

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240001056

APPLICANT REQUESTS: a personal appearance before the Board, and -

a. reconsideration of his prior requests for physical disability retirement with a rating of 100 percent in lieu of disability separation with severance pay with a rating of 10 percent, through the addition of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and hearing loss as unfitting conditions.

b. amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect his name as Par\_\_\_\_ Mi\_\_\_\_ Kn\_\_\_\_ in lieu of Hy\_\_\_\_ Mi\_\_\_\_ O\_\_\_\_.

c. eligibility for Combat Related Special Compensation (CRSC).

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

- three DD Forms 149 (Application for Correction of Military Record)
- self-authored statement
- three Privacy Act Releases
- email correspondence from two Members of Congress
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 18 September 2007
- Department of Veterans Affairs (VA) letter, 29 October 2007
- VA letter, 28 December 2007
- VA letter, 6 July 2009
- VA letter, 14 September 2011
- Marriage License, 30 September 2011
- Name Change Court Order, 30 November 2011
- VA letter, 23 February 2012
- VA letter, 3 April 2012
- Joys of Living Assistance Dogs letter, 19 November 2012
- VA letter, 15 July 2013
- VA letter, 24 April 2014
- VA letter, 1 May 2015

- VA Office of Inspector General, Office of Audits and Evaluations, Veterans Benefits Administration, Review of Special Monthly Compensation Housebound Benefits publication, 29 September 2016
- Clinical Communities Speaker Series online biography of Colonel (COL) E\_\_\_\_ F\_\_\_\_, 23 January 2020
- VA Rating Decision, 10 March 2023
- VA letter, 14 March 2023
- VA Debt Management Center letter, 25 March 2023
- VA Revenue Law Group letter, re: 3M Combat Arms Earplug (CAE) Products Liability Litigation, 22 August 2023
- Combat Arms Settlement Agreement for Wave Cases Master Settlement Agreement III, 29 August 2023
- VA letter, 14 November 2023
- University of Maryland, School of Social Work letter, undated, presumed Fall Semester 2023
- VA Rating Decision, 1 December 2023
- VA letter, 5 December 2023
- Standard Form 180 (Request Pertaining to Military Records), 12 December 2023
- VA letter, 14 December 2023
- VA letter, 27 December 2023
- VA letter, 15 August 2024
- Social Security Administration Table

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20070012883 on 8 April 2008
- AR20150013807, on 6 December 2016.

2. The applicant states:

a. At the time of his discharge, he was medically separated with a \$26,000.00 severance pay for a knee injury rated at 10 percent. The knee injury was used as the basis for his medical separation instead of the 180 different sexual assaults that Captain (CPT) E\_\_\_\_ F\_\_\_\_, her supervisor COL A\_\_\_\_ L\_\_\_\_ (who later became Lieutenant General (LTG) and her first lieutenant (1LT) and sergeant first class (SFC) asked her to agree to cover-up while in Baghdad, Iraq, B Company, 57th Signal Battalion, 3rd Signal Brigade because three noncommissioned officers (NCOs) conspired to assassinate the chain of command and himself with small firearms and hand grenades they obtained

from the Special Forces unit that the 57th Signal Battalion was attached to support. Instead, CPT F\_\_\_\_\_ and the SFC sent him to gate guard duty and the Rapid Reactionary Force for 6 months with the firing pin removed from his M16A2 rifle and they took his 300 rounds of ammunition and 30 different M16A2 magazines, because B Company's armorer did not bring any ammunition or magazines to Kuwait.

b. He had to agree to 15 years of non-disclosure for CPT E\_\_\_\_\_ F\_\_\_\_\_, who later became a COL at Fort Benning, GA, and he had to keep quiet until Lieutenant General A\_\_\_\_\_ L\_\_\_\_\_ of DISA, Fort Meade, MD, retired. She told him to never repeat the claims and warned him to take it to his grave. So, he kept quiet until LTG L\_\_\_\_\_ retired, but now he is free to speak out. His TBI is related to 180 different sexual assaults committed by three NCOs while they were in Iraq. At the time, CPT F\_\_\_\_\_, in front of the SFC and 1LT ordered him to silence and cover-up while in Iraq, because the three NCOs threatened to kill him and the chain of command with explosives and small arms if he told about the over 100 sexual assaults on himself, including choking, group beatings, group sexual assaults, hazing, molesting, unwanted touching at the work place, excessive forces, excessive physical discipline, and stalking throughout 2004 – 2007. He wants the Army to change his 10 percent disability rating for his knee to a 100 percent disability for PTSD, 40 percent for TBI, and 20 percent for hearing loss and medically retire him.

