

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003559

APPLICANT REQUESTS: through Counsel, physical disability retirement in lieu of transfer to the Retired Reserve due to early qualification for retired pay at age 60 for involuntarily medically disqualified members.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief and Counsel's letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 15 April 1991
- partial DD Form 4 (Enlistment/Reenlistment Document), 1 March 2003
- Army Achievement Medal Certificate, 21 August 2007
- Army Commendation Medal Certificate, 30 March 2008
- DD Form 214, covering the period ending 18 June 2008
- Army Commendation Medal Certificate, 15 January 2011
- DD Form 214, covering the period ending 7 July 2011
- 22 pages of Department of Veterans Affairs (VA) medical records, printed 1 August 2016
- Joint Force Headquarters-Georgia memorandum, 28 June 2017
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service) covering the period ending 18 June 2017
- Office of the Under Secretary of Defense memorandum, 25 August 2017
- Army Review Boards Agency (ARBA) letter, 20 October 2020

FACTS:

1. Counsel states:

a. The applicant submits this application to have a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) conducted to determine if she should have been medically retired from the United States Air Force [sic U.S. Army], retroactive to 18 June 2017. The instant brief is for the purpose of the Board's consideration in conduct a records review of applicant's request.

b. The applicant enlisted with the Army on 21 July 1986. She served in the Army until 1991. In 2003, the applicant reenlisted with the Army National Guard (ARNG). From 2003 to 2007, the applicant served as a Unit Supply Specialist. In 2007, she was deployed to Iraq and served from June 2007 through June 2008 and continued to serve as a Unit Supply Specialist. After her one-year deployment to Iraq, the applicant deployed to Afghanistan from March 2010 through May 2011. During her time with the ARNG, she achieved the rank/grade of sergeant (SGT)/E-5 and served as a Supply Sergeant.

c. The applicant was honorably discharged from the Army. Throughout her entire military career, she received the Army Service Ribbon, National Defense Service Medal, Overseas Service Ribbon, Army Achievement Medal, and the Army Good Conduct Medal. After deployment, the applicant went on to receive the Army Commendation Medal, National Defense Service Medal, Global War on Terrorism Service Medal and Iraq Campaign Medal with Service Star. The applicant served in an imminent danger pay area during her deployment in Iraq and Afghanistan.

d. Upon her return from Iraq in 2008, the applicant began to experience extreme symptoms of Post-Traumatic Stress Disorder (PTSD). In 2012, she attempted to complete group therapy for PTSD. Due to her condition, the applicant suffered numerous symptoms of depression, anxiety, and stress. It was not until 2014 that the applicant was formally treated and diagnosed for her PTSD. Unfortunately, the applicant suffered from suicidal ideations and required two hospitalizations for suicide attempts.

e. The applicant's total amount of active service with the Regular Army and ARNG totals 21 years, 4 months, and 20 days. During her time of service, the applicant suffered symptoms of PTSD immediately following her first deployment in support of Operation Iraqi Freedom. After her first deployment, she continued to suffer from PTSD and completed another deployment to Afghanistan. Approximately 3 years after completion of deployment, the applicant finally received an adequate diagnosis and treatment for her PTSD. However, she continued to serve with the ARNG and suffered from severe symptoms until her discharge from the ARNG in 2017 and transfer to the Retired Reserve. The applicant was honorably discharged from the Army on 18 June 2017.

f. It is submitted that the applicant suffered a material error of fact due to the failure to consider her severe symptoms of PTSD and diagnosis sustained due to her military service. Although recognizing and treating PTSD in our fighting force has become a priority for the military today, the American Psychiatric Association did not recognize PTSD as a legitimate psychological disorder until 1980. Further, it was not until 2009 that the Armed Forces promulgated guidance regarding the recognition and treatment of PTSD. The applicant was honorably discharged in 2017, yet at the time she began to experience symptoms and receive treatment, the Army was unable to properly

recognize her PTSD as a consideration in categorizing her service. It is respectfully submitted that the applicant should be processed through the MEB process in pursuit of medical retirement from the Army.

