

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240012685

APPLICANT REQUESTS: in effect:

- upgrade of his under honorable conditions (general) discharge
- change of the narrative reason to disability
- a telephonic hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 19 September 2024
- Applicant Statement, 2 August 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 June 2008
- letter of support, Sergeant First Class (Ret) TK___, undated
- letter of support, RD___, Case Manager, undated
- Post-Traumatic Stress Disorder (PTSD) screening and case manager assessment
- 2 certificates of completion of rehabilitative training
- 85 pages of Department of Veterans Affairs (VA) psychiatry and medical treatment history 2023-2024

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 states:

a. He enlisted as an 18-year-old youth eager to serve his country. He served in Iraq from October 2006 to December 2007 and was engaged in combat in the Al Doura Marketplace, Baghdad. He sustained injuries both physically and mentally as a result of his service.

b. He lost many of his buddies, including two of his best friends. He began to medicate using alcohol and drugs to manage his symptoms of PTSD, which he developed as a result of those losses and his injuries. The impact of his cognition and functioning due to multiple improvised explosive device blasts has made it difficult for him to follow through on many of the tasks and daily living that come easily to most.

c. For the last 15 years he abused substances at the cost of his family and friends. He became homeless and was in a state of chaos, the extent of which he is only beginning to understand. He has reached 5 months of sobriety after working with his case managers to understand his situation.

d. He has been awarded the Purple Heart, Army Commendation Medal, Global War on Terrorism Service Medal, and Iraq Campaign Medal with bronze service star, and Combat Infantryman Badge, along with other awards. He believes he is worthy of an honorable discharge.

3. The applicant provides:

a. Medical and psychiatric treatment records substantiating treatment for PTSD, depression, and substance abuse.

b. A letter of support from his former platoon sergeant, SFC (Ret) KD___, who outlined their combat experiences in Iraq and the fellow Soldiers they lost and who were wounded from their platoon. He notes the applicant was also wounded and saved his life during a combat operation in Baghdad. He further notes there was not adequate treatment for PTSD during his service and his doctor instructed him to take a shot of liquor to help him sleep. Nobody took serious steps to help them deal with their combat stress when they returned from Iraq.

c. A letter of support from his case manager, outlining his medical treatment and course of psychiatric evaluations, his diagnosis, and his treatment for substance abuse.

d. Medical treatment documents and psychiatric evaluations, consisting of 85 pages; of which contain a VA summary of benefits showing he is presently rated at 100% service connected for disability benefits as a result of his combat service in Iraq.

4. A review of the applicant's service records show the following:

a. On 20 October 2005, he enlisted in the Regular Army for 3 years and 18 weeks. He attained the rank of specialist 4.

b. He served in Iraq from 12 October 2006 through 28 December 2007 (15 months).

c. A memorandum issued from the Tripler Army Medical Center Alcohol and Drug Control Officer, dated 4 March 2008, reflects a urinalysis sample he provided for a random inspection, tested positive for Tetrahydrocannabinol (THC).

d. A memorandum issued from the Fort Carson Alcohol and Drug Control Officer, dated 11 March 2008, reflects a urinalysis sample he provided for a probable cause inspection tested positive for cocaine.

e. On 28 April 2008, he was counseled for being drunk on duty.

f. On 6 May 2008, he accepted nonjudicial punishment for using marijuana and for using cocaine. He was reduced to the rank of private, forfeited pay for 2 months, and was given 45 days extra duty.

g. On 21 May 2008, he underwent a chapter medical examination and gave a report of medical history. The examining physician noted traumatic brain injury, concussion, alcohol abuse, anxiety, dizziness, memory problems, balance problems, ringing in ears, irritability, sleep problems. The examining physician noted he was unable to determine if alcohol abuse was related to his conditions.

h. On 10 June 2008, his commanding officer notified him of his intent to initiate separation proceedings against him under provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offence, by reason of his marijuana and cocaine use. He advised him of his rights and that he was recommending an under honorable conditions (general) characterization of service.

i. On 12 June 2008, he waived his rights and acknowledged he understood he may be ineligible for many or all benefits as a Veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life.

j. On 12 June 2008 his commanding officer recommended his separation and subsequently; his intermediate commanders recommended his discharge.

k. On 12 June 2008, the separation authority approved his discharge with an under honorable conditions (general) characterization of service.

l. On 19 June 2008, he was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct (drug abuse). He completed 2 years and 8 months of net active service.

