

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240003225

APPLICANT REQUESTS: correction of U.S. Army Physical Disability Agency (USAPDA) Orders D 326-19, 22 November 2011, to reflect -

- his disability is 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 war period as defined by law
- his disability resulted from a combat-related injury as defined in title 26, U.S. Code, section 104

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- USAPDA Orders D 326-19, 22 November 2011
- USAPDA memorandum, 22 November 2011
- witness statement, 19 February 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 correction to USAPDA Orders D 326-19, 22 November 2011, to reflect his disability is based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law and his disability resulted from a combat-related injury as defined in title 26, U.S. Code, section 104.

b. The incidents that resulted in his diagnosis of post-traumatic stress disorder (PTSD) occurred during his time while deployed to Afghanistan and were in the LOD

while service on tower guard at Forward Operating Base (FOB) Salerno. The two traumatic incidents, the attack on their tower and the Soldier who threatened him while on tower guard, were the direct cause of his PTSD symptoms that affect him to this day.

c. The Retirement Services Officer (RSO) in Idaho never contacted him concerning his retirement orders and a follow-up to make sure he had completed the necessary documentation. This resulted in him missing the last 12 years of TRICARE eligibility for himself and his family. Until now, he was unaware of the orders in his service record, which led him to submitting a DA Form 2656 (Data for Payment of Retired Personnel) to Defense Finance and Accounting Service (DFAS), updating his DEERS information, and obtaining identification (ID) cards for himself and his dependents and enrolling in TRICARE. The discovery of these orders came about when he requested his service record from the archives to aid in his recent Department of Veterans Affairs (VA) claim. Had he known about these orders earlier, he would not have forfeited 12 years of TRICARE eligibility for his family.

d. His diagnosis of anxiety disorder resulting in PTSD has significantly impacted his daily life, necessitating years of treatment from the VA to address its symptoms. His experiences in the towers have irrevocably altered his life. He trusts that his statement, along with that of his fellow Soldier, elucidates why he believes a correction is necessary regarding the classification of his mental health injury sustained in the LOD. The Boise VA Medical Center (VAMC), Houston VAMC, and Oklahoma City VAMC have records of his diagnosis and treatment.

e. He wishes to provide insight into the circumstances surrounding his medical discharge from the Army National Guard (ARNG). During his deployment at FOB Salerno, Afghanistan in 2006, he encountered a series of traumatic events that deeply affected him both mentally and emotionally.

f. While on night tower guard rotation with Specialist (SPC) J____ F____, their tower came under direct small arms fire, with tracer rounds visible, from the nearby city of Khost. The tower, which was made from shipping containers, was hit multiple times. Reacting swiftly, they sought cover and utilized their forward-looking infrared (FLIR) camera to identify the source of the gunfire. They identified multiple enemy targets with weapons hiding behind walls after firing at their tower. They radioed for clearance to return fire and engage the enemy. 10th Mountain Brigade Quick Reaction Force (QRF), which possessed observation capabilities, denied their request, citing a lack of identified targets and the potential for collateral damage.

g. A QRF AH-64 Apache helicopter was flying nearby, so they called their Tactical Operations Center (TOC) to radio the off patrol Apache to help identify the threat and the Apache flew near their tower to identify the targets. Consequently, the Apache received small arms fire. Concerned for the safety of the pilots, SPC J____ F____

switched over to the Apache frequency and called the pilots directly on the radio to report the danger. The pilots stated that they also could not return fire for fear of collateral damage. The Apache pulled off and returned to the FOB to land. The small arms fire ceased, and his heart and mind were racing with the thought that they could have been killed.

h. Following the incident, they were told to brief 10th Mountain Brigade and provide a detailed account of the incident. Despite presenting evidence of damage sustained by the Apache from the small arms fire, their statements were summarily dismissed. The sergeant major (SGM) accused them of fabricating the event for recognition, which they flatly denied. The refusal to engage with returning fire was incredibly challenging to come to terms with, and it was later identified by a VA psychologist as a frozen memory ingrained in his nervous system, due to the inability to protect himself. Since this incident, he confronts this memory and the associated trauma on a daily basis.

