

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240005864

APPLICANT REQUESTS: reconsideration of his previous requests for upgrade of his under other than honorable conditions discharge to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Page 3 of Department of Veterans Affairs (VA) Rating Decision, undated
- Standard Form (SF) 513 (Consultation Sheet), 31 May 1977
- Summarization of Sworn Testimony, J_W_T, undated
- Summarization of Sworn Testimony, R_L_G_, undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number:

- AR20090004043 on 21 July 2009
- AR20200008155 on 4 June 2021

2. The applicant states, in effect:

a. He was discharged from the U.S. Army under other than honorable conditions. He is not denying his misconduct or wrongdoings that led to his discharge; he is disputing the errors the Army committed in recommending that he be discharged. He is responsible for his actions, as well as the Army is responsible for how his training and the situation was handled.

b. During his enlistment, he was present and involved with multiple demolition training exercises. This includes but is not limited to C-4 plastic explosives, claymore mines, antipersonnel mines, various landmines, and grenades. Due to the nature of the

exercises, he was always in close proximity to the blast area and without any ear or eye protection. The impact from the blast caused intense headaches, ringing in his ears, blurred vision, nausea, nightmares, anxiety, and unconsciousness on several occasions. To date, he is hypervigilant and triggered by loud noises and bright lights. The VA states that he suffers from post-traumatic headaches with predominant migraine symptoms caused by an event in service. The VA has established a nexus between his claimed issue and an event, which happened during his service. The migraines that he experienced affected his behavior and performance of his job duties.

c. The targeted persecutions of his superiors, after they discovered the brief affair that he had with a married woman, exacerbated his condition. Based upon the memorandum from the Office of the Under Secretary of Defense, he believes the evidence of his diminished mental capacity demonstrates the need for the review Board to give liberal consideration to his petition for discharge relief. He notes that the infractions he had were minor in severity and were normally punished with some form of extra duty, not worthy of an under other than honorable conditions discharge. His command continued to promote him to private first class (PFC)/E-3 after the supposed leaving of his post on 8 September 1977.

d. After his discharge from the Army, he still desired to serve his country so he enlisted in the Navy. His superiors in the Navy, who only evaluated him on his performance, stated he could be a value to the Navy, squared away, worth working with, hardworking with a desire to improve himself, and a good leader. He understands his enlistment in the Navy was fraudulent, but it does demonstrate that the Army was in error when it chose to discharge him under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14. AR 635-200 states action will be taken to separate a member for misconduct when it is clearly established rehabilitation is impracticable or is unlikely to succeed. How is it that another branch of service found his performance of military duties noteworthy enough to write a letter of support for him to stay in the Navy? The Army was in error and was too quick to discharge him from the service.

3. The applicant provides:

a. Page 3 of his VA rating decision, which shows:

(1) The VA examiner at his 5 June 2021 examination opined that his condition was at least as likely as not (50 percent or greater probability) incurred in or caused by the claimed in service injury, event, or illness. Since a nexus has been established entitlement to health care benefits under Chapter 17, Title 38 USC and 38 CFR 3.360(a) was established. The evidence does not support a change in the VA's prior decision. Therefore, the VA confirmed the previous denial of this claim.

(2) Favorable Findings identified in the decision: He was diagnosed with a disability, VA examination, received on 7 June 2021 notes a diagnosis of post traumatic headaches with predominantly migraine symptoms. The claimed disability is a chronic disease which may be presumptively linked to his military service. Headaches are a chronic disease subject to service connection.

b. A Consultation Sheet, which shows the applicant visited the Troop Medical Center on 31 May 1977.

c. An undated summarization of sworn testimony given by J_W_T_, U.S. Navy, Transient Department, which states, in effect, he had known Airman Recruit H_ [Applicant] approximately three- and one-half months. J_W_T_ was the applicant's supervisor. He stated there were no problems with his performance the first two months, and the applicant was receiving recommendations from people all over the base for him to work in their offices. From what the supervisor observed, not counting the last four weeks of the applicant's down period, he would say Airman Recruit H_ [applicant] could stay in the Navy and make something out of himself. Altogether, he would say that he could be squared away if he stayed in the Navy and noted the applicant was worth working with.

d. An undated summarization of sworn testimony given by R_L_G_, U.S. Navy, Recruit Training Command, which states, in effect, he was Airman Recruit H_ [applicant] company commander for roughly four weeks. He stated that based on his experience with the applicant in boot camp, he thought he would be a good sailor. The applicant was the company master-at-arms which was a position of leadership and responsibility within the company. R_L_G_ noted that he did know about the applicant's fraudulent enlistment. The applicant told him just before graduation, or right after. Knowing what he knew about the applicant's situation, he believed he should be retained in the Navy. The applicant showed a lot of potential and leadership as master-at-arms and he was a good master-at-arms. He got his people working for him and he kept them working for him.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 8 March 1977. The highest grade he held was private first-class PFC/E-3.

