

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240000554

APPLICANT REQUESTS: reconsideration of his prior request for:

- in effect, reinstatement on active duty for the purpose of physical disability evaluation system (DES) processing
- promotion to the rank/grade of Chief Warrant Officer Two (CW2) effective 24 January 2012, with corresponding backpay and allowances
- physical disability retirement in lieu of honorable discharge due to failure to complete a course of instruction
- 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 AR20180011198 on 1 December 2020.

2. The applicant states:

a. He is requesting reinstatement on active duty for the purpose of DES evaluation with simultaneous promotion to CW2 retroactive to 24 January 2012, with all corresponding backpay and allowances, and subsequent physical disability retirement.

b. He was erroneously involuntarily separated from active duty for an undiagnosed condition. His command was aware of his post-traumatic stress disorder (PTSD) and completed his elimination from flight school on a non-medical, biased, and discriminative assessment of adjustment disorder, which involved Constitutional injustice. The members of his command who made a determination of elimination for cause were not medical personnel and erroneously declared an undiagnosed disorder.

c. His command was negligent in ignoring his medical assessment of PTSD and the need for further treatment. His separation caused the loss of his Army career, marital

divorce, and years of incarceration due to lack of treatment. Pecuniary losses were substantial to mention for the purpose of addition to pay and allowances due.

3. The applicant enlisted in the Regular Army on 23 November 2004 and was awarded the Military Occupational Specialty (MOS) 91P (Artillery Mechanic).

4. The applicant deployed to Iraq during the following two periods:

- from 2 October 2006 through 28 November 2007
- from 13 December 2008 through 12 September 2009

5. Headquarters III Corps and Fort Hood Orders L195-053, dated 14 July 2009, show:

a. The applicant was reassigned as a Warrant Officer Candidate to the Warrant Officer Career College (WOCC) at Fort Rucker, AL, for the purpose of attendance at Warrant Officer Cadet School (WOCS), Phase I, with a reporting date of 9 November 2009, and a through date of 27 November 2009.

b. Upon successful completion of WOCS, the applicant would be appointed a Warrant Officer One (WO1) and ordered to active duty.

c. The orders list his further schooling as Phase II, with a report date of 30 November 2009, and a through date of 19 January 2010. Upon successful completion of WOCS, he would be appointed to WO1 and ordered to active duty by the Commandant, Fort Rucker, AL.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 12 January 2010, for the purpose of accepting a commission or warrant in the Army. He was credited with 5 years, 1 month, and 20 days of net active service this period.

7. A DA Form 71 (Oath of Office) shows the applicant was appointed an officer in the Army of the United States in the rank of WO1 at Fort Rucker, AL, effective 13 January 2010.

8. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 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. Physical profile ratings can be either permanent (P) or temporary (T).

9. A DD Form 2808 (Report of Medical Examination), dated 16 August 2011, shows the applicant underwent medical examination on the date of the form for the purpose of flight duty qualification and on 12 October 2011, was disqualified from flying duty by the Army Aeromedical Center with a PULHES of 11T3111, with a temporary physical profile rating in factor L for lower extremities.

10. A U.S. Army Human Resources Command (AHRC) memorandum, dated 12 October 2011, shows:

a. The applicant was informed of his recommendation for medical disqualification, referenced in Headquarters, U.S. Army Aeromedical Center memorandum, dated 11 October 2011, subject: Recommendation for Medical Disqualification and Suspension Granted.

b. Under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), a 1W medical recommendation for medical disqualification was granted to the applicant and would remain in effect until terminated by that office.

c. A copy of this correspondence would be posted in the applicant's Individual Flight Record Folder (IFRF) and in his medical record. Details relating to this action are located within the medical record and Aeromedical Electronic Resource Office (AERO).

d. Flight status may be reconsidered (if appropriate) after a thorough review, evaluation, and submission of Aeromedical Summary documenting resolution of conditions and fitness to perform flight duties. Details are available in AERO.

11. A U.S. Army Aviation Center of Excellence (USAACES) Form 396-R-E (Record of Student Elimination), shows action was taken to eliminate the applicant from the Aircraft Selection/Initial Entry Rotary Wing Course (IERW) for medical reasons, with a diagnosis of adjustment disorder and on 13 October 2011, the approval authority approved the recommendation for the applicant's elimination with release from active duty (REFRAD).

