

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240005747

APPLICANT REQUESTS: physical disability discharge in lieu of honorable administrative discharge due to personality disorder

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- father's statement
- doctor's letter, 23 December 2021
- Department of Veterans Affairs (VA) Rating Decision, 6 September 2022
- VA letter, 8 September 2022
- VA letter, 24 September 2022

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. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) states she was honorably discharged from active duty due to a personality disorder, when in fact, the problem she had was with a superior officer and military sexual trauma. She would like her record corrected to show she received an honorable medical discharge and have the reference to personality disorder removed from the document.

b. She would also like to have any benefits that would be due to her based upon a proper medical discharge and corresponding diagnosis. This has haunted her for almost 40 years and it's time to have it corrected for her benefit and the benefit of her family. This correction would help her heal from years of knowing she did nothing wrong and that her experience of military sexual trauma was taken seriously.

c. Being sexually harassed and discharged early into her active duty service made her spiral out of control for years with alcohol abuse and trips to mental hospitals with severe post-traumatic stress disorder (PTSD). The VA determined she was not lying about her military sexual trauma experience and awarded her a 100 percent permanent and total disability compensation for PTSD related to the experiences she had while in the service. She knew her discharge was wrong when she was forced to sign her discharge papers. From that date forward, she has been ashamed and mentally tormented, unable to trust people to help. She finally found someone to help her with VA benefits and this request in 2021.

d. She came home a mess after her Army discharge. She couldn't get out of bed most days. She didn't know who to contact with this matter of sexual harassment. She was told when she was discharged that was it and that she couldn't receive any benefits, so she did nothing for all these years until someone at the American Legion listened to her.

e. She spent 3 weeks in the psychiatric ward of Carson City Hospital in Carson City, MI. The doctors there said she had PTSD from the issues she had while in the service. She was put on anti-depressants and sent back home. She is still on anti-depressants along with anxiety and sleep medications. She does not go out much and only with family whom she trusts. She gets very nervous, anxious, and nauseated when around any men she does not know and suffers with migraines due to not being able to overcome the sexual harassment.

f. She has a lot of digestive issues and a lot of stomach pains. She still to this day lives like this. She also gets a lot of lower back pain and has not been physically injured in any way. So, she continues to try living a happy life, but counseling after counseling never helps. She really has tried to get past this over all these years, but she cannot. She continues to suffer with all this and would appreciate some help so she can live and feel alive again, because this should have been addressed a long time ago. Her discharge was not her choice, but it was the only way to get away from the abuse.

g. The officers who sexually harassed her were all lieutenants. She worked in the mail room and they would just stop by and ask for sex and said that would help her with her ranks. She felt very alone in this situation. One lieutenant brought stuffed toys that smelled horrible. She found out from others that he used them when he ejaculated. She threw them away as soon as he left her mail window. No one would do anything about this, so it continued her whole active service at Fort Shafter, HI.

h. She came from a very small town and had brothers who always protected her from such ugly acts. She did not feel her discharge was correct in any way. A personality disorder is a medical reason to be discharged, but she was told that that was the only way they could do the discharge. She never wanted this. She wanted to

make a career with the Army, but at a young age, she really didn't know what to do, so she left it as it was.

3. The applicant enlisted in the Regular Army on 3 February 1983 and was awarded Military Occupational Specialty (MOS) 71L (Administrative Specialist).

4. A statement from Sergeant (SGT) F____ B____, the 4th Platoon Barracks Sergeant in Building 520, Fort Shafter, HI, 12 February 1984, shows:

a. She was asked her opinion about the applicant's current behavior in her capacity as the Barracks Sergeant, and stated in her opinion there was a very noticeable difference in the applicant's behavior in the last 6 months. The applicant had been extremely nervous and went into heavy depressions at times, wanting to be left alone.

b. She was seen at Tripler Army Medical Center (TAMC) several times and still did not seem to get any better. Her work performance was outstanding up to this point, but if these conditions continues, her all around personal and job performance could suffer. It was her opinion that the applicant needed to be informed as to what was causing her nervousness and to correct it or to release her from the Army, as she was unable to adapt to military life.

