

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 March 2025

DOCKET NUMBER: AR20240006654

APPLICANT REQUESTS: in effect –

- a. he appear before a Medical Evaluation Board (MEB),
- b. he be found unfit for duty,
- c. restoration of his rank/grade to staff sergeant (SSG)/E-6,
- d. receipt of all back pay and compensation allowed,
- e. correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the:
 - Army Achievement Medal (AAM), 4th Award
 - Army Commendation Medal (ARCOM), 2nd Award
 - Three Certificates of Achievement
 - Special Forces Tab
 - Operation Inherent Resolve Medal, in effect, the Global War on Terrorism Expeditionary Medal (GWOTEM)
 - Purple Heart (PH)
 - Special Forces Qualification Course
 - Raven Operator Course
 - Family of Special Operations Vehicles Mobility Course
- f. a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Associated Documents Pertaining to the Upgrade of the Characterization of his Service to Honorable
- Email, Colonel JRD, 8 August 2018
- Inpatient Records beginning 17 August 2018 – 27 June 2019

- Army Discharge Review Board (ADRB) Case Report and Directive AR20200006255
- DD Forms 214, 3 July 2019
- DA Form 2823 (Sworn Statement), Sergeant First Class (SFC) MLNII, 15 October 2019
- DA Form 2823, SSG JAA, 18 October 2019
- Letter, Department of Veterans Affairs (VA), 31 October 2020
- Form W-2 (Wage and Tax Statement) 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 Board will not consider the following portions of the applicant's request, as these items will be addressed through an administrative correction:
 - ARCOM (2nd Award)
 - GWOTEM
 - Special Forces Tab
 - Special Forces Communications Sergeant Qualification Course
3. The applicant states he was erroneously separated from the U.S. Army. He should have received an MEB and been found unfit for duty. He claims his discharge was procedurally and substantively defective.
4. The applicant enlisted in the Regular Army on 21 August 2008. He served in military occupational specialties 11B (Infantryman) and 18E (Special Forces Communication Sergeant). He was promoted to the rank/grade of SSG/E-6 on 1 February 2014.
5. On 7 June 2019, while serving in the rank/grade of SSG/E-6, the applicant was charged with the following:
 - a. Charge 1: Two Specifications of violating Article 86, Uniform Code of Military Justice (UCMJ):
 - (1) Specification 1: On divers occasions, between 25 January 2019 and 11 February 2019, the failed to go to his appointed place of duty at the prescribed time, to wit: medical appointments.

(2) Specifications 2: On 17 May 2019, he failed to go to his appointed place of duty at the prescribed time, to wit: medical appointments.

b. Charge II: Violation of Article 89, UCMJ. On 18 May 2019, the applicant behaved himself with disrespect towards CPT A.P. M., his superior commissioned officer, by saying to CPT A.P.M., "You're not even worthy of speaking to me," or words to that effect.

c. Charge III: Three Specifications of violating Article 90, UCMJ: Two specifications of disobeying CPT A.P.M. to not consume alcohol on 18 May 2019, and to not leave the Fort Campbell area, on 18 May 2019. One specification of disobeying MAJ B.M.E., his superior commissioned officer, to not consume alcohol, on 6 June 2019.

d. Charge IV: Violation of Article 91, UCMJ. On 18 May 2019, the applicant was disrespectful in language towards SFC S.W.S, a superior NCO, by writing, "Eat dick," or words to that effect on DA Form 4856 Developmental Counseling Form.

e. Charge V: Violation of Article 115, UCMJ. On 18 May 2019, the applicant wrongfully communicated to SFC S.W.S, a threat to injure SFC S.W.S.'s reputation.

f. Charge VI: Violation of Article 134, UCMJ. On 16 June 2019, the applicant was drunk and disorderly.

6. On 3 July 2019, he was discharged under other than honorable conditions (UOTHC) in lieu of trial by court-martial in the rank/grade of private/E1; his date of rank is 11 June 2019.

7. On 26 September 2019, he petitioned the ADRB to upgrade his UOTHC discharge to honorable and to change the narrative reason for his discharge.

8. In a records review conducted at Arlington, VA on 13 November 2020, and by a 5-0 vote, the Board determined his discharge was inequitable based on the applicant's length and quality of service, to include combat service, the circumstances surrounding the discharge (i.e. in-service diagnosis of traumatic brain injury (TBI) and post-traumatic stress disorder, and prior period of honorable service. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), the separation code to JKN, and the reentry code to RE-3.