i. A separate incident happened when he was assigned a new tower guard partner, SPC J____ K____, from a different command. While on tower guard duty with this Soldier, he encountered a concerning situation. Early in the morning, he noticed SPC J____ K____ had fallen asleep, snoring loudly. He was compromising their duty to remain alert and vigilant, so he woke him and emphasized the seriousness of sleeping on duty and his response was alarming. SPC J____ K____ stated he would shoot the applicant if they came under attack while he slept, simply to avoid reprimand. SPC J____ K____'s statement deeply troubled him, as it not only undermined their duty, but also posed a direct threat to his own safety. He made it clear to him such remarks were unacceptable, especially in a combat environment, and he warned him of the consequences of his words. Despite his efforts to address the issue, he remained dismissive and unrepentant.

j. Recognizing the severity of the situation, he promptly reported the incident to his chain of command upon returning to the TOC. He expressed his concerns about the Soldier's threatening behavior and requested to be reassigned to tower guard duty with a different partner for his safety and peace of mind. He also requested to sleep in his own tent between shifts. Despite reporting the situation to his chain of command, his concerns were disregarded, and he was denied the option to sleep in a separate tent for his safety. He found himself in a precarious situation and decided to sleep in his own tent to avoid SPC J____ K____. As a result, he was accused of being absent without leave (AWOL) while on duty, leading to disciplinary action and a referral to the psychologist on the FOB.

k. During his conversation with the psychologist, he recounted the entirety of the situation, including the threat he received, and the subsequent actions taken by his command. The psychologist acknowledged the gravity of the circumstances and suggested preventive measures should have been implemented by the command to

avert such incidents. He was reprimanded multiple times by his chain of command following the psychologist's report; it was apparent the command did not want to deal with the situation. While in his tent speaking with his wife about the disciplinary action, he was unexpectedly confronted by his first sergeant (1SG) and captain (CPT), who took control of his wife's duty rifle and his own duty rifle, informing him it was a precaution. Overwhelmed by the sudden turn of events and the mounting stress, he experienced what was later diagnosed as a panic attack, causing him to physically shut down. In response, he was informed that he would undergo evaluation by the flight surgeon, who subsequently recommended his evacuation from the country to prevent any further deterioration of his mental health.

I. To this day, he continues to struggle with nightmares and vivid recollections of the traumatic incidents of the tower attack, the threat from a fellow Soldier, disbelief from his command, and the subsequent disciplinary actions. It has deeply impacted his mental well-being. He was diagnosed with anxiety disorder, chronic PTSD, and depressive disorder, which have taken a toll on his career, marriage, and family life. These experiences have left lasting scars, and he remains committed to seeking the support and assistance necessary for his recovery and well-being.

3. After a prior period of honorable enlisted service in the U.S. Navy, the applicant enlisted in the ARNG on 5 November 2004, and was awarded the Military Occupational Specialty (MOS) 15P (Aviation Operations Specialist) upon completion of active duty training (ADT).

4. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty on 22 October 2005, in support of Operation Enduring Freedom, with duty in Afghanistan from 26 February 2006 through 14 December 2006. He was honorably released from active duty on 23 January 2007, due to completion of required active service, credited with 1 year, 3 months, and 2 days of net active service this period, and transferred back to his ARNG unit.

5. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, VA Proposed Rating Decision for DES purposes, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

6. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 11 August 2011, while the applicant was an ARNG drilling member, and he was found physically unfit with a recommended combined rating of 30 percent and that his disposition be permanent disability retirement.

b. His condition not meeting retention standards is panic disorder without agoraphobia with comorbid anxiety disorder, not otherwise specified (MEB diagnosis (Dx) 1 and 2). This condition manifested during his Afghanistan deployment in 2006, due to interpersonal conflict with another Soldier. He was not exposed to combat stressors. This condition is unfitting due to mood lability and sleeplessness which impair the reliable performance of his MOS. His commander notes no occupational impairment, but notes the applicant is unable to drill.

c. His conditions meeting retention standards are MEB Dx 3-9 (right wrist tendonitis, right ankle sprain, tailbone fracture, plantar fasciitis, spleen laceration, erectile dysfunction, and gastroesophageal reflux) because the case file supports that these conditions do not pose significant limitations on his ability to perform his MOS.

d. The PEB made the following findings:

(1) The applicant's retirement is not based on disease or injury received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

(2) The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 for Title 10, U.S. Code, section 10216.

e. The applicant signed the form on 19 August 2011, indicating he had been advised of the findings and recommendations of the PEB and concurred with the findings, waiving his right to a formal hearing of his case. He further indicated he did not request reconsideration of his VA findings.

7. USAPDA Orders D 326-19, 22 November 2011, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability effective 27 December 2011, with a disability rating of 30 percent. The orders further show:

a. The disability is not based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law.

b. The disability did not result from a combat-related injury as defined in Title 25, U.S. Code, section 104.

8. A USAPDA memorandum addressed to the applicant, 22 November 2011, advised him that in accordance with the findings and recommendations of the USAPDA, he was found to have a disability and would be permanently retired with a disability rating of

30 percent. His attached retirement orders announced the effective date of his retirement and his retired pay would be computed from that date. He was also advised that DFAS was furnished with the date to compute his retired pay and establish his retired pay account. He was advised of the need to complete a DD Form 2656 in order for DFAS to active his retired pay account and advised to contact the nearest RSO for assistance.

9. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was honorably discharged from the ARNG effective 27 December 2011, and transferred to the Retired Reserve, due to medical unfitness for retention. He was credited with 7 years, 1 month, and 23 days of net ARNG service this period; 4 years, 11 months of prior active service, and 10 years total service for retired pay.

10. The applicant provided a witness statement from J____ F____, which shows:

a. He is writing this letter on behalf of the applicant, concerning a series of events that transpired during in Afghanistan 2006. They were stationed in multiple areas across north-eastern Afghanistan and had been engaged in small arms fire and rocket attacks leading up to the night in question. He and the applicant had been paired together to participate as members of the QRF and Tower/Gate Security for FOB Salerno.

b. The night progressed similarly to the first 3 days where individuals tested the gate protocols by approaching the gate and or brandishing weapons to gauge their reaction. They were not allowed to fire unless they had positive identification (PID). The makeshift tower was a few Tricons (shipping containers) stacked on top of one another with wobbly stairs welded on the back side. They had a FLIR camera with a degraded video that made it difficult to identify friend or foe. He and the applicant took turns watching the camera and panning the Wadi in front of their gate for Taliban fighters. These fighters would often hide themselves in the village to gather intel on the routines of the changing of the guard.

c. He had his night vision goggles focused to about 50 meters and sitting on the left side of the Tricon while the applicant manned the M249 with the thermal mounted scope. In an instant chaos ensued, with a tracer round fired from a hut in the village nearly grazing his head. The ricochet fragmented, forcing him to the ground to avoid a second round. He looked over at the applicant to make sure he was good and asked if he saw the other rounds hit. He was kind of frozen with disbelief and asked if he was hit. He told him no and that they needed to report in and return fire. He asked him to pass the radio so he could call for the Sergeant of the Guard (SOG) to assist them at the gate. The SOG told them to stay in place and observe and report. After the initial radio call, he heard the AH- 64 Apache overhead and remembered the frequency to the A/C, but their standard operating procedure (SOP) was to radio the TOC and have them

direct the aircraft to maneuver for a show of force. The TOC asked the aircrew to fly over Tower 7 and observe and report. The fullback element passed over their location and, in that moment, they took small arms fire. He and the applicant could clearly see the red tracer rounds trying to pinpoint the aircraft (A/C). He communicated with the aircrew and let them know they were taking fire. The A/C passed over again and told them the rounds were coming from inside a dwelling in the village and they could not return fire. The rest of the night they remained on alert status and lost in their thoughts. The SOG finally showed up to their tower and told them they'd have to report to the SOG noncommissioned officer in charge (NCOIC) because they wanted the details in interview form.

