

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2025

DOCKET NUMBER: AR20250008434

APPLICANT REQUESTS: This case comes before the Army Board for Correction of Military Records (ABCMR) on remand from the United States Court of Federal Claims (hereinafter refer to as The Court). The Court directs the ABCMR to review the applicant's application and consider the application in light of the Court's 6 June 2025 Opinion and Order. The applicant, through counsel, requests correction of his service record due to Executive Order 14184 (Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate) to, in effect:

- Apology letter from the Secretary of Defense be placed in the applicant's Army Military Human Resource Record (AMHRR)
- Amend U.S. Army Installation Management Command Headquarters, United States Army Garrison, Fort Bragg, North Carolina, Orders 227-0258, 15 August 2022 to show the date of discharge as 15 October 2024
- Medical Retirement with a Medical Disability finding of at least 30 percent
- Amend his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was honorably discharged on 15 October 2024, due to completion of required active service, along with the corresponding Separation Program Designator (SPD) code, and Reentry/Reenlistment (RE) Code
- Show constructive service credit without a break in service for the period of 3 October 2022 through 15 October 2024
- All associated backpay and Combat Related Special Compensation (CRSC) as his injuries were incurred, while in active combat (Afghanistan)
- Rescission of all indebtedness, reenlistment bonus or other recoupments, including approximately \$4,004.00 garnished thus far
- Full debt cancelation or forgiveness for any and all indebtedness caused by his involuntary separation
- Remove the General Officer Memorandum of Reprimand (GOMOR), dated 8 November 2021 from his AMHRR
- Remove any and all derogatory and disciplinary documents related to him refusing to become fully vaccinated against COVID-19 from his AMHRR
- Reimbursement for out of pocket medical expenses associated with his wife's pregnancy in March 2023 and subsequent treatment

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 149 continuation page
- Court Remand
- Declaration in Support of Complaint and Motion
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 28 April 2022
- Separation Under Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c, Misconduct - Commission of a Serious Offense, 29 July 2022

FACTS:

1. The applicant, through counsel states, he is requesting correction of his service record due to Executive Order 14184.

a. Due to the absence of any licensed vaccine for the COVID-19 vaccine mandate, the applicant was unable to adhere to the order as stipulated. The COVID-19 vaccine implementation was unlawful as it utilized available but unlicensed products instead of licensed ones that were not accessible. Rendering all actions taken thereafter legally invalid as they stemmed from unlawful orders in execution.

b. The Department of Defense (DoD), despite being fully cognizant of the aforementioned details, concurrently issued certain administrative and medical exemptions. However, it breached the Religious Freedom Restoration Act (RFRA) by:

- removing individuals from their positions while their requests for accommodations (RAs) were still under review, contrary to the DoD RFRA guidelines
- denying nearly all requests for religious exemptions
- neglecting to perform the necessary individual assessments

c. During his initial term of service, he was deployed to Afghanistan, where he sustained a back injury. He persisted in his service and sought medical care through the Army's medical system over the subsequent years. He reenlisted for an additional four years in October 2020, receiving a reenlistment bonus of \$10,000. In late 2020, he was assigned to a Psychological Operations (PSYOP) unit. At that time, Covid-19 vaccination was not compulsory. By then, he had initiated the medical board evaluation process due to the worsening condition of his back; he continued to receive treatment and undergo evaluation while assigned to PSYOP.

d. In late 2021, following the implementation of the Covid-19 vaccine mandate, he communicated to his chain of command that he was sufficiently advanced in the

medical evaluation process, indicating that he was likely to be medically retired due to degenerative disc disease and herniated/bulging discs in his back. He had an approved medical board package and was recognized as being 30 percent (%) or more disabled, which qualifies him for medical retirement. His immediate leadership was supportive and recognized that he would probably be discharged in the near future, specifically within a month or two of November 2021, and as a result, he was not being pressured to receive the Covid-19 vaccine.

e. Despite these circumstances in late 2021, higher headquarters annulled his medical board proceedings and commenced punitive and separation actions against him. He sought to communicate directly with his higher headquarters for clarification; he particularly inquired about the rationale behind the denial of his request for exemption from the vaccinations, considering he was undergoing medical and administrative processing due to his injuries. His requests were denied; he received a GOMOR and faced involuntary separation proceedings.

