

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240000722

APPLICANT REQUESTS: in effect, reconsideration of his prior requests for physical disability discharge from the Army National Guard (ARNG) in lieu of honorable administrative discharge due to failure to complete a branch or basic entry specialty qualification course.

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

- DD Form 149 (Application for Correction of Military Record)
- multiple self-authored statements
- Temporary Radiology Report, 14 May 2002
- State of Washington Military Department memorandum, 25 June 2002
- Master Military Pay Account (MMPA), July 2002
- U.S. Army Human Resources Command (AHRC) Orders C-03-606378, 8 March 2006
- Medical Record, 1 June 2006
- MedPro Diagnosis Summary, 10 April 2007
- Automated Orders and Resource System printout, 16 January 2008
- Cougar Health Services doctor's letter, 14 January 2021
- My HealtheVet, Personal Information Report, 4 October 2023
- Traumatic Brain Injury (TBI) Comprehensive Evaluation consult Report, 30 September 2024
- Orthopedic Surgery Secure Messaging Note, 27 September 2024
- Department of Veterans Affairs (VA) Problem List, 19 November 2024
- Army Review Boards Agency (ARBA)/applicant email correspondence, 4 December 2022 – 22 November 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200004254 on 5 October 2021 and Docket Number AR20220009405 on 27 July 2023.

2. The applicant states:

a. He takes issue with some portions of the prior Record of Proceedings in Docket Number AR20220009405. In that case, the medical reviewer mentioned missing PULHES documents. He attached a copy of the PULHES document. The medical reviewer presented the medical aspect of the PULHES document and no contemporaneous documents to follow before or after the date of the PULHES. His security clearance was decided after the date of the PULHES, on 31 January 2008, and came back with no determination, which had an effect on his clearance.

b. With regard to his lower extremities issues, his back was aggravated when he was on annual training (AT) and he had an x-ray done in May 2002. He has been to the VA several times for lower extremities issues since he was allowed to sign up for VA healthcare. His lower back and knee issues are listed on his VA Problem List, which hadn't been updated at the time of that case.

c. He was diagnosed with post-traumatic stress disorder (PTSD) through the Social Security Process, not workers compensation, and by his therapist whom he sees once a week. In 2019 he presented a sexual harassment issue, but no comment was made about it in Docket Number AR20200004254. In Docket Number AR20220009405, the medical reviewer mentioned it and nothing more was said or discussed about it. Nothing was presented saying how the situation in the hotel room was wrong or that it's against military policy to harass or degrade somebody in a situation like that. His unit and the Army paid for the hotel room. Soldiers from his unit caused the issue and it's been over 4 years since he first presented the issue.

d. He asked AHRC what the administrative viewpoint of prolife procedures is and what actions are taken with profiles at the time of discharge, since they are experienced in this subject matter and deal with these issues all the time, but he didn't see any comments from them or the G1 in this regard.

e. He agrees with the medical reviewer that he was separated on 8 February 2006, and that he was not owed a physical examination from the Army at the time based on his discharge. Since he was separated and not given a physical he wouldn't have been allowed to be put on a promotion board and would have had to wait until after 8 March 2006. His U.S. Army Reserve (USAR) orders, dated 8 March 2006, stated he would be allowed a physical within 90 days, but that never happened.

f. He can't sleep at night due to waking in the middle of the night thinking someone will burst into his room. He is unable to run like he used to because of his back and knees issues. All of this happened prior to 2005, was aggravated by service, and only gotten worse. A physical examination in March 2006 would have pointed out some of these issues related to PTSD and sexual harassment.

g. While at Officer Basic Course (OBC), he fell during the road march in preparation for the German Armed Forces Proficiency Badge (GAFB). He was wearing a full rucksack with weight in it, his rifle, and Kevlar. As he started his pace, he lost balance, and fell flat on his face with all his gear. He almost broke his glasses and a few days later needed to buy sunglasses that would clip to his glasses to stop the sun from bothering his eyes and the headaches he was having. He finally got to see the doctors regarding the upper respiratory issues he was having on 1 June 2006, and did not mention the headaches, nausea, and myalgias to the doctor. He knew nothing about TBI or what it was at the time. He had issues with his memory and issues with lights. He was released from OBC for academic comprehension.

h. The applicant marked the blocks on his application indicating that PTSD and sexual assault/harassment are issues related to his request.

3. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant enlisted in the ARNG on 27 January 2000 and was honorably discharged on 18 July 2001, for the purpose of appointment as a commissioned officer. He was credited with 1 year, 5 months, and 22 days of net active service.

