ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240010221

APPLICANT REQUESTS:

- duty-related physical disability retirement in lieu of non-duty related administrative discharge due to medical disqualification with corresponding benefits, compensation, and back pay
- correction of records to reflect promotion to the rank/grade of sergeant (SGT)/E-5

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 20 December 2013
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard), 11 October 2014
- Army National Guard (ARNG) Current Annual Statement, 19 June 2015
- DA Form 3349 (Physical Profile), 13 September 2015
- Medical Retention Decision Point (MRDP) Summary, 19 September 2015
- Headquarters Iowa Army National Guard (IAARNG), Office of the Adjutant General memorandum, 23 September 2015
- Certificate of Promotion, 9 October 2015
- Physical Evaluation Board (PEB) Fact Sheet/Counseling Statement, Non-Duty Related (NDR) Cases, 10 October 2015
- NDR Case File Checklist, undated
- partial DA Form 7652 (Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement), 10 October 2015
- DA Form 4856 (Developmental Counseling Form), 10 October 2015
- Personnel Qualification Record – Enlisted, 10 October 2015
- APFT Data, 10 October 2015
- 833rd Engineer Company (Sapper) memorandum, 10 October 2015
- Headquarters IAARNG, Office of the Adjutant General Orders 296-036, 23 October 2015
- Department of Veterans Affairs (VA) letter, 15 September 2017
- VA letter, 10 July 2023

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. His separation papers and all subsequent documents and proceedings regarding his military status should be corrected to reflect his final rank/grade at the time of his discharge and should show SGT/E-5 instead of SPC/E-4.

b. His separation papers were completed on 10 October 2015, while his rank/grade was SPC/E-4. He was then promoted to the rank/grade of SGT/E-5 on 23 October 2015, and his separation documents should be corrected to reflect this promotion.

c. His discharge status should be corrected to show permanent medical retirement instead of NDR medical disqualification. He further requests monthly medial retirement compensation back pay from 11 December to present, continued monthly medical retirement compensation, and all eligible medical benefits for permanent medical retirement status.

d. He was wrongfully medically disqualified from the ARNG in 2015. Before his time in the service, he had no previous medical conditions, mental, behavioral, or physical. Upon entry into the military, he passed all physical and psychological evaluations and was deemed fit for service.

e. In 2014, he was deployed to Afghanistan for approximately 7 months, from April 2013 – November 2013. His Military Occupational Specialty (MOS) was 21B (Combat Engineer). He served as a manual gunner and their mission was route clearance. Their unit recovered 8 improvised explosive devices (IEDs) during this time, truly risking their lives to ensure the safety of other Soldiers and civilians.

f. During deployment, his gunner seat broke two separate times, causing him to fall and land on his back on top of the .50 caliber ammunition boxes. This resulted in a lower back injury that continues to affect him to this day. At the time of the injury and during deployment, he found some relief from the pain with Tylenol and Flexural provided to him by his medic. He continued to serve the rest of his deployment and was honorably released from active duty orders to ARNG orders at the end of his deployment in November 2013.

g. At the direction of his superiors, he began seeking help through the VA for his back injuries and mental health concerns in December 2013, directly after returning from Afghanistan. He was diagnosed with anxiety, post-traumatic stress disorder (PTSD), and other physical injuries. His initial disability rating was 70 percent.

h. His PTSD and anxiety diagnoses as well as his physical injuries were a direct result of his time in Afghanistan in 2013. During the 2 years that followed, he continued to serve in the ARNG while seeking help for his physical injuries and mental health through the VA. He was hospitalized in July 2015, for mental health reasons. In September 2015, he was medically evaluated again while on duty and his evaluation results indicated a 70 percent disability status and he was non-deployable.

i. On 23 September 2015, he was coerced by his superiors, who took advantage of his disability, and was told to either be "cleared" of his PTSD diagnosis or he would be medically separated. He was unwilling to deny that he did in fact need the VA's continued support for his mental health and physical injuries. He was issued a permanent physical profile for NGR medical disqualification on that day and his separation date was set for 11 December 2015.

j. His disabilities were a direct result of his time spent in Afghanistan. At the time of his discharge, his superiors made it seem as if his only two options were to lie and say he didn't have PTSD or to be separated. He was not informed that he did, in fact, meet the requirements for permanent medical retirement. His disability status upon returning home from Afghanistan in 2013, and at the time of his separation in 2015, was 70 percent, and has only continued to increase over the years to his present disability rating of 100 percent.