g. The applicant suffered from PTSD at the time of her discharge in 2017, and suffered from severe symptoms of this condition for the last 9 years of her service. The applicant's condition required numerous hours of group therapy, individual therapy, and medication. Most severely, due to her PTSD, the applicant unfortunately attempted to take her own life in 2014. She spent 5 days in the hospital due to calling a crisis line for suicidal and homicidal ideations. Additionally, the applicant's medical records indicate long-term suffering from symptoms of severe depression, anxiety, nightmares, and paranoia. These symptoms continued, and the applicant again attempted to commit suicide in February 2017.

h. The applicant reported symptoms of PTSD in 2012, within the first year following her deployment to Afghanistan. She reported the anxiety and fear she continued to feel due to her deployment in Iraq and the continued fear she experienced before and after Afghanistan. The applicant indicated that she witnessed hostile incoming fire from artillery, rockets, and mortars. Moreover, the applicant witnessed others in her unit suffer casualties and injuries. The applicant was required to fire her weapon at the enemy and cared for injured or dying people. However, the applicant's duties did not end here. She suffered traumatic experiences when she served in Iraq as a Military Police (MP) Officer. She was required to guard detainees, causing her to feel threatened by the detainees. In this position, she witnessed 2-3 prisoners die and saw improvised explosive devices (IEDs) detonate, causing her to feel overwhelmed. Lastly, the applicant was responsible for questioning prisoners.

i. In 2014, the applicant stated she "feels like she is back working in Afghanistan and back in a war zone." During her deployment to Afghanistan, the applicant reported being placed in a position of authority that she did not feel she was supposed to have. Another Soldier was not able to be deployed and therefore the applicant filled this Soldier's place. Because of this position, she was labeled as a "bad Solider" among her unit because she was inexperienced. This then exacerbated her feelings of depression and anxiety. When she completed her deployment in Afghanistan, she got on a plane to return home. Unfortunately, the applicant witnessed an attack on her base as they flew away. This led the applicant to feel useless as she could not help her fellow Soldiers during the attack. After these deployments and traumatic experiences, the applicant continued to experience intrusive thoughts, flashbacks, nightmares, and increased reactivity to cues that remind her of her experiences.

j. In August of 2017, the Office of the Under Secretary of Defense release a memorandum in which it listed a multitude of factors in which a Medical Review Board can consider for individuals who suffer from PTSD that was not diagnosed during their

time of active service. Notably, the Secretary of Defense indicated that "liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD." Additionally, "a diagnosis made by a licensed psychiatrist or psychologist that the condition existed during military service will receive liberal consideration." The memorandum notes PTSD often goes undiagnosed and is not diagnosed until years afterwards and is frequently unreported. Lastly, the memorandum provides evidence of PTSD can include "substance abuse, episodes of depression, panic attacks, or anxiety without an identifiable cause, unexplained economic or social behavior changes, and relationship issues."

k. As evidenced by the applicant's medical and psychiatric records, she received a formal diagnosis for PTSD and treatments began in 2012. The applicant suffered from symptoms of suicidal thoughts, panic attacks, obsessive compulsive disorder (OCD), social issues, and racing thoughts. Moreover, since 2012, the applicant struggles with alcohol abuse. The applicant continued to receive counseling and therapy regarding alcohol consumption throughout her time in the ARNG until her discharge.

l. The applicant's medical records following her deployments to Iraq and Afghanistan in 2008 and 2012, demonstrate that her medical issues were incurred in the line of duty and were not a result of her misconduct. The only question that remains is whether the applicant would have been found fit for duty by a MEB at the time. As such, it is respectfully submitted that the applicant should be processed for an MEB in order to prove that her PTSD and mental symptoms were significant enough to find her unfit for continued service with the U.S. Army.