4. Department of Military Science, New Mexico Military Institute Orders 199-2, 18 July 2001, show the applicant was released from the USAR Reserve Officer Training Corps (ROTC) after selection from the ROTC Early Commissioning Program for assignment to the USAR Control Group (Officer Active Duty Obligor (OADO)).

5. The applicant was appointed as a Reserve Commissioned Officer of the U.S. Army under the Early Commissioning Program, on 19 July 2001, branch unassigned.

6. A review of the applicant's ARNG Retirement Points History Statement shows he reverted to ARNG membership from an ARNG ROTC/Simultaneous Membership Program (SMP) status then a USAR Control Group (OADO) status on 7 November 2001.

7. A Temporary Radiology Report, 14 May 2002, shows the applicant was seen for back and neck pain and L-Spine and C-Spine studies were performed.

8. The applicant provided A State of Washington Military Department memorandum, 25 June 2002, authorizing his interstate transfer (conditional release) to the New Mexico ARNG within 90 days of the date of the memorandum.

9. An AHRC Special Officers Team letter, 26 August 2004, advised the applicant he was transferred from the Early Commissioning Program to Reserve Forces Duty (RFD) and assigned to the Military Intelligence (MI) Branch.

10. AHRC Orders T-06-509184, 22 June 2005, ordered the applicant to active duty for training (ADT) with a reporting date to Fort Huachuca, AZ of 5 July 2005, for MI OBC.

11. AHRC Orders T-06-509184R, 6 July 2005, revoked the AHRC Orders from 22 June 2005 sending the applicant to MI OBC.

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

13. A Personnel Qualification Record (PQR), 1 November 2005, shows the applicant's PULHES was 111111.

14. An NGB Form 22 shows the applicant was honorably discharged from the ARNG on 8 February 2006, under the provisions of National Guard Regulation 635-100 (Termination of Appointment and Withdrawal of Federal Recognition), paragraph 5a(20) for failure to complete a branch or basic entry specialty qualification course. Item 12 (Military Education) shows German Language, 2 years, 2001.

15. There is no evidence of record the applicant attended and completed OBC.

16. Headquarters Military Department State of Washington Orders 039-001, 8 February 2006, honorably discharged the applicant from the ARNG effective the date of the orders and transferred him to the USAR Control Group (Annual Training).

17. AHRC Orders C-03-606378, 8 March 2006, released the applicant from the USAR Control Group (Annual Training) and reassigned him to the USAR 70th Regional Readiness Command (RRC) Trainee Transients Holders (TTHS) Account effective the date of the orders. The additional instructions show the unit agrees to provide a physical exam within 90 days of assignment.

18. AHRC Orders T-93-60321OAO1, 11 April 2006, amended their prior orders T-03-603210, 14 March 2006, and ordered the applicant to ADT at Fort Huachuca, AZ, with a report date of 3 April 2006, to attend MI OBC.

19. There is no evidence of record the applicant completed OBC.

20. A Medical Record shows the applicant was seen on 1 June 2006 at Bliss Army Community Hospital for an upper respiratory infection where he was prescribed medication.

21. A MedPro Diagnosis Summary, 10 April 2007, shows the diagnoses and treatment of spasm of muscle, lumbago, and dislocated patella, from 27 March 2002 through 4 February 2004.

22. An AHRC memorandum, 22 February 2007, notified the applicant a Department of the Army Reserve Components Mandatory Selection Board was convened to consider officers in his grade for promotion.

a. The board considered the performance portion of his Official Military Personnel File (OMPF), but unfortunately, he was not among those selected for promotion by the board.

b. The records reviewed indicated he did not complete the required civilian and/or military education by the date the board convened.

23. A second PQR, 24 February 2007, shows the applicant was not duty qualified/was awaiting initial active duty training and had a PULHES of 111111.

24. An Automated Orders and Resource System printout, 16 January 2008, shows the applicant's PULHES was 111113.

25. A review of the AHRC Soldier Management System (SMS) shows the applicant was identified as having failed to meet height/weight standards and favorable actions were suspended on 8 April 2008.

26. AHRC Orders D-01-900407, 13 January 2009, honorably discharged the applicant from the USAR effective 31 January 2009, under the provisions of Army Regulation 135-175 (Separation of Officers), with the paragraph and reason unlisted.

27. A review of the AHRC SMS shows a transaction was completed on 31 January 2009, to involuntarily discharge the applicant from the USAR and archive his record due to promotion non-selection.