9. The DD Form 214 he was issued shows he was awarded or authorized, in part, the ARCOM and AAM (3rd Award).

10. The applicant provides:

a. 20 pages of inpatient medical records beginning 17 August 2018 through 27 June 2019, which state, in part, the applicant on:

(1) 17 August 2018, air evacuated, applicant stated he was involved in a vehicle rollover with loss of consciousness, diagnosed with sinus and orbital bone fractures requiring surgery, TBI, and multiple facial bruises.

(2) 11 February 2019, applicant requested/stated he wanted to detox from alcohol. Diagnosed in part, with alcohol use disorder, anxiety, and depression without suicidal homicidal ideation. Staff worked to arrange for inpatient 30-day alcohol treatment program.

(3) 19 May 2019, diagnosed with alcohol intoxication and escorted for a behavioral health evaluation. Spent previous night in jail. Recommended discharge to unit until behavioral health evaluation on Tuesday.

(4) 7 June 2019, escorted in handcuffs triaged for bilateral hand injury. Swelling and discomfort in right wrist, swelling in right elbow due to bursitis. Pain in left index finger. Would not allow for full examination. X-ray negative for fracture, recommended Tylenol, and cold compress.

(5) 27 June 2019, triaged for shoulder pain, finger numb, depression. Applicant had been drinking and appeared tearful and agitated.

b. DA Form 2823, 15 October 2019, SFC MLNII, and DA Form 2823, 18 October 2019, SSG JAA, in which they state, in effect, the applicant's vehicle struck an IED which caused the vehicle to fall 2 meters into a crater created by the blast, disabling the vehicle. All personnel in the convoy located near the IED were medically evacuated to the nearest aid station.

c. Letter from the VA dated 31 October 2020, summarizing the applicant's benefits as receiving 100 percent service-connected disability.

d. Associated documents from the Defense Finance and Accounting Service pertaining to the correction of his military records.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a referral to DES to be assessed for a medical discharge as a result of other mental health conditions. 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 on 21 August 2008; 2) On 3 July 2019, he was discharged under other than honorable conditions (UOTHC) in lieu of trial by court-martial in the rank/grade of private/E1; 3) On 13 November 2020, the ADRB voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), the separation code to JKN, and the reentry code to RE-3.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy military and VA medical documentation provided by the applicant were also examined.

c. The applicant is requesting a referral to DES to be assessed for a medical discharge as a result of other mental health conditions. The applicant first engaged in behavioral health services in April 2018 as part of Command Directed evaluation due to concerns about reported suicidal ideation, unprofessional behavior, and poor job performance. The applicant denied any mental health concerns including suicidal ideation, and he declined further services and was not diagnosed with a mental health condition. Later again in April 2018, the applicant was referred to SUDCC by Command due to ongoing concerns regarding his alcohol consumption. The applicant was diagnosed with alcohol use disorder and recommended for continued outpatient SUDCC treatment. He was seen intermittently till June 2018 before his treatment was discontinued due to completion. In August 2018, the applicant was seen by behavioral health following a MEDEVAC due to roll-over accident. He reported moderate situational stress, but he was not diagnosed with a mental health condition. The applicant was seen regularly by a counselor as part of the Center for Intrepid for case-management from August 2018-November 2018, and he was not diagnosed with a mental health condition. Due to repeated missed appointments over the course of several months, the applicant was discontinued at the TBI clinic at the Center for the Intrepid in September 2018 (25 missed appointments). In November 2018 due to the applicant's increased personal stressors and problems with sleep, he was diagnosed with an Adjustment Disorder with anxiety, and later the applicant was prescribed psychiatric medication and diagnosed with an Anxiety Disorder for one session. On 11 January 2019, the applicant was seen by the Group Psychologist at triage. The applicant appeared agitated and anxious but denied substance and alcohol abuse. The applicant's history of TBI was noted, and he was recommended for continued treatment, but he was not diagnosed with a mental health condition. The applicant continued to be seen for medication management with minor adjustments made to his psychiatric medication, and he was encouraged to follow-up with the TBI clinic. The applicant was again Command directed for a Mental Status Exam on 05 February 2019. The applicant was noted by Command to demonstrate erratic and aggressive behavior. The