12. The applicant's Officer Record Brief (ORB), dated 13 October 2011, shows:

- his basic date of appointment was 13 January 2010
- the source of his original appointment was Warrant Officer Aviation Training
- his rank was WO1 with a date of rank of 13 January 2010
- his assignment status at Fort Rucker was as a student effective 13 January 2010, with no aviator qualifications

13. An Office of the Staff Judge Advocate USAACES memorandum, dated 21 October 2011, shows the applicant's medical elimination and discharge/REFRAD proceedings were reviewed and found to be legally sufficient.

14. On 25 October 2011, the applicant was notified by his commander of his 13 October 2011 elimination from IERW Course, due to medical disqualification with a diagnosis of adjustment disorder. His commander recommended the applicant not be considered for further flight training at a later date, that he be REFRAD, and that his term of service be characterized as honorable. The command was not attempting to rebranch the applicant to complete his service obligation and he had been removed from the Aircraft Selection phase of training on 10 May 2011. The commander's comments show the applicant is medically disqualified from aviation and does not possess the leadership qualities to continue in the Army.

15. On 25 October 2011, the applicant was notified of his elimination from a program of instruction at the USAACES and that further action would be initiated to involuntarily discharge him from the service or REFRAD him. He was advised of his right to have the assistance of counsel and prepare a written statement or rebuttal to his involuntary separation.

16. On 25 October 2011, the applicant acknowledged notification of elimination from program of instruction and acknowledged notification of his rights, to include submission of a written statement in rebuttal.

17. On 25 October 2011, the applicant acknowledged having had sufficient opportunity to consult with an attorney regarding his rights and to submit a statement or rebuttal for consideration by the separation authority before he could be involuntarily discharged or REFRAD, he indicated he would not make a statement or submit a rebuttal and waived his option to request to revert to his previous enlisted rank and MOS.

18. On 28 October 2011, the applicant's battalion commander recommended the applicant not be considered for further flight training at a later date, that he be REFRAD, and that this service be characterized as honorable. His comments reflect the applicant did not appear to have the desire or necessary traits for military service.

19. On 3 November 2011, the applicant's brigade commander recommended the applicant not be considered for further flight training at a later date, that he be REFRAD, and that this service be characterized as honorable. His comments reflect the applicant was medically disqualified and his medical condition was unsuitable for future military service.

20. An undated memorandum shows the Commanding General, Headquarters, USAACES directed the applicant's honorable REFRAD under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), in response to his request for voluntary REFRAD. His medical disqualification and elimination from the IERW course were the basis for the termination of his warrant officer appointment and REFRAD. The applicant would not be considered for future aviation training.

21. On 28 November 2011, the applicant acknowledged his receipt of notification of separation from the U.S. Army.

22. A DD Form 214 shows the applicant was honorably discharged on 24 January 2012, under the provisions of Army Regulation 600-8-24, due to failure to complete course of instruction, with corresponding separation code JHF. He completed 2 years and 12 days of active service this period and 5 years, 1 months, and 20 days of prior active service. His grade, rate or rank and pay grade reflect WO1 and his primary specialty shows 003A0 (Student).

23. There is no evidence of record the applicant was ever recommended for promotion or promoted to the rank of CW2 prior to his discharge.

24. The applicant previously applied to the ABCMR in June 2018, requesting in effect, DES processing, physical disability retirement in the rank of CW2, and backpay from 24 January 2012.

a. In the adjudication of that application, a medical advisory opinion was obtained from the Army Review Boards Agency (ARBA) medical advisor and is included in the Record of Proceedings for Docket Number AR20180011198, provided in full to the Board for review.

(1) The advisory opinion shows, in pertinent part, the applicant had been pending dismissal from IERW for failing his Army Physical Fitness Test (APFT) and that he self-referred to mental health on 26 May 2011, due to anxiety and depression related to being eliminated from flight school due to APFT failure. At that time, he reported a history of combat trauma, blast exposure and marital problems related to deployment. The flight surgeon noted a temporary physical profile for a left hand injury and a history of chronic right ankle instability and lower back pain.

