

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240000374

APPLICANT REQUESTS:

a. reconsideration of her prior request for correction of her DA Form 199 (Physical Evaluation Board (PEB) Proceedings) to reflect her disability was received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

b. a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 AR20210008957 on 5 April 2022.

2. The applicant states:

a. She would like a reconsideration of her original claim and submit new evidence showing she is entitled to a change to her DA Form 199 based on section V, Title 10, U.S. Code, section 1206, v1. It currently shows her disability disposition is not based on disease or injury incurred in the LOD in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war (Title 5, U.S. Code, sections 8332, 3502, and 6303).

b. This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal civil service. Her DA Form 199 needs to be corrected with the combat codes that were recommended by Fort Sam Houston, TX.

c. On 12 September 2012, she was released from active duty without proper guidance to understand the DA Form 199 and the codes that were associated with it.

This was unjust because the medical injuries she sustained were due to her deployment to Iraq in 2007 – 2008. She was medically evacuated out of theater and none of the evaluations that were done at Landstuhl were reviewed. Only bits and pieces were reviewed, but the entire evaluation was not taken into consideration. The PEB from Fort Sam Houston agreed with the evidence she provided to change the codes, and yet the Board did not take this under advisement. She also requested to see the Board face-to-face and was not given the opportunity to present her case in person.

d. She waited for the Board of Veterans Appeals to take the case when she filed it back in 2013. Her original request was denied one year ago and due to becoming the caregiver for her now deceased mother, she did not file the reconsideration right away. She is not ready to provide the additional evidence and would like for the Board to allow her to appear in person as originally requested.

3. After 3 years, 10 months, and 2 days of total prior active service and 11 years, 3 months, and 22 days of total prior inactive service, the applicant again enlisted in the Regular Army on 18 April 2006 and was awarded the Military Occupational Specialty (MOS) 92Y (Supply Specialist).

4. The dates of the applicant's deployment to Iraq are not in her available records for review. Prior coordination with the Defense Finance and Accounting Service (DFAS) confirms she served in Kuwait from 30 April 2007 through 1 May 2008.

5. Documentation pertaining to the applicant's medical evacuation to Landstuhl Regional Medical Command, referenced by the applicant as evidence supporting the request to change her disability combat codes, are not in her available records for review and have not been provided by the applicant.

6. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), Department of Veterans Affairs (VA) Compensation and Pension (C&P) Exam, VA Proposed Rating Decision for DES purposes, are not in her available records for review and have not been provided by the applicant.

7. The applicant's DA Form 199 shows:

a. A PEB convened on 4 June 2012, at the National Capital Region, Arlington, VA, where the applicant was found physically unfit with a recommended combined rating of 80 percent and that her disposition be permanent disability retirement.

b. The applicant's unfitting conditions are:

(1) Migraine headaches; 50 percent; non-battle condition, gradual onset; diagnosed in February 2006; (10A/C/D – No) [Note code 10D is not listed on this DA Form 199]. This condition is unfitting as the medical condition and profile limitations impose unreasonable requirements on the military to maintain or protect the Soldier. Soldier is unable to reasonably perform the duties of her MOS.

(2) Undifferentiated somatoform disorder and mild major depression; 50 percent; non-battle condition, gradual onset diagnosed June 2010; (10A/C/D – No). This condition is unfitting as the medical condition and profile limitations impose unreasonable requirements on the military to maintain or protect the Soldier. Soldier is unable to reasonably perform the duties of her MOS.

(3) Mild degenerative joint disease (DJD) left shoulder/left shoulder tendonitis (minor); 20 percent; non-battle condition, acute onset during Advanced Individual Training (AIT) in 2004. Deployment to Iraq in 2007 exacerbated the condition (10D-Yes). This condition is unfitting as her profile precludes her from performing functional activities such as lifting more than 10 pounds, wear load bearing equipment, and take the Army Physical Fitness Test (APFT). The Soldier is unable to reasonably perform the duties of her MOS.

c. The following are the applicant's conditions not found to be unfitting because they meet medical retention standards, have been found not unfitting either independently or in combination, the conditions do not render her unable to reasonably perform the duties of her rank and MOS, and they do not represent a decided medical risk to the health of the Soldier if she were to continue on active duty:

- MEB Diagnosis (Dx) 4, degenerative disc and joint disease of the cervical spine with chronic neck pain
- MEB Dx 5, recurrent bronchitis
- MEB Dx 6, recurrent sinusitis
- MEB Dx 7, post-herpetic neuralgia
- MEB Dx 8, insomnia

d. Item 10 shows if retired because of disability, the Board makes the recommending finding that:

