

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000426

APPLICANT REQUESTS: The narrative reason and corresponding separation program designator (SPD) code for his separation be changed to reflect that he was medically retired due to physical disability, instead of unsatisfactory performance.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letters (3)
- Army Medical Documents (43 pages)
- Dependent Identification Card documents (3 pages)
- Geneva Convention Identification Card
- DA Form 4856 (Developmental Counseling Form), 16 April 2020
- Installation Management Agency (IMA), Human Resources Directorate, Fort Lee, VA, memorandum Subject: Important Information for Service Members Separating, Regarding [the applicant], 18 May 2020
- National Personnel Records Center (NPRC), letter, 24 November 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (2)
- Department of Veterans Affairs (VA) letter, 30 June 2020
- VA letter, Janesville, WI, 2 July 2020
- VA Veteran Status Verification Form, 6 July 2020
- VA Veterans Identification Card
- California Disabled Person Placard, 5 March 2022
- California Driver License
- Rental Agreement, 16 April 2022
- VA Regional Office Director letter, 13 November 2023
- Photographs (2)
- Handwritten document (in a foreign language)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), Section 1552 (b); however, the Army Board for Correction of Military

Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant provides three self-authored letters which are available in their entirety for the Board's consideration. He states, in effect, he joined the military with a deep sense of commitment and dedication to serving his country. Unfortunately, over the past three years, he has grappled with a debilitating medical condition that has significantly affected his performance. Despite his best efforts to overcome the challenges posed by his health, he has reached a point where continued service is no longer feasible. He has not received adequate support from any organization over the past three years, contributing to the deterioration of his health and performance. The lack of assistance has left him in a vulnerable position, and he believes that a change of his discharge status to medical retirement is not only justified, but also essential for his well-being.

a. Basic Combat Training (BCT) was an extremely stressful event for him, and he has struggled with the aftermath of it ever since. During BCT, he was constantly pressuring himself to perform to the best of his abilities. This pressure led to frequent anxiety attacks and nightmares, making it increasingly difficult for him to sleep at night. Unfortunately, there was no time or assistance provided to them to help cope with these conditions. This made it more difficult for himself and his fellow Soldiers to handle the stresses of training.

b. He heard of Soldiers passing away under similar conditions, which put even greater strain on his mind. He vividly recalls having his first post-traumatic stress disorder (PTSD) attack in the bay when two of his battle buddies startled him after training hours. It felt like he lost control of his thoughts and emotions, and it took him a while to regain his composure and function properly. Knowing that their lives were constantly at risk during training added to the already existing anxiety and sleepless nights, causing him to develop insomnia. The nightmares that haunt him have made him afraid to sleep, and his condition has gotten progressively worse. He experiences an attack almost twice a week now, leaving him feeling broken and unable to cope.

c. He is unable to identify what triggers these attacks. Sometimes, even a simple task could lead to a flashback and an attack. This makes it difficult for him to operate, let alone perform even the simplest of jobs. His condition seems to be getting worse with each passing day, and he is terrified of what may happen if he does not receive the help he needs. He would appreciate any assistance that the VA can provide to help him cope with his PTSD.

d. His time in the military was meant to be a time of growth, dedication, and service to his country. However, due to circumstances beyond his control, his time in the military was cut short, leaving him with physical and emotional scars that he still carries.

The change in climate from South Carolina (where he attended BCT) to Virginia (where he attended Advanced Individual Training) led to a severe bout of pneumonia and sinusitis that lasted for over a month. This illness left him unable to train and qualify in his military occupational specialty (MOS), which in turn led to him being recommended for discharge. During this time, he was constantly visiting the doctor, seeking medical help to no avail.

e. Despite his best efforts, he was honorably discharged for unsatisfactory performance, without being given the opportunity for a medical discharge. He was left feeling defeated and abandoned, having given his all to the military, only to be let go due to circumstances beyond his control. The COVID-19 pandemic only exacerbated his situation. The social distancing rules meant that they were crammed into small rooms, with little regard for their health and safety. The commander and first sergeant of Whiskey company were more concerned with discharging holdovers as quickly as possible, rather than ensuring that each Soldier received the medical attention they needed.