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable and a change to the narrative reason to disability. He contends he experienced an undiagnosed mental health condition, including PTSD, and Traumatic Brain Injury (TBI) that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 20 October 2005.
- The applicant served in Iraq from 12 October 2006 through 28 December 2007.
- On 6 May 2008, he accepted NJP for using marijuana and for using cocaine.
- On 10 June 2008, his commanding officer notified him of his intent to initiate separation proceedings against him under provisions of Army Regulation 635-200, paragraph 14-12c for commission of a serious offence by reason of his marijuana and cocaine use.
- The applicant was discharged on 19 June 2008 and completed 2 years and 8 months of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was self-medicating at the time of his misconduct, and he was diagnosed with PTSD soon after his discharge. He indicated PTSD, TBI, and "other mental health" as issues or conditions related to his request. The application included several pages of VA records, which will be summarized below, and a VA Summary of Benefits letter dated 25 June 2024 showed the applicant is 100% service connected. A letter from Green Mountain Treatment Center dated 20 June 2024 provided documentation of successful completion of residential, partial-hospitalization, and intensive outpatient programs for detoxification, and it indicated the applicant's participation from 20 February 2024 to 22 May 2024. A Mental Status Evaluation dated 16 May 2008 showed no indication of any mental health symptoms and that the applicant was psychologically cleared for administrative separation. A Report of Medical History dated 12 May 2008 showed the applicant endorsed symptoms of nervousness, memory loss, trouble sleeping, depression/excessive worry, illegal drug use, and having received counseling, and a Report of Medical Examination discussed complaints of anxiety, confusion, dizziness, memory problems, irritability, and sleep problems. However, it was noted that until he stops drinking, TBI cannot be distinguished from his

alcohol use, and he was cleared for separation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant is 100% service connected for PTSD since June 2008 with an increase in 2014. His records show over 9,000 encounters, and the applicant passed away unexpectedly at the age of 37 on 6 November 2024. DoD records showed the applicant participated in a command referred ASAP evaluation on 27 March 2008 and was diagnosed with Alcohol Dependence. Documentation is limited but indicated the applicant was in a residential program for substance abuse. A TBI evaluation was conducted on 24 April 2008 and noted the applicant was involved in an IED blast resulting in concussion, and he was diagnosed with TBI "without symptoms." A Post-Deployment Health Assessment from 24 April 2008 showed the applicant reported several symptoms of PTSD and discussed his abuse of substances as "because when he was high or drunk, he did not have panic attacks and felt better." It was also noted that he self-discharged from a residential substance abuse treatment program because he felt he was "forced" to be there by his chain of command and was not getting better. He was referred to psychiatry for possible medication, but the documentation from that visit on 5 May 2008 showed that he refused to discontinue drinking or to engage in alcohol treatment, and medications were not prescribed. Documentation from the Chapter 14 separation exam on 16 May 2008 showed that the provider discussed with the applicant the need to discontinue alcohol use in order to assess for "the severity and nature of pt's anxiety," but the applicant refused to stop drinking. It was also noted, "SM deployed x1 and described the experience as 'mixed' and reported some anxiety but did not report symptoms of PTSD however he did report extensive alcohol use." The evaluator stated, "after careful review of all clinical information IAW AR 635-200, 1-33 this soldier's Axis I diagnosis is not unfitting IAW AR 40-501 and therefore a medical evaluation board is not supported. Disposition through medical channels is not warranted."

The applicant initiated VA healthcare in July 2008 and completed TBI and psychiatric evaluations. He reported symptoms of PTSD and was prescribed an antidepressant medication. The initial diagnosis was Adjustment Disorder with anxiety with a rule out diagnosis of PTSD. At follow up visits, more thorough assessment was conducted, and the applicant reported significant distress related to having seen his friend be shot in the face and killed, and he was diagnosed with PTSD. By March 2009, he was using heroine to self-medicate and sought treatment through the VA's suboxone program. The applicant's initial PTSD Compensation and Pension (C&P) evaluation is not available, but a Review PTSD Disability Benefits Questionnaire (DBQ) on 7 June 2013 showed diagnoses of PTSD, Polysubstance Dependence, and Cognitive Disorder not otherwise specified due to chronic heroin/alcohol dependence. A review of history noted inpatient treatment for polysubstance abuse from 31 March to 18 April 2008 and intermittent

outpatient treatment primarily related to substance dependence with underlying PTSD. The applicant was homeless and involved in the VA's housing program. Another Review PTSD DBQ dated 12 December 2013 showed similar diagnoses, and another Review DBQ on 17 April 2014 concluded PTSD, Unspecified Depressive Disorder, and Alcohol and Opioid Use Disorder. These two evaluations noted engagement in the VA's Vocational Rehabilitation program, housing, and mental health treatment with some improvement in his substance use. He reported residential substance abuse treatment from February to April 2014 and eight weeks of sobriety. A final DBQ on 8 July 2019 showed a history of 13 residential or inpatient treatment program admissions, six months incarceration, and continued occupational and relational impairment. The applicant's most recent visit was on 26 August 2024 for medication renewal, and he reported stability, living in transitional housing, and his last use of drugs/alcohol was in February 2024.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. DoD records showed the applicant endorsed mental health symptoms associated with PTSD and TBI while on active service, but it was impossible to fully assess for these conditions because of the applicant's refusal to comply with maintaining a period of sobriety that would allow for the necessary evaluation of these conditions. There is insufficient evidence to fully support the diagnoses of PTSD or TBI while the applicant was on active service. Therefore, there is insufficient evidence to support a referral to the Disability Evaluation System (DES).