(2) He then underwent an Aeromedical Psychology Evaluation on 17 August 2011, where he was diagnosed with anxiety disorder. Anxiety disorders, to include panic disorder, PTSD, acute stress disorder are medically disqualifying for aviation service and a waiver will only be considered with the aviator is asymptomatic without medications for 3 months. The applicant was on sertraline and trazodone to treat his conditions.

(3) It was concluded the applicant's mental health condition was incompatible with aviation duties and he was permanently disqualified from aviation service, but there is no evidence the applicant's mental health condition failed medical retention standards. The applicant's referral to the DES is not warranted.

b. On 1 December 2020, the Board denied the applicant's request, determining there was insufficient evidence of error or injustice which would warrant his referral to the IDES for evaluation, change his narrative reason for separation, and/or change his pay record.

25. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), 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 reconsideration of the ABCMR's prior denial of his request for a referral to the Disability Evaluation System (DES) and a medical retirement. He states:

"Administration initiated an involuntary separation for substandard performance on facts of a misdiagnosis of adjustment disorder and failure of one record army physical fitness test when actually injury was level three non-traumatic rupture of hamstring with insufficient treatment to train and heal with the mental illness being chronic post- traumatic stress disorders incurred from multiple long combat tours and encounters with enemy combatives {sic} less than 24 months earlier."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former USAR Warrant Officer entered active duty for on 13 January 2010 and was honorably discharged on 24 January 2012 under the provisions of paragraph 2-37 of AR 600-8-24, Officer Transfers and Discharges (12 April 2006), "Failure to Complete Course of Instruction."

d. This request was previously denied by the ABCMR on 1 December 2020 (AR20180011198). Rather than repeat their findings here, the board is referred to the

record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. No new documentation was submitted with the application. The prior medical advisory opinion:

f. The applicant had entered the Army to attend the Initial Entry Rotary Wing (IERW) Course at Ft. Rucker, Alabama. Review of the applicant's Aeromedical Summary Evaluation (AMS) shows that he had been pending dismissal from IERW for failing his Army Physical Fitness Test:

"SM [service member] self-referred to behavioral health on 26 May due to anxiety & depression related to being eliminated from flight school due to a PT failure. SM reported a history of combat trauma, blast exposure and marital problems related to deployments. SM was not experiencing difficulty in flight training – but symptoms were affecting his personal life, stress level, and motivation."

g. The flight surgeon noted the applicant had a temporary profile for a left-hand injury and a history of chronic right ankle instability lower back pain. The applicant underwent an Aeromedical Psychology Evaluation by a trained aeromedical psychologist on 17 August 2011. The provider identified "significant symptoms of anxiety and depression on psychometric testing, to include paranoia, somatization and traumatic stress." The applicant was diagnosed with anxiety disorder, not otherwise specified (NOS).

h. The applicable Aeromedical Policy Letter states that anxiety disorders, to include panic disorder, post-traumatic stress disorder (PTSD), acute stress disorder, and anxiety disorder NOS are medically disqualifying for aviation service; and a waiver request will only be considered after the "aviator is asymptomatic without medications for three months." The applicant was on sertraline and trazadone to treat this condition.

i. Additional entries in the psychologist's evaluations include:

- Service Member denies audiovisual hallucinations - but does report hearing his name called sometimes and experiences paranoia related to combat stress symptoms - e.g., feels like someone is watching him.
- Described situation on Saturday evening where he drank two shots in mixed drinks and later took Trazodone, blacking out.
- Symptoms appear incompatible with flight duties and present a clear danger to the safety of the aviation environment.

j. Following this evaluation, the flight surgeon writing the Aeromedical Summary (AMS) recommended the applicant be permanently disqualified from aviation service because of his mental health condition:

“SM's current levels of anxiety are a clear danger to the aviation environment. SM's symptoms of paranoia, depression, somatization, and insomnia are incompatible with safe execution of aviation duties.”

k. IAW paragraph 7-4 of AR 600-105, Aviation Service of Rated Aviation Officers, his AMS was reviewed by the Aeromedical Consultation Service (ACS) at the US Army Aeromedical Activity (USAAMA) on Ft. Rucker, Alabama. Given the issues in his particular case, it was selected for review by the Aeromedical Consultant Advisory Panel (ACAP). ACAP consists of aeromedical specialists appointed by the Director of USAAMA and experienced aviators appointed by the Commanding General of the U.S Army Aviation Center of Excellence (USAACE).