3. The applicant enlisted in the ARNG on 11 May 2011.

4. A DD Form 214 shows the applicant was ordered to active duty on 25 January 2013, in support of Operation Enduring Freedom, with duty in Afghanistan from 6 April 2013 through 13 November 2013. He was honorably released from active duty on 20 December 2013, due to completion of required active service, and transferred back to the ARNG.

5. The applicant provided a DA Form 705, which shows he passed his record APFT on 20 October 2012, 15 October 2013, and 11 October 2014.

6. An ARNG Current Annual Statement, 19 June 2015, shows the applicant completed 4 years of creditable service for retired pay as of that date.

7. The acronym "PULHES" 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 member's 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.

8. A DA Form 3349 shows the applicant was issued a permanent physical profile with a PULHES of 111113 on 13 September 2015 and approved on 18 September, for unresolved anxiety and PTSD. He met with a mental health provider who recommended no weapons, live-fire ranges, or combatives, no deployments or annual training. He may attend drill and participate in all APFT events but was recommended to a medical board to determine his MOS and or retainability status.

9. A MRDP Summary, 19 September 2015, signed by the Office of the State Surgeon, Physician Assistant, shows:

a. His rank was SPC.

b. His diagnoses with anxiety and PTSD. These diagnoses prevented him from adequately completing warrior and MOS tasks.

c. He did not have an approved line of duty (LOD) for these conditions. He had one deployment to Afghanistan from April – November 2013. He stated he did not take on any fire and felt weird with the PTSD diagnosis, but they did find 8 IEDs.

d. The basis for NDR determination is that he had chronic behavioral health issues that had not significantly improved over the past 2 years. His first psychiatric hospitalization was 2 months ago. He was diagnosed with obsessive compulsive disorder (OCD) following an evaluation with a psychologist. He presented with many physical and behavioral health issues and the Minnesota Multiphasic Personality Inventory (MMPI) stated he may over report. However, he has a 70 percent disability rating and with his current symptomology he was non-deployable.

10. A Headquarters IAARNG, Office of the Adjutant General memorandum, 23 September 2015, advised the applicant:

a. The Office of the State Surgeon General conducted a comprehensive review of his medical records. He was issued a permanent profile on 18 September 2015, for

anxiety and PTSD. In accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, he no longer met medical retention standards.

b. His condition was considered NDR. If he believed his condition was in the LOD or that he was fit for duty, he was to work with his unit to complete the proper election (option 2). He was advised he was pending a medical separation date with an effective date of 60 days from the date of this memorandum.

c. He was advised he may submit a written request, to include all required documents on the PEB Checklist, within 30 days of the date of this memorandum, for referral to the NDR PEB, for a fitness for duty determination only.

11. The applicant signed a PEB Fact Sheet/Counseling Statement, NDR Cases, on 10 October 2015, which was prepared to assist Soldiers in understanding the physical evaluation system process as it pertains to NDR cases.

12. The applicant provided page 1 of a 5 paged DA Form 7652, 10 October 2015, which does not include the pages detailing his commander's assessment of his performance and ability to function in his MOS with his diagnosed conditions.

13. A DA Form 4856 shows the applicant was counseled by his immediate commander on 10 October 2015, regarding his decision to either be discharged at his expiration term of service (ETS), initiate an interstate transfer, a PEB, or transfer to the Individual Ready Reserve and the options available to him.

14. Personnel Qualification Record – Enlisted, 10 October 2015, shows the applicant's rank/grade as of the date of the record was SPC/E-4.

15. A 833rd Engineer Company (Sapper) memorandum, signed by the applicant on 10 October 2015, shows:

a. The applicant acknowledged notification of his medical disqualification for further retention in the IARNG.

b. He elected option 1, accepting the findings and requested discharge/retirement from the IARNG. He requested his separation date to be 11 December 2015. By signing the memorandum, he acknowledged he read and understood the information.

c. His unit commander signed the form on 10 October 2015, concurring with the applicant's separation identified within the medical disqualification disposition election memorandum.

16. A Headquarters IAARNG, Office of the Adjutant General memorandum, 15 October 2016, shows discharge orders were to be initiated for the applicant after having been found unfit for duty as a result of a medical evaluation conducted at Johnston, IA, on 18 September 2015. His medical condition was NDR and he was recommended for discharge effective 11 December 2018. He did not qualify for retirement benefits at age 60.

