ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240007075

APPLICANT REQUESTS:

- an upgrade of his characterization of service from general under honorable conditions to fully honorable service
- a medical retirement
- an opportunity to personally appear before the Board by video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 214C (Certificate of Release or Discharge from Active Duty (Continuation Sheet))
- Three Department of Veterans Affairs (VA) Rating Decisions
- Two VA Letters

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 undiagnosed post-traumatic stress disorder (PTSD), and other medical conditions caused his military career to be cut short. His service should be upgraded to fully honorable based on undiagnosed PTSD and he should receive a medical retirement due to undiagnosed service-connected conditions, which would entitle him additional benefits.

3. Initially, the applicant served honorably in the Regular Army (RA) from 10 May 2005 to 20 November 2014. During this period of service, he served in Iraq from 19 November 2005 to 20 November 2006, Iraq from 21 September 2008 to 15 September 2009, and in Afghanistan from 26 February to 25 November 2013.

4. On 21 November 2014, he reenlisted for 6 years in the rank/pay grade of staff sergeant/E-6. He held military occupational specialty 11B (Infantryman). He served in Djibouti from 3 February to 7 October 2016.

5. On 4 January 2017, a DD Form 2873 (Military Protective Order) was issued restraining the applicant from initiating any contact or communication with the named protected person, [his spouse] either directly or through a third party. He was to remain at all times and places at least 250 feet away from her and members of the protected person's family or household including, but not limited to, residences and workplaces. On the same date the applicant signed the protective order acknowledging he understood the terms and conditions of the order which were in effect until 1 July 2017.

6. On 17 May 2017, by email, the applicant's spouse informed the applicant's chain of command the applicant had violated the protective order twice by coming to her workplace on the past Friday [12 May 2017] and today, Wednesday, 17 May 2017. She let the first time go because she was rattled and intimidated, but now she had to say something to protect herself and her son. She was frightened of what the applicant might be capable of. She believed he was going out of his way to intimidate her based on her anxiety and panic attack conditions.

7. A DA Form 4856 (Developmental Counseling Form), dated 18 May 2017, shows the applicant was counseled by his commander. The applicant was advised the Military Protection Order, dated 4 January 2017 was in effect until 1 July 2017. The order stated he was to remain 250 feet away from his spouse's place of employment Wal-Mart, Hinesville, GA. He had violated the order on two occasions. His spouse had provided photographs of each event. This was a clear violation of the Military Protection Order. This behavior and lack of regard for orders would not be tolerated. The commander stated what the applicant did was a blatant display of insubordination for good order and discipline. The commander stated he was recommending the applicant be reprimand under the Uniform Code of Military Justice (UCMJ) at the battalion level.

8. On 7 June 2017, the applicant's immediate commander notified the applicant he was initiating action to separate him under the provisions of Chapter14-12c, Army Regulation (AR) 635-200, due to commission of a serious offense, with an under other than honorable conditions discharge, for the following specific reasons:

a. He violated a Military Protective Order on 12 and 17 May 2017.

b. He communicated with indecent language on multiple occasions to multiple women not his wife.

c. He was advised of his rights.

9. On 7 June 2017, the applicant acknowledged he had been notified of the pending separation action against him and requested consideration of his case by an administrative separation board and a personal appearance before an administrative separation board. He declined to submit statements in his own behalf and annotated this document to show he did not believe he was suffering from PTSD or traumatic brain injury (TBI) as a result of deployment overseas in support of contingency operation(s) during the previous 24 months. The applicant and defense counsel signed this document.

10. On 8 June 2017, the applicant's immediate commander recommended the applicant's separation prior to the expiration of his term of service under the provisions of chapter 14-12c, AR 635-200, due to commission of a serious offense, for violation of a Military Protective Order on 12 and 17 May 2017 and for communicating with indecent language on multiple occasions to multiple women not his wife.

11. On 12 June 2017, the applicant's intermediate commander recommended the applicant's separation prior to the expiration of his term of service under the provisions of chapter14-12c, AR 635-200, due to commission of a serious offense, with an under other than honorable conditions discharge. The separation did not involve a medical condition that was related to a sexual assault, nor PTSD. The separation was in the best interest of the Army and the applicant.

