

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240003148

APPLICANT REQUESTS:

- a medical retirement vice medical discharge
- 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)
- Self-Authored Statement
- Orders 254-0032, 11 September 2014 (Separation Orders)
- Enlisted Record Brief (ERB)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 26 November 2014
- Department of Veterans Affairs (VA) Statement in Support of Claim
- VA Rating Decision Letter
- Medical Documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 when he went through the Medical Evaluation Board (MEB) they only gave him 10 percent for his combat injury, but they did not consider or rate his other service-connected disabilities. He was young and dumb and took the discharge and should have stayed and fought the Physical Evaluation Board (PEB) and the MEB. He has a civilian document stating he had combat post-traumatic stress disorder (PTSD) right before being discharged back in 2014. The Army did not or avoided diagnosing Soldiers with combat PTSD. He had two combat related injuries and was rated 70 percent through the VA. He has sleep insomnia and is currently at 100 percent, the VA discovered after going through his files. He has multiple service-connected disabilities that were never considered during the MEB. He was diagnosed with combat

PTSD shortly after leaving the service. The applicant also lists Traumatic Brain Injury (TBI) as related to his request.

3. The applicant provides:

a. An applicant letter which states when he was younger, he was in a lot of pain and still suffers with chronic pain. The VA finally did an MRI on his right shoulder and found his clavicle and labrum was very injured which occurred while he was in the Army but was never looked at because they were more concerned with his left leg staph infection which ended his career. They pushed his MEB/PEB through at the time he did not know any better between a medical discharge and medical retirement. He was paid combat related severance at the time he was discharged. He still suffers in pain and never had the anterior cruciate ligament (ACL) fixed. The VA told him they were afraid to fix it because the staph infection could lie dormant in the bone.

b. VA Statement in Support of Claim, dated 22 January 2015 reflects the applicant was on a battalion mission and split up from most of his platoon and on top a roof with a 60mm mortar system. The day he got his Combat Infantryman Badge was the day his basic training buddy was blown up by a pressure plate improvised explosive device. His teammates stepped on the pressure plate killing three people and he heard, over the radios their names being called in the phonetic alphabet. On 3 May 2012, during weekly gun maintenance on the 120mm a recoilless rocket flew over his head, and he landed in the pit while they were being shot at by machine guns and mortar rounds. He yelled to his team, but he could not move his leg and was not able to move.

c. VA Rating Decision letter, 15 July 2015 reflects service connection for:

- PTSD with generalized anxiety disorder (also claimed as night sweats and loss of libido and previously rated as anxiety disorder not otherwise specified) 70%
- sleep apnea and asthma (also claimed as chronic obstructive pulmonary disease and bronchitis) 50%
- migraines 50%
- right shoulder strain and sprain 10% (dominant)
- left shoulder strain (claimed as both shoulders pain) 20%
- left ankle strain and sprain (non-dominant) 10%
- lumbar spine strain (claimed as low back) 10%
- left knee ACL tear 10%
- right knee sprain and strain 10%
- tinnitus 10%
- temporomandibular joint disorder (claimed jaw condition) 10%

d. The applicant's medical information, documents which will be reviewed and discussed by the medical and mental health staff at the Army Review Boards Agency (ARBA).

4. The applicant's service record shows the following information:

a. DA Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 1 October 2008.

b. His ERB shows in Section I-(Overseas/Deployment/Combat Duty) the applicant served in Afghanistan from 28 May 2009 to 28 May 2010 and Afghanistan from 10 March 2012 to 4 December 2012.

c. DD Form 4 shows the applicant reenlisted on 11 March 2010.

d. Orders 254-0032, 11 September 2014, discharged the applicant from the Regular Army. Additional instructions show:

- a disability rating of 10%
- severance pay in the grade of corporal/E-4 based on 6 years, 1 month, and 26 days of service as computed Title 10 USC Section 1206
- his scheduled date of discharge: 26 November 2014
- disability was based on injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war as defined by law: Yes
- disability resulted from a combat related injury as defined in Title 26 USC 104: Yes
- disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008 Section 1646): Yes

e. He was honorably discharged on 26 November 2014. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), Chapter 4 for disability, severance pay, combat zone (enhanced). He completed 6 years, 1 month, and 26 days of active service. His DD Form 214 shows in item 18 (Remarks) Disability Severance Pay \$29,127.60.

f. The applicant submitted an application for Combat Related Special Compensation (CRSC), 18 December 2023 that reflects he was injured in 2012 when he was deployed when they were being shot at from the mountain. He was deployed and enemy rocket propelled grenades and gunfire. He fell into a mortar pit during the stacked and "jacked

up (his) left knee” and had multiple surgeries due to infection. The VA determined he had combat related PTSD awarded at 70%.

5. The Memorandum for Record, CRSC Application, 5 January 2024, reflects the U.S. Human Resources Command was unable to verify the applicant’s retired pay account and his records show he did not have a VA waiver.

6. To be eligible for CRSC, a uniformed service retiree must be entitled to receive retired pay and have a combat-related disability. Title 10, USC, section 1413a(c), a combat-related disability is a disability that is compensable under the laws administered by the Secretary of the VA and includes disabilities (1) incurred as a direct result of armed conflict or (2) through an instrumentality of war. Title 10, USC, section 1413a(e)(2)(A).

7. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant’s ABCMR application and accompanying documentation, the military electronic medical record (EMR - AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting additional conditions – to include PTSD, a right shoulder condition, and “sleep insomnia” – be determined to have been unfitting for continued service with a subsequent increase in his military disability rating and change in his current disability separation disposition from separated with disability severance pay to permanent retirement for physical disability. The applicant states the Board did not consider his other service-connected disabilities and he is now rated 100% by the VA.