m. The applicant still suffers from numerous symptoms of PTSD to this day. In accordance with the VA metric, the applicant is 70 percent service connected for PTSD and 30 percent service connected for sinusitis, with an overall service rating of 80 percent. The applicant struggles with nightmares and during the day finds herself extremely anxious in workplace settings. She attempted to continue gainful employment with the Internal Revenue Service (IRS), but a highly stressful work environment would trigger her memories to serving in Iraq and Afghanistan. The applicant continues to struggle in her daily living activities. She continues to feel threatened by others and does not feel safe when placed in situations where she cannot see incoming people.

n. The applicant served with the U.S. Army for over 20 years and was honorably discharged with over 17 years of service for retirement. As a Unit Supply Sergeant and MP Officer, the applicant served in a designated imminent danger pay area. She has suffered from this condition for many years and now prays for relief in the form of a medical retirement. The applicant suffered her mental health for the good of the U.S. Army through her years of training and deployments to Iraq and Afghanistan. She was unfit for continued service in the ARNG at the time of her discharge because of her

PTSD and poor mental health during weekend drill requirements in the Reserves. To continue to deny the applicant the opportunity to be awarded her medical retirement would be a *prima facie* case of material injustice.

o. In light of the facts and arguments presented herein, the applicant requests that this honorable Board direct a MEB be initiated to determine if she should have been medically retired from the U.S. Army, retroactive to 18 June 2017. The applicant's military records demonstrate the long-term symptoms that she has suffered from since her time in the military, despite the failure to recognize her PTSD in categorizing her retirement from the U.S. Army. The applicant was honorably discharged for her years of dedicated service without a proper treatment or process for medical retirement. Further, the applicant presently suffers from PTSD after her many years with the U.S. Army and seeks the opportunity to be heard through the MEB process.

2. A DD Form 214 shows the applicant enlisted in the Regular Army on 21 July 1986 and was honorably released from active duty on 15 April 1991, with transfer to the U.S. Army Reserve (USAR) Control Group (Reinforcement). She was credited with 4 years, 8 months, and 25 days of net active service.

3. After a break in service, a DD Form 4 shows the applicant enlisted in the ARNG on 1 March 2003.

4. A second DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom on 4 June 2007, with duty in Kuwait/Iraq from 31 August 2007 through 28 April 2008. She was honorably released from active duty on 18 June 2008, in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service and transferred back to her ARNG unit. She was credited with 1 year and 15 days of net active service this period.

5. A third DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom on 29 April 2010, with duty in Afghanistan from 1 June 2010 through 25 April 2011. She was honorably released from active duty on 7 July 2011 in accordance with chapter 4 of Army Regulation 635-200 due to completion of required active service and transferred back to her ARNG unit. She was credited with 1 year, 2 months, and 9 days of net active service this period.

6. The applicant provided 22 pages of VA medical records, printed on 1 August 2016, all of which have been provided in full to the Board for review, and in pertinent part show:

a. A Consult Request shows the applicant was diagnosed with PTSD by a clinical psychologist on 27 March 2012. The disposition shows she met program admission

criteria and agreed to engage in intensive outpatient treatment for PTSD. She enrolled in PTSD 101, on 28 March 2012, and a psychiatric care appointment was to be scheduled.

b. A Progress Note shows the applicant was seen for a TRP intake in March 2012 and was referred to PTSD 101, but did not complete due to feeling invalidated by other group members. She then began individual Prolonged Exposure (PE) only to switch to Cognitive Processing Therapy (CPT) in September 2012. Notes show she completed PT/CPT 20 February 2013 and no-showed subsequent follow-up appointments. She then reached out to crisis line in December 2013. She had been sporadic about attending appointments for a variety of reasons.

c. A Progress Note shows the applicant had a history of PTSD as well as reported history of bipolar I disorder and alcohol abuse in remission, who presented to the clinic for follow-up. Primary Care (PC) Mental Health (MH) Integration Initial Evaluation Note, 30 January 2012; Mental Health Therapy (TRP) Intake Note, 23 March 2012; and PC MH Integration Initial Evaluation Note, 3 January 2014, are all referenced as providing her psychiatric history, military history, substance use history, and medical history.