f. He is now plagued by sinusitis and PTSD, both of which have made it impossible for him to find gainful employment. His claim for unemployment benefits was disapproved, solely because of his narrative reason for separation. He has been forced to live illegally in his father's apartment, as he cannot afford to pay for his own housing. Some days, he had to stay in a hotel, fearing that he would be reported to the property manager and evicted from his temporary lodging. He implores the Board to reconsider his case and approve his application for a medical retirement. He did not choose to fall ill, nor did he choose to be discharged for unsatisfactory performance. He dedicated himself to serving his country, and he asks the Board to show him the compassion and understanding that he deserves.

3. On 7 October 2019, the applicant enlisted in the Regular Army for a period of 4 years. He completed English as a Second Language training at Lackland Air Force Base, TX, and BCT at Fort Jackson, SC. Upon completion of BCT he was assigned to a unit at Fort Lee, VA, for completion of Advanced Individual Training (AIT).

4. A DA Form 4856 shows the applicant was counseled on 16 April 2020. His DA Form 4856 shows he was advised of the following:

a. There were no qualifying MOSs listed in the Army Training Requirements and Resources System at the time and the Army Human Resource Command was not accepting/assigning new MOSs.

b. He was being recommended for separation from the Army under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), Chapter 13, for unsatisfactory performance.

c. An administrative flag was being imposed to prevent him from receiving favorable personnel actions while he was pending separation. He was advised of the potential consequences of this type of separation on his eligibility for Veterans benefits.

5. The applicant underwent a mental status evaluation on 21 April 2020, which included, in part, a clinical interview, mental status examination, comprehensive medical record review, and screening for PTSD and depression. He had failed academically, and his commander's judgment was that he would not develop sufficiently to become a satisfactory Soldier. The applicant had no reported or documented history of past or current affiliation with the Department of Behavioral Health, Substance Use/Dependency Counseling Clinic, or Family Advocacy Program. He did not currently have a behavioral health condition that caused him to fail medical retention standards in accordance with Army Regulation 40-501 (Medical Services - Standards of Medical Fitness). The medical record did not contain substantial evidence that the applicant met criteria for a condition requiring referral to the Integrated Disability Evaluation System. The applicant was considered "mentally fit for duty."

6. On 12 May 2020, the applicant's immediate commander notified the applicant of the intent to initiate actions to separate him from the Army, under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance. The basis for this action was the commander's opinion that his ability to perform duties effectively was unlikely based upon his inability to successfully complete the 92Y (Unit Supply Specialist) Program of Instruction. His commander stated this action could result in his service being characterized as either honorable or general (under honorable conditions). He would be recommended for an honorable discharge, but the separation authority would render the final decision. The applicant acknowledged receipt of the notification the same date.

7. The applicant's immediate commander formally recommended the applicant's separation under the provisions of Army Regulation 635-200, Chapter 13, due to unsatisfactory performance.

8. On 13 May 2020, the applicant consulted with counsel, and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He elected not to submit statements in his own behalf and waived his right to military counsel and/or civilian counsel.

9. The separation authority approved the recommended separation on 13 May 2020 with an honorable characterization of service.

10. Orders and the applicant's DD Form 214 show he was discharged on 28 May 2020 under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. He was assigned SPD code "JHJ" and Reentry Eligibility (RE) code "3." His service was characterized as honorable. He was credited with completion of

7 months and 22 days of net active service. He did not complete his first full term of service.