17. Headquarters IAARNG, Office of the Adjutant General Orders 296-036, 23 October 2015, promoted the applicant in rank/grade to SGT/E-5 effective 9 October 2015. The additional instructions show his promotion was not valid and would not be effective if he was not in a promotable status on the effective date of the promotion. Acceptance of this promotion incurred a service remaining obligation per Army Regulation 600-8-19 (Enlisted Promotions and Demotions) paragraph 7-8.

18. Headquarters IAARNG, Office of the Adjutant General Orders 296-036, 26 October 2015, honorably discharged the applicant from the ARNG in the rank of SPC under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-25c, with assignment/loss code MG (medical, physical or mental condition failing to meet retention standards).

19. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was honorably discharged from the ARNG on 11 December 2015, in the rank/grade of SGT/E-5, under the provisions of National Guard Regulation 600-200, paragraph 6-35c, due to failure to meet medical procurement standards. He was credited with 4 years, 7 months, and 1 day of net service this period.

20. A VA letter, 15 September 2017, shows the applicant had a combined service-connected disability rating of 70 percent effective 21 December 2013, and a combined rating of 90 percent effective 5 May 2017, for the following conditions:

- radiculopathy of right leg and foot, 10 percent
- radiculopathy of left leg and foot, 10 percent
- degenerative arthritis of the lumbar spine with intervertebral disc syndrome (IVDS), 40 percent
- right shoulder strain with degenerative arthritis, 20 percent
- left shoulder strain, 20 percent

21. A VA letter, 10 July 2023, shows the applicant's combined service-connected disability rating was increased to 100 percent effective 10 August 2022.

22. 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.

23. 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 MHS Genesis (DoD electronic Medical), Joint Longitudinal Viewer (JLV) (a Repository of DoD and VA electronic medical record), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS).

b. The ARBA Medical Advisor made the following findings and recommendations:

c. The applicant is applying to the ABCMR requesting his discharge "status of Non-Duty Related Medical Disqualification to Permanent Medical Retirement and a correction of records to reflect promotion to the rank/grade of sergeant (SGT)/E-5".

d. The applicant was activated on Active duty for deployment to Afghanistan from 25 January to 20 December 2013.

e. There was no documentation available for review in support his request in his supporting documentation files.

f. Documentation in JLV:

- DoD encounters:
- there were five encounters from 20 July to 12 September 2011. These encounters were related to his initial entry examination.
- During his activation time (2013), there were three encounters found from 31 January to 14 November 2013. These encounters were related the Solider Readiness Processes encounter.
- There was no other encounter found from the DoD after 14 November 2013.
- The encounters listed above did not reveal any information to support the Applicant's request.
- In his post deployment encounter on 14 November 20013, there was documentation that the applicant "Deployed from Afghanistan. DU Exposure: 0. TBI Score: No. Behavioral Health screening. Low risk. SM currently has concerns

about their health (see AHLTA notes). Disposition: SM stated prefers to follow-up with PCM. Screened HI/SI Yes. HI/SI Denies. Discussed ETOH use. VBH-Required SM is aware of Military One Source information: Yes. Exposure Risk Negative Risk. TST done. Malaria Rx: Primaquine given to SM. Medically Cleared. Behaviorally Cleared. Insomnia: SM reports minor lumbar strain, sleep maintenance insomnia. Declines referral for evaluation, will try short term intervention with melatonin, will F/U with PCM if sx persist …"

g. The rest of his JLV encounters (From 8 January 2014 to present) were from the VA clinics encounters. Most of these encounters were for behavioral health issues. From the medical standpoint, the Applicant did not have any career terminating condition while on Active Duty that would require this case be sent to the Disability Evaluation System.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting duty-related physical disability retirement in lieu of non-duty related administrative discharge due to medical disqualification with corresponding benefits, compensation, and back pay. He contends PTSD and OMH as related to his request.