d. They reported and were interviewed separately for them to determine that the events that transpired were unclear. In a sense, they thought it was made up until the maintenance crew for the same fullback element reported "bullet holes" that damaged the rotor blades from that night. He and the applicant had a few more nights on tower and during that time, he was given an infrared (IR) laser glove with a finger attachment to "lase" the Taliban shooting from their location. There was no doubt to their story once it was confirmed the aircraft took damage to more than 2 rotor blades. He completed his time with the applicant, but he was given one more 12-day rotation with SPC J _____ K _____ (Rest in Peace).

e. He took notice of the applicant because he was reluctant to show his funny side and he walled himself off from those around him. He didn't want to go back out on his second rotation, but he was forced by command due to information he was not privy to. During the next few days when they saw each other they'd talk about what had happened and that he was not happy with how he was being treated. They were both visibly tormented, but it wasn't something that they could share. It was frowned upon by command to continue talking about it because it was thought that the command reacted poorly to the A/C being damaged so close to the FOB.

f. He doesn't remember when the applicant left the FOB because it happened so quickly. He does remember that he was given his rifle to safeguard because it was taken from him due to "precautionary steps" while leaving the theater. He knows how the applicant feels because he has had the same sentiments from the events that night rolling on repeat in his head since 2006. He was told when he returned from Afghanistan that if he didn't want to stay in Texas, in a padded room, then he better not answer yes to any "mental" questions. They all just wanted to go home and see their families. As Soldiers, they are trained and expected to work through it on their own because it shows weakness if you ask for help.

11. In the adjudication of this case, an advisory opinion was provided by a USAPDA legal advisor, 15 November 2024, which shows:

a. This is in response to a request for an advisory opinion regarding the applicant's request for a combat code to his unfitting behavioral health condition. For the following reasons, the appeal is found to be legally insufficient.

b. On 11 August 2011, the applicant was found unfit for his behavioral health condition and placed into permanent disability retirement at 30 percent. The PEB specifically found that the condition arose while deployed to Afghanistan due to interpersonal conflict with another Soldier and not due to combat stressors. The applicant reviewed and accepted the findings of the PEB on 19 August 2011. He was then medically retired on 27 December 2011.

c. A medical record (page 51/131) in the case file indicates that he received a death threat from another Soldier, to which he then refused to sleep in the same tent as the Soldier. This resulted in him receiving nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) and being sent to behavioral health for treatment. Afterwards, he had a panic attack and was medically evacuated. Another medical note (page 59/131) notes that he got into an argument with another Soldier while on tower guard duty when the other Soldier fell asleep during his shift. The applicant awoke the Soldier, and they had a heated exchange, and the Soldier threatened to shoot him. The applicant did, however, provide a personal statement wherein he describes being on tower guard duty and coming under direct small arms fire (page 11/12). According to the applicant, his command did not know the event occurred.[Neither the NJP nor the medical notes/evidence referenced in this USAPDA advisory opinion are in the applicant's available records for review by the Board].

d. Outside of his own personal statement, there was no evidence presented to indicate that the condition arose due to direct armed conflict with the enemy. Indeed, the medical evidence notes interpersonal conflicts with other Soldiers as the catalyst for his condition. Thus, a combat code is not warranted. The presented case file does not make it clear what/if any error the PEB committed at the time of the applicant's case in December 2011. Therefore, his appeal is legally insufficient.