28. The applicant previously applied to the ABCMR in June 2020, requesting in effect, correction of his NGB Form 22 to reflect disability discharge, his area of concentration (AOC) as 01A (Branch Immaterial), and completion of course 3-30-C20-35D. The complete Record of Proceedings for his case in Docket AR20200004254, which includes the medical review, has been provided in full to the Board for review. On 5 October 2021, the Board denied the applicant's request, determining the evidence

presented does not demonstrate the existence of a probable error or injustice; therefore, the overall merits of his case are insufficient as a basis for correction of his records.

29. A Cougar Health Services doctor's letter, 14 January 2021, shows the applicant was seen on a telemedicine visit for right knee patellar instability. Records indicate a closed patellar dislocation in 2004. His episodes of patellar instability appear to be exacerbated by activities performed while in the ARNG.

30. The applicant again applied to the ABCMR in September 2022, requesting reconsideration of his October 2021 denial by the Board. The complete Record of Proceedings for his case in Docket AR202220009405, which includes the medical review, has been provided in full to the Board for review. On 27 July 2023, the Board denied the applicant's request, determining the evidence presented does not demonstrate the existence of a probable error or injustice; therefore, the overall merits of his case are insufficient as a basis for correction of his records.

31. A My HealtheVet, Personal Information Report, 4 October 2023, has been provided in full to the Board for review and lists multiple conditions, including headaches.

32. A TBI Comprehensive Evaluation consult Report, 30 September 2024, shows the applicant was given a diagnosis of one lifetime mild TBI/concussion event.

33. Orthopedic Surgery Secure Messaging Note, 27 September 2024, shows the applicant inquired about the status of a Magnetic Resonance Imaging (MRI) for his knee.

32. A VA Problem List, 19 November 2024, has been provided in full to the Board for review and shows a list of his problems, which include a history of mild TBI/concussion, chronic low back pain, pain of right knee, headache, and anxiety.

33. The complete facts and circumstances surrounding the applicant's claims of an incident in a hotel room while in the ARNG are not in his available records for review.

34. In the adjudication of this case the U.S. Army Criminal Investigation Division (USACID) was requested to provide redacted sexual assault reports related to the applicant. On 20 February 2024, USACID responded that a search of the Army criminal file indexes revealed no sexual assault records pertaining to the applicant.

35. 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.

36. 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 (EMR) (AHLTA and/or MHS Genesis), 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 has again applied to the ABCMR requesting a reversal of their prior denials to essentially refer him the Disability Evaluation System (DES).

c. Rather than repeat information from and the findings of the previous Boards (AR20100012098, AR20180015655, AR20200004254, and AR20220009405), the board is referred to the record of proceedings for those cases along with the separate medical opines written by a clinical psychologist, military physician, and a civilian physician. This review will concentrate on the new evidence and issues raised by the applicant in his current request for reconsideration.

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

e. The applicant states he aggravated his back while in advanced individual training and that he has been see "several times" by the VA for "lower extremity issues.

f. A 14 May 2002 radiology report of his cervical and lumbar spine was normal.

g. In a 14 January 2021 civilian "To Whom It May Concern" memorandum, the provider did a telemedicine exam of the patient based on radiographic studies from 2020. He states he believes the applicant may have dislocated his right patella in 2004 and suffered patellar instability since that time.

h. No permanent duty limiting physical profile was submitted with the application and none was found in MEDCHART.

i. There is no probative evidence the applicant had any service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-

501 prior to his discharge; or which prevented him from meeting his training requirements. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows he has been awarded three VA service-connected disability ratings: Migraine headaches in 2021, labyrinthitis in 2022, and tinnitus in 2021. There are no ratings related to his back or knee.

k. The DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA medical advisor that a referral of the case to the DES remains unwarranted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting reconsideration of his prior requests for physical disability discharge from the Army National Guard (ARNG) in lieu of honorable administrative discharge due to failure to complete a branch or basic entry specialty qualification course. The applicant contends PTSD and harassment as related to his request. This opine will narrowly focus on the applicant's behavioral health concerns.

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:

- A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant enlisted in the ARNG on 27 January 2000 and was honorably discharged on 18 July 2001, for the purpose of appointment as a commissioned officer.
- Applicant was appointed as a Reserve Commissioned Officer of the U.S. Army under the Early Commissioning Program, on 19 July 2001.
- AHRC Orders D-01-900407, 13 January 2009, honorably discharged the applicant from the USAR effective 31 January 2009, under the provisions of Army Regulation 135-175 (Separation of Officers), with the paragraph and reason unlisted.

