

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 October 2024

DOCKET NUMBER: AR20240001630

APPLICANT REQUESTS: in effect, an:

- honorable physical disability discharge vice under other than honorable conditions administrative discharge for the good of the service, in lieu of court-martial, and/or
- upgrade of the characterization of his service from under other than honorable conditions to honorable based on mitigating disability

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

- DD Form 149 (Application for Correction of Military Record)
- 2 self-authored statements
- Standard Form 93 (Report of Medical History), 13 February 1976
- Standard form 88 (Report of Medical Examination), 13 February 1976
- Stroger Hospital of Cook County Emergency Department Appointment Information, 31 August 2006
- Patient Education Materials, 14 September 2006
- State of Illinois Application for Voluntary Admission, 17 September 2006
- Standard Form 180 (Request Pertaining to Military Records), 22 September 2017

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. On his application to the Board, he has marked the boxes for indicating he is requesting disability discharge/separation and that post-traumatic stress disorder (PTSD) is related to his request. He further states he is requesting upgrade of his discharge to disability and he is requesting honorable from dishonorable.

b. To this day, he is proud of his service. He is 67 years old and in his little town, people call him Mr. K____. When he joined, he asked for Military Police (MP) or electrician for his Military Occupational Specialty (MOS). He was guaranteed his trade of choice, but this didn't happen. The Army failed him. He loves the Army to today and forever. He was assigned to live on a ship. He didn't know the Army had ships and boats. His duty station was on a ship with the 329th Transportation Company, at Fort Eustis, VA.

c. The coldness from living down on that ship, down on the docks, caused him pain after fulfilling 18 months of his 2-year contract. He could not wear regulation boots anywhere he went. The pain would go through his feet into his legs. One day, he was walking on post from the dock and there came the Colonel. He was taught to salute the car when the flags were on board, which is what he did. The next thing he knew, the Colonel left the car and approached him. He stopped at attention and saluted him and the Colonel said, "At ease." The Colonel had stopped to commend him for being well dressed.

d. A few months later, he was in formation with "Walmart" black boots on because they were softer on his feet and legs and he was reprimanded for not being in uniform. After that, he went on post to the clinic, then to the hospital, where the doctor told him he only had 3 months left on his contract and offered no solution to his foot problem. He couldn't make formation because of the pain.

e. Please help him. He is now 67 years old and was told that no Soldier is left behind. There is a paper trail about his legs and feet. He also suffers from PTSD. 40 years ago, he received a letter regarding a sign on bonus, but he could not sign it because of the pain of it all. Lord help him. Living on a ship for 2 years caused him great pain. He did not join the Navy. Please upgrade his discharge to a disability discharge.

f. At the request of the Army Review Boards Agency (ARBA) for medical documentation supporting his PTSD, the applicant provided some documents he found in his box concerning depression. This is not exactly what was asked for, but this is what he found. All of his therapy was done outside of the Department of Veterans Affairs (VA). Once on the other side of this red tape, he is asking if he could be set up with a therapy visit within the VA or if the VA approves the millions of veterans who wish to seek help outside the VA, rather than be placed on the waiting list. You may drop PTSD from his request, but other than that, carry on. That's just part of the equation.

3. 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).

4. A DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows:

- a. The applicant enlisted in the Regular Army on 22 February 1974.
- b. His MOS is listed as 09B (Trainee unassigned).
- c. His PULHES was 111111.
- d. The remarks show reference to Army Regulation 601-2010 (Personnel Procurement Qualifications and Procedures for Processing Applicant's for Enlistment and Reenlistment in the Regular Army) Table 2-9 (Enlistment Grades for Special Categories), item 3 (is authorized to enlist in pay grade E-1).

5. The applicant's DA Form 20 (Enlisted Qualification Record) shows:

- a. His MOS is alternately shown as 61B (Watercraft Operator) which is stricken through, and also (Seaman), both of which were awarded in June 1974.
- b. His PULHES is 111111
- c. His Record of Assignments shows assignment to 329th Transportation Company, Fort Eustis, VA, effective 3 July 1974.

6. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ) shows the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on 19 December 1974, for negligently and wrongfully failing to carry out the prescribed duties of the Vessel Watch in an alert manner on 13 December 1974, while serving as watch on the Landing Craft Utility (LCU) 1540 in the 329th Transportation Company (Heavy Boat).