c. On 5 December 2023, the VA admitted to an unmistakable error in his prior 2007 denial of TBI and granted him service-connection for military sexual trauma related TBI at 40 percent, migraine headaches at 30 percent, 0 percent for loss of smell and taste, 40 percent for fibromyalgia based on the PACT Act, 40 percent for degenerative spine disease and 20 percent for tinnitus. He is also one of the 3M class action clients qualified for a \$24,000.00 minimum pay out. He is also currently rated 100 percent disabled for PTSD alone, 40 percent for TBI, 20 percent for bilateral hearing loss, 40 percent for degenerative spine disease, 10 percent for meniscus tear, left knee, 20 percent for bicipital tendonitis right shoulder, 10 percent for right knee arthritis, 30 percent for migraine headaches, 50 percent for obstructive sleep apnea along with other rated conditions. He is rated 100 percent for total social and occupational impairment.

d. He would like to appear in person before the Board to reconcile that he had to silence his story because of the nondisclosure agreement made between himself and the chain of command in the Iraqi theater under duress and threats from the chain of command as well as from the perpetrators. The Army promoted two of the NCOs after returning from Iraq. One of the three NCOs who assaulted him was an Army Ranger who made death threats against him. The Army also promoted CPT F\_\_\_\_\_ through the ranks to COL and he details her assignments since returning from Iraq. She was promoted despite burying his military sexual assault reports in Iraq and setting him up to fail by ordering him to gate guard duty at Camp Liberty, roaming guard for 16 hours per day, and part of a nighttime rapid reactionary force when the gate was attacked, all

without any ammunition; CPT F\_\_\_\_ put socks in his M16A2 magazines, and she removed the firing pin from his weapon.

e. His period of active duty service was from 2002 – 2007 and his deployment to Iraq was 2004 – 2005. The U.S. Army in Iraq was investigated for sexual atrocities, torture, and prisoner abuse at Abu Ghraib in April 2004. His deployment to Iraq was from January 2004 – January 2005, where he was sexually assaulted over 100 times in 180 days in Baghdad. He reported the incidents to the Army Judge Advocate General (JAG) in Baghdad, Iraq and to his chain of command. At the time, his chain of command investigated instead of appointing a special prosecutor and involving Criminal Investigation Division (CID). Where are the JAG and CID reports he filed in Baghdad, Iraq? His chain of command buried the incidents due to the sensitivities of the Abu Ghraib torture and prisoner abuse and the media's attention.

f. For some of the initial VA Rating Decisions and in the Compensation and Pension (C&P) examinations themselves, the VA uses the normal aging process as a reason for denial, but he was only 31 in 2007 and not 60 years old. And some of the VA documents state he did not have Iraq service. He came to find out the reason for this was they were referencing another veteran's records with service from 1978 to 1980, whose records were mixed in with his medical file. Many of his initial denials for TBI, migraines, and additional disabilities were based on the wrong records for a different service member. Even now after 15 years, they continue to cite those records on occasion. The VA did eventually recognize, after 15 years, their clear and unmistakable error and have approved many of his additional service-connected disabilities; therefore, he believes his Army records should be amended to grant him a disability retirement for TBI due to military sexual trauma.

g. He also feels he should be eligible for and wants to apply for CRSC, which provides tax-free monthly payments to eligible retired veterans with combat-related injuries. With CRSC, eligible veterans can receive an amount equal to or less than their length of service retirement pay and VA disability compensation if the injury is combat-related. He is also concerned about his Statement of Medical Examination and Duty Status, dated 22 February 2007. It reports "no" on blood alcohol test being made, but the medical opinion shows individual was under the influence of alcohol. This is an error. Then in the remarks it shows there is no evidence to suggest that alcohol usage or misconduct contributed to the listed injury/diseases. Thereafter, he was given a 0 percent disability rating for his knee.

h. He is also requesting a name change on his DD Form 214 to reflect his name as Pa\_\_\_\_ Mi\_\_\_\_ Kn\_\_\_\_. His DD Form 214 shows his name as Hy\_\_\_\_ Mi\_\_\_\_ O\_\_\_\_, but he since changed his name.

3. The applicant enlisted in the Regular Army on 31 January 2002, and was awarded the Military Occupational Specialty (MOS) 25B (Information Systems Operator-Analyst). He used the name Hy\_\_\_ Mi\_\_\_ O.

4. The applicant deployed to Iraq from 9 January 2004 through 14 January 2005.

5. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities 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).

6. The applicant's records contain multiple DA Forms 3349 (Physical Profile), which show:

a. On 21 June 2006, he was given a temporary physical profile rating of 2 in factor L for low back pain with a profile expiration date of 21 July 2006. He was limited to no 2-mile run or sit-ups Army Physical Fitness Test (APFT) events and lifting or carrying a maximum weight of 30 pounds.

b. On 10 July 2006, he was given a temporary physical profile rating of 3 in factor L for right knee pain and low back pain with a profile expiration date of 31 August 2006. He was limited to no running or jumping, no lifting greater than 15 pounds, and no standing more than 30 minutes.

c. On 11 July 2006, a different profiling officer gave him another temporary physical profile rating of 3 in factor L for right knee pain and low back pain with a profile expiration date of 11 August 2006. He was limited to no running or jumping, no lifting greater than 15 pounds overhead, no flutter kicks, and no standing more than 30 minutes.

d. On 4 August 2006, he was given a permanent physical profile rating of 2 for low back pain and right meniscal tear, knee. He was limited to no running, jumping, lifting over 15 pounds overhead, no flutter kicks, and no standing greater than 30 minutes.

e. On 11 January 2007, he was given a permanent physical profile rating of 3 in factor I for right knee chondromalacia. He was limited in multiple functional activities as well as no running, jumping, high impact activities, no deep knee bends, and no prolonged standing greater than 20 minutes.

