

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240002828

APPLICANT REQUESTS:

- physical disability retirement in lieu of honorable administrative discharge due to a condition, not a disability
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form 513 (Medical Record – Consultation Sheet), 18 May 2005
- 348th Quartermaster Company Memorandum, subject: Command Referral for Mental Health Evaluation of [Applicant], 24 June 2005
- Medical Command (MEDCOM) Form 691-R (Medical Record – Patient Release/Discharge Instructions), 25 July 2005
- DA Form 3349 (Physical Profile), 25 July 2005
- three DA Forms 4856 (Developmental Counseling Form), 2 August 2005 (2) and 12 September 2005
- partial DD Form 2807-1 (Report of Medical History), 31 August 2005
- numerous 348th Quartermaster Company memoranda, 27 September 2005
- two U.S. Army Trial Defense Service, Region VI memoranda, 27 September 2005
- U.S. Army Support Command and Area III Legal Center memorandum, 30 September 2005
- Headquarters, 23rd Area Support Group memorandum, dated 3 October 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 19 October 2005
- Department of Veterans Affairs (VA) Form 21-0960P-2 (Mental Disorders (Other than Post-Traumatic Stress Disorder (PTSD) and Eating Disorders) Disabilities Benefits Questionnaire), 16 May 2013
- Letter from Spouse, 2014
- wife's letter, 2014
- VA Summary of Benefits Letter, 28 December 2023

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. His reason for separation needs to be corrected to medical retirement instead of condition, not a disability. At the time of his separation the Army did not deem his disability worthy of a medical separation. He was released from duty with no guidance or information on how to get help.

b. He would like it to be documented as an Army retirement. He feels that should have been done in 2005, but his disability was not seen as such at the time.

3. The applicant enlisted in the Regular Army on 21 April 2004, and was awarded the military occupational specialty (MOS) 92F (Petroleum Supply Specialist).

4. A Standard Form 513, dated 18 May 2005, shows:

a. The applicant was referred to the Neurology Clinic for consult for, without prior neurologic problems in the past, having over last year a total of three episodes characterized by shaking of limbs with intact consciousness and awareness. Recent episode triggered by his wife not answering the phone; he was observed to be shaking his limbs with intact consciousness, without incontinence not tongue biting. Since then, shakiness is gone, but notes continuous tendency to move his head and stuttering. He was referred for a neurologic opinion.

b. His provisional diagnosis was emotion induced behavior.

c. The note shows he had a normal neurologic examination. The third episode was with a clearly identifiable stress event that did not represent a true neurologic movement disorder nor any seizure activity. Clearly documented episode that was observed was diagnostic of non-neurologic disorder and have him reassurance from the neurologic point of view.

5. Two Standard Forms 600 (Chronological Record of Medical Care) show:

a. On 20 May 2005, the applicant was seen at the Primary Care Clinic, after having been seen by Neurology and determined to have no neurologic and no seizure

disorders. His pseudo seizures most likely due to stress induced and he was referred to psychiatry.

b. He was seen again on 7 June 2005 after having been seen by Mental Health. He reported his seizure-like anxiety episodes and expressed doubt that his diagnosis is not stress/anxiety related. He was assessed with emotion induced behavior; possible anxiety disorder. He would be started on a trial of Zoloft and follow up with Mental Health. If he failed to improve, a brain Magnetic Resonance Imaging (MRI) or electroencephalogram (EEG) would be considered to rule out possible neurological etiology.

6. On 24 June 2005, the applicant's immediate commander referred the applicant for a mental health evaluation for evaluation of conversion disorder. The applicant had been on active duty for 1 year and 2 months and his past performance was outstanding, with no legal action or nonjudicial action pending.

7. A MEDCOM Form 691-R, dated 25 July 2005, shows:

a. The applicant was admitted on 22 July 2005, with an admitting diagnosis of conversion disorder after episodes of seizure after anxiety under stress. Neurology ruled out neurological etiology.

b. He received psychological evaluation and observation. His final diagnosis at discharge was conversion disorder with mixed presentation vs. seizures and adjustment disorder not otherwise specified.

c. Discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) paragraph 5-17 (Other Designated Physical or Mental Conditions) was recommended, with follow-up appointments with Psychiatry.