12. A DA Form 2697 (Medical Assessment), dated 11 July 17, shows:

a. The applicant's lower back pain had gotten worse and continued to get worse as each day passed.

b. He had illnesses or injuries that caused him to miss duty for longer than 3 days.

c. He had seen a medical provider for back pain.

d. He had not suffered from any injury or illness while on active duty for which he did not seek medical care.

e. He was not taking any medications.

f. Back pain was preventing him from doing his job at a satisfactorily level.

g. He intended to seek VA disability for his lower back, knees, and shoulder.

h. Healthcare Provider (HCP) Comments: show in 10, 12, and 15: He was under the care of a neurosurgeon for chronic back pain with "DJD" on cervical and L-spine magnetic resonance imaging (MRI); he was scheduled for a "f/u" soon, but would likely

not be a surgical candidate; “Pt to f/u with PCM” as needed and pain management would be considered

13. A DA Form 2832 (Report Mental Status Evaluation), dated 13 July 2017, confirms the applicant underwent a mental status evaluation as a part of his misconduct administrative separation processing. This evaluation determined there was no evidence of an impairing behavioral health disorder. His cognition and perception were normal. Behavioral risk for harm to himself or others was not elevated, and no follow-up was needed.

14. A DD Form 2807-1 (Report of Medical History), pages 2-3, dated 19 July 2017, shows he answered “Yes” to:

a. Have You Ever Had or Do You Have?

- Received Counseling of any type
- Depression or excessive worry
- Been evaluated or treated for a mental condition

b. Item 29 - Explanation of “Yes”' Answer(s):

- SM #10D (Asthma or any breathing problems related to exercise, weather, pollens, etc..): When I returned from Iraq in·2006 and 2009
- SM #10H (Been prescribed or used an inhaler): When I was in Africa the “PA” prescribed an inhaler
- SM #12A (Painful shoulder, elbow, or wrist (e.g., pain, dislocation, etc.)): Right shoulder still currently hurts
- SM #12B (Arthritis, rheumatism, or bursitis): Had bursitis in my right elbow a couple years ago
- SM #12C (Recurrent back pain or any back problem): Had back pain upon return from Iraq in 2006, been struggling with it ever since, just recently told by independent doctor that my two lower discs are completely gone
- SM #12D (Numbness or tingling): I often have numbness in my right and left arms depending on the way I lay down
- SM #12H (Swollen or painful, joint(s)): I suffer from painful joints all the time
- SM #12I: (Knee troubles-locking, giving out, pain or ligament injury, etc.): My knees constantly hurt, and I also have sharp pain in the left from time to time
- SM #13C (Gall bladder trouble or gall stones): I had my gall bladder removed at Winn Hospital in 2012
- SM #14C (Currently in good health): My back pain is extreme, and it makes it hard to do normal every day activities
- SM #14D (Tumor, growth, cyst, or cancer): Had a cyst removed when I was in high school from my spine

- SM #17E (Received counseling of any type): “None ya”
- SM #17F (Depression or excessive worry): Very depressed
- SM #17G (Been evaluated or treated for a mental condition): I was evaluated and cleared
- SM #22 (Have you ever had, or have you been advised to have any operations or surgery-if yes, describe and give age at which occurred): Cyst removal, gallbladder removal, advised to get a fusion on my lower back

c. Item 30 - Examiner's Summary and Elaboration of all Pertinent Data-Comments:

- HCP #10D/#10H: Pt (Patient) reports only breathing issue he had was during an acute illness last year in Africa. Pt was prescribed an inhaler that he only used for a few weeks. No current issues
- HCP #12A: Chronic issue with no acute changes and no reported functional limitations;“F/u” with “PCM” as needed
- HCP #12B: Single episode of olecranon bursitis that occurred prior to military service and never recurred
- HCP #12C/#12D#/14C: Pt is under ongoing care with “PCM” and neurosurgeon for chronic cervicalgia and “LBP” with “MRI” findings of mild-moderate “DJD.” Likely will not be a surgical candidate; will consider pain management after surgical evaluation is complete; Pt to f/u with “PCM” as needed
- HCP #12H: Chronic shoulder and knee pain with no acute changes or functional limitations; f/u with “PCM” as needed
- HCP #12I: Chronic knee pain with no acute changes or functional limitations, f/u with “PCM” as needed
- HCP #13C: No post-surgical sequela reported findings
- HCP #14D: Prior to military service no residual issues or sequela from cyst or procedure
- HCP #17E: Pt underwent family advocacy counseling and mandated anger management counseling as part of this
- HCP #17F: Pt with positive finding for depression on screening, but has never sought care, referral to “EBH” team was placed
- HCP #17G: Pt was treated for anger management as part of a family advocacy evaluation, no current issues
- HCP #22: Discussed individually above

