

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240003439

APPLICANT REQUESTS:

- Amendment to his narrative reason for separation to show "Medical Retirement"
- In effect, Medical Evaluation Board Proceedings (MEB)
- An upgrade to an honorable discharge
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Disability Ratings
- VA Health Record (eight pages)
- VA Benefits Decision, dated 12 January 2021

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, in effect, he is requesting an amendment to his narrative reason for separation to show "Medical Retirement", due to military sexual trauma (MST), and not having been afforded the opportunity to for an MEB process. This traumatic event has had a negative impact on his mental health, and his life. He did not receive any kind of support from his chain of command when he informed them of the assault, he was however, mistreated and his allegations were dismissed. The applicant's statement is available in its entirety for the Board's review.
3. The applicant's request for an upgrade to an honorable discharge will not be discussed further in these proceedings since the applicant already has an honorable characterization of service.

4. The applicant provides:

a. In a letter issued by the VA, dated 12 January 2021, shows he was granted individual un-employability, and received a service connected disability rating of 70 percent (%).

b. A VA disability ratings document, shows his combined disability rating is 90%. This document also provides the following in regard to the applicant's service-connected ratings:

- 0 % rating for erectile dysfunction. Effective date: December 20, 2023
- 20% rating for left lower extremity, diabetic neuropathy, femoral nerve. Effective date: August 14, 2023
- 20% rating for right lower extremity, diabetic neuropathy, femoral nerve. Effective date: August 14, 2023
- 20% rating for left lower extremity, diabetic neuropathy, sciatic nerve. Effective date: August 14, 2023
- 20% rating for right lower extremity, diabetic neuropathy, sciatic nerve. Effective date: August 14, 2023
- 20% rating for diabetes mellitus. Effective date: October 13, 2022
- 70% rating for Other Specified Trauma-Stressor Related Disorder, assault, Major Depressive Disorder, moderate, recurrent with panic attacks, Alcohol Use Disorder, Cannabis Use Disorder. Effective date: October 13, 2022
- 0% rating for acne and pseudofolliculitis barbae. Effective date: January 04, 2015

c. VA Health Record (eight pages), which will be reviewed and discussed by the Behavioral Health staff at the Army Review Boards Agency (ARBA).

5. The applicant's service record shows the following:

a. He enlisted in the Regular Army on 1 September 2009.

- No apparent danger signs
- He was mentally responsible
- He was able to distinguish right from wrong
- Has the mental capacity to understand and participate in administrative/board proceedings
- No evidence of thought disorder
- No psychotic symptoms
- No observed behavioral abnormalities
- Unlikely to be impulsive

b. On 25 January 2012, his commanding officer initiated separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12, with an under honorable conditions (general) discharge, for Pattern of Misconduct. He was advised by consulting counsel on 28 January 2013, for his separation action, its effects of the rights available to him, and the effect of any action taken by him in waiving his rights. The applicant's separation packet is available in its entirety for the Board's review. He further acknowledged:

- He requested to consult with consulting counsel as his military counsel and/or civilian counsel at no expense to the government
- He waived consideration of his case by an administrative separation board
- He waived a personal appearance before an administrative separation board
- He did not file an unrestricted report of sexual assault within 24 months of initiation of the separation action

c. A Form 3822 (Report of Mental Status Evaluation) dated 23 October 2012, shows he underwent a mental status evaluation, due to an administrative separation. He was cleared for administrative action as deemed appropriate by his command. The applicant stated he no longer feels that he wants to remain in the Army. He will continue treatment with behavioral health. He meets retention standards, and there is no psychiatric disease or defect that warrants disposition through medical channels. He was screened for Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). These conditions are either not present or, if present, do not meet the criteria for an MEB. This document also reflects the following:

- His perceptions were normal
- He was Cooperative
- No obvious Impairments

d. On 28 January 2013, the battalion commander recommended that the applicant be separated from the Army prior to his expiration of current term of service, with a general character of service.

e. On 6 February 2013, the separation authority directed the applicant's separation with general character of service, and that he not be transferred in the Individual Ready Reserve (IRR).

f. His DD Form 214, shows he was honorably discharged from active duty on 26 February 2013, under the provisions of Army Regulation 635-200, Chapter 14-12b, due to a pattern of misconduct. He received a separation code of "JFA" with a reentry code of "3". He completed 3 years, 5 months, and 16 days. His grade at the time of discharge

was private (PV2)/E-2. He has lost time from 25 September 2012 through 4 October 2012. He was awarded and/or qualified for the following awards:

- National Defense Service Medal
- Korean Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

6. In an Army Discharge Review Board (ADRB) Docket Number AR20210001208 on 25 April 2024, the applicant requested a change to his narrative reason for separation and reentry eligibility (RE) code. The Board determined the narrative reason for the applicant's separation was improper based on the applicant's MST and Major Depressive Disorder outweighing the applicant's offenses of disobeying a lawful order, failure to report (FTR), and absent without leave (AWOL). Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. The Board determined the RE code was proper and equitable and voted not to change it.

7. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

8. Due to the applicant's request for a medical retirement due to MST, the case is being forwarded to the Behavioral Health staff at ARBA.

9. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR an amendment to his narrative reason for separation to show "Medical Retirement," in effect, Medical Evaluation Board Proceedings (MEB), and an upgrade to an honorable discharge. Per the ROP, the applicant's request for an upgrade to an honorable discharge will not be discussed further since the applicant already has an honorable characterization of service. In his application, the applicant, in effect, contends his discharge was related to mental health issues due to Military Sexual Trauma (MST). The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 01 September 2009, 2) On 25 January 2012, his commanding officer initiated separation under the provisions of Army Regulation 635-200 Chapter 14-12, for Pattern of Misconduct, 3) he underwent a Mental Status Evaluation (MSE) on 23 October 2012. The evaluating provider documented that he met retention standards and that there was not a disease or defect that warranted disposition through medical channels, 4) the applicant was discharged on 26 February 2013 under the provisions of AR 635-200,

Chapter 14-12b, due to pattern of misconduct with a separation code of JFA and reentry code of '3,' 5) Army Discharge Review Board (ADRB) Docket Number AR20210001208 dated 25 April 2024 shows the Board determined the narrative reason for the applicant's separation was improper based on the applicant's MST and Major Depressive Disorder (MDD), outweighing the applicant's offenses of disobeying a lawful order, failure to report (FTR), and going absent without leave (AWOL). Therefore, the Board directed the issue of a new DD Form 214 changing the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code of JFF. The Board determined the RE code was proper and equitable and voted not to change it.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records were available for review via JLV from 28 September 2009 through 21 February 2013.

- The applicant presented for an in-processing behavioral health screening on 21 March 2011. It was documented that he reported having no previous BH treatment and denied experiencing symptoms of depression, anxiety, or suicidal/homicidal ideation.
- The applicant presented to BH on 01 December 2011 as a walk-in due to problems with anger and depression. It was documented that he reported being singled-out and harassed in the workplace due to his sexual orientation in addition to experiencing family issues. At the time, he reported an increase in alcohol use to cope with stress. He endorsed experiencing the following BH-related symptoms: poor sleep, nightmares of harming those who have threatened violence against him, feelings of hopelessness, helplessness, decreased interest, energy, concentration, guilt, and appetite. He denied experiencing suicidal or homicidal (SI/HI) ideation. The applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions and agreed to an off-post therapy referral. He presented to the BH clinic the following day as a walk-in requesting to be seen sooner noting he was experiencing continued stress, that his wife had a miscarriage, his unit was not helpful, and that he would like counseling. His previously documented diagnosis was continued.
- The applicant was referred for a BH evaluation on 06 December 2011 due to possible homicidal ideation. Several psychosocial stressors were noted in addition to reporting that his noncommissioned officer (NCO) had been harassing him for the previous 1.5 months and he felt he could not be around her anymore. As such, he said he avoided her as he was afraid he would get into trouble. He stated he did not have a plan or intent to hurt anyone though indicated he was

unsure how he would react if someone did something to upset him. He was not diagnosed with a psychiatric condition and was released without limitations.

- He underwent a pre-deployment screening on 13 December 2011. It was documented that he felt counseling had been helpful and he was able to manage his mood and anxiety symptoms. At the time of the evaluation, he denied experiencing any new or acute psychiatric concerns. He denied experiencing SI/HI and was determined to be fit for deployment. No psychiatric diagnosis was documented. A consult report dated 16 December 2011 shows he was referred for treatment via Tricare due to anxiety, sleep, difficulty controlling anger, and an upcoming deployment. The date of the report was noted as 16 January 2012 showing that the applicant had not returned for further treatment. The referral was administratively closed on 28 February 2012.
- The applicant presented for a command-directed behavioral health evaluation (CDBHE) on 25 January 2012 due to safety concerns one day after texting that he wanted to harm/kill two members of his command and to keep him from hurting others he decided to take his own life. The applicant reported he never intended to harm anyone but wanted to get their attention. He was placed on unit watch and was to be escorted to the BH clinic the following day for a command meeting. He was diagnosed with Adjustment Disorder with Disturbance of Emotions. During the command meeting on 26 January 2012, it was determined that the applicant was not able to deploy at that time due to his not agreeing to follow the safety protocol if having thoughts of harming himself or others while deployed. He met with a BH provider on 27 January 2012 for supportive counseling and was released without limitations.
- There was a gap in BH documentation from 27 January 2012 until 15 May 2012 when the applicant presented to BH as referred by his PA in preparation for a rotation at JRTC. It was documented in the record that the applicant had been meeting with an off-post counselor which had been helpful [*Advisor's Note*: off-post counseling records were not available to this Advisor for review]. It was documented that his previous concerns with his chain of command had been resolved as he had returned to his old unit (it was noted that he had been previously tasked out to another unit). It was documented that there were some financial strains as his wife was not getting paid properly and he had attempted to make a fraudulent insurance claim, which he later recanted, and although the insurance claim did not press charges informed his chain of command which resulted in an Article 15. He reported that he was in a "much better place" and was able to "stand up for himself in more appropriate ways." He reported having support from his leadership and that he was looking forward to going to JRTC. No psychiatric condition was diagnosed and he was released without limitations.
- The applicant presented to BH on 01 August 2012 due to what was documented as a "series of stressful events." It was documented that he reported having conflict with his leadership since December 2011/January 2012, his wife suffered a miscarriage, financial problems, and not getting along with many of his NCOs.