(1) 10A: The Soldier's retirement is not based on disability from injury or disease in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurring in the LOD during a period of war as defined by law. [This correlates to Section V(1) on the current version of the DA Form 199]

(2) 10B: Evidence of record reflects the Soldier was not a member or obligated to become a member of an Armed Force or Reserve thereof, or the NOAA or the

USPHS on 24 September 1975. [This correlates to Section V(2) on the current version of the DA Form 199]

(3) 10C: Disability did not result from a combat related injury as defined in Title 26, U.S. Code, section 104 and for purposes of Title 10, U.S. Code, section 10216(G). [This correlates to Section V(3) on the current version of the DA Form 199].

(4) Of note, there is no item 10D on this form, although 10D is referenced in the disability descriptions.

e. On 8 June 2012, the applicant signed the form indicating she had been advised of the findings and recommendations of the PEB, received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto and concurred with the PEB findings. She waived her right to a formal hearing of her case and she did not request reconsideration of her VA ratings.

8. A Physical Disability Information Report, dated 26 July 2012 shows the applicant was placed on the Permanent Disability Retired List (PDRL) effective 13 September 2012, with a disability rating of 80 percent. It further shows:

- disability is not based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war as defined by law
- disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104
- not applicable (N/A) is whether disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was retired on 12 September 2012, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to permanent disability (enhanced), with corresponding separation code SEJ. She was credited with 6 years, 4 months, and 25 days of net active service this period, with 3 years, 10 months, and 2 days of total prior active service, and 11 years, 3 months, and 22 days of total prior inactive service.

10. A U.S. Army Human Resources Command (AHRC) Combat-Related Special Compensation (CRSC) Decision Letter, dated 6 August 2020, shows:

a. They reviewed the applicant's claim for CRSC and approved her claim for tinnitus as combat-related effective October 2012, with a rating of 10 percent, and a justification of combat-related due to an instrumentality of war.

b. They were unable to verify the following conditions as combat-related:

(1) post-traumatic stress disorder (PTSD); VA rating 100 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition.

(2) migraine headaches; VA rating 50 percent; second disapproval; no new medical evidence provided to show combat-related event caused condition.

(3) bilateral visual field defects; VA rating 30 percent; second disapproval; no new medical evidence provided to show combat-related event caused condition.

(4) left shoulder strain with mild DJD, tendonitis, VA rating 20 percent; second disapproval; no new medical evidence provided to show combat-related event caused condition.

c. To award CRSC, the disability or injury must be linked to a combat-related event. Her request form requires her to prove her eligibility by providing military and medical records or notes that verify how the injury/disability occurred. There were no supporting documents in her claim that confirm her conditions were directly caused by a specific combat-related event. They did not find any documentation which confirms her personal exposure to armed conflict. To authorize PTSD, she must prove she was personally exposed to armed conflict. For her remaining disability, her medical history was reviewed in the Armed Forces Health Longitudinal Technology Application (AHLTA) and they did not find supporting documentation confirming her conditions were caused by a specific combat-related event.

11. A VA Board of Veterans' Appeals Order, dated 24 February 2021, shows:

a. Service-connection for traumatic brain injury (TBI) residuals was granted.

b. A total disability rating based on individual unemployability due to service-connected disabilities from 13 September 2020, was granted.

c. Special Monthly compensation (SMC) under Title 38, U.S. Code, section 1114(s) from 13 September 2020, was granted.

d. A compensable rating for service-connected left arm neuropathy and post-herpetic neuralgia was remanded back to the VA for determination.

12. A VA Decision Review Officer Decision, dated 3 March 2021, shows the following were granted effective 13 September 2012:

- service-connection for TBI, 40 percent

- entitlement to individual unemployability
- entitlement to an earlier effective date for the grant of entitlement to SMC based on housebound status
- entitlement to an earlier effective date for the grant of eligibility to Dependents' Education Assistance

13. A second AHRC CRSC Decision Letter, dated 13 April 2021, shows:

a. They reviewed the applicant's claim for CRSC and verified her previously approved claim for tinnitus as combat-related effective October 2012, with a rating of 10 percent, and a justification of previously awarded; verified percentage and effective date.

b. They were unable to verify the following conditions as combat-related:

(1) PTSD; VA rating 100 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition.

