ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240010478

APPLICANT REQUESTS: with counsel, in effect, a medical discharge in lieu of an uncharacterized discharge due to failing to meet procurement medical fitness standards.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief in Support of Application
- DD Form 214
- Statement of Support, Unsigned, Undated
- Self-Authored Statement to the Department of Veterans Affairs (VA), 19 May 2023
- VA Rating Decision, 30 September 2023
- Standard Form 180 (Request Pertaining to Military Records), 13 March 2024

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, through counsel states, in effect:

a. Upon completion of Basic Combat Training and Advanced Individual Training, the applicant was required to take a physical for Airborne School. During the physical examination, he noticed extreme swelling in his feet and ankles. After several blood tests, it was discovered that he developed Microscopic Hematuria, which is the detection of blood in the urine. Due to this finding, his orders to Airborne School were rescinded and he was sent to Walter Reed National Military Medical Center and subjected to multiple medical tests to determine the cause of the Microscopic Hematuria, including a renal biopsy and biopsy of the kidney.

b. He was immediately released from the hospital, despite instructions to the contrary that he be held for 24 hours for monitoring and that he only be released after a nephrologist examined him. As a result, he returned to Fort Leonard Wood, Missouri, as he awaited the medical results of his kidney biopsy. Shortly thereafter, he was informed that he was diagnosed with chronic kidney disease and would likely need dialysis within five to ten years. On 4 March 1999, the U.S. Army determined his condition as Existing Prior to Service (EPTS), and he was discharged from the Army

c. Over the years, the applicant experienced shortness of breath. difficulty sleeping. muscle cramps, tiredness. swollen hands and feet, and headaches as collateral effects of his kidney condition. However, in the fall of 2013, he was diagnosed with Stage Ill Chronic Kidney Disease, requiring his primary physician to refer him to a kidney specialist, as his condition had advanced too far for the physician's skillset to treat. As a result of his advanced condition, he suffers from hypertension, hyperkalemia, severe inflammatory arthritis (gout), erectile dysfunction, anxiety, depression, and sleep apnea. The sheer number of medical appointments and fatigue upon his body, "put an immense amount of stress" on himself, his wife, and his entire family. In winter 2019, his kidney functionality dropped to 16 percent; he is currently awaiting a kidney transplant.

d. On 19 May 2023, the Applicant filed an original disability claim with the VA. In the VA's rating decision, effective 12 April 2023, they determined that the rating decision for the applicant's Stage IV Chronic Kidney Disease with hyperkalemia was 100%. In addition, they determined his left elbow impairment of supination and pronation due to left elbow gout as 20%. Similarly, the VA determined his left foot gout, left forearm limitation of flexion due to gout, and right foot gout to be 10%. Finally, the VA rated the applicant's left ankle gout, left hand gout, right ankle gout, right elbow gout, and hypertension at 0%, meaning his condition might eventually worsen or improve, but currently is not severe enough to be rated at a compensable level. As a result. the VA determined that the evidence displays the applicant currently has totally disabling service-connected disability that is permanent in nature and is eligible for Dependents' Educational Assistance under 38 U.S. Code, Chapter 35.

e. It is respectfully submitted that the applicant's chain of command made a factual error in determining his condition as EPTS rather than a condition he developed while on active duty. There is a presumption, for the purposes of section 1110, that, “every veteran shall be taken to have been in sound condition when examined, accepted, and enrolled for service, except as to defects, infirmities, or disorders noted at the time of the examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed before acceptance and enrollment and was not aggravated by service.”

f. The applicant had been examined, accepted, and enrolled for service and there is no documentation nor notations that his chronic kidney disease existed at the time of

said enrollment. He passed Basic Combat Training, Advanced Individual Training, and had received an invite to Airborne School before his condition had been diagnosed. His chain of command failed to demonstrate with clear and unmistakable evidence, after his diagnosis, that the disease existed before acceptance and enrollment. This error is displayed by the VA's independent determination that his disease was directly connected to his service, as shown by their note "as the evidence shows you [applicant] currently has a totally disabling service-connected disability or disabilities, permanent in nature."

g. The VA determines service-connected disabilities based upon the following criteria: (both must be true) (1) have a current injury or illness affecting the mind or body and (2) served on active duty, active duty for training, or inactive duty training. Additionally, one of the following must be true: (1) the servicemember became sick or injured while on active duty and can link condition to injury or illness, (2) the servicemember had an injury or illness before joining military and time in service worsened said condition, or (3) the servicemember developed a disability related to active-duty service that did not appear until after completion of service. Furthermore, the VA determines the effective date for a disability that was caused and or made worse by military service as whichever came later: (1) the date the claim was submitted or (2) the date that the illness or injury was sustained or diagnosed. The VA noted the effective date of his grant was 12 April 2023. As a result, the report displays the VA found a solid nexus between his military service and his current condition. The discrepancy between his command's classification of his condition as EPTS and the VA's independent decision displays the factual error that exists regarding his separation authority and narrative for separation. The discrepancy between these reports makes it impossible for the applicant's command to point to "clear and unmistakable evidence that the disease existed before acceptance and enrollment" as required by law.