He also indicated that he was previously evaluated by BH for deployment and after he was determined to be a “no-go” felt that he was threatened by some of his NCOs. He reported that after returning to his unit things did not get better noting he was flagged and unable to attend school but that he was not aware he had been flagged. He reported he got in trouble in July [2012] for not reporting to work which he indicated was due to getting his car towed, though stated he informed his command and got to work the best he could that day despite lack of assistance from his NCOs. Regarding BH symptoms, he endorsed decreased appetite, anxiety, problems falling asleep, being upset by problems at home or work, and marital problems. The provider diagnosed him with Adjustment Disorder with Disturbance of Emotions and noted that his emotional problems appeared to be in reaction to multiple life stressors. He did not show for his appointment on 21 August 2012.

- He was seen by BH three times in September 2012 for issues related to anger and frustration. He requested to be seen on a regular basis and also requested to be enrolled into group therapy to learn coping skills to manage his anger and resolve his issues. He also expressed interest in medication for anxiety, reporting he was having daily panic attacks. On 27 September 2012, it was documented that he walked in due to continued issues with anger and frustration with his unit. He stated his unit reported him as AWOL despite him informing them that he was at ACAP. He also reported that he was getting a divorce and that his DFAC supervisor no longer wanted him to work at the DFAC after an incident wherein he got upset a couple of weeks ago after his supervisor yelled at him. The provider documented he was planning for a future without the military and was “excited” about the change. His diagnosis of Adjustment Disorder with Disturbance of Emotions was continued.
- On 05 October 2012, he was prescribed Ambien by psychiatry due to sleep problems and diagnosed with Adjustment Disorder. It was also documented that they would plan to evaluate for Chapter 5-17 separation and he was released without limitations. He discontinued the medication on 12 October 2012 due to side effects and was referred for sleep hygiene with the diagnosis noted as Insomnia.
- Between 19 October-06 December 2012 he attended several groups to include Cognitive Behavioral Therapy, orientation to group, stress management, distress tolerance, and sleep hygiene group. Diagnoses during this time included Adjustment disorder and Adjustment Disorder with Anxiety.
- On 23 October 2012 he presented to BH for the purposes of a Chapter 14-12b separation evaluation. The DA 3822 shows the evaluating provider noted all domains of the MSE were within normal limits (WNL). It was further documented that he was able to understand and participate in administrative proceedings, able to appreciate the difference between right and wrong, and met medical retention requirements in accordance with AR 40-501. He was diagnosed with Adjustment Disorder and Insomnia, noted to be per BH. It was documented that

he screened negative for Posttraumatic Stress Disorder and Traumatic Brain Injury (TBI). The associated clinical documentation in JLV shows that his PTSD screening was elevated; however, it was noted that the applicant was likely exhibiting trauma-related symptoms that had existed since childhood and were triggered by his interactions with his chain of command. The provider cleared him for any administrative action deemed appropriate by command.

- The applicant presented to psychiatry on 11 February 2013 requesting to restart Ambien noting he was having problems with insomnia. Although he reported feeling “ok” at the time, he said his command was stressing him out and he was having problems with sleep. He was diagnosed with Insomnia and restarted on Ambien.
- The applicant presented for an out-processing visit on 20 February 2013. On 21 February 2013, he presented for a closeout BH visit due to his discharge. It was documented that he had experienced mild anxiety and depressive symptoms in response to stressors and that his behavioral infractions ultimately led to his discharge. The provider documented that the applicant was not contesting his discharge and was looking forward to exiting the military. Moreover, it was documented that he experienced a decrease in anxiety and depressive symptoms associated with exiting the military and engaging in enjoyable activities. The applicant was not diagnosed with a condition at the time of the visit.

