work relationships with other supervisors and co-workers.

d. 21Mar2022 Mental Disorders DBQ. The claimant reported the onset of anxiety and depression in response to frustration over the pending premature discharge from the military for disciplinary reasons, and limited mobility related to bilateral knee conditions with associated pain. He reported a recent increase in depression and

anxiety over the last few months characterized by depressed mood, decreased energy, negative self-talk, and worry about his immediate financial and occupational future. The mental status evaluation revealed that thought processes and content were organized and relevant, respectively. He denied past or present illusions, hallucinations, or delusional beliefs. The VA diagnosed him with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The BH condition had resulted in occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks although generally functioning satisfactorily.

e. 21Apr2022 EBH Clinic-Drum. He reported feeling "extremely stressed and depressed." The reported stressors were occupational and medical. He endorsed having some difficulty controlling his anger. He was undergoing a MEB and chapter process. PCL-5 score was 0 consistent with PTSD was unlikely. GAD-7 score was 7, consistent with mild anxiety. PHQ-9 score was 15 consistent with moderately severe depression. Diagnosis: Phase of Life.

f. 02May2022 CTMC Conner-Drum. The applicant reported panic attacks and generalized anxiety for 1 year. The panic attacks lasted approximately one minute in duration without identified triggers. The episodes were accompanied by palpitations, shortness of breath, and racing thoughts. He endorsed increased stress of work and home life recently. He denied suicide and homicide ideation. The primary care provider diagnosed Generalized Anxiety Disorder with panic attacks. Psychotropic agents were started.

g. 11May2022 EBH Clinic-Drum. DSM 5 Diagnoses: Phase of Life Problem; Rule Out Adjustment Disorder, With Mixed Anxiety and Depressed Mood. There were no duty limitations—he was considered fit for full duty from a behavioral health perspective.

h. 29Jun2022 EBH Clinic-Drum. He completed 3 sessions of CBT/supportive psychotherapy. The sessions were discontinued due to imminent chapter separation.

6. Immunization history

a. 13May2019 Reception Medical Clinic-Jackson. While undergoing basic military training, the applicant received immunizations required by the Army for hepatitis A, polio, meningitis, tetanus/diphtheria/whooping cough and adenovirus.

b. 26Nov2019 Medical In-Processing/Medical Readiness. He received smallpox, the second hepatitis A, and the flu vaccines.

7. Conclusion/Opinion

a. The applicant developed a bilateral knee condition for which he had failed

conservative treatment including physical therapy under the athletic trainer, anti-inflammatories and profiling. Two separate orthopedic teams were consulted. By the time orthopedics was consulted, he had been on profile for 130 days. His case was reviewed by a MEB and multiple right knee conditions were determined to have failed medical retention standards of AR 40-501 chapter 3-35b(1), 3-23e and 3-23n. The IDES process was halted prior to PEB review due to Command's decision to separate the applicant for misconduct.

b. After discharge from service, the applicant consulted with orthopedics at the VA. He reported that his knee primarily bothered him (anteriorly over the patella tendon) when he went up and down stairs. The pain was rated 3/10. The 26Nov2022 right knee MRI showed mild degenerative changes. VA Orthopedics assessed that the applicant had patellofemoral pain. The specialist advised that his chronic knee pain likely would not resolve with any one treatment modality and that he should continue to be managed conservatively. They recommended another round of physical therapy and further advised that the applicant should consider that weight loss was the primary modality of treating his knee pain. *The applicant's height of 65 inches and weight of 221 pounds were consistent with BMI of almost 37*.

c. Based on records available for review, the MEB diagnoses Right Knee Patellofemoral Pain Syndrome; Right Knee Baker's Cyst; Right Knee Chondromalacia Patella; and Right Knee Patellar Tendonitis did fail medical retention standards of AR 40-501 chapter 3. Evidence was insufficient to support that the applicant had other medical conditions which failed retention standards at the time of discharge. The applicant's case was not reviewed by the PEB. JLV search today showed that the VA ratings for knee conditions included Limited Flexion of Knee at 10% and Limited Flexion of Knee at 10%. Concerning the applicant's request for medical retirement, if the Board finds that an injustice has occurred and deems it appropriate, the applicant should be referred to IDES for the PEB fitness determination for MEB diagnoses Right Knee Patellofemoral Pain Syndrome; Right Knee Baker's Cyst; Right Knee Chondromalacia Patella; and Right Knee Patellar Tendonitis.

d. The record did not reveal a medical basis for the applicant's refusal of the COVID-19 vaccine: The record did not show that he had experienced a severe allergic reaction to prior dose or to vaccine components. There was no indication that a medical condition was the direct or substantial contributing cause of the conduct that led to his chapter separation. BH evaluation indicated that a mental health condition was not likely a mitigating factor in the alleged behavior leading to the administrative separation. The applicant reported that he had requested religious exemption for the vaccine and that he had been refused. Of note, the medical record revealed compliance with the other Army mandated vaccines.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with a BH condition that could be mitigating for misconduct. The condition was Generalized Anxiety Disorder (GAD).