applicant's history of TBI was noted, but the applicant attributed his changes in mood to his relationship problems. He was recommended to continue at behavioral health and the TBI clinic, but the applicant was again inconsistent with his attendance to treatment. Again, in February 2019, the applicant was referred to SUDCC for alcohol abuse and again diagnosed with alcohol abuse disorder. He was enrolled into a residential rehabilitation program on 20 February 2019. On 05 March 2019, he was discharged from the program and determined to be a rehabilitation failure due to his inability to refrain from alcohol, adhere to the protocol, and he was disrespectful to staff. The applicant completed psychological testing and neuropsychological screening on 28 February 2019 while enrolled in the program due to the fact that the "patient continues to abuse alcohol despite insistence that he can control his drinking and was mainly self-medicating with ETOH. He met criteria for AUD, severe. Given strong belief that his anxiety was caused by recent TBI, and minimization of likely contribution of recent divorce, additional assessment will be required for diagnostic clarification." The results of the testing concluded the applicant met criteria for with Alcohol Use Disorder and Narcissistic Personality Disorder traits. The applicant was instructed to follow-up with substance abuse treatment and behavioral health treatment. The applicant refused to follow-up with SUDCC treatment and was disruptive and argumentative with staff. He continued to see the Group Psychologist intermittently till his discharge. On 26 April 2019, the applicant was provided a neuropsychological evaluation to assess his suitability to for a MEB for a psychiatric condition or TBI. The applicant's treatment history was reviewed, a full clinical interview, and cognitive and psychological testing was conducted. The applicant was diagnosed with Alcohol Abuse and Unspecified disorder of Adult Personality Disorder. He also was noted to meet medical retention standards IAW AR 40-501 Chapter 3. He was found to not present with a medboardable psychiatric condition and has not met MDRP for any psychiatric condition. However, he required a waiver to deploy due to inpatient hospital stay for alcohol/substance treatment within the last 12 months.

d. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD (100%SC) by the VA following his discharge.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was exposed to a TBI during his active service. He was continually non-compliant with treatment for his TBI, behavioral health concerns, and alcohol abuse. He was provided multiple psychological evaluations and seen by multiple behavioral health providers. The applicant was not determined to require inpatient psychiatric treatment while on active service or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was exposed to a TBI during his active service. He was continually non-compliant with treatment for his TBI, behavioral health concerns, and alcohol abuse. He was provided multiple psychological evaluations and seen by multiple behavioral health providers. The applicant was not determined to require inpatient psychiatric treatment while on active service or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time.

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

(3) Does the condition experience actually excuse or mitigate the misconduct? 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was pending a court martial for being AWOL, failure to go to his appointed place of duty, disrespect towards an officer, disobeying an officer, being disrespectful towards an NCO, communicating a threat to injure, and being drunk and disorderly, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant was discharged with an Under Other Than Honorable Discharge on 3 July 2019. However, the applicant submitted a request to the Army Discharge Review Board and his discharge was upgraded to an Honorable with a Narrative Reason correction to misconduct – minor infractions.

a. Be given a Medical Evaluation Board. Deny: The Board concurred with the medical review, which states, in part, the applicant's treatment history was reviewed, a full clinical interview, and cognitive and psychological testing was conducted. The applicant was diagnosed with Alcohol Abuse and Unspecified disorder of Adult Personality Disorder. He also was noted to meet medical retention standards IAW AR 40-501 Chapter 3. He was found to not present with a med-boardable psychiatric condition and has not met MDRP for any psychiatric condition. As a result, the medical

review opined that there is insufficient evidence the applicant was medically unfit as a result of a mental health condition while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time. Therefore, the Board denied his request

b. Be found unfit for duty. Deny: The Board concurred with the medical review, which states there is insufficient evidence the applicant was medically unfit as a result of a mental health condition while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time. In addition, the Board determined there was insufficient evidence to show he had a condition in which he was unfit for duty. Therefore, the Board denied his request

c. Restoration of his rank/grade to SSG/E-6. Deny: The Board determined that the applicant was pending charges for failure to be at his appointed place of duty AWOL, disobeying an officer, disrespect towards an NCO, communicating a threat, and drunk and disorderly. He voluntarily requested to be discharged in lieu of trial by court-martial. As a result, he was reduced in rank to E1. The Board found no error or injustice and denied his request

d. Receipt of all back pay and compensation. Deny: The Board determined there was no error or injustice when he was discharged in lieu of trial by court-martial and therefore, denied relief

e. Correction of his DD Form 214 to show the following awards:

- Army Achievement Medal, 4th Award. Deny: The Board found no evidence to show he was awarded an AAM (4th Award) and denied relief
- Three Certificates of Achievement. Deny: The Board determined there was no error or injustice. The Board noted per Army Regulation, Certificates of Achievement are not listed on a DD Form 214. Therefore, the Board denied relief
- Purple Heart. Deny: The Board found no evidence to show he was entitled to the award, nor did the applicant provide any substantial evidence to show that was authorized or entitled to the award. The Board determined there was no error or injustice and denied relief

f. Add the following courses to his DD Form 214:

- "Family of Special Operations Vehicles Mobility Course". Deny: The Board determined there was a lack of evidence to show he completed the course and therefore, denied relief
- Raven Operator Course. Deny: The Board determined there was a lack of evidence to show he completed the course and therefore, denied relief

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant was exposed to a TBI during his active service. He was continually non-compliant with treatment for his TBI, behavioral health concerns, and alcohol abuse. He was provided multiple psychological evaluations and seen by multiple behavioral health providers. The applicant was not determined to require inpatient psychiatric treatment while on active service or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time.