7. A DA Form 2173 (Statement of Medical Examination and Duty Status), 16 February 2007, shows:

a. The applicant was seen as an outpatient at the Joint Readiness Training Center (JRTC) Aid Station, Fort Polk, LA, on 22 February 2006 for posterior horn medial meniscus tear and partial tear of anterior cruciate ligament with joint effusion.

b. The Medical opinion shows the applicant was under the influence of alcohol, the injury was incurred in the LOD, and it also shows a blood alcohol test was not made.

c. The details of the accident or history of disease show the applicant and another Soldier were connecting a 10 kilowatt generator trailer to the back of a military vehicle when the other Soldier slipped and fell, causing the generator trailer to fall on the applicant's knee on 22 February 2006 at JRTC, Fort Polk, LA.

d. The remarks shows, based upon a review of applicable medical documents, there is no evidence to suggest that alcohol, drug usage, or misconduct contributed to the listed injury. Therefore, the presumption of in the LOD applies. The form was signed on 22 February 2007, indicating that no formal LOD investigation was required and the injury is considered to have been incurred in the LOD.

8. The applicant's DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in his available records for review and have not been provided by the applicant.

9. A final DA Form 3349 shows on 13 March 2007, the applicant was given a permanent physical profile rating of 3 in factor L for right knee chondromalacia and left knee meniscal tear. He was limited in multiple functional activities as well as no running, jumping, or high impact activity, no knee bends, and no lifting or carrying more than 25 pounds.

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

a. A Formal PEB convened on 13 July 2007, where the applicant was found physically unfit with a combined rating of 0 percent and that his disposition be separation with severance pay.

b. The applicant's unfitting condition right knee chondromalacia, without neurologic abnormality, status post right knee arthroscopy in October 2006. Right knee range of motion is 0 – 135 degrees. His physical profile restricts most functional activities, no

running, jumping, high impact activities, deep knee bends. His commander indicates that physical demands of his MOS are rated as very heavy. Orthopedic physician indicates the applicant is unable to perform Army physical training as well as duties assigned to him by his unit. 0 percent rating.

c. The following conditions, MEB diagnoses (Dx) 2 – 5, were found not unfitting and not rated:

- (1) left knee pain, MEB Dx 2
- (2) obstructive sleep apnea, MEB Dx 3
- (3) depressive disorder, MEB Dx 4
- (4) lumbago, MEB Dx 5

d. Section 10 shows:

(1) If retired because of disability, the applicant's retirement is based on disability from injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurring in the LOD during a period of war as defined by law.

(2) The applicant's disability did result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

e. The applicant signed the form on an unknown date indicating he did not concur with the findings and recommendations of the formal PEB and attached a statement of rebuttal.

11. In the applicant's undated appeal he requested the following resolution and provides 6 pages of explanation, all of which has been provided in full to the Board for review, as to why he believes this resolution is warranted, to include descriptions of medical treatments, symptoms, and diagnoses:

a. He requested approval of a 30 percent disability rating, including sleep apnea, lower back pain, left knee meniscal tear, right knee chondromalacia, chronic pain, and possible arthritis.

b. He asked for a delay in the MEB proceedings until completion of orthopedic surgery on his left knee is completed through the recovery phase of 30 days plus however many months physical therapy requires before further evaluating him.

c. He requested approval a 10 percent disability rating for PTSD.

d. He asked for approval of a temporary or permanent medical retirement with at least a 30 percent disability rating.

12. Headquarters, III Corps and Fort Hood Orders 233-0145, dated 21 August 2007, separated the applicant due to physical disability with a rating of 0 percent effective 18 September 2007. His disability is based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law. His disability did result from a combat-related injury as defined in Title 26 U.S. Code, section 104.

13. The applicant's DD Form 214 shows he was honorably discharged on 18 September 2007, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay with corresponding separation code JFL. He was credited with 5 years, 7 months, and 18 days of net active service.