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with Generalized Anxiety Disorder while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. While the applicant was diagnosed with GAD, a potentially mitigating BH condition, it appears that the condition developed after the misconduct. The applicant did endorse that chronic knee pain also contributed to his mental health symptoms. He was first seen for bilateral knee pain 19Nov2020, he was seen again 6 months later on 05May2021 with continued intermittent knee pain. He advanced in rank to SPC on 06May2021. On 22Sep2021, he declined to receive the COVID-19 vaccine. On 10Feb2022, he underwent a Command referred BH evaluation during which no significant mental health symptoms were reported and no mental health diagnosis was found. Objective testing results were consistent with 'no or minimum distress': PTSD score was 0/4; and PHQ-2 score for screening for depression was 0/6. His score for multiple subscales for general distress were subclinical to low. In April 2022, he reported increased stress. He was diagnosed with GAD on 02May2022. Objective testing indicated a mild mental health condition. The VA assessment was also consistent with a mild mental health condition. Based on review of available records, the applicant's physical and mental health conditions were not of sufficient severity to impact his decision-making ability to either adhere to or reject the lawful order to receive the COVID-19 vaccine. Under Liberal Consideration Policy, the Board will consider the applicant's contentions.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include the applicant's diagnoses of Right Knee Patellofemoral Pain Syndrome; Right Knee Baker's Cyst; Right Knee Chondromalacia Patella; and Right Knee Patellar Tendonitis, met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received 2.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to granting a medical retirement/separation without further review by DES.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by referring the applicant's medical records to the Disability Evaluation System (DES) to determine whether the applicant's condition(s), to include the applicant's diagnoses of Right Knee Patellofemoral Pain Syndrome; Right Knee Baker's Cyst; Right Knee Chondromalacia Patella; and Right Knee Patellar Tendonitis, met medical retention standards at the time of service separation.

//SIGNED//

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CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 (ABCMR) applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, prescribes policies and procedures for the administrative separation of enlisted Soldiers.

a. Paragraph 1-34 (Disposition through Medical Channels). Processing under the Disability Evaluation System (DES) takes precedence over administrative separation processing, regardless of when the medical determination is made (either before, during, or after initiation of separation).

(1) Soldiers undergoing administrative separation per chapter 14 are eligible for referral to and completion of the MEB phase of DES. The administrative separation proceedings will continue, but the separation authority will not take final action.

(2) If the MEB finds the Soldier meets medical retention standards, the approved MEB proceedings are forwarded to the separation authority and unit commander to complete the separation action.

(3) If the MEB finds the Soldier does not meet medical retention standards and referral to a PEB is warranted, the Soldier's GCMCA and unit commander will receive the approved MEB proceedings. The GCMCA must direct, in writing, whether to proceed with the DES process or administrative separation.

(4) The GCMCA's written directive must address whether the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation, and/or whether other circumstances of the individual case warrant disability processing instead of further processing for administrative separation. The authority of the GCMCA to determine whether to proceed with the DES process or administrative separation may not be delegated.

(5) If the Soldier was beyond the MEB phase when the chapter 14 was initiated, the last level of completed adjudication (physical evaluation board (PEB) adjudication or U.S. Army Physical Disability Agency (USAPDA) approval of the case for the Secretary of the Army (SECARMY), whichever is the last completed action) will be forwarded with the MEB to the Soldier's GCMCA. If neither an informal nor formal PEB was completed, only the MEB will be forwarded to the GCMCA

b. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who had committed a serious military or civilian offense, and for which the Manual for Courts-Martial and Uniform Code of Military Justice (UCMJ) authorized a punitive discharge for the same or similar offense.

c. Chapter 15 (Secretarial Plenary Authority).

(1) Separation under this chapter is the prerogative of SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies.

(2) Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interests of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee.

3. The Manual for Courts-Martial, currently in effect, shows the maximum punishments for violating UCMJ Article 92 (Violation of Other Lawful Order) includes a punitive discharge.

4. AR 635-8 (Separation Processing and Documents), currently in effect, includes policies and procedures for DD Form 214 preparation. In paragraph 5-6 (Rules for Completing the DD Form 214), the regulation states the narrative reason for separation is tied to the Soldier's regulatory separation authority.

a. The regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 and 28 (Narrative Reason for Separation).

b. For item 27 (Reentry (RE) Code), the regulation referred preparers to AR 601-210 (Regular Army and Reserve Components Enlistment Program).