l. His case was reviewed at the 11 October 2011 ACAP meeting. The panel concluded his mental health condition was incompatible with aviation duties and he was permanently disqualified from aviation service the following day.

m. Aviation safety places additional physical and mental health requirements on all rated crew members, both Officers and Enlisted. While the applicant's mental health condition was below aeromedical adaptability standards per se and because of the treatment with psychoactive medication, there is no probative evidence it failed the medical retention standards of paragraph 3-33 of AR 40-501, Standards of Medical Fitness (4 August 2011). This paragraph states that a mental health condition fails medical retention standards when it causes:

- Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- Persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- Persistence or recurrence of symptoms resulting in interference with effective military performance.

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

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare

the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

o. The applicant had the area of concentration (AOC) of 03A, Student, at the time of discharge. Because he did not complete IERW training, he was not a rated aviation officer, and therefore a physical evaluation board would not find him unfit as an aviator.

p. Based on the information currently available, remains the opinion of the Agency Medical Advisor that a referral of this case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient information for reinstatement for referral of his case to the Disability Evaluation System (DES). The Board concluded his honorable discharge on 24 January 2012 was appropriate and there was no basis for referral to the DES for consideration of a physical disability retirement.

2. Upon review of the applicant's petition and available military records, the Board determined the applicant was discharged on 24 January 2012 in the rank/grade of warrant officer one with a date of rank of 13 January 2010. The Board found no evidence or documentation to support the applicant was recommended for or promoted to chief warrant officer two while on active duty and therefore denied his request for promotion with backpay and allowances.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

■

■ ■

■

■

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 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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. 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.

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 their 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 their 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. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of Army officer personnel. This regulation includes statements, operating tasks, rules in support of operating tasks, and sequential steps of each operating task.

a. Paragraph 2-33c (Rules for processing involuntary release from active duty and termination of Reserve appointments of student officers and warrant officers attending branch orientation, familiarization courses, or Warrant Officer Basic Course (WOBC)) states effective 1 October 1992, warrant officer (WO) W-1, who are appointed contingent upon successful completion of WOBC, will be released from active duty (REFRAD) or discharged if—

(1) Eliminated from WOBC due to resignation from the course or for failure to meet the conduct, moral, physical, professional, academic, or leadership standards.

(2) Failure of Reserve Component, WO, W1 to successfully complete WOBC within 2 years of appointment (3 years with HQDA (DAPE-MPO) or Chief, National Guard Bureau (GB-ARP-O) waiver).

b. Paragraph 2-37a (Rules for processing involuntary release from active duty due to failure of selection for permanent Reserve promotion). States the provisions of this section do not apply to commissioned officers and warrant officers on the active duty list (ADL). Except as indicated in b through e, the officers and warrant officers listed in

subparagraphs (1) and (2), below, will be released from active duty. They will be discharged on the 120th calendar day after receipt of involuntary release notification. This is unless earlier release is voluntarily requested or transfer to the Retired Reserve is requested and the Soldier is eligible. Officers and warrant officers with a remaining service obligation will be transferred to the Ready Reserve.

c. Paragraph 2-37c states reserve warrant officers holding the permanent Reserve grade of W1 and serving on active duty as warrant officers and who are not promoted to the permanent Reserve grade of CW2 on or before date completing 3 years promotion service will be released from active duty. They will be released from active duty and discharged on date of completion of such service unless they have a service obligation. Those serving an obligated period of service will be retained on active duty until completion of their obligation.

6. Army Regulation 600-8-29 (Officer Promotions) prescribes policies and procedures governing promotion of Army commissioned and warrant officers on the active duty list. Paragraph 3-3a (Rules for computing promotion eligibility date (PED) to chief warrant two (CW2) states the earlier of the following dates will be the PED to CW2:

a. The second anniversary of warrant officer service provided the officer has served a minimum of 18 months on the Active Duty List as a WO1. Adjust the PED to ensure the officer meets the 18 months active duty requirement if necessary.

b. The second anniversary of total active duty service in the current or any higher grade provided that the officer has served a minimum of 18 months of active duty service as a WO1. Adjust the PED to ensure the officer meets the 18 month active duty requirement if necessary. Active duty service as a commissioned officer before appointment as a warrant officer will also count as active duty service.

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.

8. 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//