ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240000361

APPLICANT REQUESTS: reconsideration of his prior request for physical disability retirement in lieu of physical disability separation with severance pay

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 21 September 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999019221 on 22 July 1999.

2. The applicant states:

a. He is writing to request correction of his military record. He was honorably discharged on 17 June 1996, citing medical reasons; however, he firmly believes his discharge should have been a medical retirement, considering the severity of his combat-related injuries and their ongoing impact on his well-being.

b. At the time of his discharge, the Physical Evaluation Board (PEB) rated him at 20 percent disabled, taking into account his bipolar disorder, social impairment, muscular tension headaches, chronic thoracic muscle strain, cervical paraspinal muscle strain, and neck/shoulder pain. These disabilities are all directly attributed to the combat-related injury he sustained during his service. Based on the substantial impact these conditions have on his daily life, he believes that they alone warrant a higher disability percentage.

c. Furthermore, he was diagnosed with several additional medical conditions upon his release from the Army, which were not considered by the Medical Evaluation Board (MEB). These conditions include bipolar disorder, gout, mild hyperlipemia, olecranon bursitis, post-traumatic headaches, left varicocele, upper hemorrhoids, nausea,

photophobia, and left elbow trauma. It is disheartening to see that these significant conditions were overlooked during his evaluations, as they further impact his life.

d. Considering the cumulative effect of these disabilities, as well as their potential long-term implications, he kindly requests the reassessment of his case to change his discharge to a medical retirement, retroactive to his original discharge date to ensure he receives all benefits and support to which he is rightfully entitled by virtue of his injuries incurred in the line of duty (LOD).

3. After a prior honorable period of service in the Regular Army between July 1978 and July 1981, the applicant again enlisted in the Regular Army on 4 December 1985.

4. The acronym "PULHES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

5. A DA Form 3349 (Physical Profile) shows on 30 August 1995, the applicant was given a permanent physical profile with a PULHES of 111113 for bipolar disorder, mixed type. His assignment limitations included no assignment to areas where psychiatric care is not available.

6. A 6-page MEB Narrative Summary (NARSUM) has been provided in full to the Board for review and reflects the summary of the applicant's examinations performed on 11 August 1995, 21 August 1995, 22 August 1995, 30 August 1995, and 11 September 1995. Of note, it references an injury the applicant incurred in Airborne School in April 1994, which may be the combat-related injury he references in his statement.

7. A DA Form 3947 (MEB Proceedings) shows an MEB convened on 19 October 1995, to consider the applicant's following conditions and referred him to the PEB:

- bipolar disorder, mixed type, controlled by medication
- alcohol dependence, in remission, non-ratable
- passive and dependent personality features
- muscular tension headaches vs. mixed headaches
- history of gout x 1 episode
- olecranon bursitis

- mild hyperlipidemia
- left varicocele, asymptomatic

8. A DA Form 199 (PEB Proceedings) shows:

a. A PEB convened on 31 October 1995, where the applicant was found physically unfit with a recommended combined rating of 10 percent and that his disposition be separation with severance pay.

b. His unfitting condition was bipolar disorder, mixed type, controlled by medication, with marked impairment for further military duty and mild impairment for social and industrial impairment (MEB Axis 1, diagnosis (Dx) 2; 10 percent.

c. MEB Axis II, Dx 2, and Axis III, Dx 1-5 were not unfitting and not rated.

9. A second DA Form 199 shows:

a. A PEB convened on 9 February 1996, to informally reconsider the applicant's case based on multiple MEB addenda.

b. He was found physically unfit with a recommended combined rating of 20 percent and that his disposition be separation with severance pay.

c. The applicant's unfitting conditions were:

- bipolar disorder, mixed type, controlled by medication, 10 percent
- muscular tension headaches associated with chronic thoracic and cervical paraspinal muscle strain with a trigger point manifested as neck/shoulder pain, 10 percent

d. The remaining Dxs were not found unfitting.

10. A third DA Form 199 shows:

a. A formal PEB convened on 14 March 1996, where the PEB reevaluated all available medical records and sworn testimony by the applicant and determined the prior PEB convened on 9 February 1996, appropriately rated his conditions.

b. He was found physically unfit with a recommended combined rating of 20 percent and that his disposition be separation with severance pay for the following unfitting conditions:

- bipolar disorder, mixed type, controlled by medication; VA Code 9206;

10 percent
- muscular tension headaches associated with chronic thoracic and cervical paraspinal muscle strain with a trigger point manifested as neck/shoulder pain; VA Code 5003; 10 percent

11. A DA Form 199-1 (Election to Formal PEB Proceedings) shows on 22 March 1996, the applicant signed the form indicating he did not concur with the findings and recommendations. His consultation with civilian and military attorneys, PEB personnel, and others confirmed the majority feel his conditions warrant a higher disability rating for both his unfitting rated conditions as well as his conditions not found unfitting.