14. A VA letter, 29 October 2007, shows the applicant was granted service-connected compensation for the following conditions effective 19 September 2007:

- obstructive sleep apnea, 30 percent
- PTSD with depressive disorder, 30 percent
- bicipital tendonitis, right shoulder, 20 percent
- chondromalacia, right knee, 10 percent
- meniscus tear, left knee, 10 percent
- bilateral plantar fasciitis, 0 percent
- low back strain with L4-5 disc desiccation, 0 percent
- seasonal allergic rhinitis, 0 percent
- hypertension, 0 percent

15. The applicant previously applied to the ABCMR in 2007, requesting correction of his records to reflect physical disability retirement in lieu of physical disability discharge. On 8 April 2008, the Board denied his request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

16. A VA letter, 6 July 2009, shows the applicant was granted service-connection for the following conditions:

- osteoarthritis with plantar fasciitis, right foot with pes planus and radiation to the right ankle, 10 percent effective 29 December 2008
- bicipital tendonitis, right shoulder, 10 percent effective 1 January 2009



- obstructive sleep apnea, 50 percent effective 29 December 2008
- osteoarthritis with plantar fasciitis, left foot with pes planus and radiation to the left ankle, 10 percent effective 29 December 2008

17. A Marriage License shows the applicant, whose name at the time was Hy\_\_\_\_ Mi\_\_\_\_ O\_\_\_\_, married El\_\_\_\_ Fo\_\_\_\_ Kn\_\_\_\_ on 30 September 2011, and that his legal name taken after marriage was Hy\_\_\_\_ Mi\_\_\_\_ Kn\_\_\_\_.

18. A General Judgment of Name Change shows the applicant's name was ordered changed from Hy\_\_\_\_ Mi\_\_\_\_ Kn\_\_\_\_ to Pa\_\_\_\_ Mi\_\_\_\_ Kn\_\_\_\_ on 30 November 2011.

19. A Joys of Living Assistance Dogs letter informed the applicant that he was accepted into their Assistance Dog program effective 19 November 2012.

20. In April 2013, the applicant applied to the Physical Disability Board of Review (PDBR), requesting an increase to his disability rating of 0 percent based on the VA awarding him a total and permanent disability rating.

21. The PDBR Record of Proceedings shows:

a. A board convened on 18 June 2013. The scope of review shows the PDBR's scope of review is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the applicant.

b. A ratings comparison shows the service PEB found the applicant's right knee chondromalacia unfitting with a rating of 0 percent and the conditions of left knee pain, obstructive sleep apnea, depressive disorder, and lumbago not unfitting, for a combined rating 0 percent. The VA gave the applicant a combined rating of 70 percent (1 month pre-separation) for the conditions of right knee chondromalacia, 10 percent, left knee meniscus tear, 10 percent, obstructive sleep apnea, 30 percent, depressive disorder, PTSD, 30 percent, and low back strain with L4-5 disc desiccation, 0 percent.

c. The applicant's contended conditions of left knee pain, lumbago, obstructive sleep apnea, and depressive disorder were reviewed and considered by the Board. There was no performance based evidence from the record that any of these conditions significantly interfered with satisfactory performance of duty. The board concluded there was insufficient cause to recommend a change in the PEB fitness determinations for lumbago, left knee pain, obstructive sleep apnea, and depressive disorder and so no additional disability ratings are recommended.

d. In the matter of the right knee condition, the board unanimously recommended a disability rating of 10 percent. In the matter of the contended lumbago, left knee pain, obstructive sleep apnea, and depressive disorder conditions, the board unanimously recommended no change from the PEB determinations as unfitting. There were no other conditions within the board's scope of review for consideration.

e. The board recommended the applicant's prior PEB determination be modified, effective as of the date of his prior medical separation to show a right knee chondromalacia rating of 10 percent and a combined disability rating of 10 percent.

22. On 21 August 2013, the Acting Deputy Assistant Secretary (Army Review Boards) reviewed the PDBR recommendation and record of proceedings pertaining to the applicant and accepted the board's recommendation to modify his disability rating to 10 percent, without recharacterization of his separation, and directed the correction of his records accordingly.

23. Headquarters, III Corps and Fort Hood Orders 259-0152, 16 September 2013, amended the applicant's previous separation Orders 233-0145 from that headquarters, 21 August 2007, to show his percentage of disability as 10 percent in lieu of 0 percent.

24. As a result of the finality of the PDBR's decision, the scope of the current Board's review is limited to those conditions which were not considered by the PDBR and not determined by the PEB to be unfitting for continued military service.

25. A VA letter, 1 May 2015, shows the applicant was granted service-connection for bilateral hearing loss with a disability rating of 0 percent effective 11 July 2014.

26. The applicant again applied to the ABCMR in 2015, requesting reconsideration of his prior request for physical disability retirement in lieu of physical disability separation with severance pay. On 6 December 2016, the Board denied his request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

27. A VA Rating Decision, 10 March 2023, shows the following decisions were made with regard to the applicant's service-connected disability ratings effective 9 January 2023:

- evaluation of PTSD with other specified mental disorder with is currently 70 percent disabling, is increased to 100 percent

- evaluation of intervertebral disc syndrome lumbar spine with chronic thoracic strain and degenerative disc disease, which is currently 20 percent disabling, is increased to 40 percent
- entitlement to special monthly compensation based on housebound criteria being met is granted

28. A VA letter, 14 November 2023, shows the applicant has one or more service-connected disabilities with a combined evaluation of 100 percent effective 1 February 2023 and he is considered totally and permanently disabled solely due to his service-connected disabilities effective 4 March 2010.