12. On 18 November 2024, a copy of the USAPDA advisory opinion was provided to the applicant and he was given an opportunity to submit comments in rebuttal. The applicant responded via email, as follows, on 3 December 2024:

a. He is concerned about a few things in the USAPDA memorandum that he hopes to get explained in more detail. It states that he reviewed and accepted the findings of the PEB on 19 August 2011. He was instructed by the doctors to not argue with the findings of the PEB to avoid delaying it. He was simultaneously under administrative separation review from his command and the doctor said he did not want to delay any medical proceedings.

b. He has stated clearly that is was and is still affected by the events of that night they came under direct fire. These stressors were combat-related and he will suffer the mental effects of them for the rest of his life.

c. The memorandum also states that he provided a personal statement describing the incident in the tower involving direct fire. Where in his statement did he say his command was not aware of the incident? He specifically brought up his command when he was questioned by the 10th Mountain Brigade about the incident and explained that his command was aware and had an after action report concerning the incident with their tower and the mechanics were replacing the rotor blade on the Apache helicopter that was damaged by the same individuals that were firing on their tower. He presented that information to the 10th Mountain Brigade as evidence of the small arms fire.

d. The other incident with the threat from another Soldier happened not long after the tower small arms incident. These two incidents combined to create his medical condition of PTSD. He has stated this in all of his mental health treatments since he was separated. He can submit these medical files if needed.

e. In the advisory opinion, is states "outside his own personal statement" there was no evidence provided, but it does not mention the other Soldier's statement. Was the statement from the other Soldier reviewed? He has attached it again in case it wasn't received for some reason. There were other service members who are aware of the incident that happened in their tower and to the Apache helicopter that night who could corroborate what he said happened if that would be admissible for his case.

g. The PEB was a stressful time for him, and he was told by the doctors to not interact with his command to avoid further issues and this resulted in only making things more difficult for him. He is simply trying to correct the record and bring a close to the single most traumatic experience that has shaped his life.

13. 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the U.S. Army Physical Disability Agency (USAPDA)- Legal advisor advisory opinion, the Board concurred with the advising official finding insufficient basis to grant relief to

correct USAPDA Orders D 326-19 to reflect that the applicant's disability is based on injury or disease received in the line of duty (LOD) or disability resulted from a combat-related injury.

2. The Board acknowledged the applicant served honorably in the U.S. Navy prior to enlisting in the Army National Guard (ARNG) in 2004 and that he deployed to Afghanistan from February to December 2006 in support of Operation Enduring Freedom. Evidence in the record show a Physical Evaluation Board (PEB) convened in August 2011 and found him physically unfit due to panic disorder without agoraphobia and comorbid anxiety disorder, which manifested during his deployment. The PEB also determined that the condition arose from interpersonal conflict with another Soldier and not from combat stressors. The Board noted the applicant concurred with the findings and waived his right to a formal hearing.

3. In addition, the Board acknowledged the applicant's personal statement and the corroborating witness account describing an incident involving small arms fire while on tower guard duty. However, the medical documentation and PEB findings attribute the applicant's unfitting condition to interpersonal conflict, including a documented death threat from another Soldier and subsequent nonjudicial punishment. The Board found these events, while serious, do not meet the statutory definition of a combat-related injury or an injury caused by an instrumentality of war. The USAPDA advisory opinion further determined that the appeal was legally insufficient, citing a lack of evidence that the applicant's condition arose directly from armed conflict. Furthermore, the advisory also noted that the PEB's findings were consistent with the standards in effect at the time and that the applicant accepted those findings without requesting reconsideration.

4. The Board is sympathetic to the applicant's experiences and acknowledged the psychological impact of his deployment, however, the evidence does not support a correction to reflect a combat-related disability under current law and regulation. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 //SIGNED//

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. 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. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

4. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live-fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

5. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. Engaged in Hazardous Service: Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of 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 material, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

6. 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.

7. 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.

8. 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//