5. A DA Form 4856-R (General Counseling Form) shows the applicant was counseled by her immediate commander on 13 February 1984, regarding her desire to get out of the Army. The applicant informed her commander that the doctor at TAMC told her that her chronic illness was due to her nerves and she should see a psychiatrist. Her commander sent her to see the Chaplain and also referred her to Mental Hygiene.

6. A DA Form 3822-R (Report of Mental Status Evaluation) shows:

a. The applicant underwent a mental status evaluation on 13 February 1984, for the purpose of requesting her discharge for the good of the service.

b. Her behavior was evaluated as passive and her mood or affect as anxious. It was the medical professional's opinion she had the mental capacity to understand and participate in the proceedings, met the retention requirements of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness), and should be considered for possible expeditious discharge under chapter 5, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

c. The remarks show the applicant had not been able to adapt emotionally to the demands of active duty. She met the retention standards prescribed in chapter 3, Army Regulation 40-501, and there was no psychiatric disease or defect which warranted disposition through medical channels. Her past history and present adjustment to the

demands of military service were indicative of a constricted emotional development which was not commensurate with her chronological age and physical growth.

d. In considering future rehabilitative efforts, it was believed that her command could reasonably expect that her future performance would resemble her past performance. The applicant was cleared for any administrative action considered appropriate by her command. She would be offered counseling services for her personal benefit, but such counseling should not inhibit her command in its exercise of command responsibility.

7. A memorandum from the Chaplain, 13 February 1984, shows he counseled the applicant on 9 February 1984, and in his professional opinion, she could no longer fulfill her military obligation. It seemed to be a constant disorder for her to be in this type of environment. If she had to remain, he felt she would not be a quality Soldier for the future. After his interview with her, he believed she would be a liability instead of an asset. In the best interest of the Army and the applicant, he recommended approval of the release from active duty.

8. On 5 March 1984, the applicant's immediate commander notified her of his intent to take action to separate her from the Army under the provisions of Army Regulation 635-200, paragraph 5-13, due to personality disorder, with an honorable or under honorable conditions discharge. The proposed action was based on the recent counseling session he had with her, which led to her mental evaluation conducted at TAMC, Mental Hygiene, the comments from the Chaplain, and the comments from her Barracks Platoon Sergeant. Her inability to cope with military service left no other recourse than to recommend her separation. The applicant was advised of her right to consult with counsel and submit statements in her own behalf.

9. On 6 March 1984, the applicant acknowledged having been advised by consulting counsel of the basis for the contemplated action to separate her for personality disorder under the provisions of paragraph 5-13, Army Regulation 635-200, its effects, and the rights available to her. The applicant indicated she waived representation by counsel and did not submit statements in her own behalf. She acknowledged understanding she may expect to encounter substantial prejudice in civilian life if she were issued a general discharge under honorable conditions.

10. A second DA Form 3822-R shows:

a. The applicant underwent a second mental status evaluation on 28 March 1984, for the purpose of requesting her discharge for the good of the service.

b. Her behavior was evaluated as passive and her mood or affect as anxious. It was the medical professional's opinion she had the mental capacity to understand and

participate in the proceedings, and she met the retention requirements of chapter 3, Army Regulation 40-501.

c. The remarks show see the DA Form 3822 sent to the command on 13 and 14 February 1984. Paragraphs 1 and 3 reflect the medical professional's further opinion that the applicant has a diagnosis of immature personality. This diagnosis represents a personality disorder within the meaning of Army Regulation 40-501 and Army Regulation 635-200, paragraph 5-13.

11. On 30 March 1984, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-13 due to a personality disorder.

12. The applicant's DD Form 214 shows she was honorably discharged on 10 April 1984, under the provisions of Army Regulation 635-200, paragraph 5-13 due to a personality disorder. She was credited with 1 year, 2 months, and 8 days of net active service this period.