29. A VA Raring Decision, 1 December 2023, shows:

- a. A clear an unmistakable error was found in the denial of the applicant's TBI. Therefore, a 10 percent evaluation is granted from 19 September 2007. An increased evaluation of 40 percent for TBI (to be combined with his mental health disabilities at a single 50 percent) is warranted from 4 November 2010.
- b. Entitlement to an earlier effective date of service-connection for tinnitus is granted effective 4 November 2010.
- c. Service-connection for migraine headaches is granted with an evaluation of 30 percent effective 4 November 2010.
- d. Service-connection for loss of sense of smell is granted with an evaluation of 0 percent effective 4 November 2010.
- e. Service-connection for loss of sense of taste is granted with an evaluation of 0 percent effective 4 November 2010.
- f. Service-connection for gastroenteritis/irritable bowel syndrome is granted with an evaluation of 30 percent effective 10 August 2022.

30. A VA letter, 27 December 2023, shows the applicant was granted service-connection for the following conditions:

- diabetes mellitus type II, 20 percent, effective 10 August 2022
- carpal tunnel syndrome, left, 10 percent, effective 10 August 2022
- carpal tunnel syndrome, right, 10 percent, effective 10 August 2022
- tuberculosis, 0 percent, effective 16 May 2023

31. A VA letter, 15 August 2024, provides a statement verifying the applicant's service-connected disabilities for a combined rating of 100 percent:

- obstructive sleep apnea with asthma and tuberculosis, 50 percent
- lumbar spine IVDS to include lumbar stenosis, thoracic strain, and degenerative disc disease, 40 percent
- fibromyalgia, 40 percent
- gastroenteritis/irritable bowel syndrome, 30 percent
- migraine headaches, 30 percent
- bilateral hearing loss, 20 percent
- diabetes mellites type II, 20 percent
- right shoulder bicipital tendonitis, 20 percent
- PTSD with other specified mental disorder ant TBI, 100 percent
- carpal tunnel syndrome, left, 10 percent
- carpal tunnel syndrome, right 10 percent
- tinnitus, 10 percent
- left foot plantar fasciitis and pes planus with history of hallux valgus, 10 percent
- right foot plantar fasciitis and pes planus with history of hallux valgus, 10 percent
- left knee meniscus tear and strain, 10 percent
- right knee chondromalacia and strain status post-surgery with residual scars, 10 percent
- residuals of cold injury affecting the right upper extremity, 10 percent
- residuals of cold injury affecting the left upper extremity, 10 percent
- residuals of cold injury to right lower extremity, 10 percent
- residuals of cold injury to left lower extremity, 10 percent
- scars, right knee, residual of right knee surgery, 0 percent
- loss of sense of smell, 0 percent
- loss of sense of taste, 0 percent
- allergic rhinitis with a deviated septum, 0 percent
- hypertension, 0 percent

32. In the adjudication of this case, the Army CID office provided a memorandum, 29 April 2024, showing a search of the Army criminal file indexes utilizing the information provided revealed no sexual assault records pertaining to the applicant.

33. Also in the adjudication of this case, the U.S. Army Inspector General Agency (DAIG) provided a memorandum, 8 May 2024, showing a DAIG Records Release office searched the Army IG database, the Inspector General Action Request System, and did not locate any records related to the applicant.

34. 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.

35. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout their lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

#### MEDICAL REVIEW:

The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records.

Essentially, the applicant requests Army ratings for PTSD, TBI and Hearing Loss to be added to his current Right Knee 10% rating in pursuit of disability medical retirement. The TBI and PTSD conditions were reviewed under separate cover. This review covers Hearing Loss only. The VA initially rated the condition at 0% in 2014, and then at 20% effective in January 2023. However, an Army disability rating is not warranted: There were no visits while on active orders with primary complaint of hearing loss (or tinnitus). This condition was not profiled. Concerning CRSC, the 31Jan2015 Hearing Loss and Tinnitus DBQ examiner opined the hearing loss was due to acoustic trauma in both ears during military service, however, a specific incident was not mentioned. And finally, neurology did not identify hearing loss as a TBI residual (08Mar2012 Initial TBI DBQ).

#### BEHAVIORAL HEALTH REVIEW:

1. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for physical disability retirement with a rating of 100 percent in lieu of disability separation with severance pay with a rating of 10 percent, through the addition of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and eligibility for Combat Related Special Compensation (CRSC). The applicant's previous ABCMR cases are summarized in in Docket Number(s) AR20070012883 dated 8 April 2008 and AR20150013807 dated 6 December 2016. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 31 January 2002 as a 25B (Information Systems Operator-Analyst), 2) he deployed to Iraq from 09 January 2004 through 14 January 2005, 4) he was honorably discharged on 18 September 2007 under the provisions of Army Regulation (AR) 635-20, due to disability with severance pay with a corresponding separation code of JFL, 5) In April 2013, the applicant applied to the Physical Disability Board of Review (PDBR), requesting an increase to his disability rating of 0 percent based on the VA awarding him a total and permanent disability rating. The board recommended the applicant's prior PEB

determination be modified, effective as of the date of his prior medical separation to show a right knee chondromalacia rating of 10 percent and a combined disability rating of 10 percent. 6) the Army CID office provided a memorandum dated 29 April 2024 indicating there were no sexual assault records pertaining to the applicant in their criminal index files, 9) the U.S. Army Inspector General Agency provided a memorandum dated 8 May 2024 indicating showing a DAIG Records Release office did not locate any records related to the applicant.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records were available for review via JLV from 17 May 2002 through 06 October 2007.