(2) migraine headaches; VA rating 50 percent; final disapproval; no new medical evidence provided to show combat-related event caused condition.

(3) TBI; VA rating 40 percent, documentation does not show accident or incident to connect disability to a combat-related event.

(4) bilateral visual field defects; VA rating 30 percent; final disapproval; no new medical evidence provided to show combat-related event caused condition.

(5) left shoulder strain with mild DJD, tendonitis, VA rating 20 percent; final disapproval; no new medical evidence provided to show combat-related event caused condition.

c. To award CRSC, the disability or injury must be linked to a combat-related event. Her request form requires her to prove her eligibility by providing military and medical records or notes that verify how the injury/disability occurred. There were no supporting documents in her claim that confirm her conditions were directly caused by a specific combat-related event. To award conditions as combat-related, she must provide the CRSC office with official medical documentation that shows how each condition is combat-related as defined by CRSC program guidance.

14. The applicant previously applied to the ABMR requesting correction of her records to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war and

her disability resulted from a combat-related injury as defined in Title 26 U.S. Code, section 104.

15. In the adjudication of that case, two advisory opinions were obtained, one was provided by the U.S. Army Physical Disability Agency (USAPDA) legal advisor and one was provided by the Army Review Boards Agency (ARBA) medical advisor, which show in pertinent part:

a. The USAPDA legal advisor found the applicant's request legally sufficient. Title 10, U.S. Code, section 1216a requires that the military departments, "utilize the schedule for rating disabilities in use by the VA (VASRD), including any applicable interpretation of the schedule by the U.S. Court of Appeals for Veterans Claims. The VA conceded the applicant was exposed to a blast during her service in Iraq. Prior to her retirement, the VA's polytrauma nurse practitioner noted the nature of the injury was causing a worsening of her migraines and depression. While not explicitly stated, it is clear that the "nature of the injury" is referring to the blast exposure in Iraq. This information was relied upon when it found her TBI should be service-connected. Therefore, she should be awarded combat codes (V1/3 – Yes) for her migraine and undifferentiated somatoform disorder and mild major depression conditions.

b. The ARBA medical advisor's recommendation shows:

(1) The applicant met criteria for in-service TBI under Title 38, U.S. Code, sections 1110 and 5107(b) and 38 Code of Federal Regulations sections 3.102 (Reasonable doubt) and 3.303(b) (Principles relating to service connection). However, in-theatre clinical notes and deployment TBI Evaluation documentation did NOT support that the applicant sustained TBI due to in-service blast exposure. Presumed non-combat related TBI conditions:

(2) Tinnitus, bilateral visual field defects, and migraine Headaches (V1/3 – No).

(3) Mild major depression, undifferentiated somatoform disorder; and mild DJD, left shoulder/left shoulder tendonitis conditions were incurred or exacerbated while in a combat zone, but evidence was insufficient to support that there were caused by combat or a combat related event (V1/3 – No; V4 - Yes). [Note V(4) states the disability severance pay was not awarded for disability incurred in a combat zone or incurred while performing combat-related operations as designated by the Secretary of Defense]

16. On 5 April 2022, the Board denied the applicant's request, determining the evidence presented does not demonstrate the existence of a probable error or injustice and the overall merits of her case are insufficient as a basis for correction of her records.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of her prior request for correction of her PEB Proceedings to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war. 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: 1) The applicant was deployed to Iraq from 2007-2008; 2) A PEB convened on 4 June 2012, where the applicant was found physically unfit with a recommended combined rating of 80 percent and that her disposition be permanent disability retirement for: A) migraine headaches non-battle condition, gradual onset; diagnosed in February 2006; B) Undifferentiated somatoform disorder and mild major depression; 50 percent; non-battle condition, gradual onset diagnosed June 2010; C) Mild degenerative joint disease (minor); 20 percent; non-battle condition, acute onset during Advanced Individual Training (AIT) in 2004; 3) A Physical Disability Information Report, dated 26 July 2012, shows the applicant was placed on the PDRL effective 13 September 2012, with a disability rating of 80 percent. It further showed: A) disability is not based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war as defined by law; B) disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104; C) not applicable is whether disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) were also examined.

