ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240007921

APPLICANT REQUESTS:

- in effect, physical disability retirement in lieu of physical disability separation with severance pay
- award of the Purple Heart
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 7 August 2001
- DD Form 214 covering the period 6 April 2006
- multiple photos
- Department of Veterans Affairs (VA) Rating Decision, 22 November 2011
- two VA letters, both 17 June 2020
- partial Physical Disability Board of Review (PDBR) Record of Proceedings, 17 December 2020
- PDBR memorandum, 17 December 2020
- applicant's Privacy Act Release and Constituent Information Form, 26 July 2024
- numerous Congressional emails, July 2024 – January 2025

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He is writing in hopes of getting his records corrected. In April 2006, he was processed out of the Army and received a 20 percent recommended disability rating for injuries he sustained in the Army.

b. One of those conditions for which he was granted a disability was post-traumatic stress disorder (PTSD), which was incurred after witnessing a suicide bombing. That same suicide bombing also resulted in a traumatic brain injury (TBI) and migraine headaches, which were not annotated on his medical records that were submitted to the Physical Evaluation Board (PEB).

c. After the suicide bombing, which was less than 20 feet away from him, he was treated for dizziness, headaches, and concussion symptoms in Iraq. None of those medical documents were found in his medical records or submitted to the PEB. Therefore, he received no disability percentage for TBI and TBI migraines. His DA Form 199 (PEB Proceedings) does not include these conditions in his disability description.

d. He also had breathing problems and dizziness on his second deployment after the suicide bombing, which caused him to be emergency medically evacuated to Germany for medical treatment, where he received treatment for his breathing problems, dizziness, and headaches.

d. One of the doctors who was sitting on the PEB provided a minority opinion and recommended him for a rating of 40 percent. Please take this information into consideration when making a decision on his behalf.

e. In his Privacy Act Release and Constituent Information Form submitted to his Member of Congress, the applicant explains his problem as needed correction of his military record, Purple Heart.

3. After 3 years, 11 months, and 29 days of prior honorable enlisted service in the Regular Army between August 1998 and August 2001, the applicant enlisted for a second time in the Regular Army on 27 November 2001.

4. The applicant deployed to Iraq during the following time periods:

- 16 April 2003 through 17 April 2004
- 15 January 2005 through 16 February 2005

5. The complete facts and circumstances surrounding the applicant's physical disability discharge are unknown as his DA Form 3947 (MEB Proceedings) and DA Form 199 are not in his available service records for review and have not been provided by the applicant.

6. The applicant's DD Form 214 shows:

a. He was honorably discharged on 6 April 2006, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay and corresponding Separation Code JFL.

b. He was credited with 4 years, 4 months and 10 days of net active service this period and 4 years and 7 days of total prior active service.

7. A VA Rating Decision, 22 November 2011, shows the applicant had a combined evaluation of 90 percent effective 7 April 2008, and a combined evaluation of 100 percent effective 2 December 2008, for the following service-connected conditions:

- asthma/obstructive sleep apnea, 50 percent
- PTSD, 50 percent
- bilateral maxillary sinusitis, 30 percent
- esophageal reflux, 30 percent
- nephrolithiasis (kidney stones), 30 percent
- migraine headache residuals of TBI, 30 percent
- allergic rhinitis, 10 percent
- TBI, 10 percent

8. A VA letter, 17 June 2020, shows the applicant's combined disability rating was increased to 100 percent for the above-listed conditions.

9. A DD Form 294 (Application for a Review by the PDBR of the Rating Awarded Accompanying a Medical Separation from the Armed Forces of the United States) shows the applicant applied to the PBDR in August 2020, requesting an increase to his Army disability rating to allow for retirement, through an increase to his PTSD rating (as he was not properly rated prior to his discharge) and the inclusion of the additional unfitting conditions of migraine headaches and TBI.

10. A 5-page PDBR Record of Proceedings, 17 December 2020, which has been provided in full to the Board for review shows:

a. The applicant was medically separated for reactive airway disease (RAD) and PTSD, each rated at 10 percent, with a combined disability rating of 20 percent.

b. The applicant's contention shows he was seeing his therapist while in the Army for PTSD and he also requested review of additional conditions not identified by the MEB and the PEB.

c. His VA Rating Decision shows he was rated 50 percent for asthma/obstructive sleep apnea and 50 percent for PTSD, for a combined VA disability rating of 90 percent.

d. After deliberation, the PDBR recommended a retroactive 6-month period of Temporary Disability Retirement List (TDRL) placement with a rating of 50 percent and a permanent rating of 10 percent for the PTSD.

e. The PDBR recommended the applicant's prior determination be modified, effective the date of his medical separation to show:

- RAD, TDRL rating of 10 percent and a permanent rating of 10 percent
- PTSD, TDRL rating of 50 percent and a permanent rating of 10 percent

f. Included in the PDBR Record of Proceedings is a Minority Report, which reflects that one Board member recommended the applicant's prior determination be modified to show:

- RAD with a permanent rating of 30 percent
- PTSD with a permanent rating of 10 percent.

