

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240011361

APPLICANT REQUESTS:

- upgrade of his discharge from under honorable conditions (General) to honorable
- in effect, correction of his records to show he was discharged due to a service-incurred medical disability
- separation code changed to "LFW" vice "JKN"
- grade/rank changed to "E5/sergeant (SGT)" vice "E1/private (PVT)"
- name change to J____ S____ vice B____ T____

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs letter, 31 July 2024
- College Transcripts

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 he is requesting an upgrade of his under other than honorable conditions discharge to honorable. Post-traumatic stress disorder and traumatic brain injury are marked on his DD Form 149 as conditions related to his request. He further noted:

- the discharge code LFW stands for failed medical physical procurement standards
- he has service-connected disabilities with a combined rating of 100%
- his rank should be changed to SGT due to his current college transcripts and in accordance with the Soldier of the quarter board in 2006, in Iraq

3. The applicant provides:

a. A Department of Veterans Affairs letter, 31 July 2024, that shows he was awarded a combined rating of 100%.

b. A court order changing his name to J____ S____, 14 September 2023.

c. Two college transcripts that show he completed college courses with the following institutions; however, he has not earned a degree:

- University of Hawaii – Honolulu Community College, issued on 2 July 2024
- University of Hawaii – Leeward Community College, issued on 3 July 2024

4. A review of the applicant's record shows:

a. He enlisted in the Regular Army on 17 May 2005.

b. His Enlisted Record Brief shows:

- Section I (Overseas/Deployment Combat Duty) – service in Iraq from 1 September 2006 to 20 November 2007
- Section III (Service Data) - his highest grade attained was E3/private first class, effective 1 May 2008

c. On 2 October 2008, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) in that he did on or about 19 May and 9 June 2008 wrongfully imported tablets of Benzylpiperazine, a Schedule I controlled substance into the customs territory of the U.S. His punishment consisted of reduction to E1, suspended to be automatically remitted if not vacated on or before 2 April 2009; forfeiture of \$673.00 pay per month for two months, suspended to be automatically remitted if not vacated on or before 2 April 2009; 45 days extra duty, and 45 days restriction.

d. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 9 December 2008, the applicant underwent a mental evaluation for the purpose of separation. The applicant was cleared for administrative action as deemed appropriate by his command

e. On 27 January 2009, he accepted NJP under Article 15, UCMJ:

(1) In that he did on or about 27 October 2008 failed to go to the time prescribed to his appointed place of duty. His punishment included forfeiture of \$673.00 pay per month for two months, suspended to be automatically remitted if not vacated on or before 27 July 2009; 45 days extra duty; and restriction for 45 days.

(2) The continuation sheet shows on or about 14 November 2008, he was disrespectful in language toward a noncommissioned officer.

f. On 2 February 2009, the applicant's immediate commander notified the applicant on of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. He noted the specific reasons for separation were based on 19 May 2008 the applicant wrongfully imported 25 tablets of Benzylpiperazine, a Scheduled I controlled substance into the customs territory of the U.S. The commander recommended the applicant receive a general, under honorable conditions discharge.

g. On the same day, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if general, under honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he elected to submit matters on his own behalf

h. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14-12c, prior to the expiration of his term of service. Additionally recommending his characterization of service be characterized as general, under honorable conditions discharge.

i. On 11 February 2009, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12, for commission of a serious offense. He further directed the applicant be furnished a general, under honorable conditions discharge.

j. On 10 March 2009, the applicant was discharged, due to misconduct (serious offense) in accordance with AR 635-200, paragraph 14-12c. His DD Form 214 shows he completed 3 years, 9 months, and 24 days of active-duty service with no lost time. His rank and pay grade are listed as private/E-1 and he was issued separation code JKQ. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one campaign star

- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Combat Action Badge
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Marksman Marksmanship Qualification Badge with Grenade Bar

k. On 15 February 2019, the Army Discharge Review Board (ADRB) in AR20180009331, reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

l. On 25 July 2022, the ADRB in AR20210002892, reviewed the applicant's discharge processing. The ADRB granted relief by issuing a new DD Form 214, change of characterization to "honorable", change reason and SPD code to "misconduct (Minor Infractions) JKN", no change to the RE Code, and a change authority to "AR 635-200, paragraph 14-12a". The applicant's DD Form 214 was voided and corrected to show in:

- item 18 (Remarks) - service characterization upgraded per ADRB AR20210002892 on 21 July 2022 following application dated 16 April 2018
- item 24(Character of Service) – Honorable
- item 26 (Separation Code) – JKN
- item 28 (Narrative Reason for Separation) – Misconduct, (Minor Infractions)

m. On 22 August 2024, in ABCMR Docket Number AR20230013832, the Board approved his request for a legal name change. The applicant's DD Form 214 was voided and corrected to show his name as the requested name, J____ S_____.

5. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his discharge from under honorable conditions (General) to honorable. In addition, correction of his records to show he was discharged due to a service-incurred medical disability, a change in separation code and grade/rank, as well as a name change. Given the applicant's requests for an upgrade, change in separation code, and name change have been

addressed by previous Boards, this opine will narrowly focus on his request for service-incurred medical disability. All other requests are deferred to the Board.

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 Regular Army on 17 May 2005.
- Applicant deployed to Iraq from 1 September 2006 to 20 November 2007.
- On 2 October 2008, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) in that he did on or about 19 May and 9 June 2008 wrongfully imported tablets of Benzylpiperazine, a Schedule I controlled substance into the customs territory of the U.S.
- On 27 January 2009, he accepted NJP under Article 15, in that he did on or about 27 October 2008 fail to go to the time prescribed to his appointed place of duty and on or about 14 November 2008, he was disrespectful in language toward a noncommissioned officer.
- On 2 February 2009, the applicant's immediate commander notified him of intent to recommend separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. He noted the specific reason for separation were based on the applicant wrongfully importing 25 tablets of Benzylpiperazine, a Scheduled I controlled substance into the customs territory of the U.S. on 19 May 2008. The commander recommended the applicant receive a general, under honorable conditions discharge.
- On 10 March 2009, the applicant was discharged, due to misconduct (serious offense) in accordance with AR 635-200, paragraph 14-12c. His DD Form 214 shows he completed 3 years, 9 months, and 24 days of active-duty service with no lost time. His rank and pay grade are listed as private/E-1 and he was issued separation code JKQ.
- On 15 February 2019, the Army Discharge Review Board (ADRB) in AR20180009331, denied his request for a change in the character and/or reason of his discharge.
- On 25 July 2022, the ADRB in AR20210002892, granted relief by issuing a new DD Form 214, with change of characterization to “honorable”, change reason and SPD code to “misconduct (Minor Infractions) JKN”, no change to the RE Code, and a change authority to “AR 635-200, paragraph 14-12a”.
- On 22 August 2024, the ABCMR in Docket Number AR20230013832 approved his request for a legal name change. The applicant’s DD Form 214 was voided and corrected to show his name as requested.

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 is requesting an upgrade of his under other than honorable conditions discharge to honorable. He contends PTSD and traumatic brain

injury (TBI) as conditions related to his request. He further notes having a combined service-connected disabilities rating of 100%.

