

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003562

APPLICANT REQUESTS: in effect, honorable discharge for physical disability with corresponding separation code and reentry code in lieu of uncharacterized administrative discharge due to entry level performance and conduct.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statement
- Social Security Card
- Birth certificate
- Regular Army (RA) Applicant Data Report, 20 September 2012
- U.S. Military Entrance Processing Command (USMEPCOM) Prospective/Enlistee Record, 7 January 2013
- Personal in Nature, Roster, 9 January 2013
- DD Form 2366 (Montgomery GI Bill Act of 1984 – Basic Enrollment), 9 January 2013
- Enlisted Record Brief (ERB), 22 May 2013
- DA Form 4856 (Developmental Counseling Form), 23 May 2013
- DA Forms 4856, 13 June 2013, 27 June 2013, 5 July 2013
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard), 13 May 2013, 13 June 2013, 27 June 2013
- U.S. Army Combined Arms Support Command (CASCOM) Orders 183-00268, 2 July 2013
- B Company, 266th Quartermaster Battalion memorandum, Subject: Commander's Report, 5 July 2013
- B Company, 266th Quartermaster Battalion memorandum, Subject: Separation, 5 July 2013
- B Company, 266th Quartermaster Battalion memorandum, Subject: Acknowledgement of Receipt of Separation Notice, 5 July 2013
- ERB, 5 July 2013
- U.S. Army Combined Arms Support Command (CASCOM) Orders 190-00527, 9 July 2013

- B Company, 266th Quartermaster Battalion memorandum, Subject: Request for Financial Status, 9 July 2013
- B Company, 266th Quartermaster Battalion memorandum, Subject: Election of Rights, 11 July 2013
- 266th Quartermaster Battalion memorandum, Subject: Separation Action, 18 July 2013
- voided DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 24 July 2013
- Medical Record, 244 pages compressed into 61 pages with 4 pages per sheet, printed 21 February 2018
- Army Review Boards Agency (ARBA) letter, 15 September 2022
- DD Forms 214, Member Copy 1, Service Copy 2, and Member Copy 4, reissued 15 September 2022
- [REDACTED] Services Evaluation, 30 October 2023
- [REDACTED] Clinical Mental Health Counselor [REDACTED] letter, undated

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 his character of service to reflect honorable, and unspecified correction to his separation code, reentry code and narrative reason for separation. He has marked on his application that post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and transgender are conditions and issues related to his request.
 - b. His discharge is only accurate with regard to the duration of time served. He received a TBI during Basic Combat Training (BCT) that was left untreated, resulting in his entry level performance and conduct discharge under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) chapter 11.
 - c. A TBI that occurred prior to military service was exacerbated by a second TBI on or around February 2013, during BCT. Additionally, a third concussion that occurred post military service in 2023 spearheaded his evaluation and treatment that has been since ongoing. A neuropsychological report has been included in his packet as evidence of current symptoms experienced and the level of disability caused by the multiple head injuries. As reported by [REDACTED] Services, he continues to have

issues with emotional regulation, comprehension, anger, and sleep due to these successive concussions.

d. Additionally, he was seen for adjustment disorder while in the military, stemming from a traumatic event that took place prior to his enlistment, while working as an emergency medical technician (EMT) with the local emergency medical services (EMS) department. He finds this diagnosis to be improper, as it has since been classified as PTSD and coded as F43.11 and F33.1. His military medical records show many sessions of treatment by military psychologists and he believes, due to his treatment by Behavioral Health, he was inappropriately given an entry-level separation.

e. Finally, as a transgender individual, the treat of discharge due to his lifestyle was an ever-looming reality. He was forced into silence and when it came out that he was transgender, the integrity of his character was questioned.

f. Because of the above, he believes that his character of service, separation code, reentry code, and narrative reason for separation all deserve to be reevaluated. He believes he should be eligible for Department of Veterans Affairs (VA) healthcare to continue treatment for his PTSD and TBI, and the other perks that go hand-in-hand with an honorable discharge.

3. The applicant's birth certificate reflects his first name as [REDACTED] his middle name as [REDACTED] and his sex as female.

4. A DD Form 2808 (Report of Medical Examination) shows:

a. The applicant underwent medical examination on 28 September 2012, for the purpose of Regular Army enlistment.

b. The form shows his first name as [REDACTED] his middle name as [REDACTED] and his sex as female.

c. He was found qualified for enlistment with a PULHES of 111121, with the rating of 2 in factor E for vision. The summary of defects and diagnoses shows dermatographism (condition in which lightly scratching your skin causes raised, inflamed lines or welts). [A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more

medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T)].