7. An NGB Form 23A (ARNG Current Annual Statement) shows the applicant entered a period of ARNG Active Guard/Reserve service under Title 32, U.S. Code, State controlled, from 5 October 2015 through 30 November 2016.

8. A fourth and final DD Form 214 shows the applicant entered active duty on 5 October 2015 and was honorably released from active duty with corresponding separation code MBK, on 30 November 2016, in accordance with chapter 4 of Army Regulation 635-200 due to completion of required active service. She was credited with 1 year, 1 month, and 26 days of net active service this period.

9. The complete facts and circumstances surrounding the applicant's medical unfitness for retention in the ARNG and transfer to the Retired Reserve are unknown, as her discharge packet, to include a DA Form 3349 (Physical Profile) and notification of medical disqualification for retention, are not in her available records for review and have not been provided by the applicant.

10. An NGB Form 22 shows the applicant was honorably discharged from the ARNG and transferred to the Retired Reserve effective 18 June 2017, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-35l, due to medical unfitness for retention per Army Regulation 40-501 (Standards of Medical Fitness). She was credited with 14 years, 3 months, and 18 days of net service this period; 2 years, 4 months, and 7 days of prior Reserve Component service; 4 years, 8 months, and 25 days of prior active Federal Service; and 17 years, 1 month, and 2 days of total service for retired pay.

11. The applicant's NGB Form 23A, 28 June 2017, shows the applicant completed 17 years, 1 month, and 2 days of creditable service for retired pay.

12. Joint Force Headquarters-Georgia memorandum, 28 June 2017, notified the applicant of her eligibility for retired pay for non-regular service (15 Years). She was informed she completed at least 15 years, but fewer than 20 years of qualifying service and will be eligible for retired pay upon her application at age 60. Her eligibility is based upon the following qualifications:

a. She was in the Selected Reserve.

b. She completed at least 15, but less than 20 years of qualifying service on or after 1 October 1991.

c. She no longer met the qualifications for membership in the Selected Reserve solely because she was unfit due to a physical disability and the disability was not the result of her intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary of the Army, and it was not incurred during a period of unauthorized absence.

d. She was discharged from the ARNG and, unless she requested transfer to the Retired Reserve, was also separated as a Reserve of the Army.

13. The Adjutant General, State of Georgia Orders 179-141, 28 June 2017, honorably discharged the applicant from the ARNG and transferred her to the Retired Reserve effective 18 June 2017, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-35I, with assignment/loss reason code XM (Early Qualification for Retired Pay at Age 60 (Involuntary Medically Disqualified Members))

14. Additional VA medical records show:

a. An addendum, 6 April 2017, shows the applicant attempted suicide about 3 weeks ago, by taking sleeping pills.

b. The applicant's service-connected disability rating is 80 percent, with the rated disabilities of PTSD (70 percent) and sinusitis, frontal, chronic (30 percent), with an unlisted effective date.

14. U.S. Army Human Resources Command (AHRC) Orders C05-495069, 16 May 2024 retired the applicant and placed her on the Army of the United States Retired list effective 25 July 2024.

15. 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.

MEDICAL REVIEW:

a. Background: The applicant is requesting disability retirement in lieu of transfer to the Retired Reserve due to early qualification for retired pay at age 60 for involuntarily medically disqualified members.

