

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240003213

APPLICANT REQUESTS: in effect, a physical disability retirement in lieu of a physical disability separation with severance pay

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- nine DD Forms 214 (Certificate of Release or Discharge from Active Duty), covering periods ending between September 1990 – January 2011
- three DA Forms 2166-7 (Noncommissioned Officer Evaluation Report (NCOER), covering periods ending between April 1998 – October 2000
- 13 sets of assignment/mobilization/Release from Active Duty/transfer orders, February 2003 -April 2011
- DA Form 2-1 (Personnel Qualification Record), 9 January 2009
- U.S. Army Human Resources Command (AHRC) memorandum, 12 February 2009
- Defense Finance and Accounting Service Military Leave and Earnings Statement (LES), June 2011
- Chronological Statement of Retirement Points, 15 July 2012
- 20 pages of medical records, April 1991 – July 2012
- DA Form 7652 (Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement), 1 August 2021
- DD Form 2648-1 (Transition Assistance Program (TAP) Checklist), 31 October 2012
- 44 pages of Compensation and Pension (C&P) examinations, 15 November 2012
- DA Form 3349 (Physical Profile), 20 November 2012
- partial DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 3 December 2012
- Integrated DES (IDES) Narrative Summary (NARSUM), 4 December 2012

- DA Form 5889 (Physical Evaluation Board (PEB) Referral Transmittal Document), undated and unsigned
- Department of Veterans Affairs (VA) letter, 1 November 2013
- AHRC Permanent Order 316-08, 12 November 2013
- DD Form 215 (Correction to DD Form 214), 13 November 2013
- DA Form 199 (Informal PEB Proceedings) 21 November 2013
- U.S. Army Physical Disability Agency (USAPDA) Orders D 336-14, 2 December 2013
- USAPDA memorandum, 2 December 2013
- VA letter, 26 December 2013
- VA letter, 6 December 2013
- VA Rating Decision, 2 December 2021
- Chronological Statement of Retirement Points, 20 March 2024

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. He is requesting an upgrade of his initial Army medical board rating of 20 percent along with eligibility for a full retirement from the U.S. Army Reserve (USAR) due to the incongruity between his initial Army disability rating and the VA disability rating of 80 percent, which has since been increased to his current rating of 100 percent.

b. He was assigned a disability rating of 20 percent by the medical board, which led to his medical discharge with severance pay in 2014. He was at the sunset of his career in the USAR as a Military Police (MP) Soldier and Investigator and was physically and mentally exhausted when he went through the medical board process. The facilities for the medical board process were in a different State, hours away from his home unit and residence, and the arduous trips back and forth, along with ongoing divorce procedures and his full time civilian job compounded the hardship of the travel and his own clarity on how he was being treated at the time.

c. Feeling like a second class Soldier due to the way in which his case was handled and the lack of counsel from either the medical board itself or his chain of command (who offered zero assistance or guidance), along with the aforementioned stressors, he

accepted the initial findings of the board without realizing either how damaging they were or the long-term consequences of that decision.

d. The doctors who examined him presented as much more concerned about his status as a Reservist and associated gatekeeping than they did with a fair assessment of the effects of his service on his physical and mental well-being. They seemed intent on keeping his rating low to meet some metric. Indeed, he was led to believe by the administrators that he had little hope of obtaining a higher rating if he appealed at the time and a chance of losing what had already been offered. In short, it was presented as a “take it or leave it” proposition and, being at his wits end at the time, he accepted it.

e. He faithfully served in the USAR through seven full mobilizations and many short-term active duty assignments, including the Gulf War, Bosnia, and three times to Iraq and Afghanistan. He often volunteered for those assignments and mobilizations and endured many injuries in training, exercises, and combat, for which he received a Purple Heart. Indeed, in many situations, he did not have the means or opportunity to get medical care due to the austere and fluid conditions of a combat environment.