11. The applicant provides the following documents:

a. Army medical record documents which show he underwent a medical examination prior to his enlistment. The documents also show, in part, he was treated and or evaluated for a variety of reasons including, but not limited to: ingrown toenail, left hand knuckle injury, sore throat, nasal congestion, cold like symptoms, right ear pain/hearing loss, red acne pimple, stomach pain, left shoulder pain, runny nose, respiratory infection, and a pre-separation medical examination.

b. Documents showing the applicant was granted approval for issuance of Dependent Identification Cards for his parents.

c. A copy of his Geneva Convention Identification Card.

d. IMA, Human Resources Directorate, Fort Lee, VA, memorandum Subject: Important Information for Service Members Separating, Regarding [the applicant], 18 May 2020, wherein guidance was provided to enable the applicant to properly process out of the Army.

e. A letter from the NPRC, St. Louis, MO, dated 24 November 2020, which shows the applicant was provided certified copies of his DD Form 214.

f. A letter from the VA office in Atlanta, GA, dated 30 June 2020, wherein the applicant was informed he was found ineligible to enroll in VA health care due to the fact he served less than 24 months of active duty service.

g. A letter from the VA office in Janesville, WI, dated 2 July 2020, shows they acknowledged receipt of the applicant's intent to file a claim for compensation and provided him guidance on how to do so.

h. A California Department of Veterans Affairs, Veteran Status Verification Form shows the applicant was approved for Veteran status with the California Department of Motor Vehicles on 6 July 2020.

i. A copy of his VA Identification Card.

j. A copy of his State of California Disabled Person Placard issued on 5 March 2022.

k. A copy of his California Driver License which shows he was granted Veteran status.

l. A rental agreement dated 16 April 2022, shows the applicant and another person as tenants.

m. A letter from a VA Regional Office Director, dated 13 November 2023, shows the applicant was receiving service-connected disability compensation from the VA for a combined disability evaluation of 70 percent, effective 1 December 2022.

n. Two photographs of a room containing tables and chairs.

o. A document that was handwritten in a foreign language.

12. Regulatory guidance provides that commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

13. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to the narrative reason and corresponding separation program designator (SPD) from unsatisfactory performance to medically retired due to physical disability. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 7 October 2019.
- On 12 May 2020, the applicant's immediate commander notified the applicant of the intent to initiate actions to separate him from the Army, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. The basis for this action was the commander's opinion that his ability to perform duties effectively was unlikely based upon his inability to successfully complete the 92Y (Unit Supply Specialist) Program of Instruction.
- The applicant was discharged on 28 May 2020 and was credited with completion of 7 months and 22 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he has PTSD or another mental health condition due to the conditions of basic training and his belief that trainees had died in similar situations. The application included a VA letter of eligibility dated 30 June 2020, which stated that the applicant is ineligible because he served less than 24 months, but a second letter dated 13 November 2023 showed the applicant is 70% disabled and receiving service-connected compensation. A Mental Status Evaluation dated 21 April 2020 showed the applicant had no duty limitations and met retention standards for behavioral health, and he did not meet criteria for a condition requiring referral to IDES. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. Joint Legacy Viewer (JLV), which shows medical and mental health records from DoD and VA, was also reviewed, and showed the applicant was evaluated for a chapter 13 mental health examination on 21 April 2020. He denied any mental health symptoms or problems, and he was deemed fit for duty and worldwide deployable.

e. The applicant attempted to initiate mental health treatment through the VA on 28 August 2020, but it was determined that he was ineligible. The applicant reported he had been seeing a community provider and had been told he may have PTSD because he reported nightmares. There were two additional contacts with mental health, and he was referred to the Vet Center. His most recent visit was on 28 March 2024, and he

reported significantly improved symptoms secondary to getting a job. The applicant is 80% service connected for physical health problems.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that substantiates a disability.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of his discharge. There is no evidence, beyond self-report, that he experienced a mental health condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. Additionally, his report of experiences while in basic training do not provide any evidence of experiences outside the norm for BCT and AIT. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence of record shows the applicant was discharged under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. He was assigned Separation Code JHJ. He was credited with completion of 7 months and 22 days of net active service, and he did not complete his first full term of service. The Board found no mitigating factors that would merit a change to the applicant's Separation Code. The Separation Code follows the authority for discharge and reason for separation. The narrative reason for separation listed on the DD Form 214 is governed by specific directives. The applicant was discharged under Chapter 13 of AR 635-200. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "Unsatisfactory Performance." The appropriate Separation Code assigned to enlisted Soldiers separated due to unsatisfactory performance is JHJ.