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

- The applicant enlisted in the Regular Army on 21 July 1986 and was honorably released from active duty on 15 April 1991, with transfer to the U.S. Army Reserve (USAR) Control Group (Reinforcement).
- After a break in service, a DD Form 4 shows the applicant enlisted in the ARNG on 1 March 2003.
- A second DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom on 4 June 2007, with duty in Kuwait/Iraq from 31 August 2007 through 28 April 2008. She was honorably released from active duty on 18 June 2008, in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service and transferred back to her ARNG unit. She was credited with 1 year and 15 days of net active service this period.
- A third DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom on 29 April 2010, with duty in Afghanistan from 1 June 2010 through 25 April 2011. She was honorably released from active duty on 7 July 2011 in accordance with chapter 4 of Army Regulation 635-200 due to completion of required active service and transferred back to her ARNG unit. She was credited with 1 year, 2 months, and 9 days of net active service this period.
- An NGB Form 23A (ARNG Current Annual Statement) shows the applicant entered a period of ARNG Active Guard/Reserve service under Title 32, U.S. Code, State controlled, from 5 October 2015 through 30 November 2016.
- A fourth and final DD Form 214 shows the applicant entered active duty on 5 October 2015 and was honorably released from active duty with corresponding separation code MBK, on 30 November 2016, in accordance with chapter 4 of Army Regulation 635-200 due to completion of required active service. She was credited with 1 year, 1 month, and 26 days of net active service this period.
- The complete facts and circumstances surrounding the applicant's medical unfitness for retention in the ARNG and transfer to the Retired Reserve are

unknown, as her discharge packet, to include a DA Form 3349 (Physical Profile) and notification of medical disqualification for retention, are not in her available records for review and have not been provided by the applicant.

- An NGB Form 22 shows the applicant was honorably discharged from the ARNG and transferred to the Retired Reserve effective 18 June 2017, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-35I, due to medical unfitness for retention per Army Regulation 40-501 (Standards of Medical Fitness). She was credited with 14 years, 3 months, and 18 days of net service this period; 2 years, 4 months, and 7 days of prior Reserve Component service; 4 years, 8 months, and 25 days of prior active Federal Service; and 17 years, 1 month, and 2 days of total service for retired pay.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant submits this application to have a Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) conducted to determine if she should have been medically retired from the United Army, retroactive to 18 June 2017.

d. The active-duty electronic medical records available for review show the applicant was initially diagnosed with Adjustment Disorder related to grief via a medical appointment on 23 April 2009 and was treated with antidepressant medication. She was seen in theater on 22 October 2010 and again post-deployment on 21 February 2011 and diagnosed with Adjustment Disorder due to work related stressors. The record shows the applicant was provided with ongoing behavioral health services along with social services support due to financial stressors and housing insecurity. A discharge summary shows the applicant was hospitalized from 19 October to 24 October 2014 due to suicidal and homicidal ideation and reported a history of depression and anxiety with exacerbation of her symptoms due to multiple psychosocial stressors, relationship issues, and limited social supports. She was diagnosed with: Major Depressive Disorder, Alcohol-Induced Mood Disorder, PTSD, and Alcohol Use Disorder. The record indicates she received ongoing behavioral health treatment while in service. The available service records did not contain a DA Form 199 (Physical Evaluation Board Proceedings). In addition, the service record does not indicate her military career was shortened due to a medical or mental health condition. In fact, quite the opposite, the four available DD214 show the applicant was honorably discharged and successfully completed four separate enlistments. The behavioral health services she received while in service, supported managing her behavioral health condition and allowed her to successfully complete her military service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process. Although the applicant has been 70% service connected for PTSD, 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 would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The complete facts and circumstances surrounding the applicant's medical unfitness for retention in the ARNG and transfer to the Retired Reserve are unknown, as her discharge packet, to include a DA Form 3349 (Physical Profile) and notification of medical disqualification for retention, are not in her available records for review and have not been provided by the applicant. Her NGB Form 22 shows she was honorably discharged from the ARNG and transferred to the Retired Reserve effective 18 June 2017, under the provisions of NGR 600-200, paragraph 6-35I, due to medical unfitness for retention. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding the behavioral health services she received while in service, supported managing her behavioral health condition and allowed her to successfully complete her military service and retire. Therefore, the Board determined there is insufficient evidence to support a referral to the disability evaluation system.

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.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress

disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system 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 (Disability 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; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

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

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

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

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

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

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the

Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

6. 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.

7. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign, utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 6-35, in effect at the time, provides for the separation of Soldier found medically unfit for retention per Army Regulation 40-501.

8. 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.

9. 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.

10. 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.

11. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//