f. This is not a complaint, but a simple testament to the fact that he served honorably and to the best of his ability for over 22 years in the USAR, earning eligibility for regular retirement in that way, including over 10 years of mobilized time. His leadership recognized him for his service with two Bronze Star Medals, the Defense Meritorious Service medal, two Meritorious Service Medals, the Joint Service Commendation Medal, two Army Commendation Medals, six Army Achievement Medals, the Military Police Regiment’s Order of the Marechaussee, and the Combat Action Badge.

g. His military and VA medical records clearly support the unfit for duty part of the medical board rating, but they also support an initial rating of at least 30 percent as opposed to the 20 percent assigned by that board. He humbly requests that the Board review the totality of the circumstances surrounding his medical discharge and increase his disability rating to at least 30 percent, along with a change in his status to allow for his retirement with pay due to disability caused by injuries and wounds received in combat. To that end, he submitted the medical board’s assessments and findings along with the VA findings, and his most recent VA findings, his USAR “20 Year Letter” notifying him of his retirement eligibility, and other pertinent documentation included with this letter. Thank you in advance for your consideration.

3. The applicant enlisted in the USAR on 10 January 1989, and was awarded the Military Occupational Specialty (MOS) 95B (Military Police).

4. Multiple DD Forms 214 reflect the applicant deployed to the following locations during the following time periods:

a. He was ordered to active duty in support of Operation Desert Shield/Desert Storm on 12 September 1990, with service in Southwest Asia from 12 September 1990 through 3 April 1991. He was honorably released from active duty on 1 May 1991, due to expiration term of service (ETS), credited with 7 months and 20 days of net active service this period, and transferred back to his USAR unit.

b. He was ordered to active duty in support of Operation Joint Endeavor/Joint Guard on 19 August 1997, with service in Hungary, Bosnia, and Croatia from 22 October 1997 through 11 April 1998. He was honorably released from active duty on 24 April 1998, due to completion of required active service, credited with 8 months and 6 days of net active service this period, and transferred back to his USAR unit.

5. The applicant provided multiple NCOERs, covering the periods ending April 1998, May 2000, and October 2000, which all reflect in every portion of Part IV (Rater) (Values/NCO Responsibilities) he was rated "Success" or "Excellence."

6. Multiple additional DD Forms 214 reflect additional periods of mobilization and/or deployment:

a. The applicant was ordered to active duty in support of Operation Noble Eagle on 10 October 2001, without overseas service. He was honorably released from active duty on 9 October 2002, due to completion of required active service, credited with 1 year of net active service this period, and transferred back to his USAR unit.

b. He was ordered to active duty in support of Operation Enduring Freedom on 20 February 2003, with service in Kuwait/Iraq from 20 February 2003 through 1 October 2004. He was honorably released from active duty on 9 January 2004, due to completion of required active service, credited with 10 months and 20 days of net active service this period, and transferred back to his USAR unit.

c. He was ordered to active duty on 5 August 2005, with service in Kuwait/Iraq from 2 November 2005 through 22 October 2006. He was honorably released from active duty on 19 November 2006, due to completion of required active service, credited with 1 year, 3 months, and 15 days of net active service this period, and transferred back to his USAR unit.

7. An AHRC memorandum, 12 February 2009, notified the applicant he had completed the required years of qualifying Reserve service and was eligible for retired pay on application at age 60.

8. Two additional DD Forms 214 reflect the applicant's last two periods of mobilization/deployment during the following time periods:

a. He was ordered to active duty in support of Operation Iraqi Freedom on 6 January 2008, with service in Iraq/Kuwait from 19 March 2008 through 12 December 2008. He was honorably released from active duty on 22 February 2009, due to completion of required active service, credited with 1 year, 1 month, and 17 days of net active service this period, and transferred back to his USAR unit.

b. He was ordered to active duty in support of Operation Enduring Freedom on 18 January 2010, with service in Afghanistan from 3 June 2010 through 30 September 2010. He was honorably released from active duty on 17 January 2011, due to completion of required active service, credited with 1 year of net active service this period, and transferred back to his USAR unit.

9. The applicant's Chronological Statement of Retirement Points, 15 July 2012, shows he completed 22 years of qualifying service for retirement as of the date of the form.