b. On 3 January 1978, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for leaving his assigned guard post before being properly relieved, on or about 4 December 1977. His punishment included forfeiture of \$50.00 per month for a period of one month and 7 days extra duty.

c. On 8 May 1978, he accepted NJP under the provisions of Article 15, UCMJ for without authority, absenting himself from his place of duty; to wit: guard duty, from on or about 16 April 1978 to on or about 17 April 1978. His punishment included forfeiture of \$75.00 for a period of one month (\$50.00 per month for a period of one month suspended for a period of 45 days) and 14 days extra duty (7 days suspended for a period of 45 days).

d. On 18 May 1978, the suspension of the punishment of forfeiture of \$50.00 per month for one month suspended for 45 days, and the extra duty for 7 days suspended for 45 days were vacated. The unexecuted portions of the punishment were duly executed.

e. On 20 December 1978, he accepted NJP under the provision of Article 15, UCMJ for willfully disobeying a lawful order from his superior noncommissioned officer (NCO), on or about 11 November 1978. His punishment included forfeiture of \$100.00 per month (suspended 60 days) and 7 days extra duty.

f. On 7 June 1979, he accepted NJP under the provisions of Article 15, UCMJ for on or about 23 May 1979, failing to go at the time prescribed to his appointed place of duty, to wit: morning formation and 1300 formation. His punishment included reduction to the grade of private (PV2)/E-2 (suspended 60 days), forfeiture of \$100.00 per month for one month, and 14 days extra duty.

g. On 2 July 1979, the suspension of the punishment of reduction to the grade of PV2/E-2 (suspended for 60 days) imposed against the applicant on 7 June 1979 was vacated. The unexecuted portion of the punishment were duly executed.

h. On 19 July 1979, he accepted NJP, under the provisions of Article 15, UCMJ for on or about 5 July 1979, failing to go at the time prescribed to his appointed place of duty and for on or about 10 July 1979, willfully disobeying a lawful order from his superior NCO to take his hand out of his pocket. His punishment included reduction to the grade of private (PV1)/E-1 and correctional custody for 30 days.

i. DA Form 4126-R (Bar to Reenlistment Certificate), dated 10 July 1979, shows the applicant's immediate commander recommended that he be barred from reenlistment. His commander noted that the applicant had been a continual disciplinary problem with repeated Article 15's for misconduct. He failed to perform his assigned duties and had a totally negative attitude towards the Army and its mission. He refused rehabilitative efforts and degraded the combat effectiveness of the unit.

j. On 20 Jul 1979, the applicant acknowledged he was furnished a copy of his commander's recommendation to bar him from further enlistment, and he had been

counseled and advised of the basis for the action. The applicant did not desire to submit a statement in his own behalf.

k. DA Form 2496 (Disposition Form) shows the bar to reenlistment was approved on 25 July 1979.

l. A DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows a flag was initiated on 26 July 1979. The applicant was pending elimination under the provisions of AR 635-200, chapter 14, for misconduct.

m. The applicant underwent a medical examination for the purpose of separation. The evaluating official noted the applicant was qualified for separation.

n. A final DA Form 268, dated 29 August 1979, shows the applicant had an approved separation under chapter 14, AR 635-200. The Report of Suspension of Favorable Personnel Actions was effective 1 September 1979.

o. A Statement of Medical Condition, dated 31 August 1979, shows the applicant underwent a separation medical examination more than three working days prior to his departure from place of separation. The applicant noted to the best of his knowledge, there had been no change in his medical condition since his last separation examination.

p. All the documents pertaining to the facts and circumstances surrounding the processing of the applicant's discharge are not included in the available service records. However, his DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 31 August 1979 under the provisions of AR 635-200, paragraph 14-33B, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He received a separation program designator code of JKA. He completed 2 years, 5 months, and 23 days of net active service this period. Additionally, his DD Form 214 shows in:

- Item 10 (Reenlistment Code): RE-4
- Item 26 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Expert Marksmanship Qualification Badge (grenade) and the Marksman Marksmanship Qualification Badge (M-16)

q. On 31 August 1979, the applicant was notified of the reason and narrative description of the regulatory/statutory authority for his separation from active duty. The letter states he was separated for misconduct, frequent incidents of a discreditable nature with civil or military authorities. His RE code was RE-4, not eligible for enlistment, due to nonwaivable disqualifications.

r. On 21 March 1983, the applicant was issued a DD Form 215 (Correction to DD Form 214), with the following corrections:

- Item 10 (Reenlistment Code): RE-3, RE-3B, RE-3C
- Item 27 (Remarks): added Chapter 4, AR 600-200 (Personnel General – Enlisted Personnel Management System) and Table 4-1, AR 601-210 (Regular Army and Army Reserve Enlistment Program) apply, AR 600-37 (Unfavorable Information) complied with.