- The applicant first sought BH treatment on 12 October 2005 due to depression, insomnia, and nightmares about horror movies. The applicant reported he was sexually assaulted while in Iraq and that the perpetrators were still in his unit and were never punished. He denied experiencing suicidal and/or homicidal ideation (SI/HI). He was diagnosed with Adjustment Disorder with Depressed Mood with a rule out (R/O) of Attention Deficit Disorder (ADD) (now known as Attention Deficit/Hyperactivity Disorder (ADHD)). He was scheduled to see a psychiatric nurse practitioner (PNP) the same day and was prescribed Temazepam (anxiolytic) and Bupropion (antidepressant). He was seen as a walk-in on 10 November 2005 reporting he was still having problems in his unit and that he would speak with his Commander about moving. He reported being uncomfortable in crowds, distrusting others, and occasional nightmares, though denied experiencing flashbacks or problems with loud noises. On the same day, he was seen by the PNP for a medication refill and it was noted that Wellbutrin was helping but he was still not sleeping. His diagnosis of Adjustment Disorder with Depressed Mood was continued.
- There was a gap in BH treatment until 2006. A medical note dated 10 May 2006 shows the applicant reported he had been 'tortured and sexually assaulted by male Soldiers in his unit.' He indicated that he was still taking Wellbutrin, was not sleeping well, and endorsed feeling depressed and anxious about certain situations. The provider diagnosed him with PTSD, Chronic. He presented for an intake with BH on 13 November 2006 noting he was experiencing anxiety with persistent worry about anticipated performance, depression, and occupational problems. It was documented that he was taking Wellbutrin which seemed to be helping. He was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, R/O ADHD and was released without limitations. The applicant continued to follow-up with BH on approximately a monthly basis until his discharge.

- On 03 April 2007, the applicant underwent a BH evaluation as part of his Medical Evaluation Board (MEB). It was noted that he reported experiencing depression since April 2004 which he reported worsened in February 2006 after he was crushed by a generator, resulting in his knee problems. He endorsed experiencing occasional suicidal ideation without plan or intent on the weekends when he was bored. It was documented that he had a history of one prior suicide attempt at age 10 and also reported significant childhood abuse. The provider noted his depressive symptoms did not fail medical retention standards and did not appear to interfere with his military functioning. He was diagnosed with Depressive Disorder Not Otherwise Specified (NOS) and Personality Disorder NOS. The provider noted he met retention standards in accordance with (IAW) AR 40-501.
- On 19 June 2007 he presented to BH after being referred due to inappropriate laughing and thoughts. The applicant reported he had been sexually assaulted by his supervisor. During his deployment, he reported he was present when a rocket hit a shower, resulting in the deaths of Soldiers. The applicant reported possible hallucinations/sensory experiences, to the provider noted the applicant's symptoms were likely a visual oddity and not actually hallucinations and that he was not overtly psychotic. Furthermore, it was noted that he was functional and should proceed with the MEB for his medical problems. He was diagnosed with Depression and Schizotypal Traits were also noted. He was command referred to BH on 23 July 2007 following an email he had written that alluded to thoughts of suicide. It was noted that he reported having numerous medical problems and disagreed with the last MEB findings. He reported last having suicidal ideation approximately 3 weeks prior without plan, means or intent. He indicated he was still suffering from PTSD and had not received adequate treatment. The provider noted there were no signs of psychosis. He also indicated when he does not take his psychotropic medications he has suicidal thoughts. He was diagnosed with Depression and was released without limitations. During a follow-up BH visit on 24 July 2007, he reported his PTSD symptoms continued to worsen, endorsing insomnia, depressed mood, and nightmares as his primary symptoms though did not describe symptoms consistent with flashbacks, autonomic arousal, or avoidant behaviors. He denied experiencing SI/HI though endorsed fleeting thoughts of not wanting to be alive. He was diagnosed with Depression and was released without limitations. He was seen by BH on 27 July 2007 as a triage, noting he had stopped his medications as he believed he had a medication interaction approximately 2 days before. He was released without limitations.
- Per the ROP, in April 2013, the applicant applied to the Physical Disability Board of Review (PDBR), requesting an increase to his disability rating of 0 percent based on the VA awarding him a total and permanent disability rating. The applicant's contended conditions of left knee pain, lumbago, obstructive sleep apnea, and depressive disorder were reviewed and considered by the Board.

There was no performance-based evidence from the record that any of these conditions significantly interfered with satisfactory performance of duty.