10. The applicant provided numerous pages of additional medical records dated between April 1991 and July 2012, all of which have been provided in full to the Board for review.

11. A DA Form 7652, 1 August 2012, purportedly provides his commander's performance and functional statement, but is signed by a Human Resources Specialist (Military) and not his commander due to not being assigned to a Troop Program Unit (TPU) at the time, and shows:

- the applicant was currently assigned to the USAR Control Group (Individual Ready Reserve (IRR))
- a Periodic Health Assessment (PHA), 7 February 2012, shows he was not able to perform his duties without limitations
- he did not have a current DA Form 705 (Army Physical Fitness Test (APFT) Scorecard) on file

12. The applicant provided multiple C&P Exams, all dated 15 November 2012, including initial evaluations for Post Traumatic Stress Disorder (PTSD), Traumatic Brain

Injury (TBI), joints, and general medical exams, which reflect his diagnoses of anxiety disorder, not otherwise specified (NOS); depressive disorder NOS; mild TBI resolved; migraine with aura controlled with medications; left knee condition; right shoulder condition; irritable bowel syndrome (IBS); and lumbago.

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

14. A DA Form 3349 shows the applicant was given a permanent physical profile with the PULHES of 333112 on 20 November 2012, for the conditions of TBI, sleep apnea, shoulder pain, back pain, knee pain, anxiety NOS, depression NOS, anxiety, and depression. He was limited in many functional activities and all APFT events and required an MEB.

15. A partial DA Form 3947 shows:

a. An MEB convened on 3 December 2012, where the applicant was referred to a PEB.

b. His conditions of chronic right shoulder A.C. Joint arthritis, chronic lower back pain, spondylosis, degenerative disc disease (DDD), and chronic left knee pain, chondromalacia, patella and osteoarthritis were determined to not meet retention standards of Army Regulation 40-501 (Standards of Medical Fitness).

c. His conditions of anxiety disorder, depressive disorder, mild obstructive sleep apnea (OSA), migraine with aura, controlled with medications, and IBS, were determined to meet retention standards.

16. A multi-page IDES NARSUM, 4 December 2012, detailing the applicant's above listed MEB conditions, has been provided in full to the Board for review.

17. A VA letter, 1 November 2013, shows the VA decided on his claim for service-connected compensation received on 29 October 2012, and determined his minimal

lumbar spondylosis, previously denied, was granted at 10 percent effective 18 January 2011. His entitlement to combined disability compensation was granted at the 90 percent rate effective 1 November 2012.

18. AHRC Permanent Order 316-08, 12 November 2013, awarded the applicant the Purple Heart for wounds received as a result of hostile actions on 28 April 2008.

19. A DD Form 215, 13 November 2013, corrected the applicant's DD Form 214 covering the period ending 22 February 2009, to add award of the Purple Heart.

20. A DA Form 199 shows:

a. An informal PEB convened on 21 November 2013, where the applicant was found physically unfit with a recommended rating of 20 percent and that his disposition be separation with severance pay.

b. His unfitting conditions were:

(1) Left knee, chondromalacia patella and osteoarthritis (MEB diagnosis (Dx) 3); 10 percent; he originally injured his knee in 2001 in a twisting injury during combatives training and this condition was further aggravated during subsequent deployments to Iraq and Afghanistan. Despite treatment and physical profiles, his impairment continues. This condition is unfitting because he is restricted in the performance of multiple functional activities, which preclude the performance of his military duties, to include in an austere environment.

(2) Lumbar DDD and spondylosis (Not compensable) (MEB Dx 2); the PEB found no objective evidence in the case file to validate this condition was incurred or permanently aggravated by his military service; therefore, this condition is not compensable. This condition is unfitting because he is restricted in the performance of multiple functional activities, which preclude the performance of his military duties, to include in an austere environment.

c. His unfitting conditions were MEB Dx 4-8 (anxiety disorder, depressive disorder, mild OSA, migraine with aura, controlled with medication, and IBS). These conditions were not unfitting because they are not associated with profile limitations, do not impact his ability to perform any of the functional, and the MEB indicated these conditions meet medical retention standards.

d. On 25 November 2013, the applicant signed the form indicating:

(1) He had been advised of the findings and recommendations of the PEB and concurred, waiving a formal hearing of his case

(2) He did not request reconsideration of his VA ratings.