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the RA on 7 January 2013, with the first name [REDACTED] and the middle name [REDACTED]

6. The applicant additionally provided a RA Applicant Data Report, USMEPCOM Processee/Enlistee Record and a Personal in Nature Roster, all of which are service documents that reflect his first name as [REDACTED] his middle name as [REDACTED] and his sex/gender as female.

7. All available service documents either predating or contemporaneous to the applicant's military service reflect his first name as [REDACTED] his middle name as [REDACTED] and, where identified on the document, his sex/gender as female.

8. A DD Form 2366 shows the applicant's enrollment in the Montgomery GI Bill on 9 January 2013.

9. An ERB, 22 May 2013, shows the applicant's PULHES as 111121, with the 2 rating in factor E (Vision).

10. Multiple DA Forms 4856 show the applicant was counseled on the following dates for the following reasons:

a. He was counseled by his platoon sergeant on 23 May 2013, for failing his APFT on the date of the counseling, by failing to obtain the minimum score of 60 in each event. He was advised he was required to pass an APFT in order to graduate from Advanced Individual Training (AIT) and after being given a reasonable period of time to correct his deficiencies, his separation could be initiated under Army Regulation 635-200.

b. He was counseled by his platoon sergeant on 13 June 2013, for failing his APFT on the date of the counseling, by failing to obtain the minimum score of 60 in each event. He was advised he was required to pass an APFT in order to graduate from AIT and after being given a reasonable period of time to correct his deficiencies, his separation could be initiated under Army Regulation 635-200.

c. He was counseled by his platoon sergeant on 27 June 2013, for failing his APFT on the date of the counseling, by failing to obtain the minimum score of 60 in each event. He was advised he was required to pass an APFT in order to graduate from AIT and after being given a reasonable period of time to correct his deficiencies, his separation could be initiated under Army Regulation 635-200.

11. A DA Form 705 provides the applicant's APFT scores from 13 May 2013, 13 June 2013, and 27 June 2013, all of which reflect below 60 points in the run event.
12. U.S. Army Combined Arms Support Command (CASCOM) Orders 183-00268, 2 July 2013, ordered the applicant to proceed on permanent change of station from the 23rd Quartermaster Brigade, Fort Lee, VA, to the Headquarters and Headquarters Detachment, 97th Military Police Battalion, Fort Riley, KS, effective 27 July 2013.
13. Two additional DA Forms 4856 reflect the applicant was twice counseled on 5 July 2013, by his platoon sergeant and by his company commander, regarding the initiation of his administrative separation for failure to meet the minimum standards prescribed for completion of training.
14. On 5 July 2013, the applicant was notified by his company commander of the initiation of action to separate him with an uncharacterized discharge under the provisions of Army Regulation 635-200, chapter 11, for entry level performance and conduct. The reason for the proposed action are that since his arrival at Fort Lee on 6 May 2013, to attend the 92Y (Unit Supply Specialist) course, he was unable to pass his APFT on 23 May 2013, 13 June 2013, and 27 June 2013. He was advised of his right to consult with counsel and to submit written statements in his own behalf.
15. On 5 July 2013, the applicant acknowledged receipt of notification from his commander informing him of the contemplated action to separate him under the provisions of Army Regulation 635-200, chapter 11, and the rights available to him, including the right to consult with counsel prior to submitting his election of rights.
16. A second ERB, 5 July 2013, shows the applicant's PULHES remained 111121.
17. U.S. Army Combined Arms Support Command (CASCOM) Orders Number 190-00527, 9 July 2013, revoked previously issued orders 183-00268, 2 July 2013, reassigning the applicant to Fort Riley, KS.
18. On 11 July 2013, the applicant acknowledged having been advised by consulting counsel of the bases for the contemplated action to separate him for entry level performance and conduct under the provisions of Army Regulation 635-200, chapter 11, its effects, and the rights available to him. He indicated he waived consulting counsel and did not submit statements in his own behalf.
19. On 18 July 2013, the approval authority directed the applicant's uncharacterized discharge under the provisions of Army Regulation 635-200, chapter 11, due to his inability to pass the APFT.

