ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240005217

APPLICANT REQUESTS: correction of her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and retirement orders to show her disabilities are combat-related.

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

- DD Form 149 (Application for Correction of Military Record)
- deployment orders
- Enlisted Record Brief (ERB)
- DA Form 199, dated 12 October 2023
- Headquarters, U.S. Army Physical Disability Agency (USAPDA) Orders D297- 0008, dated 24 October 2023
- Irwin Army Community Hospital Office and Clinic Notes (9 pages)
- Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR))

FACTS:

1. The applicant states her records state that her post-traumatic stress disorder (PTSD) did not have any connection to her combat deployment, but it did. An improvised explosive device ignited about 300 meters away from her, along with other events. She does not know why she did not catch this before, but she has specified the impact of her combat deployment on her numerous times. Her records should be corrected because her combat deployment did, in fact, contributed to her PTSD and it should be annotated due to her not being able to receive certain benefits due to this information being incorrect. She was looking through her files to gather everything she needed to apply for Combat-Related Special Compensation program, and she discovered the discrepancy at this time.

2. The applicant enlisted in the Regular Army on 4 January 2016.

3. Orders issued on 2 January 2019 ordered the applicant's deployment in support of Operation Inherent Resolve (Syria) with a reporting date of 4 January 2019. Her ERB shows she served in Syria from 7 January to 1 May 2019.

4. On 7 June 2022, a PEB found the applicant unfit for further military service due to PTSD and major depressive disorder, recurrent, severe. The PEB recommended a 50% disability rating and the applicant's placement on the Temporary Disability Retired List (TDRL) with reexamination during February 2023. The PEB indicated the applicant sought behavioral health treatment for these conditions in July 2018 while stationed at Fort Campbell, KY. These conditions are attributed to a personal traumatic event and personal stressors.

5. The DA Form 199 contains the following entries in Section V (Administrative Determinations):

a. The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

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

6. On 13 June 2022, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of her case.

7. Orders 178-0004, dated 27 June 2022, issued by Headquarters, U.S. Army Garrison, Fort Riley, KS, ordered the applicant's release from assignment and duty because of physical disability and her placement on the TDRL effective 14 September 2022. The orders contain the following entries:

a. Disability is based on injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No

b. Disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104: No

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was retired on 14 September 2022 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, temporary.

9. On 12 October 2023, a PEB reevaluated the applicant's unfitting conditions of PTSD and major depressive disorder, recurrent, severe, and recommended a 100% disability

rating and her permanent disability retirement. The administrative determinations in section V of the DA Form 199 did not change (i.e. disabilities are not combat-related).

10. Orders D297-0008, dated 24 October 2023, issued by Headquarters, USAPDA, ordered the applicant's removal from the TDRL because of permanent physical disability and her permanent disability retirement effective 24 October 2023. The orders contain the following entries:

a. Disability is based on injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No

b. Disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104: No

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting a correction of her DA Form 199 and retirement orders to show her disabilities are combat-related. On her application, the applicant stated that an IED ignited about 300 meters away from her, along with other events. 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 04 January 2016, 2) The applicant's Enlisted Record Brief (ERB) shows she served in Syria from 07 January 01 May 2019, 3) the applicant was found unfit for duty by a PEB on 07 June 2022 due to Posttraumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD), Recurrent, Severe and recommended a 50% disability rating with placement on the TDRL. These conditions were attributed to a personal traumatic event and personal stressors, 4) The DA Form 199 shows that the disability disposition was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216, 5) Orders 178-0004, dated 27 June 2022, issued by Headquarters, U.S. Army Garrison, Fort Riley, KS, ordering the applicant's release from assignment and duty because of physical disability and her placement on the TDRL also showing that her disability was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war 6) the applicant was retired on 14 September 2022 under the authority of Army Regulation (AR) 635-40, Chapter 4, by reason of disability, temporary, 7) on 12 October 2023, a PEB reevaluated the applicant's unfitting conditions of PTSD and

MDD, Recurrent Severe and recommended a 100% disability rating and permanent disability retirement. The administrative determinations in section V of the DA Form 199 did not change (i.e. disabilities are not combat-related), 8) Orders D297-0008, dated 24 October 2023, issued by Headquarters, USAPDA, ordered the applicant's removal from the TDRL because of permanent physical disability and her permanent disability retirement effective 24 October 2023. The orders also show that her disability was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war.

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 05 January 2016 through 07 September 2022. Her DoD medical records are extensive and will not be exhaustively summarized. It is of note the BH records submitted as part of her application were also available for review via JLV and were considered as part of the review.