8. A MEDCOM Form 699-R (Mental Status Evaluation), dated 25 July 2005, shows:

a. The applicant underwent a mental status evaluation from 22 – 25 July 2005 at the Inpatient Psychiatry Service, 12st General Hospital.

b. Based on this evaluation, the diagnostic impressions were conversion disorder with mixed presentation versus seizures (pseudo); adjustment disorder not otherwise specified.

c. This condition and the problems presented by the applicant are not amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It is unlikely that efforts to rehabilitate or develop the applicant into a successful member of the military would be successful.

d. The applicant was deemed to have no potential to meet mobilization requirements or useful service under conditions of full mobilization and discharge from the Army in accordance with Army Regulation 635-200, paragraph 5-17, would be in the best interests of both the applicant and the Army. The process should be expedited to preclude further crisis.

9. An undated handwritten note of unknown source filed in the applicant's service records shows:

a. The applicant's final diagnosis was conversion disorder with mild seizure. The reason for the diagnosis was his ongoing symptoms of shaking of hands, shuddered speech, restlessness, headaches, light-headedness, body drained of energy at least 7 times in 1 week, body shakes, storable sleeping, trouble waking, anxiety episodes mostly occur once or twice a day, mornings or nights or both.

b. The applicant had been to the emergency room seven times in the last 2 months for the same reason and was seen as an inpatient at 121st, Mental Health, form 22 -25 July 2005, where he was diagnosed with conversion disorder with mild seizures.

10. 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).

11. A DA Form 3349 shows on 25 July 2005, the applicant was given a temporary physical profile rating of 3 in factors P and S for the condition of conversion disorder with mixed presentation versus seizures (pseudo); adjustment disorder not otherwise specified. He was limited in all functional activities and Army Physical Fitness Test (APFT) events.

12. Two DA Forms 4856, both dated 2 August 2005, show the following counseling:

a. On 2 August 2005, the applicant's squad leader indicated the applicant's performance in the month of July was not observed due to his sickness preventing him from working.

b. On 2 August 2005, the applicant's immediate commander counseled the applicant to inform him of how his inability to accomplish the mission to affect him in the future and that his conversion disorder diagnosis prevented him from driving a vehicle, carrying a weapon, conducting physical training, and working in his MOS. If he could not overcome these restrictions in a reasonable amount of time he may be separated under the provisions of Army Regulation 635-200, paragraph 5-17.

13. A partial DD Form 2807-1, shows on page 3 of the applicant's Report of Medical History, the medical examiner signed the form on 31 August 2005, showing the applicant had a history of dizziness, anxiety, insomnia and stuttering, was receiving mental health counseling and taking Paxil; was diagnosed with anxiety, conversion disorder and mild seizures.

14. A third DA Form 4856 shows the applicant was counseled by his immediate commander on 12 September 2005, regarding his failure to overcome the limits of his physical profile, which prevented him from conducting physical training, driving a vehicle, working in his MOS, and carrying a weapon. In view of this inability, he was being recommended for separation under the provisions of Army Regulation 635-200, paragraph 5-17.

15. A complete DD Form 2807-1, dated 23 September 2005, shows the applicant provided his medical history in conjunction with a medical examination for the purpose of separation. He listed numerous conditions, including, dizziness, severe headache, seizures, palpitations, nervous trouble, stammering, trouble sleeping, depression,. Page 3 is signed by a medical professional showing the applicant was evaluated by Psychiatry and was being separated with a diagnosis of anxiety disorder, pseudo seizures, and insomnia.

16. An undated DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination for the purpose of separation, where he was found qualified for separation with an unlisted PULHES and a diagnosis of anxiety disorder.

17. On 27 September 2005, the applicant was notified by his immediate commander of her initiation of action to separate him with an honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to his diagnosis of conversion disorder with mixed presentation versus seizures and adjustment disorder and the psychologist's recommendation that he be discharged. He was advised of his right to consult with counsel and submit written statements in his own behalf.

18. On 27 September 2005, the applicant acknowledged having been notified by his commander of initiation of his administrative separation under the provisions of Army Regulation 635-200, paragraph 5-17 for other designated physical or mental conditions. He acknowledged understanding military legal counsel would be available to assist him

and he did not desire military legal counsel be appointed to assist him. He indicated he would not submit statements in his own behalf for consideration.