5. The ABCMR considered the applicant's request in ABCMR Docket Number AR20090004043 on 21 July 2009. The Board denied the applicant's request and determined the evidence presented did not demonstrate the existence of a probable error or injustice. In view of the circumstances in the case, the Board determined that the applicant was not entitled to an upgrade of his discharge.

6. The ABCMR considered the applicant's request in ABCMR Docket Number AR20200008155 on 4 June 2021. The Board denied the applicant's request. After reviewing the application and all supporting documents, to include the Department of Defense guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. Based upon the available documentation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service and/or a change to his reenlistment status. The evidence presented did not demonstrate the existence of a probable error or injustice.

7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests reconsideration of his prior request for discharge upgrade to General, Under Honorable Conditions. He indicated that PTSD and TBI conditions were related to his request. He previously endorsed that his discharge was "too harsh, unjust, unfair and possible unlawful due to the circumstances at the time, as well as the unintended personality conflicts".

2. The ABCMR ROP summarized the applicant's available record and circumstances surrounding the case and reason for discharge. The applicant enlisted in the Regular Army on 08Mar1977. His MOS was 12B, Combat Engineer. He served in Germany

from 28Jun1977 to 03Mar1980. He did not have combat deployment. The applicant was separated on 31Aug1979 under AR 635-200 para 14-33B for misconduct due to frequent incidents of a discreditable nature with civil or military authorities. The offences included the following: Left guard post (04Dec1977); failure to report to appointed place of duty (23May1979, 16Apr1978 and 05Jul1979); disobeyed order from NCO (11Nov1978 and 10Jul1979). His service was characterized as Under Other Than Honorable Conditions. He successfully petitioned to have his military reentry code changed from 'RE-4' to 'RE-3, RE-3B and RE-3C', documented on DD 215 dated 21Mar1983.

3. Summary of service treatment records and related

a. The applicant stated that during an MOS training exercise involving demolitions, there was an accidental premature explosion. Afterward, he experienced ringing in his ears, headaches and loss of hearing which reportedly has worsened over time. He stated that he never sought treatment for symptoms. Indeed, a clinical visit related to this event was not found in the records submitted. However, the applicant did submit a record dated 07Sep1977 which described that a 30-foot board dropped 10 feet hitting him on the top of his head. There was no visible trauma to the head, but there was tenderness to palpation of the cervical spine above C-3. He was dizzy for 5 minutes and was still feeling shaky at the time of the visit. He also complained of neck pain and weakness in both hands. He was sent to the emergency room for further evaluation. Loss of consciousness, altered consciousness or amnesia surrounding the event was not mentioned. Two months later, on 16Nov1977 he was seen for a complaint of headaches and problems sleeping for 2 weeks. Two years later, during the separation physical exam (27Jul1979 Report of Medical History, SF Form 93), the applicant denied head injury, frequent or severe headaches, dizziness or fainting spells, loss of memory or amnesia, or periods of unconsciousness. More than 40 years after discharge from service, a records review was completed during the 03Dec2020 Headache DBQ evaluation. A current ongoing headache condition was not affirmed. It should be stated that the applicant was not examined or interviewed at the time as he was incarcerated.

b. In addition to the record describing the head injury, the undersigned noted specific injuries during the 12 months prior to discharge: In October 1978, he hit the left knee on spare tire rack of a truck and was placed on crutches and no PT for 24 hours. He fell down some stairs and sprained the left ankle in June 1979 and was on a no running profile for 5 days. And he was hospitalized 04Jun1979 for Low Back Sprain and was also found to have Spinal Bifida Occulta during the admission. Upon discharge from the hospital, he was placed on a no-heavy-lifting profile for 3 weeks. He had several follow up visits in June/July 1979.

c. Notwithstanding the varied and sometimes significant injuries sustained while in

service, the 27Jul1979 separation physical exam (SF Form 88) and history (SF Form 93) indicated the applicant did not have any disqualifying medical conditions. Of note, physical examination of the head and spine were normal. There was insufficient evidence to support that the applicant had conditions which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service.