f. He was discharged on October 3, 2022, while his wife was over three months pregnant with their first child. His DD-214 showed an unfavorable discharge, consequently terminated health coverage for him and his family. He did qualify for benefits from the Department of Veterans Affairs (VA), as he was awarded a 90% disability rating. However, VA healthcare benefits do not extend to family members, and with his wife nearing the end of her pregnancy, he needed to cover the medical expenses for the birth of their child. Furthermore, since he was involuntarily discharged due to misconduct instead of being medically retired, his \$10,000 reenlistment bonus was recouped. Following his involuntary separation, he managed to secure employment and was able to live with his fellow service members until he achieved financial stability.

2. In regard to the applicant's request for an apology letter from the Secretary of Defense be placed in his AMHRR, this request is outside the purview of this Board. In appropriate cases, the Board directs or recommends correction of military records to remove an error or injustice.

3. Regarding the applicant's request for payment under the CRSC program, it is important to note that this aspect of the request is premature. Eligibility for CRSC is contingent upon the applicant receiving a qualifying military retirement, which includes retirement due to disability. Therefore, the applicant may pursue a CRSC claim only if relevant authority formally approves his medical retirement based on disability. Until such a determination is made, no action can be taken with respect to CRSC entitlement or payment.

4. With respect to the applicant's request for reimbursement of out-of-pocket medical expenses incurred in connection with his wife's pregnancy in March 2023, the Board has determined that this matter falls outside its scope of authority. The Board is charged

with reviewing and making determinations related to military service records and associated benefits as defined by applicable statutes and regulations. Personal medical expenses of family members, including those related to pregnancy, do not fall within the jurisdiction of this review process. Accordingly, this issue will not be addressed further in the record of proceedings.

5. The applicant, through counsel, provides and the service record shows:

- On 26 July 2016, he entered active duty in the Regular Army
- On 15 October 2020, he signed a Statement of Entitlement to Retention Incentive accepting an incentive in the amount of \$10,000 for additional obligated service from 26 July 2020 through 14 October 2024
- On 24 August 2021, the Secretary of Defense mandated that all service members receive the COVID-19 vaccine
- On 16 September 2021, the applicant refused to become fully vaccinated against COVID-19
- On 8 November 2021, he was reprimanded for disobeying a lawful order by refusing to become fully vaccinated against COVID-19 and received a General Officer Memorandum of Reprimand (GOMOR); he acknowledged receipt of the GOMOR on 16 November 2021
- On 20 January 2022, his commanding general directed that the GOMOR be filed in the applicant's AMHRR
- On 28 April 2022, a MEB found the applicant to be physically unfit; he was referred to Physical Evaluation Board (PEB); DA Form 3947, 28 April 2022, does not provide a disability rating for the applicant
- On 29 July 2022, his commanding general directed that he be honorably discharged. He also noted the applicant's medical condition was not a substantial contributing cause of the conduct that led to the administrative separation and there were no other factors of his case that warrant disability processing
- On 15 August 2022, he was issued separation Orders 227-0258, which were amended on 16 August 2022 to show a separation date of 3 October 2022
- His DD Form 214, shows that on 3 October 2022, he was discharged with a characterization of service of honorable due to misconduct (serious offense); he completed 6 years, 2 months, and 8 days of active federal service; he serviced in Afghanistan from 19 September 2017 through 21 May 2018
- On 10 January 2023, the Secretary of Defense rescinded the COVID-19 vaccine mandate
- 14 October 2024, would have been the applicant's original expiration of term of service, had he not been involuntary separated on 3 October 2022

6. The record is void of evidence showing, and the applicant nor counsel provides evidence, to show any associated indebtedness.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The Board found by a preponderance of the evidence that the Applicant's separation from service solely on the basis of his refusal to take the COVID-19 vaccine and injustice. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documents, the Board made the following findings and recommendations related to the requested relief:

- Amend U.S. Army Installation Management Command Headquarters, United States Army Garrison, Fort Bragg, North Carolina, Orders 227-0258, 15 August 2022 to show the date of discharge as 15 October 2024. PARTIAL GRANT. Based on available documentation, the Board recommended constructive service credit and back pay through Applicant's ETS date of 14 Oct 2024.