20. The applicant's DD Form 214 shows he was discharged with an uncharacterized discharge on 24 July 2013, under the provisions of Army Regulation 635-200, chapter 11, due to entry level performance and conduct, with corresponding separation code JGA and reentry code 3. He was credited with 6 months and 18 days of net active service and not awarded an MOS.

21. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

22. The applicant provided a 244 page Medical Record, compressed into 61 pages with 4 record pages per sheet, printed on 21 February 2018. The report summary shows the medical records include allergies, problems, diagnosis history, medications, family history, labs, radiology, immunization, previous encounters, clinical notes, and vitals. The Medical Record has been provided in full to the Board for review.

23. The applicant previously applied to the ABCMR in January 2022, requesting correction of his DD Form 214 to reflect his name change from [REDACTED] to [REDACTED]

24. On 15 September 2022, the applicant was advised that his request was approved. His original DD Form 214 was voided and he was provided a reissued DD Form 214, reflecting his name as [REDACTED] No other items on his DD form 214 were amended.

25. A multi-page Triangle Neuropsychology Services Evaluation, 30 October 2023, has been provided in full to the Board for review.

a. The impressions show the applicant's focal deficits in attention and concentration are consistent with the lingering consequences of TBI. Severity specifiers support a likely mild TBI compounded by prior history of concussions. Given report of preserved functional independence, a diagnosis of mild neurocognitive disorder appears most appropriate in describing his current symptoms. At this time, given time elapsed since injuries, a level of natural healing is likely to have already occurred and current symptoms are expected to be grossly stable. Of note, mood symptoms, chronic pain (i.e., headaches), and insomnia (i.e., difficulty with sleep initiation despite improved sleep maintenance) can also impact cognitive function. While these are likely secondary factors in his current profile, they are notable and require ongoing management.

Specific recommendations are provided below, and relevant materials have been shared to support his overall health and symptom management.

- b. The recommendations include medical follow-up. Alternate methods of sleep management are recommended, particularly cognitive behavioral therapy for insomnia may be helpful. Mental health follow-up and ongoing engagement with a mental health provider to facilitate sustained mood management. He is encouraged to use compensatory strategies and academic supports to assist with cognitive difficulties.
- c. The diagnostic impressions shows mild neurocognitive disorder due to post-concussion syndrome and PTSD, by history.

26. An undated [REDACTED] letter, shows the applicant has been engaged in weekly psychotherapy since 19 January 2023. At the onset of the therapeutic relationship, as presented, he met the diagnostic criteria for major depressive disorder, moderate, recurrent (F33.1) and PTSD, acute (F43.11). At this time, he meets diagnostic criteria for major depressive disorder, recent episode mild (F32.1) and continues to experience intense symptomology indicative of PTSD disorder, acute.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an honorable discharge for physical disability with corresponding separation code and reentry code in lieu of uncharacterized administrative discharge due to entry level performance and conduct. The applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and transgender are conditions and issues related to his request. More specifically, he asserted that a TBI that took place during basic training was left untreated and caused his Entry Level Performance and Conduct Chapter 11 Discharge. He further noted that a TBI that occurred prior to military service was exacerbated by a second TBI that occurred on or around February 2013 during basic training and a third concussion post-military in 2023 contributed to evaluation and treatment that has since been ongoing. 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 07 January 2013, 2) he was counseled on three occasions between 23 May 2013 and 27 June 2013 for failing his APFT, 3) he was twice counseled on 05 July 2013 by his platoon sergeant and by his company commander regarding initiation of administrative separation for failure to meet the minimum standards prescribed for completion of training, 4) On 5 July 2013, the applicant was notified by his company commander of the initiation of action to separate him with an uncharacterized discharge under the provisions of Army Regulation (AR) 635-200, chapter 11, for entry level performance and conduct. The reason(s) for the proposed action noted he was unable to pass his APFT on 23 May 2013, 13 June 2013,

and 27 June 2013, 5) an ERB dated 5 July 2013 shows the applicant's PULHES as 111121, indicating that the applicant was not on a profile for BH reasons, 6) The applicant's DD Form 214 shows he was discharged with an uncharacterized discharge on 24 July 2013, under the provisions of AR 635-200, chapter 11, due to entry level performance and conduct, with corresponding separation code JGA and reentry code 3. He was credited with 6 months and 18 days of net active service and not awarded an MOS.

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 19 January 2013 through 24 July 2013.