h. The applicant additionally submits that he suffered an injustice by command made errors in procedure and discretion when he was not properly provided a Medical Evaluation Board (MEB) during his separation given the multitude and severity of his physical and mental health conditions. When a servicemember is being separated, DoDI 6040.46 outlines the examination standards physicians must follow for a Separation History and Physical Examination (SHPE). The SHPE requires completion and submission of either a DD Form 2807-1, DD Form 2808, or an equivalent electronic template. In addition to these forms, the SHPE must also include "additional testing appropriate to the servicemember's health status, as determined by the examining credentialed provider and in accordance with current DoD policy." If, during the SHPE, the physician discovers a condition not previously discovered: "the examining provider will evaluate the complaint objectively within the scope of a screening physical examination. Any serious, potentially unfitting condition found requires a new SHPE to be completed and referral for further evaluation and treatment of the new condition as may be clinically indicated."

i. To be eligible for a military medical retirement, an applicant must demonstrate that the injuries were caused or exacerbated by military service; the injuries were not the result of his misconduct; and the injuries rendered the applicant unfit for continued service at the time of his discharge. The process begins with a physician's consult request based on a servicemember's existing disabilities and proceeds for formal review. If the examining body determines that the servicemember's collective disability rating equals or exceeds a 30% threshold, the servicemember is entitled to medical retirement along with its associated benefits. As noted in the section above, the applicant did not have any preexisting conditions of note on his entry physical examination into service. Given how his medical condition progressed during service, his chain of command, at minimum, should have recognized that the nature of his condition would have called into question his continued ability to serve. With his Microscopic Hematuria and subsequent chronic kidney disease diagnosis, his command had a responsibility to send him before a MEB to ensure that his condition was properly evaluated and that he receives a disability percentage correlating to his condition since no evidence was ever provided that the condition preexisted service. To his detriment, this did not occur and to date, he is still living with the negligence of his previous command by having to treat his condition without assistance from the VA. He maintains that his command was only concerned about streamlining the separation process and did not consider the collateral effects it would have on him and his family's future. Overall, he is highly disappointed in the position that his command placed him in upon his discharge.

j. The applicant continues to suffer injustice due to the factual error in determining narrative of separation as "failure to meet procurement medical fitness standards" rather than "medical discharge." This error has put a massive strain on him and his family as they attempt to cope with the numerous collateral complications and medical appointments. The applicant notes that "it was not until he matured and began reflecting on his short-lived career as a Soldier in the U.S. Army that he realized leadership made the decision to expedite his process out of the military." Since his separation he has continued to attend appointments with specialists and physicians regarding his declining health. Over the years, he has experienced collateral complications due to his condition, such as: shortness of breath, difficulty sleeping, muscle cramps, tiredness, swollen hands and feet, and headaches. These complications have only worsened over the years, as his health continues to decline. His condition has progressed to Stage IV Chronic Kidney Disease, and his kidney function levels fluctuate below 20%. He notes the difficulty of living with his condition, as "he is constantly fatigued, lacking energy, and unable to participate in activities with friends and family." However, he finds the most difficult part of his experience is "grasping the realization that he signed up to serve his country as a healthy, vibrant, ambitious young adult, and ended up being released without the proper support and medical assistance and benefits" military personnel reasonably can expect because of their service. These benefits would help alleviate the tremendous financial and psychological stress on himself and his family, as

he would be able to collect disability from the VA to help pay for his medical costs and support his family.

3. The applicant enlisted in the Regular Army on 16 September 1998. He completed training and was awarded military occupational specialty 12B (Combat Engineer).

4. The complete facts and circumstances of his discharge are not available for review with this case. However, his record contains a DD Form 214 which shows he was discharged on 4 March 1999 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11 for failure to meet medical procurement standards. He was credited with 5 months and 19 days of net active service. His service was uncharacterized.

5. The applicant provides, in part, a/an:

a. Letter to the VA dated 19 May 2023, which encapsulates many items of counsel's brief as noted above.

b. Undated, unsigned letter presumably authored by the applicant's son, an active duty Marine Aviation Supply Officer with four years of experience who recommends his father's discharge be changed to a medical discharge.

c. VA Rating Decision dated 30 September 2023, which notes, in part, service-connection for chronic kidney disease stage IV with hyperkalemia with an evaluation of 100% effective 12 April 2023.