5. AR 635-5-1, currently in effect, defines separation codes entered on the DD Form 214. For Soldiers separated pursuant to paragraph 14-12c, AR 635-200, the assigned SPD code is "JKQ"; the narrative reason for separation is "Misconduct (Serious Offense)."

6. AR 601-210, currently in effect, covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and Reserve Components.

a. Table 3-1 (U.S. Army RE Codes) lists the following:

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 issued to Soldiers show are not fully qualified for reentry, but the disqualification(s) may be waived

b. Paragraph 4-13 (Prior Military Service). If an enlistment applicant was separated from any component of the U.S. Armed Forces for "Misconduct (Serious Offense), a waiver is required but may not be submitted until 24 months after the date of separation.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), currently in effect, sets forth policies, responsibilities, and procedures for the evaluation of a Soldier's physical fitness for continued military service.

a. Paragraph 4-1 (Scope of the DES)

(1) The objectives of DES include:

- Maintaining an effective and fit military organization with maximum use of available manpower
- Providing benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the line of duty

(2) IDES. The IDES features the following:

- A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit
- A single set of disability ratings provided by the Department of Veterans Affairs (VA) for use by both departments
- The DES applies the VA 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

(3) The DES process begins for a Soldier when either of the following events occur:

- The Soldier is issued a permanent profile and the profile contains a numerical designator of P3/P4 within any of the profile factors for a condition that appears not to meet the medical retention standards outlined in AR 40–501 (Standards of Medical Fitness)
- The Soldier is referred to the DES as the outcome of MAR2 (Military Occupational Specialty Administrative Retention Review) evaluation

(4) The DES process concludes when one of the following takes place:

- For Soldiers determined by the medical evaluation board (MEB) to meet medical retention standards, the DES process is completed as of the date the MEB returns the Soldier to duty
- For Soldiers referred to a physical evaluation board (PEB) and determined to be fit for duty, the DES concludes as of the date of the U.S. Army Disability Agency's (USAPDA) memorandum approves the finding of fit for duty
- For Soldiers referred into the IDES process and found to be unfit, the DES concludes on the date of the Soldier's notification of the VA's benefits decision; the Soldier's military status ends, however, on the date of the Soldier's disability separation or retirement

b. Paragraph 4-3f (Soldiers Absent Without Leave, Undergoing or Pending Adverse Actions or Involuntary Administrative Separation, or With Prognosis of Imminent Death – Enlisted Soldiers Pending Administrative Separation).

(1) Soldiers undergoing an administrative separation for fraudulent enlistment or misconduct remain eligible for referral to the MEB. The Soldier's commander must written notification to the Soldier's PEB Liaison Officer (PEBLO) that administrative separation action has been initiated.

(2) The Soldier's completed MEB must be referred to the Soldier's General Court-martial Convening Authority (GCMCA) to determine whether the Soldier will be referred to the PEB. Approval and suspension of an administrative separation action is not authorized when the Soldier is pending both an administrative separation and DES action. The GCMCA must decide which action to pursue.

(3) Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct, be discharged through the DES process without the approval of the GCMCA.

c. Paragraph 4-19 (PEB – Policy). PEBs determine fitness for purposes of Soldiers' retention, separation or retirement for disability under Title 10 (Armed Forces), U.S. Code, chapter 61 (Retirement or Separation for Physical Disability). The PEB also makes certain administrative determinations that may have benefit implications under other provisions of law.

d. Paragraph 4-22 (The Informal PEB (IPEB) Process). All cases will be initially adjudicated by an IPEB. The IPEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service. The IPEB may obtain additional documents necessary for proper adjudication and will include them in the case file. The IPEB makes the following determinations:

- Whether any medical conditions individually or collectively causes the Soldier to be unfit for continued military Service
- Whether the unfitting medical conditions were incurred or aggravated in the line of duty
- For Soldiers being placed on the TDRL or permanently retired, whether the unfitting medical conditions are permanent and stable
- if the initial IPEB decision is that the Soldier is unfit, the PEB president will request preliminary VA ratings for each condition the PEB determined was unfitting
- Once the PEB receives the VA disability rating percentages, it will apply them to the conditions determined compensable by the PEB, recommend a disposition, and generate the DA Form 199 (Informal PEB Proceedings)
- The Soldier has 10 days from receipt of the DA Form 199 to make an election; the Soldier can accept the IPEB's findings and recommendations or non-concur and request a formal hearing (FPEB); additionally, the Soldier can request that VA reconsider its ratings

e. Paragraph 4-27 (Final disposition by USAPDA). USAPDA approves disability cases for the Secretary of the Army and issues the disposition instructions to the Transition Center for Soldiers separated or retired for physical disability from an active duty status. The USAPDA publishes the disability orders on Soldiers of the U.S. Army Reserve (USAR) and ARNG who are not on active duty. Dispositions include the following:

(1) Permanent disability retirement. This disposition is directed when the Soldier is determined unfit for continued service, has a compensable disability, the disability or disabilities are permanent and stable, and the Soldier either has at least 20 years of service or a combined disability rating of 30 percent or higher.