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:

- Applicant enlisted in the ARNG on 11 May 2011.
- A DD Form 214 shows the applicant was ordered to active duty on 25 January 2013, in support of Operation Enduring Freedom, with duty in Afghanistan from 6 April 2013 through 13 November 2013. He was honorably released from active duty on 20 December 2013, due to completion of required active service, and transferred back to the ARNG.
- A DA Form 3349 shows the applicant was issued a permanent physical profile with a PULHES of 111113 on 13 September 2015 and approved on 18 September, for unresolved anxiety and PTSD. He met with a mental health provider who recommended no weapons, live-fire ranges, or combatives, no deployments or annual training. He may attend drill and participate in all APFT events but was recommended to a medical board to determine his MOS and or retainability status.
- A MRDP Summary, 19 September 2015, signed by the Office of the State Surgeon, Physician Assistant, shows:
- His diagnoses of Anxiety and PTSD prevented him from adequately completing warrior and MOS tasks.

- He did not have an approved line of duty (LOD) for these conditions. He had one deployment to Afghanistan from April – November 2013. He stated he did not take on any fire and felt weird with the PTSD diagnosis, but they did find 8 IEDs.
- The basis for NDR determination was chronic behavioral health issues that had not significantly improved over the past 2 years. His first psychiatric hospitalization was 2 months prior. He was diagnosed with obsessive compulsive disorder (OCD) following an evaluation with a psychologist. He presented with many physical and behavioral health issues and had a 70 percent disability rating. Overall, his symptoms rendered him non-deployable.
- A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was honorably discharged from the ARNG on 11 December 2015, in the rank/grade of SGT/E-5, under the provisions of National Guard Regulation 600-200, paragraph 6-35c, due to failure to meet medical procurement standards. He was credited with 4 years, 7 months, and 1 day of net service this period.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was wrongfully medically disqualified from the ARNG in 2015. Before his time in the service, he had no previous medical conditions, mental, behavioral, or physical. Upon entry into the military, he passed all physical and psychological evaluations and was deemed fit for service. In 2014, he was deployed to Afghanistan for approximately 7 months, from April 2013 – November 2013. His Military Occupational Specialty (MOS) was 21B (Combat Engineer). He served as a manual gunner and their mission was route clearance. Their unit recovered 8 improvised explosive devices (IEDs) during this time, truly risking their lives to ensure the safety of other Soldiers and civilians. At the direction of his superiors, he began seeking help through the VA for his back injuries and mental health concerns in December 2013, directly after returning from Afghanistan. He was diagnosed with anxiety, post-traumatic stress disorder (PTSD), and other physical injuries. His initial disability rating was 70 percent. On 23 September 2015, he was coerced by his superiors, who took advantage of his disability, and was told to either be "cleared" of his PTSD diagnosis or he would be medically separated. He was unwilling to deny that he did in fact need the VA's continued support for his mental health and physical injuries. He was issued a permanent physical profile for NGR medical disqualification on that day and his separation date was set for 11 December 2015. His disabilities were a direct result of his time spent in Afghanistan. At the time of his discharge, his superiors made it seem as if his only two options were to lie and say he didn't have PTSD or to be separated. He was not informed that he did, in fact, meet the requirements for permanent medical retirement. His disability status upon returning home from Afghanistan in 2013, and at the time of his separation in 2015, was 70 percent, and has only continued to increase over the years to his present disability rating of 100 percent.