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and TBI at the time of the misconduct. The applicant was diagnosed with Alcohol Dependence in March 2008 and engaged in the Army's Substance Abuse Program with residential treatment. He is 100% service connected through the VA for PTSD and had an extensive history of treatment for polysubstance abuse/dependence as well as PTSD and depression.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He deployed to Iraq as an infantryman from October 2006 to December 2007, and he reported multiple traumatic events to his treating providers.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed the applicant reported mental health symptoms while on active service, and he was diagnosed with Alcohol

Dependence. He refused to engage in substance abuse treatment prior to his discharge, and there was no diagnosis of PTSD or TBI rendered while he was on active service because his providers could not evaluate these diagnoses while he was actively using substances. The applicant was diagnosed with PTSD, Polysubstance Dependence, Cognitive Disorder not otherwise specified due to chronic heroin/alcohol dependence, and Unspecified Depressive Disorder by the VA, and he was 100% service connected for PTSD. The applicant's history of substance abuse, both while in service and following discharge, is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure and can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

As to the applicant's request for a change to the narrative reason for separation to a disability, there is insufficient evidence to warrant a referral to the Disability Evaluation System (DES). The Mental Status Evaluation conducted on 16 May 2008, as part of his separation process, showed the applicant refused to cooperate with treatment for Alcohol Dependence, and there was no diagnosis of any condition that warranted discharge through medical channels in accordance with AR 40-501. The applicant cites his VA disability rating as evidence of error in discharge justifying a referral to DES, but VA examinations are based on different standards and parameters. They do not address whether a medical condition met or failed Army retention standards or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service. In accordance with Liberal Consideration, a change to the narrative reason for discharge to something more favorable, such as AR 635-200, Chapter 5-14, "other designated physical or mental condition" could be considered by the board.

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. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant's request for an upgrade to his characterization of service. The Board determined that due to the totality of applicant's records, his nonjudicial punishment for marijuana and cocaine, and his

refusal to participate in a substance abuse program, the Board determined no relief was warranted.

a. Characterization of Service: Deny. The Board found no error or injustice in the designated characterization of service assigned by his commander during separation. The Board noted his use of both marijuana and cocaine and found no mitigating circumstances to support an upgrade to his characterization of service he received upon separation. Therefore, the Board determined based on a preponderance of the evidence and the medical opinion, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

b. Narrative Reason for Separation: Deny. The Board found no error or injustice in the narrative reason for separation the applicant received upon his separation. The Board concurred with the medical advisory that there was insufficient evidence to warrant a referral to the Disability Evaluation Board (DES) to change his narrative reason to reflect a disability. The Board determined that his narrative reason for separation is appropriate. The Board concluded that there is no error or injustice.

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? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and TBI at the time of the misconduct. The applicant was diagnosed with Alcohol Dependence in March 2008 and engaged in the Army's Substance Abuse Program with residential treatment. He is 100% service connected through the VA for PTSD and had an extensive history of treatment for polysubstance abuse/dependence as well as PTSD and depression.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He deployed to Iraq as an infantryman from October 2006 to December 2007, and he reported multiple traumatic events to his treating providers.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed the applicant reported mental health symptoms while on active service, and he was diagnosed with Alcohol Dependence. He refused to engage in substance abuse treatment prior to his discharge, and there was no diagnosis of PTSD or TBI rendered while he was on active service because his providers could not evaluate these diagnoses while he was actively using substances. The applicant was diagnosed with PTSD, Polysubstance Dependence, Cognitive Disorder not otherwise specified due to chronic heroin/alcohol

dependence, and Unspecified Depressive Disorder by the VA, and he was 100% service connected for PTSD. The applicant's history of substance abuse, both while in service and following discharge, is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure and can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

As to the applicant's request for a change to the narrative reason for separation to a disability, there is insufficient evidence to warrant a referral to the Disability Evaluation System (DES). The Mental Status Evaluation conducted on 16 May 2008, as part of his separation process, showed the applicant refused to cooperate with treatment for Alcohol Dependence, and there was no diagnosis of any condition that warranted discharge through medical channels in accordance with AR 40-501. The applicant cites his VA disability rating as evidence of error in discharge justifying a referral to DES, but VA examinations are based on different standards and parameters. They do not address whether a medical condition met or failed Army retention standards or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service. In accordance with Liberal Consideration, a change to the narrative reason for discharge to something more favorable, such as AR 635-200, Chapter 5-14, "other designated physical or mental condition" could be considered by the board.

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

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

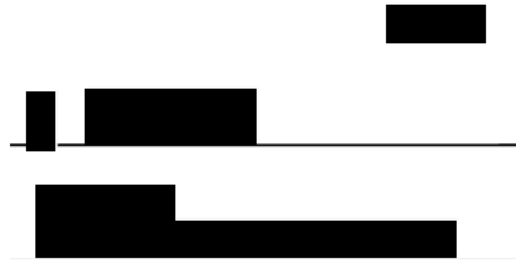
: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ 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.



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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, paragraph 2-11 reads that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), then in effect, set forth the basic authority for the separation of enlisted personnel.

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

b. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

c. Paragraph 14-12c provides commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts Martial.

d. Paragraph 14-12c(2) provides that abuse of illegal drugs is serious misconduct.

5. 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. 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), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 their physical defects raise substantial doubt that they are fit to continue to perform the duties of their 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.

//NOTHING FOLLOWS//