(2) Temporary Disability Retired List (TDRL). Soldiers are placed on the TDRL when either the years of service or disability percentage requirements are met, but the condition or conditions are not determined to be permanent and stable. The Army DES re-evaluates Soldiers placed on the TDRL at least once every 18 months. Soldier can remain on the TDRL for no more than five years.

(3) Separation with disability severance pay. This disposition is directed when the Soldier is unfit due to a compensable physical disability, has less than 20 years of service, and the Soldier's combined disability rating is less than 30 percent, to include a zero percent rating.

(4) Fit. The disposition of fit with return to duty applies to all Soldiers found physically fit.

f. Paragraph 5-1 (Adjudicative Policy for Physical Evaluation Board and U.S. Army Physical Disability Agency Determinations – Standard for Unfitness due to Disability). A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of his/her office, grade, rank, or rating.

g. Paragraph 5-2 (Duties of Office, Grade, Rank, or Rating). For purposes of unfit determinations, the duties of office, grade, rank, or rating will normally be the following:

- The duties of an enlisted Soldier's PMOS at the Soldier's current rank and skill level
- The duties of a terminal assignment preceding eligibility for regular or non-regular retirement and the Soldier has no remaining active duty or Reserve obligation

h. Paragraph 5-3 (General Criteria for Making Unfitness Determinations). The following criteria may be included in the PEB's assessment:

- The medical condition represents a decided medical risk to the health of the Soldier or to the welfare of other Soldiers, were the Soldier to continue on active duty or in an active Reserve status
- The medical condition imposes unreasonable requirements on the Army to maintain or protect the Soldier
- The Soldier's established duties during any remaining period of Reserve obligation

i. Paragraph 5-4 (Reasonable Performance of Duties). The PEB considers whether the Soldier can perform the common military tasks required for the Soldier's office,

grade, rank, or rating, including those duties during a remaining period of Reserve obligation.

(1) As a minimum, the PEB considers the common military tasks required of all Soldiers and listed on the DA Form 3349 (Physical Profile). The PEB also evaluates whether the Soldier is medically prohibited from taking the Army Physical Fitness Test, and his/her ability to deploy.

(2) Additionally, a Soldier may be determined unfit as a result of the overall effect of two or more impairments even though each of them, standing alone, would not cause the Soldier to be found unfit because of physical disability. Further, unfitness due to overall or combined effect may include one or more conditions determined to be unfitting in combination with an independently unfitting condition.

9. Title 38 (Veterans' Benefits), U.S. Code, sections 1110 (Wartime Disability Compensation – Basic Entitlement) and 1131 (Peacetime Disability Compensation – Basic Entitlement) permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service; for its disability determinations, the Army's disability system operates under a separate provision of Federal law: chapter 61 (Retirement or Separation for Physical Disability),Title 10 (Armed Forces), U.S. Code.
10. AR 600-8-22, currently in effect, states the following in chapter 4 (Army Good Conduct Medal and Army Reserve Components Achievement Medal),
section I (Army Good Conduct Medal):

a. The Army Good Conduct Medal is awarded, on a selective basis, to active duty Soldiers, based on their display of exemplary behavior, efficiency, and fidelity. Unit commanders are authorized to award the Army Good Conduct Medal to Army enlisted personnel serving under their command who meet the established criteria.

b. Any one of the following periods of continuous enlisted active Federal military service qualifies for award of the Army Good Conduct Medal:

- Each 3 years completed on or after 27 August 1940
- For first award only, upon termination of service on or after 27 June 1950, of less than 3 years but more than 1 year

c. When commanders determine the award of the Army Good Conduct Medal is not warranted, they will prepare a memorandum stating the rationale for their decision. This memorandum will include the period of disqualification and will be referred to the individual according to AR 600 37 (Unfavorable Information). The unit commander will consider the affected individual's statement. If the commander's decision remains the

same, the records manager will upload the memorandum and the Soldier's statement for included in the Soldier's official military personnel file.

11. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant’s service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//