4. A review of JLV shows he is 90% service-connected overall through the VA. A VA Rating Decision Letter dated 08 January 2021 shows the applicant is 70% service-connected for Other Specified Trauma and Stressor Related Disorder, Cannabis and Alcohol Use Disorder with Major Depressive Disorder (MDD). Three VA Compensation and Pension (C&P) examinations were available for review via JLV. At the time of his initial evaluation on 20 November 2014 the provider diagnosed him with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Substance Use Disorder, In early Remission. It was documented that the applicant did report a history of MST that occurred while attending pre-deployment training at NTC; however, at the time of the evaluation the provider noted it was difficult to establish if the applicant met criteria for PTSD due to problems confirming exposure to a Criterion A event due to inconsistencies in reporting. He was re-evaluated on 18 April 2015 and was diagnosed with Chronic Adjustment Disorder with Mixed Anxiety and Depressed Mood, Other Specified Personality Disorder (Mixed Personality Features, Histrionic and Borderline), and Cannabis Use Disorder, Mild. At the time of his evaluation on 16 June 2016 the provider changed his service-connected diagnosis from Chronic Adjustment Disorder to Other Specified Trauma or Stressor Related Disorder. The evaluating provider also added a diagnosis of Major Depressive Disorder, Recurrent (MDD), and his previous diagnosis of Unspecified Personality Disorder was maintained by history. Regarding his updated diagnosis, the provider documented that the applicant’s diagnosis was constituted as a progression of his service-connected condition (previously documented

as Chronic Adjustment Disorder) and that his clinical presentation and documented history is most consistent with a trauma-related adjustment rather than chronic dysfunction in adjustment. The provider documented the stressor associated with his diagnosis as MST while in training at Ft. Irwin in January 2012.

5. Review of an in-service memorandum dated 25 January 2012 [Advisor's Note: the date is likely a typo as the incidents cited as the reasons for separation occurred after the date of the memorandum]. recommending the applicant for separation shows the applicant's commander noted the following reasons for separation: disobeyed a lawful order on or about 17 September 2012, failed to be at his appointed place of duty on or about 24 September 2012, and was absent from his unit between on or about 25 September 2012 and on or about 05 October 2012.

6. The previous ADRB medical advisory dated 25 April 2024 was reviewed. The Advisor opined that the applicant's misconduct of difficulty with authority, disobeying a lawful order, FTR, and AWOL were mitigated by, MDD, a trauma disorder, and MST.

7. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant met criteria for a BH condition in-service that failed medical retention standards IAW AR 40-501 and required a referral to the Disability Evaluation System (DES). Per AR 40-501, Adjustment Disorders that are acute (i.e., last less than 6 months) do not require disposition through medical channels and instead fall under the purview of AR 635-200, Chapter 5-14. In-service documentation shows the applicant was treated for Adjustment Disorder with Disturbance of Emotions from December 2011-January 2012. There appeared to be a resolution of symptoms, as documented during his May 2012 encounter, until August 2012 wherein he was again diagnosed with Adjustment Disorder (with Disturbance of Emotions; with Anxiety) and later diagnosed with Insomnia (October 2012). At the time of his closeout BH note, the provider documented improvement in his depression and anxiety symptoms due to exiting the military and engaging in enjoyable activities.

8. Since being discharged from the military, the applicant has been 70% service-connected through the VA for Other Trauma or Stressor Related Disorder, Cannabis and Alcohol Use Disorder with Major Depressive Disorder (MDD). It is of note that VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of Other Trauma or Stressor Related Disorder or MDD through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even an in-service diagnosis of Other Trauma or Stressor Related Disorder or MDD is not automatically

unfitting per AR 40-501 and would not automatically result in medical separation processing.

9. As there is documentation of improvement in his symptoms in-service with treatment or alteration in environment and his diagnosis in-service was not documented as Chronic, there is insufficient evidence that the applicant met criteria for a BH condition that failed medical retention standards per AR 40-501 (e.g., no evidence that he had persistent or recurrent symptoms that required extended or recurrent hospitalization nor necessitated duty limitations via a BH profile). As such, a referral to DES is not warranted.

10. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. The applicant is requesting medical retirement.

(2) Did the condition exist or experience occur during military service? N/A. The applicant is requesting medical retirement.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A. The applicant is requesting medical retirement.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance concerning liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and lack of mitigation outlined for such misconduct in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or 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
: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, United States Code (USC) (Armed Forces), 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. Army Regulation 15-185 (ABCMR), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative 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.

3. Title 10, United States Code (USC) (Armed Forces), 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 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 MOS 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 Medical Evaluation Board (MEB) and the Informal Physical Evaluation Board (PEB) Proceedings. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

4. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces), 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%.

5. 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, on those conditions or experiences.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

7. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System according to the provisions of chapter. 61, title 10, United States Code (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It 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 or her office, grade, rank, or rating. If a

Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.

8. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//