13. The applicant's father provided a statement, which shows:

a. His daughter was always extremely athletic and outgoing in her school years. She was confident and knew what she wanted, which was to serve in the U.S. Army for her career. However, all she did when she came home from the Army was drink alcohol every day and never spoke of the Army and was at the lowest point he had ever seen her at upon her return.

b. He and her mother knew that something went wrong while she was enlisted. She had never before acted so disrespectful, isolating herself to the point she wouldn't get out of bed any longer. She was very depressed, so he and her mother (who is now passed away) took her to Carson City Psychiatric Hospital to get her help, where she was admitted and given anti-depressants.

c. She would not tell her parents why she came home early from the Army, when they knew that's what she really desired to do as a career. She has never been the same since her service. She isolates herself from all strangers and all men other than their family members. She had always been a focused, motivated, beautiful young lady, but he no longer sees that in her after all these years. Since her discharge from the Army, she is always angry, cries a lot, and just hasn't been herself again.

d. He knows she tried to reach out for help with her discharge, but was never able to do so. She seemed scared of something or someone. She's not ever held down a job for long since then, and has had a difficult time with all jobs and functioning in this world,

and around large groups, especially if men are part of anything with which she is to be involved.

e. He doesn't believe she knew what to do then or now. She needs the Board's help in resolving her discharge and why she was discharged. He doesn't really know his daughter like he did before her Army service. She finally told him how she was sexually harassed and wanted to try again to get help. Please help her so he can have his daughter back happy and healthy.

14. A letter from the applicant's doctor, 23 December 2021, shows:

a. The applicant is a patient of hers. She started taking Doxepin for depression nightly on 26 November 2012 until 31 December 2018, when the dose was decreased nightly until 24 January 2019 when the dose was increased again multiple times in multiple increments through 9 January 2020.

b. After being released from active duty, the applicant struggled with depression and was committed to Carson City Mental Health for treatment in 1986. She continues to take medication to aid in her depression since being hospitalized for her treatment.

c. They found that over time, the antidepressants were not as effective for treating her anxiety and she was prescribed Clonopin in 1987, the dosage of which was increased multiple times since then.

15. A VA Rating Decision, 6 September 2022, shows the applicant was granted service-connection for PTSD with a 100 percent rating effective 12 November 2021.

16. A VA letter, 24 September 2022, shows the applicant's combined service-connected evaluation is 100 percent and that effective 12 November 2021, she is considered to be totally and permanently disabled solely due to her service-connected disability.

17. 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.

18. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

19. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting a discharge due to physical disability in lieu of honorable administrative discharge due to Personality Disorder. On her DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) and Military Sexual Trauma (MST) are related to her request. 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 03 February 1983, 2) a statement dated 12 February 1984 from the 4th Platoon Barracks Sergeant described noticing a difference in the applicant's behavior including extreme nervousness, depression, and desire to be left alone. The Sergeant stated that the applicant had been seen at Tripler Army Medical Center (TAMC) without improvement. The Sergeant noted that that up until that point her work performance had been "outstanding." 3) The applicant was counseled by her commander on 13 February 1984 regarding her desire to get out of the Army. Her commander sent her to the Chaplain and also referred her to Mental Hygiene, 4) On 13 February 1984 the applicant underwent a Mental Status Evaluation (MSE) for the purpose of requesting her discharge for the good of the service. The provider documented that she met retention requirements of AR 40-501, Chapter 3 and that she should be considered for possible expeditious discharge under chapter 5, Army Regulation 635-200. She was cleared for any administrative action deemed appropriate by her command, 5) A memorandum from the Chaplain dated 13 February 1984 shows he recommended approval of release from active duty, 6) On 5 March 1984, the applicant's immediate commander notified her of his intent to take action to separate her from the Army under the provisions of AR 635-200, paragraph 5-13, due to personality disorder. The proposed action was based on the recent counseling session he had with her, which led to her mental evaluation conducted at TAMC, Mental Hygiene, the comments from the Chaplain, and the comments from her Barracks Platoon Sergeant. Her inability to cope with military service left no other recourse than to recommend her separation, 7) The applicant underwent a second MSE on 28 March 1984 for the purpose of requesting discharge for the good of the service. The provider documented the applicant met retention standards IAW AR 40-501 and was diagnosed with Immature Personality, 8) the applicant was honorably discharged on 10 April 1984 under the provisions of AR 635-200, paragraph 5-13 due to a Personality Disorder.