- A review of the AHRC SMS shows a transaction was completed on 31 January 2009, to involuntarily discharge the applicant from the USAR and archive his record due to promotion non-selection.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he was diagnosed with post-traumatic stress disorder (PTSD) through the Social Security Process, not workers compensation, and by his therapist whom he sees once a week. In 2019 he presented a sexual harassment issue, but no comment was made about it in Docket Number AR20200004254. In Docket Number AR20220009405, the medical reviewer mentioned it and nothing more was said or discussed about it. Nothing was presented saying how the situation in the hotel room was wrong or that it's against military policy to harass or degrade somebody in a situation like that. His unit and the Army paid for the hotel room. Soldiers from his unit caused the issue and it's been over 4 years since he first presented the issue. He can't sleep at night due to waking in the middle of the night thinking someone will burst into his room. He is unable to run like he used to because of his back and knees issues. All of this happened prior to 2005, was aggravated by service, and only gotten worse. A physical examination in March 2006 would have pointed out some of these issues related to PTSD and sexual harassment.

d. Active-duty electronic medical records available for review show the applicant was seen on 1 June 2006 for an upper respiratory infection and a diagnostic summary dated 10 April 2007, shows treatment for spasm of muscle, lumbago, and dislocated patella, from 27 March 2002 to 4 February 2004. An automated orders and resource printout, dated 16 January 2008, shows the applicant's physical profile with a 3 serial for psychiatric conditions indicating he had a duty limiting mental health condition. However, there is no contemporaneous medical documentation explaining the reason for the 3 serial. In a prior application, the applicant stated the primary stressors for his PTSD were not duty related. He was involved in a motor vehicle accident and learning of his brother's brain tumor both while not on active duty. While the reason(s) for the serial 3 on his profile remains unknown, there is insufficient medical evidence it was incurred during military service and thus the condition was not eligible for referral into the duty-related IDES. In support of his current claim, the applicant states he presented the issue of sexual harassment in AR20220009405. In AR20220009405 the applicant's reported harassment was described as follows: "A VA Statement in Support of Claim for Service Connection for PTSD secondary to personal assault, dated 12 May 2019, wherein he states while sleeping in his hotel room, in 2002, the door busted open by a group of 4 or 5 drunk people. He jumped up half awake, not knowing what was going on, and just in his underwear. The group of men and women from his unit started laughing. After that incident he would get harassed about it. It got to the point where he had to make arrangements to leave." Although upsetting to the applicant, this incident as described would not typically meet diagnostic criteria for PTSD and JLV shows the

applicant is not service connected for PTSD. Overall, the applicant's available service record does not contain a DA Form 3349 (Physical Profile), nor does it evidence:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected for three medical conditions, however, he is not service connected for any BH condition. JLV shows the applicant's only mental health related condition is non-service connected anxiety disorder with an effective date of 19 February 2019.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, currently, to support a referral to the IDES process. The applicant has not been service connected for PTSD, despite his assertion of being diagnosed with PTSD through the Social Security process and his therapist. Even if the applicant were service-connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service and a subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

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

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

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

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence of record, and medical review. The Board concurred with the advising official finding that the evidence does not indicate the applicant had any duty-related conditions prior to his discharge that would have been a basis for referring him to the Disability Evaluation System. Based on this, the Board determined the reason for his discharge is not in error or unjust.

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 amendment of the ABCMR decision rendered in Docket Numbers AR20200004254 and AR20220009405 on 5 October 2021 and 27 July 2023, respectively.

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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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system 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 (Disability 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; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

3. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

5. 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.

6. National Guard Regulation 635-100 (Termination of Appointment and Withdrawal of Federal Recognition) prescribes the policies, criteria, and procedures governing the separation of commissioned officers of the ARNG and allows for the separation of commissioned officers of the ARNG for failure to complete a branch or basic entry specialty qualification course.

7. Army Regulation 135-175 (Separation of Officers) governs the separation of officers from the ARNG and the USAR, detailing the reasons, procedures, and authorities involved. Involuntary separation may be initiated when a promotion, school, or command selection board recommends a Reserve officer be required to show cause for retention in an active status. Non-selection for promotion after second consideration of an officer who has completed his/her statutory Military Service Obligation (MSO) will be discharged for failure to be selected for promotion after second consideration by a Department of the Army Reserve Component selection board, not later than the first day of the seventh month following the board proceedings.

8. 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.

9. 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.

10. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//