- The applicant initially sought BH treatment on 16 April 2016 due to experiencing a panic attack after being yelled at by her drill sergeant. The applicant reported a history of childhood physical and emotional abuse as well as a history of sexual assault that occurred prior to military service. The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The provider recommended separation due to a condition that existed prior to service (EPTS), to which the commander declined and instead stated he would re-class the Soldier. At her follow-up visit on 27 April 2016, the diagnosis was updated to Other Problem Related to Employment and she agreed to follow-up with BH at her new duty station. The applicant was released without limitations.
- The applicant presented to BH as a walk-in on 14 March 2018 as referred by her commander. The applicant reported experiencing stressors due to physical health problems over the past few years, relationship and familial issues, and feelings of depression that she had been struggling with for a while. The applicant's diagnosis was documented as Problem Related to Unspecified Psychosocial Circumstances and she was released without limitations. She completed a BH intake appointment on 04 April 2018 and noted improvements in sleep since starting medication for sleep. She was diagnosed with Problems in Relationship with Spouse or Partner and noted to meet psychiatric retention standards. It was documented that the applicant filed a restricted report of sexual assault on 23 June 2018 (which was later changed to unrestricted in August 2018). It was documented that she cut her right hip area after she realized what

happened with the assault. The diagnosis was noted as Personal History of Adult Physical and Sexual Abuse. During an individual session on 06 July 2018, the applicant reported experiencing nightmares, not feeling safe around others, hypersomnia, and anxiety when leaving the house. To accommodate her request for an increase in the frequency of her BH appointments, the applicant was referred off-post for continued BH services. During this period of treatment, she was started on Vistaril for sleep and mood and Fluoxetine for mood on 20 March 2018 by her primary care manager (PCM).

- The applicant was referred to the Family Advocacy Program (FAP) for intimate partner abuse on 24 May 2018 (on 13 June 2018 a note shows it was substantiated with the applicant as the victim of intimate partner physical abuse). She participated in group therapy through FAP on a weekly basis from 07 June 2018 through 03 October 2018. On 15 June 2018, the applicant's individual BH provider documented that she reported she cut her side after she was notified of the FAP findings. The provider noted her diagnosis as Adjustment Disorder with Depressed Mood and Cluster B Personality Traits. No duty limitations necessitating a profile were noted and it was documented that she met retention standards. The Case Review Committee (CRC) closed her case on 24 January 2019.
- A referral note shows the applicant initiated treatment with an off-post provider on 09 July 2018 and was diagnosed with F43.9 (Unspecified Reaction to Severe Stress). A treatment summary from her off-post provider dated 31 July 2018 shows her diagnosis was changed to F43.12 (PTSD) and that she was to complete eye-movement desensitization reprocessing (EMDR) treatment on a weekly basis. On 08 August 2018, she was put on a BH profile by her on-post BH provider based on symptom report, with the diagnosis noted as PTSD, per her off-post provider, and Cluster B Personality Traits.
- She underwent a pre-deployment medical examination on 17 October 2018 and was determined to be medically fit for deployment. On 31 October 2018, BH noted that she did not have any duty limitations and that her condition was stable and not anticipated to worsen during deployment.
- There were three BH theater encounters available for review from 13-19 April 2019. The chief complaint was noted as depression and anxiety symptoms due to MST that occurred prior to deployment and that she had had been experiencing symptoms since June 2018. The provider diagnosed the applicant with Generalized Anxiety Disorder (GAD) though updated the diagnosis to PTSD, Unspecified at the time of her final in-theater encounter on 19 April 2019. It was documented that she did not require a BH profile and did not have any MOD13 disqualifications.
- The applicant presented to BH as a walk-in upon her return from deployment on 16 July 2019 requesting individual therapy and marital counseling. She continued to follow-up for individual psychotherapy on-post on a weekly basis from 22 July 2019 through 13 January 2020. Treatment primarily focused on relationship and

child custody issues in addition to issues related to MST. The diagnosis noted as Problems with Spouse or Partner. The provider and applicant discontinued treatment due to the applicant enrolling in group therapy for MST and requesting a transfer to a female therapist to work on issues related to MST. The applicant presented for group therapy for MST (Cognitive Processing Therapy (CPT) for PTSD), on 14 January 2020 and attended three sessions though had to postpone treatment due to attending BLC. She re-started the MST group on 17 March 2020 and appeared to complete two sessions (17 and 24 March 2020). The diagnosis was documented as Personal History of Sexual Abuse.