15. A DA Form 2808 (Report of Medical Examination), dated 19 July 2017, confirms the applicant had PULHES of 1 1 1 1 1 1. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: “P” (Physical capacity or stamina), “U” (Upper extremities), “L” (Lower extremities), “H” (Hearing), “E” (Eyes), and “S” (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A Service Members level of functioning under each factor is represented

by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

16. On 25 August 2017, the applicant's immediate commander notified the applicant under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c, notice was hereby given that a board of officers appointed by the memorandum enclosed would hold a hearing to determine whether he should be discharged for commission of a serious offense before the expiration of his term of service. He was advised of the place and time.

17. On 25 August 2017, the applicant acknowledged he had been notified of the pending separation action against him.

18. On 25 September 2017, the applicant appeared before the board with counsel. The board determined by a preponderance of the evidence that the applicant while at/or near Fort Stewart, GA, violated a military protective order on 12 and 17 May 2017. In view of the findings, the board recommended the applicant's separation from active service with a general, under honorable conditions character of service.

19. On 15 November 2017, the separation authority approved the board's recommendation and directed the applicant's separation from the Army under AR 635-200, paragraph 14-12c, due to misconduct, commission of a serious offense, with a general discharge.

20. Accordingly, on 5 December 2017, he was discharged. His DD Form 214 shows he completed 12 years, 6 months, and 26 days of net active. His awards are listed as the Afghanistan Campaign Medal with Campaign Star, Army Commendation Medal (5th Award), Army Achievement Medal (4th Award), Valorous Unit Award, Army Good Conduct Medal (4th Award), National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Iraq Campaign Medal with Campaign Star (4th Award), Non-Commissioned Officer Professional Development Ribbon (2nd Award), Army Service Ribbon, Overseas Service Ribbon, and Combat Infantryman Badge. His DD Form 214 also reflects in:

- Character of Service – Under Honorable Conditions (General)
- Separation Authority – AR 635-200, Paragraph 14-12c
- Separation Code, "JKQ"
- Reentry Code, "4"
- Narrative Reason for Separation – Misconduct (Serious Offense)

21. On 13 September 2019, the Army Discharge Review Board (ADRB) denied his petition to upgrade his discharge, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of the case were insufficient as a basis for correction of his records.

22. On 22 August 2022, the ADRB corrected the 13 September 2019, ADRB proceedings by deleting from his DD Form 214, block 27 (Reentry Code) "4" and adding "3." The applicant was issued a new DD Form 214 showing this correction.

23. The applicant provided three VA Rating Decisions showing as of 4 March 2022, he has a combined disability rating of 100 percent (%) for the following conditions.

- PTSD, rated as 100% disabling
- Right Upper Extremity radiculopathy associated with degenerative arthritis with Intervertebral Disc Syndrome (IVDS) of the cervical spine, rated as 40% disabling
- Degenerative Arthritis with IVDS of the Cervical Spine, rated as 30% disabling
- Left Upper Extremity Radiculopathy Associated with Degenerative Arthritis with IVDS of the Cervical Spine, rated as 30% disabling
- Degenerative Disc Disease Other Than IVDS Claimed as Back Condition, 20 percent disabling
- Bilateral Pes Planus, rated 10% disabling
- Tinnitus, rated 10% disabling

24. The applicant's submissions were provided to the Board in their entirety.

25. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 5 December 2017 under honorable conditions (general) discharge, and, in essence, a referral to the Disability Evaluation System (DES). On his DD 149, he notes that PTSD is an issue related to his request. He states:

"Undiagnosed PTSD and medical conditions caused military career to be cut short. There are conditions that are service connected for a DOD retirement."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 10 May 2005 and was discharged under honorable conditions (general) on 5 December 2017 under provisions provided in paragraph 14-12c of AR 635-200 Active Duty Enlisted Administrative Separations (19 December 2016): Serious misconduct It shows four periods of Service in imminent danger pay areas.