4. The applicant's previous Medical Advisory dated 13 October 2016 was reviewed. The previous Advisor noted that he was consistently found to meet military retention standards for his BH conditions. As such, the Advisor opined that the applicant did not suffer from a medically unfitting BH condition in-service and that he met psychiatric retention standards while on active duty IAW AR 40-501, Chapter 3 and that a referral for consideration of military medical discharge/retirement was not warranted.

5. A review of JLV shows the applicant is 100% service-connected through the VA for numerous medical conditions to include 100% for PTSD and 10% for Brain Syndrome. He completed an initial BH Compensation and Pension (C&P) examination on 25 August 2007 while he was still in the military. It was documented that he experienced chronic depression, insomnia, nightmares, decreased libido, discomfort around others, being a loner/hermit, and anhedonia. He reported experiencing ongoing suicidal ideation, particularly when he was bored. He was diagnosed with PTSD and Major Depressive Disorder (MDD), which was noted to some extent to be related to childhood trauma, but more likely than not his experiences in Iraq markedly increased his symptoms and the severity of the conditions. The stressors associated with his diagnosis of PTSD were noted as sexual molestation and inappropriate touching by several senior NCOs in Iraq, being harassed by his unit, being under direct and indirect enemy fire, and seeing dead bodies and people around him killed. A General Medical Examination conducted through the VA on 25 August 2007 listed numerous medical conditions to include a closed head injury with residual (intermittent headaches reported). A VA rating decision letter dated 01 December 2023 shows the applicant was granted service connection for TBI with an effective date of 19 September 2007 (10%) and an increased evaluation of 40% effective 04 November 2010. Regarding the initial service connection rating for TBI, it was noted that "an evaluation higher than 10 percent is not warranted under the historical criteria unless there were diagnosed neurological disabilities associated with your TBI (historical 38 CFR 4.124a)." There was no documentation in his service record that he was diagnosed or treated for TBI in-service aside from his VA medical examination as part of his separation.

6. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with several BH conditions in-service to include: Adjustment Disorder (with Depressed Mood; with Anxiety and Depressed Mood), Depressive Disorder NOS, and PTSD, Chronic and reported a history of MST. His Adjustment Disorder diagnoses are subsumed by his diagnosis of Depressive Disorder NOS. It is of note that the applicant's in-service diagnosis of PTSD, Chronic, a diagnosis typically rendered by a specialty BH provider,



was diagnosed by a non-BH provider. Since being discharged from the military, the applicant has been 100% service-connected through the VA for PTSD and 40% for TBI.

7. Regarding his request for physical disability retirement, per AR 40-501, a referral for a Medical Evaluation Board for depressive and anxiety disorders is warranted under the following circumstances: 1) persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization or, 2) persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment (i.e., a BH profile). Review of the applicant's in-service medical records do not show any evidence that he was ever psychiatrically hospitalized in-service nor that he required a higher level of care (i.e., intensive outpatient treatment program). Furthermore, the available records do not show that applicant was ever placed on a profile in-service necessitating duty limitations for BH reasons and indicated he met medical retention standards. Regarding his VA service-connected diagnosis of TBI, there is no documentation in his military medical records, aside from his VA C&P examination, that he was ever diagnosed with a TBI or received treatment for this condition in-service. Per AR 40-501, a referral for an MEB is warranted when, after adequate treatment, there remain residual symptoms and impairment to such a degree that it meets the definition of a disqualifying medical condition. As there is no documentation that the applicant was treated for TBI in-service, nor that he was placed on a profile due to TBI necessitating duty limitations, there is no indication that the applicant's condition fell below medical retention standards in-service. It is of note that 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 does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of PTSD or TBI through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even in-service diagnoses of PTSD or TBI are not automatically unfitting per AR 40-501 and do not automatically result in medical separation processing. As such, a referral to IDES is not warranted.

8. Regarding his request for CRSC, it is of note that combat related is defined in Section b(3) of 26 U.S. Code § 104, and requires there be a direct cause and effect relationship:

Special rules for combat-related injuries: For purposes of this subsection, the term "combat-related injury" means personal injury or sickness—

(A) which is incurred—

- (i) as a direct result of armed conflict,
- (ii) while engaged in extra-hazardous service, or
- (iii) under conditions simulating war; or
- (B) which is caused by an instrumentality of war.

Paragraph 630601A of Department of Defense Financial Management Regulation 7000.14-R, Volume 78, Chapter 63:

“To support a combat-related determination it is not sufficient to only state the fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting liability.”

9. The applicant is not in receipt of a Purple Heart, Combat Action Badge, and no corroborating official military documentation was found. A note in paragraph 630502 of DoD FMR 7000.14-R Volume 7B Chapter 63 CRSC notes the requirement for documentation, stating in part:

“An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made based on the program criteria.”