- The applicant initiated medication management of her BH symptoms through psychiatry on 13 August 2019 and was started on Sonata for treatment of sleep and expressed a desire to be weaned off of Prozac. The diagnosis was noted as PTSD, Chronic and Insomnia, Unspecified. Review of records shows she has continued to follow-up with her prescribing provider throughout her time in service approximately once per month. While in-service, she was trialed on several antidepressant medications (Prozac, Lexapro, Cymbalta), mood stabilizers (Abilify, Latuda), medications to treat nightmares (Prazosin, Periactin), anxiety (BuSpar), and ADHD (Concerta, Adderall).
- The applicant began couples counseling on 17 October 2019 and continued treatment on a bi-weekly basis through 20 March 2020. An off-post referral for marital counseling dated 08 May 2020 shows the applicant reported she still experienced constant anxiety from sexual assault and reported she was diagnosed with PTSD, Depression, and Anxiety.
- On 23 March 2021, the applicant attended a BH intake and it was noted that she was diagnosed with Postpartum Depression (PPD) and was recommended to restart psychotherapy and medication for management of her symptoms. Her diagnoses were noted as PPD, and PTSD, Chronic, and she was returned to duty. She was prescribed Zoloft for mood on 29 March 2021. During a BH appointment on 30 April 2021, the applicant reported she experienced symptoms of trauma after witnessing an IED blow up 300 meters away while in Syria. It was also documented that she had a history of MST. She requested a referral for Transmagnetic Stimulation (TMS) for treatment of her BH conditions. The TMS intake note dated 03 June 2021 documented the applicant's trauma history as MST and childhood abuse. She was diagnosed with MDD, Recurrent, Severe Without Psychotic Features, PTSD, and Partner Relational Problem.
- On 02 September 2021, the applicant's off-post provider emailed her on-post prescriber noting an improvement in her depressive symptoms with TMS treatment, however, that current world events reminded her of events related to her combat deployment and sexual assault. She also expressed distress due to the vaccine mandate and additional stressors. The provider recommended the applicant be referred for a medical evaluation board (MEB). On 08 September 2021, a Disability Evaluation System (DES) MEB Medical Retention Determination Point (MDRP) note shows the applicant's records were reviewed

to determine if her BH conditions met MDRP. The provider documented that her diagnoses of PTSD and MDD did not impact military functioning until very recently with profiling recommended by her primary therapist in September 2021. At the time of the note, it was documented that the applicant had not met MDRP.

- The applicant continued to meet with her prescribing provider on approximately a monthly basis and it was documented that she continued to meet with her off-post provider on a weekly basis. She reported to her prescribing provider on 15 September 2021 that her depression and irritability increased due to news about withdrawal from Afghanistan and she was anxious and depressed about the vaccine mandate. She reported that she was disturbed by noises from the range and had flashbacks from the MST in 2018. Records show she also reported to her prescribing provider that her off-post therapist informed her she met all criteria for Borderline Personality Disorder and also diagnosed her with Attention Deficit/Hyperactivity Disorder (ADHD). Medications for these conditions were managed by her on-post prescribing provider.
- A subsequent DES MDRP review dated 07 February 2022 shows a review of the applicant's records indicated she met MDRP for PTSD and was likely to fail for MDD, Recurrent, Severe.
- As part of the MEB process, the applicant underwent a VA Compensation and Pension (C&P) examination on 11 March 2022 and was diagnosed with PTSD and MDD, Severe, Recurrent. The stressor associated with her diagnosis of PTSD was documented as MST. There were no additional stressors noted in the C&P examination associated with her diagnosis. Furthermore, the Disability Benefits Questionnaire (DBQ) medical opinion documented that her "PTSD condition is at least as likely as not caused or a result of the MST stressor event(s)." A DES pre-BH addendum dated 06 April 2022 shows that the applicant's symptoms were noted as not deployment/combat-related for PTSD or MDD.
- A review of the NARSUM dated 15 April 2022 shows that the onset of the applicant's diagnosis of PTSD was documented as 06 July 2018 and that the onset of her symptoms were not deployment/combat related. The onset of her diagnosis of MDD was noted as 29 March 2021, noting that she was diagnosed by OB/GYN after delivery of her 4-month-old daughter and was not deployment-related.

4. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient medical evidence that the applicant's diagnoses of PTSD or MDD are combat-related and therefore a referral to DES is not warranted for reconsideration by the PEB to correct her DA Form 199 or retirement orders. Review of the applicant's medical records are consistent with the MDRP, NARSUM, and PEB documents in that the onset of her PTSD symptoms and diagnosis began in 2018 due to MST, prior to the applicant's deployment in 2019. Additionally, records show she was diagnosed with depression in 2021 following the birth of her child. Per AR 635-40, there

is no evidence that the applicant's condition was combat-related. As such, a correction to her DA Form 199 or retirement orders is not supported for BH purposes.