6. Title 10, U.S. Code (USC), chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability

7. 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.

8. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

9. Title 38, Code of Federal Regulations (CFR), Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA,

operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

10. 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 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 referral to the Disability Evaluation System.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered active duty on 16 September 1998 and received an uncharacterized discharged on 4 March 1999 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (30 August 1995): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

> a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—
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> > (1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. There is no contemporaneous documentation in the supporting documents and his period of service predates AHLTA. Counsel asserts without evidence that the onset of the applicant's microscopic hematuria was while the applicant was on active duty.

f. Based on counsel's statement and his 5-11 discharge, it is assumed the applicant was referred to an Entrance Physical Standards Board (EPSBD) for microscopic hematuria. IAW paragraph 5-11 of AR 635-200. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness (1 December 1983), but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently aggravated by their military service.

g. The applicant's Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) is not available for review.

h. Given his separation, the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of chapter 2 of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

i. Paragraph 4-19e(2) of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

"After a Soldier is accepted for active duty, discovery of an impairment causing physical disability is not conclusive evidence that the condition was incurred after acceptance.

Consideration must also be given to accepted medical principles in deciding whether a medical impairment was the result of, or aggravated by, military service while the Soldier was entitled to basic pay; or in the case of a Reservist on active duty for 30 days or less, whether the disability was the proximate result of performing active duty or inactive duty training (IDT). Accepted medical principles may not be excluded in making these decisions even when there is no other evidence indicating

the impairment was present before the Soldier's entry on active duty. The Soldier's length of service must be considered when determining service aggravation."

j. Paragraphs 3-2a(1-2) of AR 635-40:

The. following presumptions will apply to physical disability evaluation

a. Before and during active service

(1) A soldier was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded at the time of entry.

(2) Any disease or injury discovered after a soldier entered active service, with the exception of congenital and hereditary conditions, was not due to the soldier's intentional misconduct or willful neglect and was incurred in line of duty (LD).

k. The cause of his microscopic hematuria is unknown. The most common cause is a urinary tract infection which if this had been the case, would have been treated and that would have been the end of it. In most instances, the condition is simply followed with

l. The EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of paragraph 2-23d of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

m. Their finding was likely based on the biopsy results showing either a genetic or congenital condition which would have existed prior to service. Otherwise, the referral to the EPSBD so quickly after his biopsy(s) is not logical.

n. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

o. It is the opinion of the Agency Medical Advisor there is insufficient probative evidence to warrant a referral to the DES.

BEHAVIORAL HEALTH REVIEW.

a. The applicant is applying to the ABCMR requesting to change his uncharacterized discharge. He contends that he experienced anxiety and depression related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 16 September 1998; 2) The available record is void of a separation packet containing the specific facts and circumstance surrounding the applicant's discharge processing; 3) The applicant's DD214 shows he was discharged on 4 March 1999 – AR 635-200 paragraph 5-11 for failure to meet medical procurement standards. His service was determined to be uncharacterized. He completed 5 months and 19 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical or separation documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with any service-connected mental health conditions. The applicant noted that he experienced anxiety and depression within his application packet. However, no additional documentation was available that provided additional detail on the origin and/or the nature of his anxiety and depression. He is currently 100% VA service connected for various medical conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition during service to warrant a change to his uncharacterized discharge status. In addition, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide an appropriate opine on possible changes as the result of his reported mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions are related to his request to change his uncharacterized discharge. The applicant noted that he experiences both anxiety and depression.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts his mental health condition(s) are related to his request to change his uncharacterized discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition during his enlistment in military service, which would mitigate his uncharacterized discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible change as the result of his reported mental health condition or experience. However, the applicant's contention a mental health condition mitigates his discharge status is sufficient for the board's consideration per Liberal Consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant completed less than 180 days of military service, the regulatory guidance on separations initiated within the first 180 days, and the findings outlined in the medical reviews, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

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.

//SIGNED//

X _____

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. 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 Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

3. 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501, chapter 3, as evidenced in an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty

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 or 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 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 retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

d. 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.

e. Paragraph 3-4 states 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.

4. 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.

5. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-1 states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in an entry-level status.

b. Paragraph 5-11 states Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or active duty for training for initial entry training may be separated. Such conditions must be discovered during the first 6 months of active duty. For character of service, paragraph 5-1 should be adhered to.

c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

6. 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.

7. 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.

8. 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.

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

//NOTHING FOLLOWS//