7. Multiple DA Forms 4187 (Personnel Action) show the applicant's following duty status changes:

- from present for duty (PDY) to absent without leave (AWOL) effective 24 June 1975
- from AWOL to PDY effective 30 June 1975
- from AWOL to dropped from the rolls (DFR) effective 7 July 1975
- from DFR to PDY effective 15 July 1975

- from PDY to AWOL effective 24 July 1975
- from AWOL to DFR effective 24 July 1975
- from AWOL to PDY effective 27 July 1975

8. Headquarters, 7th Transportation Group (Terminal) Special Court-Martial Order Number 29, dated 12 September 1975, shows:

a. The applicant was arraigned and tried before a special court-martial which convened at Fort Eustis, VA, where he was charged with three specifications of being AWOL from 24 June 1975 through 30 June 1975, from 7 July 1975 through 15 July 1975, and from 24 July 1975 through 27 July 1975.

b. He was found guilty of two specifications of being AWOL, from 24 June 1975 through 30 June 1975 and from 24 July 1975 through 27 July 1975. The second specification of AWOL from 7 July 1975 through 15 July 1975, was dismissed on motion of the defense on the rounds of insufficient evidence.

c. On 12 August 1975, he was sentenced to reduction in rank/grade to private (PVT), E-1 and forfeiture of \$150.00.

9. Multiple additional DA Forms 4187 show the applicant's following additional duty status changes:

- from PDY to AWOL effective 24 November 1975
- from AWOL to DFR effective 23 December 1975

10. A DA Form 268 (Report for Suspension of Favorable Personnel Actions), approved on 30 December 1975, shows suspension action was initiated on 24 November 1975. The applicant departed AWOL on 24 November 1975 and was DFR as of 23 December 1975, and control of his FLAG was transferred to the Commander, Enlisted Records Cetner, Fort Benjamin Harrison, IN.

11. A DA Form 4187 shows the applicant's duty status changed from DFR to attached, PDY effective 29 January 1976, after surrendering at his unit.

12. A DA Forms 268, approved on 30 January 1976, shows suspension action was initiated on the date of the form. The applicant surrendered to the Commander, 329th Transportation Company on 29 January 1976. He had been DFR on 23 December 1975 and was pending charges of AWOL.

13. A DA Form 4187 shows the applicant's duty status again changed from PDY to confinement (Military) effective 2 February 1976. He was transported to Fort Meade, MD for pretrial confinement after surrendering to 329th Transportation Company.

14. A DD Form 458 (Charge Sheet) shows on 2 February 1976, the applicant was charged with absenting himself being AWOL from his unit from 24 November 1975 through 29 January 1976.

15. A final DA Form 268, approved on 3 February 1976, shows suspension action was again initiated on 29 January 1976. The applicant was placed in military confinement at Fort Meade, MED on 2 February 1976 and was pending Special Court-Court Martial bad conduct discharge for AWOL.

16. On 4 February 1976, the applicant's battalion commander forwarded the court-martial charges against the applicant and recommended the applicant's trial by Special Court-Martial with the authority to issue a bad conduct discharge, based on his past acceptance of NJP and prior conviction by court-partial for AWOL.

17. On 5 February 1976, the applicant's brigade commander forwarded the court-marital charges against the applicant and recommended the applicant's trial by Special Court-Martial with the authority to adjudge a bad conduct discharge, based on his prior AWOL conviction and past performance.

18. A DA Form 2496 (Disposition Form) shows the Acting Staff Judge Advocate (SJA) provided pre-trial advice to the approval authority regarding the applicant's charge and specification with a recommendation for trial by Special Court-Martial authorized to adjudge a bad conduct discharge. All of the applicant's commanders recommend trial by Special Court-Martial authorized to adjudge a bad conduct discharge. The Acting SJA recommended trial by Special Court-Martial authorized to adjudge a bad conduct discharge.

19. On 12 February 1976, the applicant voluntarily requested discharge for the good of the service under the provisions of chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

a. He stated he understood he may request discharge for the good of the service because charges were preferred against him under the UCMJ which authorize the imposition of a bad conduct or dishonorable discharge. He was advised of the implication so attached with this request. By submitting this request, he acknowledged he was guilty of the charges against him or of a lesser included offense. He stated he did not desire further rehabilitation and had no desire to perform further military service.

b. He acknowledged having been afforded the opportunity to consult with counsel and consulted with counsel who advised him on the nature of his rights under the UCMJ. He understood if his request were accepted, he may be discharged under other than honorable conditions and understood the possible effects of such a discharge. He

understood he may be deprived of many or all Army benefits and ineligible for many or all benefits administered by the VA.