12. A U.S. Army PEB memorandum, 25 March 1996, advised the applicant that the PEB reviewed his 22 March 1996 rebuttal to the 14 March 1996 formal PEB findings and after careful consideration found that no change to the original findings was warranted.

13. A fourth DA Form 199 shows:

a. A PEB convened on 25 March 1996, to informally reconsider the applicant's case based on MEB addendum, dated 22 March 1996, and made changes to the VA Codes used to describe one of the unfitting conditions.

b. He was found physically unfit with a recommended combined rating of 20 percent and that his disposition be separation with severance pay for the following unfitting conditions:

- bipolar disorder, mixed type, controlled by medication; VA Code 9206; 10 percent
- muscular tension headaches associated with chronic thoracic and cervical paraspinal muscle strain with a trigger point manifested as neck/shoulder pain; VA Codes 5399 and 5323 [note the change to the VA codes]; 10 percent

c. Item 10C shows the applicant's disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

14. A second DA Form 199-1 shows on 10 April 1996, the applicant again non-concurred with the PEB findings and recommendations, recounting his numerous rebuttals and instances of nonconcurrence. He did not agree with the description of his second condition on his DA Form 199 and did not believes his back injuries and headaches should be combined and provided a Medical Record, 8 April 1996, pertaining to his head and neck injuries, which has been provided to the Board for review.

15. A final U.S. Army PEB memorandum, 11 April 1996, informed the applicant that the PEB reviewed his rebuttal dated 10 April 1996, and after careful consideration, the PEB found that no change to the original findings was warranted.

16. A partial DA Form 18 (Revised PEB Proceedings) shows an administrative correction was made to the applicant's DA Form 199, item 10C to properly reflect an injury as defined in Title 26, U.S. Code, section 104, as resulting from a combat-related injury. No other changes were annotated.

17. Headquarters, U.S. Infantry Center Orders 141-2242, 20 May 1996, discharged the applicant due to disability with severance pay effective 17 June 1996, with a disability rating of 20 percent.

18. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 17 June 1996, under the provisions of Army regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay with corresponding Separation Code JFL. He was credited with 10 years, 6 months, and 14 days of net active service this period and 2 years, 11 months, and 25 days of total prior active service.

19. The applicant previously applied to the ABCMR in January 1998, requesting physical disability retirement in lieu of physical disability separation with severance pay.

20. With his prior application, the applicant provided a VA Hearing Officer Decision, 7 November 1997, which reflects service-connection for the following conditions effective 18 June 1996, for a combined rating of 40 percent:

- bipolar disorder, 30 percent
- olecranon bursitis, left elbow, 10 percent
- chronic thoracic and cervical paraspinal muscle strain with tension headaches, 10 percent
- tinnitus, 0 percent
- nerve damage, left chin and lip, 0 percent
- Hemorrhoids, 0 percent

21. On 22 July 1999, the Board denied the applicant's request, determining the evidence submitted did not demonstrate the existence of a probable error or injustice.

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

23. 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 previous ABCMR denial (22 November 2016, AR20150009779) the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a reconsideration of their prior denial of his request for an increase in his military disability rating and that his disability discharge disposition be changed from separated with severance pay to permanent retirement for physical disability. He states in part:

> "The physical evaluation board rated me 20% total for bipolar disorder, social impairment, muscular tension headaches, chronic thoracic muscle strain, cervical paraspinal muscle strain, neck/shoulder pain, all due to a combat related injury.
>
> With just the disabilities mentions here, the ratting should have been higher, especially being that I was suffered chronic bipolar, anxiety, & depression at the time."

c. The Record of Proceedings and the previous ABCMR denial detail the applicant's military service and the circumstances of the case. The DD Form 214 for the period of service under consideration shows he entered the regular Army on 4 December 1985 and was discharged on 17 June 1996 with $40,341.60 disability severance pay under provisions in paragraph 4-24b(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990).