d. The electronic medical record available for review shows the applicant participated in a post-deployment psychosocial assessment on 8 January 2014 and was diagnosed with Adjustment Disorder with Anxious and Depressed Mood. He participated in an initial intake session on 6 February 2014 and was recommended for therapy for treatment of depression and anxiety related to post-deployment adjustment issues. In May 2014, treatment was terminated following 11 individual psychotherapy sessions since the applicant demonstrated improvement in his depressive and anxious symptoms. However, on 6 November 2014 he participated in a psychiatric evaluation after requesting medication to support management of his symptoms; he was started on psychotropic medication and diagnosed with PTSD and Major Depressive Disorder. He was flagged as high risk for suicide due to suicidal ideation and provided with ongoing behavioral health care. A C and P evaluation, dated 22 December 2014, diagnosed the applicant with PTSD, Unspecified Depressive Disorder, and Alcohol Use Disorder related to his deployment experience. In May 2015, the applicant participated in an in-depth neuropsychological evaluation that diagnosed him with Major Depressive Disorder, PTSD, and Obsessive Compulsive Disorder. The applicant continued receiving care via psychiatry/medication management and once again initiated psychotherapy in November 2015. A DA Form 3349 shows the applicant was issued a permanent physical profile with a PULHES of 111113 on 13 September 2015 for unresolved Anxiety and PTSD, and he was recommended for a medical board to determine his MOS and or retainability status. A memorandum dated 15 October 2016, shows discharge orders were initiated for the applicant after having been found unfit for duty as a result of a medical evaluation conducted on 18 September 2015.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD effective 21 December 2013. The record further shows the applicant has participated in ongoing treatment for his symptoms of PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support a referral to the IDES process. The applicant is 100% service connected, including 70% for PTSD, and he was honorably discharged from military service due to being medically unfit for retention as a result of his Anxiety and PTSD. There is evidence the applicant waived his right to undergo a MEB/PEB evaluation. However, given the medical documentation indicating the applicant was struggling with symptoms of PTSD, Major Depressive Disorder, and Obsessive Compulsive Disorder; it is more likely than not his decision-making capacity was impacted when he opted to waive his right for a MEB/PEB. In addition, Paragraph 7-1 of AR 40-400, Patient Administration (8 July 2014), states, in part: "If the Soldier does not meet retention standards, an MEB is mandatory and will be initiated by the physical evaluation board liaison officer (PEBLO)." Of note there is no mention of component or duty status, thus this would apply to the applicant. In addition, Paragraph 7-5b (5) more directly addresses this case, stating that one of the situations requiring

MEB consideration is “an RC member not on AD who requires evaluation because of a condition that may render him or her unfit for further duty.” In addition, Paragraph 2-9c of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006), which would have been in effect when the applicant was discharge, identifies “The unit commander will – c. Refer a soldier to the servicing MTF for medical evaluation when the soldier is believed to be unable to perform the duties of his or her office, grade, rank, or rating.” Overall, based on the documentation available for review, and in the interest of fairness and justice, the applicant warrants a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable**.**

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Medical Retirement: PARTIAL GRANT. Based upon the findings outlined in the behavioral health review, the Board concluded there was sufficient evidence to warrant referring the applicant’s medical records to the Disability Evaluation System (DES) for further review to determine whether a medical retirement was warranted.

- Change rank to E5/SGT: GRANT. Based upon the provided certificate of promotion showing the applicant was promoted during his period of military service

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include behavioral health conditions, met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board also recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's separation order (Order #299-072) to show SGT/E5.

3. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing the applicant's narrative reason for separation to medical retirement without further evaluation.

//SIGNED//

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CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

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

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system 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 (Disability 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; 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.

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635–40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

6. 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.

7. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes he criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the Unites States enlisted Soldiers. Paragraph 6-35, in effect at the time, provides for the separation of Soldier found medically unfit for retention per Army Regulation 40-501.

8. Army Regulation 600-8-19 (Enlisted Promotions and Demotions) prescribes policies and procedures governing promotion and reduction of Army enlisted personnel.

a. Paragraph 7-4 (Nonpromotable status) shows:

(1) Commanders and leaders at all levels will notify the promotion authority when Soldiers whose name appears on a list are nonpromotable. Soldiers may be advanced or promoted only while in a promotable status.

(2) If a Soldier is accidentally or intentionally promoted when not in a promotable status, the promotion will lack original basis of authority and therefore, be voided.

(3) A Soldier is in a nonpromotable status and will not be selected, promoted, advanced, appointed to a higher grade, or laterally appointed when one of multiple conditions exists. One of the listed conditions wherein a Soldier is in a nonpromotable status is when the Soldier is ineligible for immediate reenlistment or extension of enlistment. This also includes Soldiers ineligible to extend to meet service obligation per paragraph 7-8.

b. Paragraph 7-8 (Service remaining obligation), in effect at the time, shows:

(1) The following service remaining obligations, from the effective date of the promotion, are required for promotion to sergeant (SGT) through sergeant major (SGM):

- To SGT and staff sergeant (SSG), 1 year
- To sergeant first class (SFC) through SGM, 2 years

(2) Service will be obligated from the effective date of promotion and Soldiers must extend or reenlist in order to accept the promotion. Soldiers are exempt from this requirement if they are eligible through prior service for higher pay grade at the time of retirement or they are able to serve at least 6 months in the grade, but will be involuntarily separated due to medical disqualification, action by a nonpunitive board, or will reach their maximum years of service by grade (retention control point (RCP), or maximum age.

9. 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.

10. 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.

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

//NOTHING FOLLOWS//