20. With his request for discharge under the provisions of Army Regulation 635-200, chapter 10, the applicant provided a self-authored statement, which has been provided in full to the Board for review. In pertinent part, it states:

a. The applicant was requesting discharge because he joined the Army with the intention of making a career out of it, but that was taken away from him by his company commander when he mistreated him. He was given only 2 meals a day for quite some time and his commander tried to make him look bad when he complained about the mistreatment. He felt his commander was prejudice against Black people.

b. His conduct in the Army has been outstanding and his appearance has been outstanding. He was told he could bring charges against his company commander, but that is not what he wanted. He just wanted to do his job and be treated like a person. He wanted to stay in the Army because he liked the Army. He wanted to be a good Soldier and could have been had he been treated like a person. If you ask anyone other than his company commander, you will find that he is a very good friend and Soldier.

c. Kicking him out will get rid of him, but there will be more following him because no one will listen to their complaints. He has been to the Inspector General and Equal Opportunity offices and they were willing to help him, but it all fell to the battalion commander and he never got to see him, so the ball stopped there. To whomever decides to give him this discharge, please consider he has a lady and a child to take care of and he is giving up a lot. He went AWOL for what he thinks was a good reason, but no one wishes to help him. He would prefer a good discharge rather than a bad one, so please take that into consideration.

21. A Standard Form 93 shows the applicant provided his medical history in conjunction with a medical examination on 13 February 1976. He indicated he had dizziness or fainting spells, ear, nose, or throat trouble, foot trouble, leg pain, frequent trouble sleeping, depression or excessive worry, and nervous trouble. The medical examiner's summary shows history of shin splints in the Army; given arch supports due to pes planus with no improvement; advised to wear soft shoes; and nose bleeds after trauma to the nose.

22. A Standard Form 88 shows the applicant underwent medical examination on 13 February 1976, for the purpose of discharge under the provisions of Army Regulation 635-200, chapter 10. The notes show diagnoses of pes planus and shin splints while in the Army. No other history; no illness or significant injuries. He was found qualified for administrative separation, but his PULHES is not listed.

23. On 12 February 1976, the applicant's immediate commander recommended approval of the applicant's request for discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10 and recommended the issuance of an undesirable discharge.

24. On 18 February 1976, the applicant's battalion commander recommended approval of the applicant's undesirable discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service.

25. On 18 February 1976, the applicant's brigade commander recommended approval of the applicant's undesirable discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service.

26. On 23 February 1976, the approval authority directed the applicant's discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10, with an undesirable discharge.

27. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given an under other than honorable conditions discharge on 24 February 1976, under the provisions of Army Regulation 635-200, chapter 10, with separation code KFS (For the Good of the Service – in Lieu of Court-Martial). He was credited with 1 year, 9 months, and 11 days of net active service, with 82 days of lost time.

28. The applicant's available service records do not show:

- 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

29. A DD Form 293 (Application for Review of Discharge or Dismissal from the Armed Forces of the United States) shows on 19 November 1977, the applicant applied to the Army Discharge Review Board (ADRB), requesting an upgrade of his discharge to honorable. He felt that he made some mistakes in life and was asking for another chance.

30. On 12 July 1979, the applicant was notified that the ADRB, after careful consideration of his military records and all other available evidence, determined that he

was properly discharged and his request to amend the type and nature of his discharge was denied.

31. Stroger Hospital of Cook County Emergency Department Appointment Information, dated 31 August 2006, shows the applicant was given an appointment on 19 September 2006. The clinic name, diagnosis, and physician reason for visit have all been marked out and are illegible.

32. The applicant provided Patient Education Materials, dated 14 September 2006, providing general injury and illness description, symptoms, home care treatment and follow-up instructions for depression.

33. State of Illinois Application for Voluntary Admission, 17 September 2006, shows the applicant requested admission to Maddam Mental Health Clinic on the date of the form.

34. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Other Than Honorable Conditions to Honorable due to physical disability. He indicated that PTSD and Depression were related to his request. He also mentioned the following physical problems while in service: Leg pain and foot pain. He stated that the foot pain made him unable to wear regulation boots.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. Of note, the applicant entered service 22Feb1974. His MOS was 61B, Watercraft Operator. He did not have foreign service. The applicant was discharged 24Feb1976 under provisions of AR 635-200 chapter 10 for the good of the service in lieu of trial by court-martial. He was pending an AWOL charge from 24Nov1975 to 29Jan1976. It was mentioned that there was a prior special court-martial adjudicated on 12Aug1975 for three specifications of AWOL occurrences. At the time, during his request for discharge for the good of the service, the applicant stated that the reason for his AWOL actions, was that he was being mistreated by his c.o. He also stated that the c.o. tried to make him look bad because of the applicant's complaints about him. The applicant stated that he had sought help without relief through the chain of command and other available resources ("the IG, the RR and the Equal Op"). His service was characterized as Under Other Than Honorable Conditions.