11. A PDBR memorandum to the Deputy Assistant Secretary of the Army (Review Boards), 17 December 2020, shows the PDBR adjudicated the applicant's disability rating accompanying his medical separation from the Army and by a majority vote, recommended no recharacterization of his separation or modification of his disability rating previously assigned.

12. A Deputy Assistant Secretary of the Army (Review Boards) memorandum, 4 February 2021, shows he reviewed the PDBR recommendation and Record of Proceedings pertaining to the applicant and accepted the PDBR's recommendation, thereby denying his application. This decision is final.

13. As a result of the finality of the PDBR's decision, the scope of the current Board's review is limited to those conditions which were not considered by the PDBR and not determined by the PEB to be unfitting for continued military service.

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

15. 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, and/or 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 additional conditions be found unfitting for service with a subsequent increase in his disability rating and a change disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. He indicated on his DD 149 that TBI is an issue are related to his request. He has also requested a Purple Heart for an unlisted injury.

c. The Record of Proceedings and prior denial detail the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 27 November 2001 and was discharged with $38,433.60 of disability severance pay on 6 April 2006 under provisions in paragraph 4-24b(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006).

d. The behavioral health issues will be addressed by an ARBA behavioral health advisor in a separate advisory opinion.

e. On 22 January 2006, a medical evaluation board found the applicant to have four conditions which failed retention standards: Sleep apnea, Reactive airway disease process, Posttraumatic Stress Disorder (chronic), and major depressive disorder.

f. On 10 February 2006, the physical evaluation board found his reactive airway disease and PTSD to be unfitting for continued service. They found his depressive disorder (which would later be subsumed under his PTSD) to not be unfitting:

> The diagnosis of major depressive disorder is reported by psychiatrist to cause only mild impairment for military duty and is not listed on DA form 3349 [Physical Profile.]

g. They also found his sleep apnea to not be unfitting:

> "Obstructive sleep apnea requiring CPAP is not separately medically unfitting for duty as a wheeled vehicle driver."

h. For reference, paragraph 3-41c of AR 40-501, Standards of Medical Fitness (29 August 2003), states the causes for referral to an MEB for sleep apnea:

"c. Sleep apnea. Obstructive sleep apnea or sleep-disordered breathing that causes daytime hypersomnolence or snoring that interferes with the sleep of others and that cannot be corrected with medical therapy, surgery, or oral prosthesis. The diagnosis must be based upon a nocturnal polysomnogram and the evaluation of a pulmonologist, neurologist, or a provider with expertise in sleep medicine.

A 12-month trial of therapy with nasal continuous positive air pressure may be attempted to assist in weight reduction or other interventions, during which time the individual will be profiled as T3. Long-term therapy with nasal continuous positive air pressure requires referral to an MEB."

i. There is no evidence his condition met any of these criteria.

j. The VA Schedule for Rating Disabilities (VASRD) is the document used by the military services to rate unfitting military disabilities. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006):

B–1. Purpose of the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in 10 USC 61.)

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

k. The PEB derived and applied a 10% rating to each condition for a combined rating of 20%, and recommended the applicant be separated with disability severance pay. On 13 February 2006, after being counseled on the board's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB and waived his right to a formal hearing.

l. The applicant's case was reviewed by the Physical Disability Board of Review (PDBR) in May 2016. The ratings addressed included the applicant's reactive airway disease/asthma and his PTSD. PDBR's findings dated 17 December 2020:

"BOARD FINDINGS: In the matter of the reactive airway disease and IAW VASRD §4.97, the panel majority recommends no change in the PEB adjudication at the time of constructive TDRL placement and removal. The single voter for dissent submitted the appended minority opinion.

In the matter of the PTSD, the panel recommends a disability rating of 50%, coded 9411 IAW VASRD §4.129 for 6 months from the time of discharge consistent with a constructive period of TDRL and then a permanent separation rating of 10% IAW VASRD §4.130.

There are no other conditions within the panel's scope of review for consideration. The panel recommends the CI's [covered individual] prior determination be modified as follows, effective the date of medical separation."

CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Reactive Airway Disease	6699-6602	10%	10%
Post-Traumatic Stress Disorder	9411	50%	10%

m. Their recommendation was approved by the Deputy Assistant Secretary of the Army Review Boards on 4 February 2021. DoD PDBR decisions are final and the issues considered by the PDBR cannot afterwards be considered by the Army Board for Correction of Military Records.

n. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD, Sleep apnea, and Migraine headaches.

o. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

p. The applicant did not state the injury he asserts is eligible for a Purple Heart. Without this information, the request cannot be addressed.

q. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating, the awarding of a Purple Heart, nor a referral of his case back to the DES is warranted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of physical disability retirement in lieu of physical disability separation with severance pay. He contends he experienced an undiagnosed TBI that warrants physical disability.

b. 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:

- After prior honorable enlisted service in the Regular Army between August 1998 and August 2001, the applicant enlisted for a second time in the Regular Army on 27 November 2001.
- The applicant deployed to Iraq from 16 April 2003 to 17 April 2004 and again from 15 January 2005 to 16 February 2005.
- The applicant was discharged on 6 April 2006 and was credited with 4 years, 4 months and 10 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his PEB should have included evaluation of his migraine headaches and TBI. This BH Advisor will only be offering information and an opinion in regard to his assertion of TBI since the applicant is not requesting a review of his PTSD rating and migraine falls outside the scope of expertise for BH. A VA Rating Decision document dated 22 November 2011 showed a 10% rating for TBI, and another VA document dated 17 June 2020 showed the same rating for TBI. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated mental health services in September 2005 following a post-deployment examination where he discussed symptoms of PTSD secondary to witnessing a suicide bomber. A review of the Medical Evaluation Board Proceedings dated 28 December 2005 showed that the applicant reported "a minor concussion" associated with the suicide bombing experience, and he endorsed symptoms of reduced concentration, memory impairment, and increased irritability/anger. Documentation from a primary care visit on 26 September 2006 showed that the applicant reported dizziness, light-headedness, and blurred vision that had started "four days ago" and had remitted on the third day. The provider attributed these symptoms to anxiety and provided a prescription for an anxiolytic. At a follow up visit three days later, he reported no symptoms. VA records showed that a neuropsychological evaluation was ordered on 2 December 2008, but the

applicant “no showed” two appointments and was sent a letter requesting that he call for an appointment.

e. A Compensation and Pension (C&P) examination from February 2009 was reviewed and showed that the applicant reported a history of blast exposure, fall, and head injury with less than one minute of loss of consciousness. He reported residual headaches as well as other cognitive symptoms (i.e. decreased ability to concentrate, memory problems, slowed thought process, confusion). The applicant also reported impairment in his sense of smell. The physical examination was within normal limits, and no objective cognitive testing was performed. He was diagnosed with TBI, and it was noted that he has “a ‘focal injury’ TBI with severity grade of mild. It should be noted that TBI has stabilized.”

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a TBI that warranted disposition through medical channels. While there was some evidence that the applicant reported symptoms of increased irritability, concentration and memory problems, and sleep difficulty, these symptoms overlap with his other conditions, including PTSD and Sleep Apnea. Documentation showed one primary care visit where the applicant reported dizziness, light-headedness, and blurred vision, but these symptoms occurred only over a three-day period that was at least 18 months after the blast exposure, which is not a typical course for TBI. The applicant was scheduled for a neuropsychological evaluation in 2008, but he did not keep the appointments. Without objective data from an evaluation such as this, it is difficult to determine the presence of any impairment associated with post-concussive syndrom (i.e. mild TBI). A review of the C&P examination showed, again, his reported cognitive symptoms but concluded that “the TBI has stabilized.” No objective cognitive testing was conducted as part of this evaluation. There is insufficient evidence in the DoD documentation prior to the applicant’s discharge that showed his TBI condition caused him to fall below retention standards in accordance with AR 40-501, chapter 3-33(j) and chapter 3-1.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for physical disability associated with TBI

(2) Did the condition exist or experience occur during military service? NA; request is for physical disability associated with TBI

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for physical disability associated with TBI

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 applicant's contentions, the military record, medical review, and regulatory guidance were carefully considered. The Board concurred with the behavioral medical advisory official who found that there is insufficient evidence in the DoD documentation prior to the applicant's discharge that showed his TBI condition caused him to fall below retention standards in accordance with AR 40-501, chapter 3-33(j) and chapter 3-1. In addition, the medical advisory found that neither an increase in his military disability rating, the awarding of a Purple Heart, nor a referral of his case back to the DES is warranted. In addition, the Board determined the applicant was not recommended or entitled to the award of the Purple Heart, since he did not meet the criteria for the award. Therefore, the Board denied his request.

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 discharge? NA; request is for physical disability associated with TBI

(2) Did the condition exist or experience occur during military service? NA; request is for physical disability associated with TBI

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for physical disability associated with TBI

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.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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.

[redacted]

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the

severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one

which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Department of Defense Instruction (DODI) 6040.44 (Physical Disability Board of Review (PDBR)) designates the Secretary of the Air Force as the lead agent for the establishment, operation and management of the PDBR for the DOD.

a. The PDBR reassesses the accuracy and fairness of the combined disability ratings assigned former service members who were separated, with a combined disability rating of 20 percent or less during the period beginning on 11 September 2001 and ending on 31 December 2009, due to unfitness for continued military service, resulting from a physical disability.

b. The PDBR may, at the request of an eligible member, review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

c. As a result of a request for PDBR review, the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary of the Military Department concerned.

7. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

8. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to

any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

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

11. 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.

a. 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.

b. 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//