19. On 27 September 2005, the applicant further indicated he had been given an opportunity to speak to qualified defense counsel and chose to decline that opportunity. He acknowledged having been advised by his commander of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 5-17, the rights available to him, and the effect of any action taken by him in waiving his rights.

20. On 28 September 2005, the applicant's battalion commander recommended the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions.

21. On 30 September 2005, trial counsel reviewed the applicant's separation packet under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions and found it legally sufficient.

22. On 3 October 2005, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to other designated physical or mental conditions.

23. The applicant's DD Form 214 shows he was honorably discharged on 19 October 2005, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability, with corresponding separation code JFV. He completed 1 year, 5 months, and 29 days of active service.

24. A VA Form 21-0960P-2, was signed by a clinical psychologist on 16 May 2013, indicating the applicant was diagnosed with conversion disorder and panic disorder without agoraphobia and details his symptoms, occupational and social impairment, and relevant history.

25. A letter from the applicant's wife, dated 2014, shows she was writing to express how her husband's condition had worsened. He has to be reminded of daily tasks, has trouble getting proper sleep, and going back to work is a challenge due to his mental episodes and anxiety, and becomes easily overwhelmed.

26. A VA letter, dated 28 December 2023, shows the applicant has one or more service-connected disabilities with a combined evaluation of 70 percent effective, 1 December 2013. He is paid at the 100 percent rate because he is unemployable and considered totally and permanently disabled due to his service-connected disabilities effective 11 December 2018.

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

28. 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.

29. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to the reason for separation from honorable to a medical disability separation.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 21 April 2004.
- On 27 September 2005, the applicant was notified by his immediate commander of her initiation of action to separate him with an honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-17, due to his diagnosis of Conversion Disorder with mixed presentation versus seizures and Adjustment Disorder, and the psychologist's recommendation that he be discharged.
- The applicant was discharged on 19 October 2005 and was credited with 1 year, 5 months, and 29 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts a mental health condition, which warranted a medical retirement in 2005. Medical documentation dated 18 May 2005 showed that the applicant had experienced a pseudoseizure following a "clearly identifiable stress event," and he was diagnosed with a "nonneurologic disorder." A medical record/discharge instructions dated 22 July 2005 showed that the applicant was admitted for episodes of seizure with increased anxiety and stress since May, and he was diagnosed with Conversion Disorder and Adjustment Disorder. He was prescribed an antidepressant medication and placed on a duty limiting temporary profile. A Mental Status Evaluation dated 25 July 2005 provided a diagnosis of Conversion Disorder and Adjustment Disorder, and the evaluator recommended administrative discharge. It was noted that the applicant had an inpatient hospitalization from 22-25 July 2005 and that there was "no potential to meet mobilization requirements." Notably, it was not indicated that the soldier met retention standards. A handwritten document followed, which stated that the applicant had been in the ER seven times over the previous two months due to physical

symptoms and anxiety episodes. A Developmental Counseling Form dated 2 August 2005 noted that the applicant was counseled as related to his diagnosis of Conversion Disorder and the duty limitations of his profile, and that if he were unable to overcome the limitations, he could face separation. Another Counseling Form dated 12 September 2005 indicated the applicant had attended all appointments and used medication, but he had been unable to overcome deficiencies resulting in the decision to separate him under Chapter 5-17. It was noted that the applicant agreed with the counseling. A Report of Medical History dated 23 September 2005 showed that the applicant endorsed nervous trouble, stammering or stuttering, trouble sleeping, depression or excessive worry, and that he had been treated for a mental health condition. The evaluator noted a history of diagnosis of Anxiety Disorder, pseudoseizures, and insomnia. A memorandum to a commander dated 27 September 2005 with the subject Separation Under AR 635-200, Chapter 5-17 showed that the applicant was evaluated and diagnosed with Conversion Disorder with mixed presentation and Adjustment Disorder, and discharge was recommended. A Disability Benefits Questionnaire for mental disorders other than PTSD dated 16 May 2013 showed that the applicant was diagnosed with Conversion Disorder and Panic Disorder without Agoraphobia. Documentation discussed a sudden onset of panic, shaking, stuttering, and falling down when the applicant was in Korea, and it was noted that he did not meet full criteria for Major Depressive Disorder but reported associated symptoms. A VA summary of benefits letter dated 28 December 2023 showed that the applicant is 70% service connected and is considered unemployable and totally and permanently disabled. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed DoD documentation dated in May and August 2005 of referral for evaluation related to seizure-like activity that was determined to be pseudoseizures resulting from stress and anxiety. A Compensation and Pension (C&P) examination conducted on 23 January 2006 noted the onset of the seizure-like symptoms was in May 2005 following the applicant's unsuccessful attempts to reach his wife by phone from his barracks in Korea. He reported experiencing a mild panic attack after starting Zoloft, and he was unable to work full-time, ultimately resulting in his honorable discharge from the military. The evaluation concluded a diagnosis of Panic Disorder without agoraphobia and Conversion Disorder in remission.