4. The complete discharge paperwork concerning the specific facts and circumstances surrounding the applicant's discharge were not available for this review. A not all-inclusive list of known misconduct was listed above para 2. Regarding the applicant's request for discharge upgrade, Liberal Consideration guidance was examined. Review of the available record including JLV search revealed one visit for marital stress on 03Jul1979; however, the record did not show a mental health diagnosis or follow up. In his ABCMR application, the applicant described marital relationship problems. More relevant to his argument for discharge upgrade, he described a problematic on-base-relationship with a female German national which the applicant endorses triggered jealousy motivated retaliation from some of his superiors in the form of increased scrutiny/punishment for minor offences. The history obtained during the medical evaluation for separation was silent for mental health related symptoms including complaints of frequent trouble sleeping, depression or excessive worry, or nervous trouble. The record did show the applicant sustained a notable head and cervical spine injury; and in the ARBA Medical Reviewer's opinion, he more likely than not sustained a mild TBI. However, there was no documentation of persistent TBI residuals. JLV search revealed that the applicant was not service connected by the VA. Given the extent of his in-service treatment records, this was likely due to the characterization of his service.

5. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. In the ARBA Medical Reviewer's opinion, the applicant more likely than not experienced a mild TBI which is a potentially mitigating condition. In addition, the applicant self-asserts PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. In the ARBA Medical Reviewer's opinion, the applicant more likely than not experienced a mild TBI when the 30 ft board fell 10 ft onto his head causing headache, dizziness, neck pain with bilateral upper extremity symptoms suggesting radiculopathy and necessitating an emergency room visit. The applicant self-asserts PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no medical evidence while he was in service to suggest that the applicant was experiencing any cognitive impairment, or that he was not mentally responsible for his actions, or that his ability to understand right from wrong and to adhere to the right

was impaired due to the TBI. Nor does his post military service of steady employment— first completing 15 years working for 2 different small asphalt paving companies and later working as a care giver, suggest such impairment. The applicant has claimed PTSD is related to the reason for his discharge; however, the record did not contain a PTSD diagnosis nor was evidence presented suggesting there were symptoms meeting the criteria for PTSD diagnosis. That notwithstanding, the applicant's self-assertion of PTSD and TBI alone is sufficient under Liberal Consideration to merit consideration of discharge upgrade by the Board.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion finding there was insufficient evidence to support that the applicant had conditions which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. In the ARBA Medical Reviewer's opinion, the applicant more likely than not experienced a mild TBI which is a potentially mitigating condition. In addition, the applicant self-asserts PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. In the ARBA Medical Reviewer's opinion, the applicant more likely than not experienced a mild TBI when the 30 ft board fell 10 ft onto his head causing headache, dizziness, neck pain with bilateral upper extremity symptoms suggesting radiculopathy and necessitating an emergency room visit. The applicant self-asserts PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no medical evidence while he was in service to suggest that the applicant was experiencing any cognitive impairment, or that he was not mentally responsible for his actions, or that his ability to understand right from wrong and to adhere to the right was impaired due to the TBI. Nor does his post military service of steady employment— first completing 15 years working for 2 different small asphalt paving

companies and later working as a care giver, suggest such impairment. The applicant has claimed PTSD is related to the reason for his discharge; however, the record did not contain a PTSD diagnosis nor was evidence presented suggesting there were symptoms meeting the criteria for PTSD diagnosis. That notwithstanding, the applicant’s self-assertion of PTSD and TBI alone is sufficient under Liberal Consideration to merit consideration of discharge upgrade by the Board.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board acknowledged the applicant’s medical documentation and his subsequent enlistment in the Navy, it also noted his Army service record reflects a pattern of misconduct, including multiple nonjudicial punishments, failure to respond to rehabilitative efforts, and a bar to reenlistment. The Board noted, the applicant has previously petitioned for discharge upgrade, and in both prior reviews, the Board found no evidence of error or injustice sufficient to warrant relief. In this reconsideration, the applicant has not provided new, compelling evidence of post-service achievements, character references, or documentation that would support a clemency determination. Furthermore, the Board found the applicant has not demonstrated by a preponderance of the evidence that an error or injustice occurred in the discharge process. Based on this, the Board denied relief.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20090004043 on 21 July 2009 and AR20200008155 on 4 June 2021.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Paragraph 14-33b of the regulation established the policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of serious offense, conviction by civil authorities, desertion, or absent without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a, provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b, provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

2. Army Regulation 600-200 (Personnel General – Enlisted Personnel Management System), Chapter 4, governs the procedures for denying reenlistment under the Qualitative Management Program to enlisted personnel performing unsatisfactorily. Army Regulation 601-210 governs the eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army and the U.S. Army Reserve. Army Regulation 600-37 governs the policies and procedures regarding unfavorable information considered for inclusion in official personnel files.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

5. Section 1556 of Title 10, United States Code, 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.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//