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

e. This request was previously denied by the ABCMR on 22 July 1999 (AR1999019221). The ROP for that case did an excellent job of outlining the processing of his case and the timeline thereof. This review will concentrate on the applicant's main contentions that some additional conditions should have been found unfitting and that his final disability rating of 20% was too low.

f. The applicant was placed on a duty limit permanent profile for bipolar disorder on 6 September 1995.

g. On 20 October 1995, the MEB determined his bipolar disorder failed medical retention standards. They determined five additional conditions met medical retention standards: “Muscular tension headaches vs mixed headaches, “History of gout X 1 episode,” “Olecranon bursitis,” “Mild hyperlipidemia,” and “Left varicocele which was asymptomatic.” On 25 October 1995, he agreed with the board’s findings and recommendation and his case was forwarded to a physical evaluation board (PEB).

h. On 31 October 1995, his informal physical evaluation board found his bipolar disorder was the sole unfitting condition for continued Service. They rated it at 10% and recommended the applicant be separated with disability severance pay. The determined the remaining conditions were not unfitting.

i. The applicant non-concurred, and after an informal reconsideration, his “Muscular tension headaches associated with chronic thoracic and cervical paraspinal muscle strain with a trigger point manifested as neck/shoulder pain” was added and also rated at 10%

j. The applicant’s formal PEB on 14 March 1996 upheld the findings of the informal PEB. The applicant non-concurred asserting his ratings should be higher and stated “I do not agree with description of the second item on the DA form 199. My back injuries and headaches should not be combined. The appeal was denied

k. The VASRD is the document used to rate unfitting military disabilities. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990):

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in chap 61 of Title 10, United States Code).
b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

l. The ratings are based on the Veteran’s physical exam findings. The MEB narrative summary is not very helpful when giving the measurements and finding upon which the rating for his headache condition would be based, i.e. range of motion.

> The patient is a 35-year-old Caucasian male, active-duty E-5 . The patient has a history of neck injury 19 Apr 94 while in jump school doing an exercise on the swing land trainer. While suspended in the harness he fell several feet and landed on his head .
>
> He states that he was paralyzed and could not move his neck or arms, but that he could move his legs. He was treated in the emergency room and released. He had normal thoracic and cervical spine x-rays during that emergency room visit. There is no documentation of a serious injury in the chart, there is no neurologic exam documented in the chart for that visit. Since that accident he has had frequent headaches that begin in the posterior neck and head bilaterally and extend anteriorly consisting of throbbing pain with associated nausea and photophobia.

m. Given the lack of data and that the VA is the rating expert, the advisor believes it best to use the 7 November 1997 VA Hearing Officer Decision on page 42 of the supporting documentation.

n. The VA has a 10% rating for his “Chronic thoracic and cervical paraspinal muscle strain with tension headaches” effective 18 June 1996.

o. There is insufficient probative evidence the applicant had any other additional condition(s) failed medical retention standards or were unfitting prior to his separation with severance pay; or that any additional medical condition(s) prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

p. The applicant also has asserted that his muscular tension headaches are combat related. The narrative summary shows this injury was incurred while training in a swing land trainer. 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.

q. His injury does not meet one of these criteria.

r. JLV shows some of his ratings have subsequently increased and he has additional rating as well. However, the disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or were permanently aggravated by their military service; or for compensating conditions which did not contribute to career termination. 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 Agency Medical Advisor that either a change in his military disability rating for his headache syndrome and/or a referral of his case to the DES remain unwarranted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for physical disability retirement in lieu of physical disability separation with severance pay.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- With prior honorable service in the Regular Army between July 1978 and July 1981, the applicant re-enlisted in the Regular Army on 4 December 1985.
- A DA Form 3349 (Physical Profile) shows on 30 August 1995, the applicant was given a permanent physical profile with a PULHES of 111113 for Bipolar Disorder, Mixed Type. His assignment limitations included no assignment to areas where psychiatric care was not available.
- A DA Form 199 (PEB Proceedings) shows: a PEB convened on 31 October 1995, the applicant was found physically unfit with a recommended combined rating of 10 percent and his disposition was separation with severance pay. His unfitting condition was Bipolar Disorder, Mixed Type, controlled by medication, with marked impairment for further military duty and mild impairment for social and industrial impairment.
- A second DA Form 199 shows: a PEB convened on 9 February 1996, to informally reconsider the applicant's case based on multiple MEB addenda. He was found physically unfit with a recommended combined rating of 20 percent and his disposition was separation with severance pay.