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the Regular Army on 1 October 2008 and was separated with \$29,127.60 of disability severance pay on 26 November 2014 under provisions provided in Chapter 4

of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012).

d. A Soldier is referred to the IDES when they have one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldier's referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all conditions they believe to be service-connected disabilities in block 8 of section II or a separate Statement in Support of Claim (VA form 21-4138).

e. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. All conditions are then rated by the VA prior to the Soldier's discharge. The physical evaluation board (PEB), after adjudicating the case sent them by the medical evaluation board (MEB), applies the applicable VA derived ratings to the Soldier's unfitting condition(s), thereby determining their final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

f. On 2 May 2014, the applicant was referred to the IDES for "ACL [anterior cruciate ligament] Deficient Left Knee." He claimed 18 additional conditions on a Statement in Support of Claim (VA Form 21-4138), to include sleep apnea, PTSD, Right Shoulder Condition including collar bone, and anxiety. A medical evaluation board (MEB) determined his "Left knee ACL tear with repair" failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined 17 additional medical conditions met medical retention standards, to include "Other specified trauma and stressor related disorder," "Right shoulder sprain and strain," and "Obstructive sleep apnea." From the MEB narrative summary for these two conditions:

"Other specified trauma-and stressor-related disorder

The C&P examiner reports the service member meets all DSM 5 criteria for Other specified trauma-and stressor-related disorder with the stressor related to fear of hostile military or terrorist activity; he does not meet criteria for PTSD (Checklist score 25/80).

The condition may cause mild occupational impairment during periods of significant stress but may be controlled by medication. The soldier currently does not take any psychiatric medications. The soldier has not been hospitalized for this condition. The Soldier's Commander does not indicate there are behavioral health concerns.

The Soldier has not required a profile for this condition. This condition does not significantly impact the service member's duties and does not fall below Army retention standards.”

“Status post Right collar bone misalignment (Right dominant) / Right shoulder sprain and strain (Right dominant)

The soldier reports this condition began in 2010 while in Afghanistan after falling off a roof and subsequent bench pressing. There are no visits recorded in AHLTA until May 2014 with a follow-up visit to his orthopedic surgeon on 11 June 2014. An x-ray performed 11 June 2014 shows a slight contour depression of the distal clavicle which is symmetrical right and left and may be developmental.

The orthopedic surgeon notes shoulder pain associated with crutches. The orthopedic surgeon reports a normal range of motion of the right shoulder without clinical evidence of A.C. [acromioclavicular] joint DJD [degenerative joint disease] or instability.

C&P x-ray of the right clavicle and right shoulder performed on 5 June 2014 are normal. C&P examiner reports this condition does not impact his ability to work. The service member has not required a profile for this condition. It is expected this condition will improve when he no longer uses crutches. This condition does not significantly impact the service member's duties and does not fall below Army retention standards.”

“Obstructive sleep apnea

The service member reports this condition began in 2012 while deployed when he experienced an episode of gasping for air (while sleeping). A sleep study performed at the United States Air Force Academy showed an AHI [Apnea-Hypopnea Index] of 17.1 per hour which was reduced to a normal 2.59 per hour at 8 cm CPAP [continuous positive airway pressure].

C&P examiner reports this condition does not impact his ability to work. The service member has not been previously profiled for this condition but will be categorized as P2 for the electricity requirements. The Soldier has deployed with this condition. This condition does not significantly impact the service member's duties and does not fall below Army retention standards.”

g. On 8 July 2014, the applicant agreed with the Board's findings and recommendation and his case was then forwarded to a physical evaluation board (PEB) for adjudication.

h. The applicant's informal PEB found his left knee condition was the sole unfitting medical condition for continued service. They determined the remaining 18 medical conditions were not unfitting for continued military service. The PEB applied the VBA derived ratings of 10%, and because the applicant's combined military disability rating was less than 30%, the PEB recommended the applicant be separated with disability severance pay. On 18 August 2014, after being counseled by his PEB liaison officer (PEBLO) on the Board's findings and recommendation, the applicant concurred with the PEB, waived his right to a formal hearing, and declined the opportunity to request a VA reconsideration of his disability ratings.

i. Contemporaneous medical documentation was submitted with the application is from the EMR and addresses the previously reviewed and discussed injuries. The submitted post-separation medical documentation is from the VA shows the applicant has been diagnosed with PTSD and insomnia.

j. There is no significant probative evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, Sleep Apnea, and Bilateral Shoulder Bursitis. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. Review of the DES case file in ePEB and his records in the EMR show the findings throughout his DES process are consistent with the medical evidence in the case file. No material errors, discrepancies, or omissions were identified.

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

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

n. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

X



CHAIRPERSON

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. Section 1556 of Title 10, USC, 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.
3. Title 38 USC, 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.

4. Title 38 USC, 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.

5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states 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. 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.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

7. Title 10, USC, 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and 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.

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.

8. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

9. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states 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. 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.

10. Army Regulation 635-8 (Separation Processing and Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation.

11. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JEA (is to be used for Soldiers discharged for disability, severance pay, combat zone (enhanced)).

12. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "JEA" for disability, severance pay, combat zone (enhanced).

13. Department of Defense Financial Management Regulation, Volume 7B:

a. Section 630301 states, a member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860 (Claim for CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

b. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

c. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. 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 on the basis of the program criteria.

d. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. 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, 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 disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from

military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

14. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

15. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

16. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

17. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

18. 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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; 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 to those conditions or experiences. The guidance further

describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

19. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

b. 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.

20. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//