b. AR 635-8, Separation Documents, governs preparation of the DD Form 214, and dictates that entry of the narrative reason for separation and Separation Code will be entered as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator Codes. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical provider's finding insufficient evidence to support that the applicant had a condition or experience that substantiates a disability. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable, and as such, the Separation Code is also not in error or unjust, and there is no reason to change it.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations.
 - a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.
 - b. Chapter 13 provides:
 - (1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:
 - they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;

- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It states that the SPD code "JHJ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 13, by reason of Unsatisfactory Performance. Additionally, the SPD/RE Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. Title 10, USC, Chapter 61, provides for the retirement and discharge of members of the Armed Forces who incur a physical disability in the line of duty while serving on active or inactive duty. However, the disability must have been the proximate result of performing military duty. It further provides for disability retirement or separation for a member who is physically unfit to perform the duties of his office, rank, grade, or rating because of disability incurred while entitled to basic pay.

7. Title 38, USC, Section 1110 provides: 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.

8. Title 38, USC, Section 1131 provides: 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.

9. Army Regulation 40-501 (Medical Services - Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) provides a listing of all medical conditions and specific causes for referral to a Medical Evaluation Board (MEB). It states:

a. The various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for all enlisted Soldiers of the Active Army, Army Reserve National Guard, and United States Army Reserve. The medical conditions and physical defects, individually or in combination, are those, that:

(1) Significantly limit or interfere with the Soldier's performance of their duties.

(2) May compromise or aggravate the Soldier's health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or a requirement for frequent clinical monitoring.

(3) May compromise the health or well-being of other Soldiers.

(4) May prejudice the best interests of the Government if the individual were to remain in the military Service.

b. Soldiers with conditions listed in Chapter 3, who do not meet the required medical standards will be evaluated by an MEB. Possession of one or more of the conditions listed in this chapter does not mean automatic retirement or separation from

service. Physicians are responsible for referring Soldiers with conditions listed in Chapter 3 to an MEB.

10. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System according to the provisions of Title 10, USC, Chapter 61 (Retirement or Separation for Physical Disability) and Department of Defense Directive 1332.18.2. This regulation governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states:

a. The mere presence of an impairment does not, itself, justify a finding of unfitness because of physical disability. In each case it is necessary to compare the nature and degree of physical disability present the requirements of the duties the Soldier reasonably may be expected to perform because of tier office, grade, rank or rating. To ensure all solders are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in Army Regulation 40-501. These guidelines are used to refer a Soldier to an MEB.

b. The Soldier will not be declared physically unfit for military service because of disabilities known to exist at the time of the Soldier's acceptance for military service that have remained essentially the same in degree since acceptance and have not interfered with the Soldier's performance of effective military service.

c. 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

d. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. An enlisted Soldier whose reenlistment has not been approved before the end of his or her current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical conditions occurred immediately prior to, or coincident with

processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

e. The fact that a Soldier has a condition listed in the VA Schedule of Ratings Disability does not equate to 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.

f. The medical treatment facility commander with the primary care responsibility will evaluate those referred to him/her and will, if it appears as though the member is not medically qualified to perform duty or fails to meet retention criteria, refer the member to a MEB. Those members who do not meet medical retention standards will be referred to a Physical Evaluation Board (PEB) for a determination of whether they are able to perform the duties of their grade and Military Occupational Specialty with the medically disqualifying condition. The PEB evaluates all cases of physical disability equitably for the Soldier and the Army. The PEB investigates the nature, cause, degree of severity, and probable permanency of the disability of Soldiers whose cases are referred to the board. Finally, it makes findings and recommendations required by law to establish the eligibility of a Soldier to be separated or retired because of physical disability.

11. 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 and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

12. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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.

//NOTHING FOLLOWS//