- A third DA Form 199 shows: a formal PEB convened on 14 March 1996, where the PEB reevaluated all available medical records and sworn testimony by the applicant and determined the prior PEB convened on 9 February 1996, appropriately rated his conditions. He was found physically unfit with a recommended combined rating of 20 percent and his disposition was separation with severance pay.
- A fourth DA Form 199 shows: a PEB convened on 25 March 1996, to informally reconsider the applicant's case based on MEB addendum, dated 22 March 1996, and made changes to the VA Codes used to describe one of the unfitting conditions. He was found physically unfit with a recommended combined rating of 20 percent and his disposition was separation with severance pay.
- A final U.S. Army PEB memorandum, 11 April 1996, informed the applicant that the PEB reviewed his rebuttal dated 10 April 1996, and after careful consideration, the PEB found that no change to the original findings was warranted.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 17 June 1996, under the provisions of Army regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay with corresponding Separation Code JFL.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he was honorably discharged on 17 June 1996, citing medical reasons; however, he firmly believes his discharge should have been a medical retirement, considering the severity of his combat-related injuries and their ongoing impact on his well-being. At the time of his discharge, the Physical Evaluation Board (PEB) rated him at 20 percent disabled, taking into account his bipolar disorder, social impairment, muscular tension headaches, chronic thoracic muscle strain, cervical paraspinal muscle strain, and neck/shoulder pain. These disabilities are all directly attributed to the combat-related injury he sustained during his service. Based on the substantial impact these conditions have on his daily life, he believes that they alone warrant a higher disability percentage. Considering the cumulative effect of these disabilities, as well as their potential long-term implications, he kindly requests the reassessment of his case to change his discharge to a medical retirement, retroactive to his original discharge date to ensure he receives all benefits and support to which he is rightfully entitled by virtue of his injuries incurred in the line of duty (LOD).

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides a MEB Narrative Summary (NARSUM) indicating he was psychiatrically hospitalized twice on 11 January to 1 March 1995 and on 7 March to 31 March 1995. His first hospitalization was due to worsening depression and extreme anxiety; he reported disturbance in sleep and suicidal ideation. His

behavioral health issues contributed to significant occupational and marital problems. He was treated with antidepressant medication during the course of his hospitalization and appeared stable at the time of discharge, although he reported increasing anxiety and restlessness. He was psychiatrically hospitalized six days later due to increasing agitation that was described as “in a state of crisis” along with “extreme anxiety with depressive components”. The applicant appeared to be experiencing a manic episode as evidenced by his reduced need for sleep, his labile affect, his disorganized thought process, and “his ruminative fears regarding spousal abandonment approached the level of delusions”. The antidepressant medication the applicant was prescribed during his initial psychiatric hospitalization, appeared to have precipitate a manic episode due to his undiagnosed underlying Bipolar Disorder. During the course of his second hospitalization, he was treated with a mood stabilizer and antipsychotic medication. Upon discharge from the second hospitalization, he was described as “stable on his medication, though he remained extremely susceptible to situational stressors, apparently to a far greater extent than had been the case in his past. Because of the requirement for maintenance of lithium therapy, he is non-deployable. Further, because of his affective lability secondary to stress, he is only able to work in an emotionally supportive environment”. He was diagnosed with Bipolar Disorder, Mixed Type.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for Bipolar Disorder. The applicant was rated at 70% for Bipolar Disorder, effective on 18 June 1996, the day after he was discharged from military service.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that consistent with the applicant’s assertion, his level of disability at the time of discharge warranted a rating higher than 20%. The applicant was given a 70% rating by the VA the day after his discharge from the Army. Given the VA serves as the expert on disability ratings, their percentage rating of the applicant the day after his discharge from military service should be taken into consideration. In addition, per the General Rating Formula for Mental Disorders a rating of 70% is warranted when the applicant presents with, “Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood….”. Given the applicant’s extended two month long psychiatric hospitalization, his occupational and marital impairments, and his manic and psychotic episode with the predisposition of experiencing another episode which only allowed him to function in “an emotionally supportive environment” his rating of 20% did not appear capture his level of impairment.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, medical advisory opinions, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Based upon the preponderance of the evidence, the Board agreed the applicant's record should be referred to the Office of the Surgeon General for additional medical evaluation consideration, with all relief dependent upon a final medical determination.

2. The Board considered the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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:

1. 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 his behavioral health conditions, 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. The Board further determined that 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 changing his type of discharge without evaluation under the IDES.

X //SIGNED//

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges

due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (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 Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical

impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 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.

4. 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.

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.

//NOTHING FOLLOWS//