3. While in service, in the 13Feb1976 Report of Medical History, the applicant endorsed (of pertinence): Leg cramps and foot trouble. He also endorsed symptoms potentially related to BH conditions: Frequent trouble sleeping, depression or excessive worry, nervous trouble of any sort, and dizziness or fainting spells. The Report of Medical Examination for chapter 10 separation listed only the following defects: Shin Splints and Pes Planus, Moderate, Bilateral. He was given arch supports which had not helped. It is unknown whether the inserts were custom made or over-the-counter. The applicant was advised to wear soft shoes. He was deemed qualified for separation under AR 635-200.

4. The applicant submitted excerpts of medical records from thirty years after discharge from service: In August 2006, the applicant was seen at a private emergency department for depression. He was scheduled to be seen for follow-up in September of that year. The record indicated he signed paperwork for voluntary psychiatric admission for symptoms that included being suicidal and depressed 17Sep2006. There were no other substantial details or follow-up records.

5. There were no VA or service treatment records in JLV. Based on records available for review, there was insufficient medical evidence to support that the Shin Splints or Pes Planus, Moderate, Bilateral conditions failed medical retention standards of AR 40-501 chapter 3. In addition, there was insufficient medical evidence to support that there was a mental health condition which failed retention standards: There was no documentation of psychiatric hospitalization, suicide ideation/attempts, psychosis, or mania while in service. There was no available profiling information for physical or mental health conditions; and the separation physical examiner did not indicate a specialist referral was needed or that the applicant should be retained for further treatment. There was insufficient documentation that physical or mental health conditions had failed conservative treatment. Based on evidence available for review, referral for medical discharge processing for disability is not warranted.

6. The applicant requests discharge upgrade from Under Other Than Honorable Conditions to Honorable. After discharge from service, the applicant was treated for Depression. In addition, he self asserts PTSD. PTSD and Depression conditions are considered mitigating conditions for discharge upgrade requests under Liberal Consideration guidance.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant's post discharge record shows treatment for depression; while in service, he endorsed a stressful military work environment; and he endorsed BH symptoms during the separation examination. In addition, as per Liberal

Consideration, the applicant's self-assertion of PTSD and Depression is sufficient for consideration for mitigation of his AWOL offense.

(2) Did the condition exist, or did the experience occur during military service? Yes. While he was still in the military, the applicant endorsed a stressful military work environment; and he endorsed BH symptoms during the separation examination. In addition, the applicant self-asserts PTSD and Depression due to in-service stressors which under Liberal Consideration is sufficient.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's record shows treatment for depression (after service) and symptoms while in service which could be attributable to the depressive condition such as trouble sleeping, depression (or low mood), excessive worry or nervousness. These symptoms as well as decreased motivation (also characteristic of depression) can contribute to an individual becoming AWOL. In addition, the applicant self-asserts PTSD which can be manifested by avoidant behavior.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding insufficient documentation that physical or mental health conditions had failed conservative treatment and that medical discharge processing for disability is not warranted. However, the opine noted the applicant's self-assertion of PTSD and Depression is sufficient for consideration for mitigation of his AWOL offense.

2. The Board notwithstanding the medical opine, determined under liberal consideration there is sufficient evidence to support in-service mitigating factors to overcome the misconduct of AWOL. The Board noted the applicant's treatment for depression (after service) and symptoms while in service which could be attributable to the depressive condition such as trouble sleeping, depression (or low mood), excessive worry or nervousness. The Board agreed the applicant's symptoms as well as decreased motivation (also characteristic of depression) can contribute to an individual becoming AWOL. The Board found under liberal consideration partial relief is warranted with an

upgrade of the applicant's characterization of service to general under honorable conditions.

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 re-issuing the applicant's DD Form 214 for the period ending 24 February 1976, to show his characterization of service as under honorable (general) conditions.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a honorable physical disability discharge vice under other than honorable conditions administrative discharge for the good of the service, in lieu of court-martial, and/or upgrade of the characterization of his service from under other than honorable conditions to honorable based on mitigating disability.

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides that a member who had committed an offense or offenses for which the authorized sentence included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial. When a Soldier is discharged UOTHC, the separation authority will direct an immediate reduction to the lowest enlisted grade.

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

//NOTHING FOLLOWS//