10. To award CRSC for PTSD or TBI under the category of armed conflict, the claimant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (Wartime chain of command must be First Sergeant and/or Company Commander or higher), copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict. While the applicant’s post-deployment medical records document that he reported exposure to armed conflict, there is no corroborating evidence in the medical records at the time of the event, nor official military documentation, to substantiate his assertion as it pertains to his diagnoses of TBI or PTSD and establishing a direct causal relationship. Although it is acknowledged that the threshold for a combat-related injury according to CRSC criteria as it pertains to the Instrumentality of War does not require that the disability be incurred during an actual period of war, there are no service or medical records at the time of the event(s) corroborating the events that contributed to his diagnoses of PTSD or TBI. In summary, while the applicant’s medical records document a history of PTSD and TBI as related to

events he experienced during deployment, there is no medical evidence at the time the events occurred, nor any other official military documentation, to support or establish a causal relationship between the claimed disability and combat-related event. As such, it is the opinion of the ARBA Medical Advisor there is insufficient probative evidence for CRSC based on his BH conditions. Regarding the applicant's request for physical disability retirement

11. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. The request is for medical retirement.

(2) Did the condition exist or experience occur during military service? N/A. The request is for medical retirement.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A. The request is for medical retirement.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Name Change: Administrative Grant. The evidence shows the applicant served on active duty from 31 January 2002 to 18 September 2007 using the name HMO. He was discharged from active duty and his DD Form 214 reflects this full name. He provides a post discharge marriage license as well as a court order, 30 September 2011, changing his name from HMO/HMK to PMK. In accordance with ASA (M&RA) guidance related to name changes, the post discharge court order is accepted as sufficient evidence to correct the applicant's DD Form 214 with the new name.

b. Disability rate increase: Deny. The evidence shows a formal PEB convened on 13 July 2007 and found applicant physically unfit with a combined rating of 0 percent and that his disposition be separation with severance pay. The PDBR later increased his disability rating to 10% but that did not change the disposition. No other condition was found unfitting.

(1) Regarding his physical conditions, the Board reviewed and agreed with the medical reviewer's determination that the applicant's right knee condition was the only condition found unfitting. Hearing loss was not determined to be unfitting. The VA awarded the applicant service connection for various conditions, including hearing loss. However, 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 does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate.

(2) Regarding the behavioral health conditions, the Board also reviewed and agreed with the medical reviewer's determination that the applicant did have in service behavioral health conditions. However, there is no documentation that the applicant was treated for TBI in-service, nor that he was placed on a profile due to TBI necessitating duty limitations, there is no indication that the applicant's condition fell below medical retention standards in-service. A subsequent diagnosis of PTSD or TBI through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even in-service diagnoses of PTSD or TBI are not automatically unfitting per AR 40-501 and do not automatically result in medical separation processing. As such, the Board determined a referral to the integrated disability evaluation system is not warranted.

c. CRSC: Deny. The applicant does not meet the criteria. To award CRSC for PTSD or TBI under the category of armed conflict, the applicant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict, copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict. While the applicant's post-deployment medical records document that he reported exposure to armed conflict, there is no corroborating evidence in the medical records at the time of the event, nor official military documentation, to substantiate his assertion as it pertains to his diagnoses of TBI or PTSD and establishing a direct causal relationship.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

█                █                █                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 covering the period ending 18 September 2007, in item 1 (Name (Last, First, Middle) to reflect K\_\_\_\_, P\_\_\_\_ M\_\_\_\_ in lieu of O\_\_\_\_, H\_\_\_\_ M\_\_\_\_.

2. Regarding physical disability retirement with a rating of 100 percent in lieu of disability separation with severance pay and CRSC, the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Dockets Number

- AR20070012883 on 8 April 2008
- AR20150013807, on 6 December 2016

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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. 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.
3. 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.

4. 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.

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. Department of Defense Instruction (DODI) 6040.44 (Physical Disability Board of Review (PDBR)) designates the Secretary of the Air Force as the lead agent for the establishment, operation, and management of the PDBR for the DOD.

a. The PDBR reassesses the accuracy and fairness of the combined disability ratings assigned former service members who were separated, with a combined disability rating of 20 PERCENT or less during the period beginning on 11 September 2001 and ending on 31 December 2009, due to unfitness for continued military service, resulting from a physical disability.



b. The PDBR may, at the request of an eligible member, review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

c. As a result of a request for PDBR review, the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary of the Military Department concerned.

7. Title 10, U.S. Code, section 1413a, as amended, established Combat-Related Special Compensation (CRSC). CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for Reserve retirement at age 60) or who have a physical disability retirement with less than 20 years' service for injuries that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. CRSC eligibility includes disabilities incurred as a direct result of:

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

8. Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) memorandum (Administrative Name Changes to DD Form 214 – Certificate of Release or Discharge from Active Duty – Initiative), dated 3 February 2022, established a more efficient and effective process to expedite requests for administrative name changes on DD Forms 214 pursuant to a court order. Administrative name changes to DD Forms 214 that are pursuant to a court order will be completed upon request. Requests for administrative name changes to DD Forms 214 pursuant to a court order must be accompanied by a copy of such court order.

9. 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.

10. 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.

11. 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.

12. 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//