d. Active-duty electronic medical records available for review show the applicant initially sought behavioral health services on 1 May 2007 due to distress related to the breakup of a romantic relationship and suspected alcohol abuse. The applicant was diagnosed with Depression. A post deployment mental health screening on 3 December 2007 recommended follow-up related to disrupted sleep and to assess possible PTSD symptoms. On 24 April 2008, the applicant participated in a behavioral health intake session and was diagnosed with Adjustment Disorder with Anxiety and had been started on medication for mood and sleep. Applicant participated in follow-up sessions on May 2008, where he shared not taking medication as prescribed, and on 27 June 2008, during this session he discussed concerns about a CID investigation related to illegal drugs received via mail; self-referral to ASAP was recommended. On 9 December 2008, the applicant underwent a mental status evaluation for the purpose of separation. The clinician noted the service member's "anxiety does not impact her current level of functioning regarding military service". The applicant was cleared for any administrative action deemed appropriate by command. A psychiatric medication management appointment on 12 December 2008, diagnosed the applicant with Anxiety Disorder and states, "sm does not have full criteria of PTSD, at this time, and does not need a MEB". A behavioral health encounter on 8 January 2009 enrolled the applicant in a PTSD group, the note specifically states: "while she does not meet criteria for PTSD this might be a good process/coping skills group for her to attend." On 22 January 2009, the applicant self-referred to ASAP for an assessment due to a drug related incident and a reported drug-induced seizure at work. A follow-up ASAP assessment, on 27 January 2009, diagnosed the applicant with Phencyclidine-Related Disorder and indicated a substance abuse history that predated military service and required treatment, "was treated at age 18 for OTC pill abuse in San Diego". On 3 February 2009, he was recommended for enrollment in outpatient ASAP treatment for counseling and education. The applicant was further diagnosed with Alcohol Abuse. Overall, the applicant's available service record does not contain a DA Form 3349 (Physical Profile), nor does it evidence:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD and 100% for residuals of Traumatic Brain Injury (TBI).

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process based on his behavioral health conditions. Although the applicant has been 100% service connected, including 70% for PTSD and 100% for residuals of Traumatic Brain Injury (TBI), VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD and TBI through the VA is not indicative of an injustice at the time of service. Furthermore, even in-service diagnoses of PTSD and TBI are not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In addition, it is recommended the applicant's RE code remain unchanged given their 100% service-connected disability rating.

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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. Narrative Reason for Separation - Medical Discharge – Deny. The Board reviewed and concurred with the medical advisor’s review finding insufficient evidence, at this time, to support a referral to the IDES process based on his behavioral health conditions. Therefore, the Board determined there was no error or injustice in the narrative reason for separation he received at the time of his discharge and denied relief.

b. Separation Code Change to “LFW” vice “JKN”. Deny. The Board determined that the applicant had already had his separation code amended pursuant to his prior request to show Misconduct, Minor Infractions. The Board found insufficient evidence that warrants any further correction to his separation code based upon his many infractions and denied relief.

c. Grade/Rank Change - E5/SGT vice “E1/PVT. Deny. The Board determined based on the applicant’s serious misconduct of transporting illegal drugs into the U.S. through custom, warranted the reduction he received upon his discharge. Therefore, the Board concluded there was no error or injustice that would warrant a change to his grant/rank and denied relief.

d. Character of Service and Name Change. These issues have already been corrected in ADRB Docket Number AR20210002892 on 25 July 2022 which amended his character of service to Honorable and on 22 August 2024, pursuant to a prior ABCMR in Docket Number AR20230013832, which granted him his requested name change as stated in his Court Ordered Name Change.

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? 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.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

3. ADMINISTRATIVE NOTES: A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous Honorable Active Service from 20050517-20070518."

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

X//signed//

CHAIRPERSON

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

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous Honorable Active Service from 20050517-20070518."

REFERENCES:

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

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met, the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

d. Chapter 5–11 (Separation of personnel who did not meet procurement medical fitness standards):

(1) 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 or ADT for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board. This board, which must be convened within the soldier's first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

(2) Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within

6 months of the soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that –

- Would have permanently or temporarily disqualified the soldier for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time
- Does not disqualify the soldier for retention in the military service per AR 40–501 (Medical Service-standards of Medical Fitness), chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.

2. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Block 4a (Grade, Rate or Rank) and Block 4b (Pay Grade) verify that active-duty grade or rank and pay grade are accurate at time of separation.

b. Block 18 (Remarks) states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

c. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 18 of the DD Form 214 exactly as listed in the tables.

- SPD code JKQ and JKN is listed with narrative reason "Misconduct," under regulatory authority AR 635-200, paragraph 14-12c
- SPC code LFW is listed with narrative reason "Failure to Meet Procurement Medical Fitness Standards, paragraph 5-11

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

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments and have access to all other benefits afforded to military retirees.

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

7. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of their office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

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

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

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

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria

in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

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

9. 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.

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

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

//NOTHING FOLLOWS//