5. As it pertains to CRSC, it is of note that combat related is defined in Section b(3) of 26 U.S. Code § 104, and requires there be a direct cause and effect relationship:

> Special rules for combat-related injuries: For purposes of this subsection, the term "combat-related injury" means personal injury or sickness—
>
> (A) which is incurred—
>
> (i) as a direct result of armed conflict,
>
> (ii) while engaged in extra-hazardous service, or
>
> (iii) under conditions simulating war; or
>
> (B) which is caused by an instrumentality of war.
>
> Paragraph 630601A of Department of Defense Financial Management Regulation 7000.14-R, Volume 78, Chapter 63:
>
> "To support a combat-related determination it is not sufficient to only state the fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting liability."

6. The applicant is not in receipt of a Purple Heart, Combat Action Badge, and no corroborating official military documentation was found. A note in paragraph 630502 of DoD FMR 7000.14-R Volume 7B Chapter 63 CRSC notes the requirement for documentation, stating in part:

> "An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made based on the program criteria."

7. To award CRSC for PTSD under the category of armed conflict, the claimant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (Wartime chain of command must be First Sergeant and/or Company Commander or higher), copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict. Her DA 199, Informal Physical

Evaluation Board (PEB) Proceedings, dated 07 June 2022, shows she was found unfit for PTSD and MDD. The PEB did not find either of these conditions to be combat related. They found no evidence that either of these disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war; or that she was a member of the military on or before 24 September 1975. While the applicant's medical records in 2021 document that she reported witnessing an IED blast while deployed, there is no evidence that she was exposed to armed conflict, there is no corroborating evidence in the medical records at the time of the event, nor official military documentation, to substantiate her assertion as it pertains to her diagnosis of PTSD and establishing a direct causal relationship. Although it is acknowledged that the threshold for a combat-related injury according to CRSC criteria as it pertains to the Instrumentality of War does not require that the disability be incurred during an actual period of war, witnessing a combat-related event does not qualify as having been directly and personally exposed to armed conflict. Furthermore, the available medical records show the date of onset for her diagnosis of PTSD as 2018 due to MST, prior to her deployment and her diagnosis of MDD occurring in 2021, following the birth of her child. In summary, there is no medical evidence, nor any other official military documentation, to support or establish a causal relationship between the claimed disability and a combat-related event. As such, it is the opinion of the ARBA Medical Advisor there is insufficient probative evidence for CRSC based on her BH conditions.

8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and

medical review, the Board concurred with the advising opinion of the ARBA Medical Advisor there is insufficient probative evidence for CRSC based on her BH conditions.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

3. The Board determined there are insufficient evidence to support the applicant's contentions for correction of her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and retirement orders to show her disabilities are combat-related. The Board determined a Physical Evaluation Board (PEB) found the applicant unfit for continued military service due to post-traumatic stress disorder (PTSD) and major depressive disorder, recurrent, severe. Further, the PEB recommended a 50% disability rating and placement on the Temporary Disability Retired List (TDRL). The PEB documentation clearly indicated that the applicant's conditions were attributed to a personal traumatic event and personal stressors that occurred in July 2018 while stationed at Fort Campbell, Kentucky—prior to her deployment to Syria.

4. The Board noted, Section V of the DA Form 199 explicitly states that the applicant's disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy or caused by an instrumentality of war. It further affirms that the disability did not result from a combat-related injury under Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216. The record shows, applicant concurred with the PEB's findings and waived her right to a formal hearing. Subsequent retirement orders dated 27 June 2022 and 24 October 2023 following her reevaluation and permanent retirement reaffirmed that her disabilities were not combat-related and were not incurred as a direct result of armed conflict or instrumentality of war. As such, the Board found no evidence in the record to support a change to the combat-related determinations. The Board agreed, the origin of the applicant's unfitting conditions was clearly documented as non-combat-related, and the administrative determinations were consistent across both PEB proceedings and retirement orders. While the applicant served honorably and her conditions warranted disability retirement, the Board must adhere to the regulatory definitions and evidentiary standards governing combat-related determinations. Relief is denied.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

a. Paragraph 5-24 (Determination for Purposes of Federal Civil Service Employment) states the physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of

the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war. These determinations impact the eligibility of certain military retirees for certain benefits when employed under the Federal Civil Service System.

(1) The determinations will be recorded on the record of proceedings of the Soldier's adjudication.

(2) Armed Conflict: The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations, is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

b. Paragraph 5-25 (Determination for Federal Tax Benefits) states physical disability evaluation will include a determination and supporting documentation on whether the Soldiers disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

c. Combat related: This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat-related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result of armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to

result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

2. Title 26, U.S. Code, section 104, states that for the purpose of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

3. 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//