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

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A. The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

4. Administrative Notes: A review of the applicant service records shows he is entitled to additional awards and courses, not currently listed on his DD Form 214, without action from the Board. The awards and courses are listed below.

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.

ADMINISTRATIVE NOTE(S): The following orders and regulatory cites are sufficient to make the following administrative corrections to the applicant's DD Form 214 for the period ending on 3 July 2019 without action by the Board:

a. add to Awards and Decorations:

- ARCOM (2nd Award), PO#136-83, 1AD, 27 August 2013, PO#326-09, 1AD, 22 November 2013
- GWOTEM, Army Regulation 600-8-22, paragraph 2-19d, based on service in Syria
- SF TAB, PO#080-15, USAJFKSWCS, 21 March 2017
- NATO Medal, 27 June 2010 – 16 June 2011, based on certificate in iPERMS

b. add to Military Education: Special Forces Communications Sergeant Qualification Course, 14 Weeks, March 2017

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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of the regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge UOTHC is normally considered proper. Paragraph 1-13 of the regulation in effect at the time stated that when a member was to be discharged UOTHC, the convening authority would direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19 (Enlisted Promotions and Reductions), Chapter 10.
3. Title 10, USC, 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 (USAPDA) is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 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, chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.
 - b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their 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 decide whether 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 their 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. Title 38 USC, 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.

5. Title 38 USC, 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.

6. Army Regulation 635-40 prescribes the Army Disability Evaluation System (DES) 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (DES); DoD Manual 1332.18 (DES Volumes 1 through 3) and Army Directive 2012-22 (Changes to Integrated DES Procedures) as modified by DoDI 1332.18.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the MOS Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the DoD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with Army Regulation 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. An MEB is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The PEB determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The PEB also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the USAPDA approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

7. Army Regulation 40-501, medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to an MEB.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

9. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; TBI; or who reported sexual assault or sexual harassment.

10. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NRs on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs 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 grounds.

11. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 applicant's (and/or their counsel) prior to adjudication.

12. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards and states:

a. The AAM is awarded to members of the Armed Forces of the United States, who while serving in a noncombat area on or after 1 August 1981, distinguished themselves by meritorious service or achievement. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

b. The PH is awarded to members of the Armed Forces of the United States who, while serving under the authority with any of the U.S. Armed Services, have been wounded, were killed, or who have died or may hereafter die of wounds received as a result of hostile enemy action. When contemplating this award authorization officials must take into consideration the degree to which the enemy caused the injury. The wound, injury, or death must have been the result of hostile enemy action; the wound or injury must have required treatment, not merely examination, by a medical officer or a medical professional; and treatment of the wound must be documented in the Service member's medical and/or health record.

c. Commanders may recognize periods of faithful service, acts, or achievements which do not meet the standards required for decorations by issuing to individual U.S. military personnel a DA Form 2442 (Certificate of Achievement) or a certificate of achievement of local design. Certificates of achievement will be issued under such regulations as the local commander may prescribe. If a locally designed certificate of achievement is printed for use according to this regulation, it may bear reproductions of insignia. The citation on such certificates will not be worded so that the act or service performed appears to warrant the award of a decoration. No distinguishing device is authorized for wear to indicate the receipt of a certificate of achievement. Copies of certificates of achievement or memoranda of record stating that a certificate of achievement has been awarded and citing the service recognized will be distributed to the Army Military Human Resource Record there is no provision to place the certificate on the DD Form 214.

13. Regarding award of the PH, Title 10, U.S. Code, section 1130, provides the legal authority for consideration of proposals for decorations not previously submitted in a timely fashion. Upon the request of a Member of Congress, the Secretary concerned shall review a proposal for the award of or upgrading of a decoration. Based upon such review, the Secretary shall determine the merits of approving the award.

14. Army Regulation 635-8 (Separation Processing and Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the DD Form 214 is a synopsis of

the Soldier's most recent period of continuous active service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. Block 14 (Military Education) states to list all formal, in-service (full-time attendance) training courses successfully completed during the period of service covered by the DD Form 214 of at least 1 week or 40 hours duration. Include course title, length in weeks, and year completed. This information is to assist the Soldier in job placement and counseling; therefore, do not list training courses for combat skills. Acceptable source documents include the Enlisted Record Brief, DA Form 4037 (Officer Record Brief), DA Form 1059, or other military issued certificate of completion with from and through dates or number of weeks.

15. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//