- The applicant presented to the Troop Medical Clinic (TMC) on 19 January 2013 due to a headache he had been experiencing on-and-off for the previous 9 days. The provider noted that he had no history of head injury and had experienced the same type of headaches off-and-on for the past 2 years.
- He was seen by Campus BH on 01 April 2013 noting that he had been assigned to the medical battalion due to a shoulder injury that did not require surgery though took him out of training. The applicant reported symptoms of depression and anxiety that were noted to be associated with problems adjusting to the military and interpersonal problems with his family. He was diagnosed with Adjustment Disorder and Occupational Problem with a note to follow-up in two days and at which time a Chapter 5-17 would be recommended. On 03 April 2013, the applicant's Mental Status Evaluation (MSE) (DA Form 3822) noted the domains of the Mental Status Evaluation (MSE) were within normal limits (WNL), he was able to understand and participate in administrative proceedings, was able to appreciate the difference between right and wrong, and met medical retention requirements. The provider noted the applicant's diagnosis as Adjustment Disorder with Disturbance of Emotions secondary to Deterioration of Physical health and noted he met criteria for expeditious separation under Chapter 5-17. It was further noted that he had disguised an injury from basic combat training (BCT) and had lost confidence that he would be able to heal from the injury at any time in the near future and he had no motivation to continue which would impede possible medical recovery. It was noted that he had no reported history of PTSD, Bipolar Disorder, or TBI. On 09 April 2013, he walked-in to BH to request the Chapter separation process be stopped due to believing that his shoulder would heal sufficiently and that he could proceed with reclassification. The provider documented that the commander was emailed to stop the chapter process. On 10 April 2013, he was diagnosed with Adjustment

Disorder with Disturbance of Emotions and the provider recommended disqualification from his MOS of 68W but retention in the Army. More specifically, it was noted that the applicant had experienced a traumatic event prior to enlistment while working as an EMS responder wherein he had witnessed the death of his EMS partner of 2 years. He had initially agreed to the Chapter 5-17 evaluation, but now that he disclosed the trauma history, the provider noted that it 'made sense' that he lost motivation. It was also documented that a recent MRI was encouraging, and he believed he would recover from his injury and would be an asset to the Army. The provider noted the applicant met retention standards and acknowledged he had 'some aspects of PTSD' but no history of Bipolar Disorder or TBI reported. He was discharged from BH care on 17 April 2013.

- The applicant presented to BH again on 24 April 2013 reporting recurring nightmares starting the previous September [2012] which had been happening off-and-on since that time due to his pre-enlistment trauma. He was diagnosed with Adjustment Disorder. On 03 May 2013, he presented for BH triage and reported experiencing anxiety, nightmares, problems with sleep, feeling nervous most of the time, did not like having anyone behind him, becoming easily irritated, experiencing some anger issues, and loss of appetite. He presented for an intake on 14 May 2014 and was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, with a rule out (R/O) of depression and was released without limitations. He presented for a medication evaluation on 16 May 2013 and was started on Trazodone as needed for insomnia. He was diagnosed with Adjustment Disorder with Anxiety and was released without limitations. On 30 May 2013, it was noted he was prescribed Zoloft (antidepressant) and continued on Trazodone. The provider noted he was falling asleep more easily with a slight improvement in anxiety, though reported continued nightmares. It was also noted he had gone to the ER for dehydration which the applicant attributed to a medication side effect. Trazodone was discontinued and Hydroxyzine was prescribed for sleep. It was noted that a medication profile was initiated to allow for adequate sleep. He continued to follow-up with BH primarily for medication management of his symptoms. As of 20 June 2013, it was noted that he reported an improvement in his anxiety and ability to fall asleep since starting medications though continued to have nightmares surrounding the death of his friend. It was also documented he had stopped taking Prazosin (nightmares) as it made him dizzy. The provider noted a medication profile for adequate sleep. On 11 July 2013, the applicant reported he was doing well on his medications, denied suicidal or homicidal ideation (SI/HII), and requested a 90-day refill of his medications as he was scheduled to PCS at the end of the month. His diagnosis was noted as Adjustment Disorder with Anxiety and Depressed Mood and medications were Zoloft and Hydroxyzine. He was seen by primary care on 15 July 2013 reporting a headache and stiff neck for 48 hours. He was placed on quarters for 24 hours and was diagnosed with Headache. On

17 July 2013, it was reported he woke up in the evening with a bad headache that was getting worse, and he was diagnosed with Migraine. He was subsequently referred to the ER for migraine on 18 July 2013. A follow-up on 22 July 2013 following his ER visit(s) shows that he was diagnosed with headache, was referred to a neurologist for further evaluation and treatment, and noted he was to discontinue medications (it was noted he had an allergic reaction to Zomig (treatment for migraines) and Zoloft) and to continue his current profile. The ER visit dated 20 July 2013 noted he denied experiencing recent injury or trauma.