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) and Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. The applicant provided civilian health records from Spectrum Health. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records included as part of her application were reviewed. The applicant's in-service records were outlined in-detail in the ROP. A brief summary is provided below.

- A General Counseling Form dated 13 February 1984 shows the applicant requested to see her commander on that date pertaining to her desire to get out of the Army. It was documented that she told her commander that the provider at TAMC indicated her "chronic illness was due to her nerves and she should see a psychiatrist." The commander noted she insisted that she wanted to get out of the Army. The commander referred her to the Chaplain and Mental Hygiene. In the rehabilitation results/comments section, the commander documented that the Chaplain and Mental Hygiene strongly recommended the Soldier be eliminated from the service.
- The applicant's initial MSE dated 13 February 1984 conducted for the purposes of discharge for the good of the service shows her behavior was noted as 'passive' and mood or affect noted as 'anxious.' All other domains of the MSE were within normal limits (WNL). The provider noted the applicant had the mental capacity to understand and participate in the proceedings, met retention standards IAW AR 40-501, Chapter 3, and did not have a psychiatric disease or defect that warranted disposition through medical channels. The evaluating provider further noted that the applicant's "past history and present adjustment to the demands of military service are indicative of a constricted emotional development which is not commensurate with her chronological age and physical growth." She was cleared for any administrative action deemed appropriate by command.
- A subsequent MSE was conducted on 28 March 1984 for the purposes for discharge for the good of the service. The domains of the MSE again show her behavior marked as 'passive' and her mood or affect as 'anxious.' All other domains of the MSE were WNL. The provider documented her diagnosis as Immature Personality [*Advisor's Note*: This is diagnosis is outdated and is no longer used]. It was also noted that she met retention requirements IAW AR 40-501, Chapter 3 and that her diagnosis falls within the scope of AR 635-200, paragraph 5-13 (a) (c).
- A letter from the Chaplain dated 13 February 1984 documented that it was their opinion that she could no longer fulfill her military obligation and that "it seems to be a constant disorder for her to be in this type of environment." The Chaplain recommended approval for her release from active duty.

4. A memorandum from the Criminal Investigation Division (CID) dated 19 November 2024 shows a search of the Army criminal file indexes found revealed no sexual assault or domestic violence investigations pertaining to the applicant.

5. The applicant provided a self-authored statement as part of her application. She reported that after she came home she was a “mess” and “couldn’t get out of bed most days.” She stated she spent three weeks in an inpatient psychiatric ward [date not documented] and was told that she had PTSD due to issues she experienced while in-service. She further indicated she was prescribed anti-depressant medication, which she continues to be prescribed in addition to anti-anxiety and sleep medications. Regarding her symptoms, the applicant reported she only goes out with family she trusts, she feels nauseous and anxious around men she does not know, and that she has migraines due to not being able to overcome the sexual harassment. The applicant further noted digestive issues, stomach pains, and lower back pain despite lack of physical injury. She indicated her discharge from the military was not her choice but “the only way to get away from the abuse.” Regarding MST, the applicant reported she was sexually harassed by Lieutenants while working in the mail room. The applicant also provided an undated letter from her dad pertaining to her mental state following her return from the military. In effect, he indicated he noticed a change in her, indicating she was confident prior to service and upon her return drank alcohol every day, did not speak of the Army, isolated herself, was disrespectful, and depressed.

6. A treatment summary from Spectrum Health The Medical Group dated 23 December 2021, authored by an MD (specialty unknown), shows the applicant as a current patient as of the time of the writing. It was documented she had been prescribed Doxepin for her depression since 09 January 2020. It was also documented that she was prescribed Klonopin in 1987 for treatment of anxiety and her dose was increased on 31 May 2012. The provider further noted that after the applicant was discharged from the military she has struggled with depression and was psychiatrically hospitalized in 1986.