d. On 7 June 2017, his company commander informed him that he was initiating separation action under paragraph 14-12c of AR 635-200:

"The reasons for my proposed action are:
a. SSG [Applicant] violated a Military Protective Order on 12 May 2017 and 17 May 2017.

b. That you communicated with indecent language on multiple occasions to multiple women not your wife."

e. The applicant underwent a mental status evaluation on 13 July 2017. The provider documented a normal examination and opined "SM [Service Member] shows no evidence of an impairing behavioral health disorder." He concluded "SM is thus cleared from Embedded Behavioral Health for any administrative action deemed appropriate by the United States Army."

f. The applicant underwent a pre-separation medical examination on 19 July 2017. On the Report of Medical Examination, the provider documented a normal examination, recommended the applicant be evaluated for "depression/anxiety/PTSD," and found him qualified for separation.

g. The applicant requested an administrative separation board. This board convened on 25 September 2017. The board determined the applicant had violated the military protective order and recommended he be separated from active service with a general under honorable conditions discharge.

h. On 15 November 2017, the brigade commander approved the requested separation with the directive the applicant receive a general under honorable conditions characterization of service.

i. Review of AHLTA encounters for his final year of service shows he has being treated for left knee pain, low back pain, and neck pain. His final NCO Evaluation Report shows he passed his Army Physical Fitness Test in April 2016; and no evidence was found showing one or more conditions had failed retention standards and thus been a cause for referral to the DES.

j. The applicant's multiple behavioral health encounters during this period were individual and group therapy for family issues.

k. Submitted documentation and JLV shows that in March 2022 the applicant was awarded several VA service-connected disability ratings, including ratings for PTSD and several related to his spine. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

m. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES. The condition has been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: PTSD does not interfere with one's ability to differentiate right from wrong and adhere to the right. Thus, it does not mitigate the applicant's actions which led to his involuntary separation.

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 of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES. The condition has been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: PTSD does not interfere with one's ability to differentiate right from wrong and adhere to the right. Thus, it does not mitigate the applicant's actions which led to his involuntary separation.

3. The Board acknowledged the applicant's extensive service in the Regular Army from 10 May 2005 to 20 November 2014, including multiple deployments to Iraq, Afghanistan, and Djibouti, and recognized his contributions during those periods. However, the Board determined there is insufficient evidence to support that the characterization of service and separation were in error, based on evidence supported by the record. The Board noted, the applicant was separated under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense. Specifically, he violated a Military Protective Order on two occasions in May 2017, and engaged in indecent communications with multiple individuals. The Board found the applicant's conditions may warrant evaluation for VA disability benefits; they did not meet the threshold for medical retirement under Army regulations. The applicant's mental status evaluation confirmed no behavioral health disorder or impairment at the time of separation, and he declined to assert PTSD or TBI as mitigating factors. Based on this and the advising official opine, the Board found upgrade of the applicant's discharge and medical retirement is without merit.

4. 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.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

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

REFERENCES:

1. 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 15-185 (Army Board for Correction of Military Records(ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. An under other than honorable conditions discharge is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. 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.

4. 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, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. The objectives of the system are to:

- maintain an effective and fit military organization with maximum use of available manpower
- provide benefits for eligible Soldiers whose military service is terminated because of service-connected disability
- provide prompt disability processing while ensuring that the rights and interests of the government and the Soldier are protected

b. Soldiers are referred to the PDES:

- 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
- receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board
- are command-referred for a fitness-for-duty medical examination
- are referred by the Commander, Human Resources Command

c. The PDES assessment process involves two distinct stages: the MEB and the 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 are either 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 retirement payments and have access to all other benefits afforded to military retirees.

d. 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.

5. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to

perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

7. 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.

8. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

9. 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.

10. On 24 February 2016, the Acting Principal Deputy Under Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to waive the imposition of the statute of limitation for service members requesting discharge upgrades related to PTSD or TBI.

Additionally, cases previously considered by either the DRBs, BCMRS, or BCNR without the benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

11. 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.

12. 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 (BCM/NRs) 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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.

13. 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.

//NOTHING FOLLOWS//