4. A review of JLV shows the applicant is not service-connected through the VA for any conditions.

5. The applicant provided civilian medical records for review. A report from Triangle Neuropsychology Services dated 30 October 2023 shows the applicant reported an acute onset of cognitive changes that were first noted following a concussion that was sustained in January 2023. It was noted that the applicant reported a history of previous milder concussions though denied related loss of consciousness (LOC) and/pr posttraumatic amnesia. The evaluating provider also noted the applicant reported a history of headaches with onset in middle school that were described as notably worse following his most recent concussion. It was also noted that he reported a history of PTSD and had been undergoing ongoing BH treatment which was described as beneficial. The provider indicated his severity specifiers most likely supported a mild TBI compounded by his prior history of concussions. The diagnoses were noted as Mild Neurocognitive Disorder due to Post-Concussion Syndrome and PTSD, By History. In the report, the provider documented the applicant's military history as having served in the Army for 3 years as a flight medic and having exposure to combat and blasts from 2013 to 2014. However, this report is inconsistent with the applicant's available service records [Advisor's Note: it is unclear if this documentation is due to clerical error]. An undated letter from Ocean's Edge Wellness shows the applicant had been engaged in weekly psychotherapy since 19 January 2023. The provider noted that he met diagnostic criteria for Major Depressive Disorder, Moderate, Recurrent (F33.1) and PTSD, acute (F43.11). However, none of these records attributed his conditions to his military service.

6. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant was diagnosed with a BH condition in-service that fell below Medical Retention Standards or met the Medical Retention Decision Point (MRDP) and therefore a referral to IDES is not warranted. The applicant contends his discharge due to Entry Level Separation was related to PTSD, TBI, and Transgender; however, review of the available in-service medical records did not reveal any expressed concerns, diagnoses, or treatment history for TBI or Transgender. The applicant was diagnosed with Adjustment Disorder in-service (with disturbance of emotions secondary to deterioration of physical health; with Anxiety; with Mixed

Emotions; with Anxiety and Depressed Mood). Although he was not diagnosed with PTSD in-service, it is acknowledged by this Advisor that, in addition to some adjustment-related concerns expressed during the course of treatment, he endorsed a history of pre-military trauma and trauma-related symptoms. Adjustment Disorders that are acute (e.g., lasting less than 6 months), fall under the purview of administrative separations and therefore do not warrant disposition through medical channels. Furthermore, although it is acknowledged by this Advisor that the applicant reported PTSD-related symptoms in-service due to a pre-military trauma, the applicant was not diagnosed with this condition in-service and, even if he had been, the records do not indicate that he would have failed retention standards or that he would have met MRDP. He had been placed on a temporary BH profile on 30 May 2013 to allow for adequate sleep, and as of 11 July 2013, it was documented that he was doing well on his medications and requested a refill prior to PCSing. Per AR 40-501, a referral to the Medical Evaluation Board (MEB) is warranted when there is a persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization or persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. As there is no evidence the applicant was diagnosed with a BH condition under AR 40-501 in-service that required hospitalization nor a permanent profile necessitating ongoing duty limitations, a referral to IDES is not warranted.

7. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. The request is for medical retirement.
- (2) Did the condition exist or experience occur during military service? N/A. The request is for medical retirement.
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A. The request is for medical retirement.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence that the applicant was diagnosed with a behavioral health condition during service that fell

below medical retention standards or met the Medical Retention Decision Point (MRDP) and therefore a referral to IDES is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

4/2/2025

X _____

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
 - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.
 - b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the

severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

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 LOD criteria to be eligible to receive retirement and severance pay benefits:

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

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

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or

rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. 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.
6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.
 - b. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter. This policy applies to Soldiers in the Regular Army, Army National Guard (ARNG), and USAR who have completed no more than 180 days of continuous active duty or initial active duty for training (IADT) or no more than 90 days of Phase II under a split or alternate training option.
 - c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

7. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaivable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

8. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JGA is to be used for RA Soldiers discharged due to entry level performance and conduct under the provisions of Army Regulation 635-200, chapter 11.

9. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JGA has a corresponding RE Code of "3."

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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//