7. The applicant provided a VA Rating Decision Letter dated 06 September 2022 as part of her application which shows she was granted 100% service-connection for PTSD. The applicant underwent a VA Compensation and Pension (C&P) examination on 04 April 2022 which shows she was diagnosed with PTSD at the time of the evaluation. The stressor associated with her diagnosis was documented as sexual harassment while working in the mail room from 1983 to 1984 while in-service. The evaluating provider noted the applicant was not diagnosed with a Personality Disorder before or after service. At the time of the evaluation it was documented that she was prescribed Clonazepam (anxiolytic), Trazadone (sleep), and Doxepin to help manage her symptoms. The applicant initiated treatment through the VA on 08 November 2022 with the diagnostic impression noted as PTSD (MST). Review of her problem list in JLV shows she has been diagnosed with the following BH conditions by her VA treating providers: PTSD, Chronic, Other Recurrent Depressive Disorders, Insomnia, Unspecified, Generalized Anxiety Disorder (GAD), Depression, Unspecified, and Anxiety Disorder, Unspecified. Review of her VA records shows she has not been diagnosed with a Personality Disorder and has received ongoing BH treatment through the VA for PTSD since initiating care in 2022.

8. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant met criteria for a behavioral health condition in-service that required a referral to the Disability Evaluation System (DES). In-service documentation shows the applicant was diagnosed with Immature Personality, which falls under the purview of administrative separation under the provisions of AR 635-200. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA with PTSD due to MST. Review of the available in-service military and medical records do not indicate that she met criteria for a BH condition that failed medical retention standards IAW AR 40-501 as there is no evidence that she had persistent or recurrent symptoms that required extended or recurrent hospitalization nor required duty limitations (e.g., a BH profile) while in the military. As such, a referral to DES is not warranted.

9. Although a referral to DES is not warranted, changing the narrative reason for separation is of consideration. It is of note that there is much symptom overlap between the applicant's in-service diagnosis of Immature Personality, post-discharge diagnosis of PTSD, and behavioral changes often observed following MST. Given the overlap in symptom presentation and frequent co-occurrence between these conditions, differentiating between these conditions and experiences can be complex. Personality disorders are characterized by a persistent and pervasive nature whereas trauma-related responses and conditions are often characterized by a change in behavior in response to a stressor. Such is the case with this applicant wherein the barracks Sergeant documented a change in the applicant's behavior over the course of 6 months noting symptoms of depression, isolation, and nervousness. Moreover, despite the pervasive nature of personality disorders, there is no evidence the applicant has been diagnosed with such a condition post-discharge and instead records show she is receiving ongoing BH treatment for PTSD. Thus, given further examination of the onset and course of her symptoms, changes in behavior based on her service record, as well as her post-discharge diagnoses, these factors together are suggestive that her observed in-service changes in mood and behavior may have been secondary to MST and not due to personality disorder. Based upon the potential prejudice one may face with the current narrative reason for separation (personality disorder), changing the narrative reason for separation to read, "Condition, Not a Disability" or "Secretarial Authority" is consistent with current regulations.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendation outlined in the medical review, the Board concluded there was insufficient evidence to change the applicant’s narrative reason for separation to medical discharge/separation. However, based upon the potential prejudice one may face with the current narrative reason for separation, the Board concluded there was sufficient evidence to change the narrative reason for separation to read Condition, Not a Disability.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: No change
- Separation Authority: AR 635-200
- Separation Code: JFV
- Reentry Code: No change
- Narrative Reason for Separation: Condition, Not a Disability

//SIGNED//
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 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 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.

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the administrative separation of enlisted personnel. Paragraph 5-13 states a service member may be separated for personality

disorder not amounting to disability that interferes with assignment to or performance of duty when so diagnosed by a psychiatrist. A personality disorder is a deeply-ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty. Separation because of personality disorder is authorized only if the disorder is so severe that the soldier's ability to function effectively in the military environment is significantly impaired. Separation processing may not be initiated until the soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Soldier being separated under this section will be awarded a character of service of honorable unless an entry-level separation is required.

7. 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.

8. 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.

9. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//