e. The applicant initiated mental health treatment through the VA on 13 May 2011 and was referred to psychiatry. He reported ongoing problems with anxiety, sleep difficulty, low energy, low mood, irritability, and panic attacks. He was diagnosed with Conversion Disorder, Dysthymic Disorder, Alcohol Abuse, and Panic Disorder, and he was started on an antidepressant medication and referred for a substance abuse evaluation. He successfully completed an intensive outpatient program in October 2011 and was referred to a non-VA facility for mental health treatment. Documentation is

limited, but it was noted that on 19 August 2013 the applicant was hospitalized after pulling a knife on his wife and waving it around, which was uncharacteristic of him. A primary care encounter on 17 October 2013 showed that the applicant reported he was treated for psychosis and was on two medications for anxiety, an antidepressant, and an antipsychotic. In July 2014 he was admitted to the inpatient unit at the VA due to depression, panic attacks, and suicidal ideation, and his diagnoses were Major Depressive Disorder, Panic Disorder, and PTSD. Medications were adjusted, and he discharged ten days later with antipsychotic and mood stabilizing medications. He has routinely engaged in outpatient mental health treatment and demonstrated stability on medications. His most recent mental health visit was on 11 July 2024, and his primary diagnosis is Other Specified Bipolar and Related Disorder, Panic Disorder, Conversion Disorder, and Alcohol Use Disorder in remission. It was noted that he had discontinued his medications and declined need for additional follow up at that time. VA records indicated that the applicant is currently 70% service connected for Bipolar Disorder.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to warrant a referral to IDES based on the applicant's experience of pseudoseizures and diagnosis of Conversion Disorder. The available medical documentation showed that the applicant's seizure-like episodes began in May 2005, and after evaluation by neurology and a hospitalization in July 2005, it was determined that the episodes were pseudoseizures. He was temporarily profiled and administrative discharge was recommended based on the diagnosis of Conversion Disorder. However, it was not indicated as to whether or not he met retention standards, and in accordance with AR 40-501, Chapter 3-30 (7), related to neurological conditions and pseudoseizures, pseudoseizures are disqualifying under the same rules as epilepsy, which indicates that the applicant should have been given a trial of therapy or referred directly to an MEB for referral to a PEB.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for change in narrative reason for separation

(2) Did the condition exist or experience occur during military service? NA; request is for change in narrative reason for separation

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for change in narrative reason for separation

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding based on the applicant's experience of pseudoseizures and diagnosis of Conversion Disorder. Based on this, the Board granted relief of referral of his case to the Disability Evaluation System (DES) as recommended by the medical reviewer.
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was 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:
 - a. Directing the applicant be entered into the Disability Evaluation System (DES) and a medical evaluation board convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.
 - b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and

participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined that 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 changing his type of discharge without evaluation under the DES.



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 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.

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 his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the

severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

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 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-17 states a service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or performance of duty. not amounting to disability under Army Regulation 635-40 and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) Such conditions may include, but are not limited to, the following:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

b. When a commander determines a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or a mental status evaluation in accordance with Army Regulation 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting

to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Soldier being separated under this section will be awarded a character of service of honorable, under honorable conditions, or uncharacterized if in an entry-level separation. An under honorable conditions characterization of service which is terminated under this paragraph is normally inappropriate.

7. 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.

8. 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.

9. 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.

10. 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//