c. While deployed on 14 July 2007, the applicant was seen for a headache and nausea following a vaccine for Anthrax. The applicant was predominately concerned about nausea, and she was treated appropriately and did not return for any additional treatment for headaches during the rest of her deployment. Later in January 2008, while deployed, the applicant began to complain about a sharp chest pain on her left side. The applicant was evaluated by a behavioral health provider while she was in the ICU for chest pain to provide a psychological assessment of the applicant's reported symptoms on 16 January 2008. The applicant clearly reported her symptoms were not related to anxiety or another mental health condition. She stated she "was just sitting and reading when it happened. It felt like it did last year." The applicant reported a history of depression 20 years prior and a prior suicide attempt 7 years earlier by

overdosing with over-the-counter medication resulting in a short stay in an inpatient hospital psychiatric program and outpatient behavioral health treatment. She did not report exposure any blast injury or history of traumatic brain injury, and there is insufficient evidence she was treated by any provider in theater for exposure to a blast injury or any head injury. The applicant was diagnosed with mild Major Depression recurrent by this provider.

d. There is evidence the applicant was evacuated out of Iraq on 17 January 2008 to Landstuhl Regional Medical Center (LRMC). She was seen in the Emergency Room at LRMC on 18 January 2008 for chest pain. Throughout her time LRMC for medical treatment there was no evidence the applicant reported any behavioral health symptoms, headaches, or exposure to a traumatic brain injury. On 22 Jan 2008, the applicant completed the LRMC Brain Injury Evaluation. The applicant did not report any exposure to any traumatic brain injury, and her chief complaint was atypical left sided chest pain. She was cleared to be evacuated to her home station.

e. On 29 January 2008, she was seen for a Post Deployment Evaluation, and again, she denied any behavioral health symptoms, exposure to blast injury, or head injury. On 01 February 2008, she was seen by WTU case management. It was noted she was evacuated to LRMC with Non-Battle medical problems. There was no report of the applicant having a history of traumatic brain injury related her deployment. On 27 February 2008, the applicant reported to the ER with sudden onset of severe left sided headache with numbness in left upper and lower extremity. She reported being exposed to a blast injury in Iraq two months prior. She was given an MRI, which was normal. The applicant began to engage in behavioral health treatment predominately for current significant family stressors, and she was diagnosed with phase of life or circumstance problem. She also was treated for migraines. The only evidence the applicant was exposed to a mild head injury while on active service was on 04 January 2007. This occurred prior to her deployment during a ruck march. She reported falling down. She was treated by the Aid Station, and she was returned to duty the same day.

f. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD and traumatic brain disease by the VA.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD and traumatic brain disease by the VA. However, there is insufficient evidence the applicant was reporting behavioral health symptoms during her Iraq deployment or was medically evacuated from theater due to behavioral health symptoms or a head injury. Therefore, there is insufficient evidence to change the result of her proceedings to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, that the applicant has been diagnosed with service-connected PTSD and traumatic brain disease by the VA. However, there is insufficient evidence the applicant was reporting behavioral health symptoms during her Iraq deployment or was medically evacuated from theater due to behavioral health symptoms or a head injury. Therefore, there is insufficient evidence to change the result of her proceedings to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence the applicant was reporting behavioral health symptoms during her Iraq deployment or was medically evacuated from theater due to behavioral health symptoms or a head injury. The Board found, based on the medical opine insufficient evidence to change the results of her proceedings to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

2. The Board noted, the USAPDA legal advisor found the applicant's request legally sufficient. Furthermore, evidence in the records shows that the VA conceded the applicant was exposed to a blast during her service in Iraq. Prior to her retirement, the VA's polytrauma nurse practitioner noted the nature of the injury was causing a worsening of her migraines and depression. While not explicitly stated, it is clear that the "nature of the injury" is referring to the blast exposure in Iraq. This information was relied upon when it found her TBI should be service-connected. Therefore, she should be awarded combat codes (V1/3 – Yes) for her migraine and undifferentiated somatoform disorder and mild major depression conditions. However, the Board determined the applicant's contentions to reflect her disability was received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war is unwarranted. As such, the Board denied relief.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20210008957 on 5 April 2022.

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 1413a, as amended, established Combat-Related Special Compensation (CRSC). CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it

were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for Reserve retirement at age 60) or who have a physical disability retirement with less than 20 years' service for injuries that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. CRSC eligibility includes disabilities incurred as a direct result of:

- armed conflict (gunshot wounds, Purple Heart, etc.)
- training that simulates war (exercises, field training, etc.)
- hazardous duty (flight, diving, parachute duty)
- an instrumentality of war (combat vehicles, weapons, Agent Orange, etc.)

2. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (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 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

3. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, 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, 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. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of

Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. 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.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat 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.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of 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, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//