(3) Additional election under Title 10, U.S. Code 1209, for soldiers of the Ready Reserve with 20 creditable years of service shows the applicant elected to be separated with severance pay or separated without entitlement to benefits, as applicable. He understood that if he elected separate with severance pay, he forfeit his right to receive retired pay when he would otherwise be eligible to receive such pay.

21. USAPDA Orders D 336-14, 2 December 2013, honorably discharged the applicant from the USAR Control Group (Reinforcement) under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) with a 20 percent disability rating effective 6 January 2014, with entitlement to disability severance pay.

22. A USAPDA memorandum, 2 December 2013, advised the USAR Control Group (IRR) that the above referenced orders, also dated 2 December 2013, authorized the applicant's physical disability separation with severance pay.

23. A VA letter, 26 December 2013, shows the applicant's combined service-connected disability evaluation effective 1 December 2013, was 90 percent.

24. A VA Rating Decision, 2 December 2021, shows the applicant was granted the following service-connected disability ratings for the following conditions effective 1 September 2021 or 24 September 2021:

- right shoulder arthroscopy with rotator cuff repair, increased to 30 percent
- residual scars, right shoulder, 0 percent
- post traumatic migraine headaches, increased to 50 percent
- lumbar spondylosis, increased to 20 percent
- left lower extremity radiculopathy (sciatic nerve), 20 percent
- right lower extremity radiculopathy (femoral nerve), 20 percent
- right lower extremity radiculopathy (sciatic nerve), 20 percent
- mild degenerative joint disease bilateral foot, left, increased to 20 percent
- mild degenerative joint disease bilateral foot, right, increased to 20 percent
- cervical strain with DDD and degenerative arthritis, 20 percent
- degenerative joint disease bilateral knee, left, limitation of extension, 10 percent
- IBS, continued at 30 percent
- degenerative joint disease bilateral knee, left, continued at 10 percent



- residual scar, left knee, 0 percent
- degenerative joint disease bilateral knee, right, continued at 10 percent

25. A VA letter, 6 December 2021, shows the applicant's combined service-connected disability evaluation was 100 percent effective 24 September 2021, for the conditions as listed in the 2 December 2021 VA Rating Decision, addressed above.

26. In the adjudication of this case, an advisory opinion was provided by the USAPDA legal advisor, 14 November 2024, which shows:

a. The applicant's request for ratings increase due to the post-separation change to his VA ratings is found to be legally insufficient.

b. He was medically separated with severance pay due to his unfitting left knee and right shoulder, for a combined rating of 20 percent. He was separated from the service with severance pay effective 6 January 2014. Over 7 years later, his VA Rating for his unfitting right shoulder condition was increased to 30 percent, effective 24 September 2021.

c. The VA applies its own policies and regulations to make rating determinations. The Army is required to adopt the VA's ratings per Title 10, U.S. Code, section 1216a(a)(1)(A); however, unlike the VA, the Army's application of the VA ratings is a snapshot in time, whereas the VA can revise its ratings at any time throughout a veterans life. Here, the VA increased the applicant's ratings for his unfitting right shoulder, but it did not make it retroactive to the day after his discharge. As such, the ratings at the time of his Army discharge were valid and he was properly separated with severance pay. The presented case file does not make it clear what, if any, error the PEB allegedly committed at the time of the applicant's discharge in 2014.

27. The applicant was provided a copy of the USAPDA advisory opinion on 14 November 2024, and given an opportunity to submit comments in rebuttal, but did not respond.

28. 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.

29. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an increase in his military disability rating and that his disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. He states:

“Requesting an upgrade from the initial Army medical board rating of 20% along with eligibility for full retirement from the USAR due to incongruity between the initial Army rating, and the VA rating of 80% along with the current rating of 100%.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Orders published by the United States Army Physical Disability Agency on 2 December 2013 show he was separated with disability severance pay on 6 December 2014 for a military disability rating of 20%.

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers 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 other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA C&P examinations (also known as Disability Benefits Questionnaires or DBQs) 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. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting

for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her 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.

g. On 29 October 2012, the applicant was referred to the IDES for PTSD, TBI (traumatic brain injury), lumbago (low back pain), left knee pain, and right shoulder pain. The applicant claimed one additional condition, irritable bowel. A medical evaluation board (MEB) determined he had three conditions which failed the medical retention standards of AR 40-501, Standards of Medical Fitness: Chronic right shoulder acromioclavicular joint arthritis; chronic low back pain with spondylosis (degenerative changes) and degenerative disc disease; and chronic left knee pain, chondromalacia, patella, and osteoarthritis. The MEB determined five conditions met medical retention standards.

h. The applicant disagreed with the MEB findings and recommendation. However, the applicant's appeal was not related to the MEB's findings per se but with a few items in his DBQs. The reviewing physician wrote:

"The Non concur statement from MSG [Applicant] was received and reviewed. MEB notes were reviewed. The VA exam notes and medical record were reviewed.

With regard to the NCOs concerns; I must defer to the VA and their protocol for dealing with soldiers nonconcurrence, as all the issues raised by MSG [applicant] appear to stem from their evaluation."

i. The appeal having been addressed and not concerning the MEB's findings and/or recommendation, his case along with his appeal were forwarded to a physical evaluation board (PEB) for adjudication.

j. On 21 November 2013, the applicant's informal PEB determined the three conditions failing retention standards were also unfitting condition for continued military service. They found the five remaining medical conditions not unfitting for continued military service.

k. The PEB, finding no evidence the applicant's lumbar condition was related to his military service, determined it was non-compensable:

"The PEB finds no objective evidence in the case file to validate this condition was incurred or permanently aggravated by the Soldier's military service. The PEB notes there is no LOD [line of duty] determination or theater AHLTA note related to this condition. The PEB finds no Post Deployment Health Assessment (PDHA) or Post Deployment Health Reassessment (PDHRA) in MODs [Medical Operational Data System] for the Soldier's 2010 deployment to Afghanistan. Therefore, the PEB finds this condition not compensable."

l. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and 10% respectively and recommended the applicant be separated with disability severance pay. On 25 November 2013, after being counseled on the PEB's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VBA reconsideration of his disability ratings (VARR).

m. Review of his PEB case file in ePEB along with his encounters in AHLTA revealed no substantial inaccuracies or discrepancies.

n. There is no evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

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

p. 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:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

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

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

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

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

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

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.

d. Paragraph 4-27(d) refers to Reserve Component Soldiers separating with or without disability severance pay and shows:

(1) Title 10 United States Code 1209 election. Under the provisions of 10 USC 1209, Ready Reserve Soldiers who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement for non-regular service may forfeit disability severance pay and request transfer to the Inactive Status List for the purpose of receiving non-disability retired pay at age 60 or at the age otherwise authorized by law. The USAPDA extends this election to the Ready Reserve Soldier being separated without entitlement to severance pay with 20 qualifying years. The Soldier will be afforded the opportunity to make their election when making elections to PEB or USAPDA findings.

(2) The election will include the election to be transferred to the Retired Reserve in lieu of placement on the inactive status list (Soldiers in the Retired Reserve receive continued service longevity).

(3) The PEBLO will advise the Soldier that they— (1). Forfeit all rights to future non-regular retired pay and a retired status when disability severance pay is accepted; the election becomes irrevocable on the date of the Soldier's separation.

(4) Soldiers of the Regular Army who may have completed 20 good years or otherwise have a 20-year letter are not authorized an election under 10 USC 1209. The Soldier may be released from active duty to the IRR and request transfer to the Retired Reserve.

4. 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.

5. 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.

6. 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.

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//