- Medical Retirement with a Medical Disability finding of at least 30 percent. PARTIAL GRANT. The Board does not have the authority to medically retire or affix a disability rating, however, the record shows that Applicant was in the DES process at the time of his discharge, his removal from the DES was an injustice and the Board recommends he be restored to the DES process.

- Amend his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was honorably discharged on 15 October 2024, due to completion of required active service, along with the corresponding Separation Program Designator (SPD) code, and Reentry/Reenlistment (RE) Code. PARTIAL GRANT Based on available documentation, the Board recommends that Applicant's DD Form 214 be amended to show a discharge date of October 14, 2024 with an Honorable character of service with appropriate separation and RE Codes.

- Show constructive service credit without a break in service for the period of 3 October 2022 through 15 October 2024. PARTIAL GRANT. The Board recommends correction of Applicant's service record to show continuous constructive service from 3 October 2022 to 14 October 2024.

- Rescission of all indebtedness, reenlistment bonus or other recoupments, including approximately \$4,004.00 garnished thus far. GRANT. The Board recommends that Applicant receive his entire \$10,000.00 enlistment bonus and that any continuing recoupments cease.

- Full debt cancelation or forgiveness for any and all indebtedness caused by his involuntary separation GRANT. The Board recommends that to the extent that the records demonstrate that he was paid any portion of his enlistment bonus and that a recoupment occurred, he shall be refunded any amounts recouped not to exceed his \$10,000.00 bonus.
  
- Remove the General Officer Memorandum of Reprimand (GOMOR), dated 8 November 2021 from his AMHRR. GRANT. The Board recommends removing this document from his AMHRR.
  
- Remove any and all derogatory and disciplinary documents related to him refusing to become fully vaccinated against COVID-19 from his AMHRR. GRANT. The Board recommends removing these documents from his AMHRR.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
XX	XX	XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected as follows:

- Amend U.S. Army Installation Management Command Headquarters, United States Army Garrison, Fort Bragg, North Carolina, Orders 227-0258, 15 August 2022 to show the date of discharge as 14 October 2024
  
- His DD Form 214 (Certificate of Release or Discharge from Active Duty) dated 3 October 2022 corrected as follows:
  - Item 12a (Entered Active Duty Service): 2016 07 26
  - Item 12b (Separation Date This Period): 2024 10 14

- Item 12c (Net Active Service This Period): 08 02 19
  - Item 26 (Separation Code): MBK
  - Item 27 (Reentry Code): 1
  - Item 28 (Narrative Reason for Separation): Completion of Required Service
- The Board recommends that all Department of the Army records of the individual concerned be corrected by:
  - a. Directing the Applicant be returned to the Disability Evaluation System (DES) to complete the MEB/PEB process to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.
  - b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.
  - c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.
- Awarding him constructive service credit and find that he actually served through his ETS date of 14 October 2024
- The Board recommends awarding backpay, allowances and other benefits from Applicant's date of separation of 3 October 2022 through 14 October 2024 at his last duty location of Fort Bragg, North Carolina and rank of E-5.
- Award him his retention bonus of \$10,000.00 based on completion of service in accordance with the above corrections. To the extent that the records demonstrate that he was paid any portion of this bonus and that a recoupment occurred, he shall be refunded any amounts recouped.
- Remove the General Officer Memorandum of Reprimand (GOMOR), dated 8 November 2021 from his AMHRR and remove any and all derogatory and

disciplinary documents related to him refusing to become fully vaccinated against COVID-19 from his AMHRR

- Based on the above corrections to Applicant's service record, the Board determined that the Applicant qualifies for an award of the Army Good Conduct Medal (2nd Award) and so recommends its award.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any other requested relief not mentioned above.

X //signed//

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CHAIRPERSON

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

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.
2. Army Regulation 637-1 (Army Compensation and Entitlements Policy) provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active-duty Soldiers. It is used in conjunction with the Department of Defense (DoD) Financial Management Regulation (FMR), Volume 7A. For the purpose of this regulation, active duty is defined in accordance with Title 37, United States Code (37 USC). The term "active duty" means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army (SECARMY).
3. Title 10 (Armed Forces), United States Code (USC), section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.
4. Army Regulation 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. When a DD Form 214 has been prepared and distributed, and subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's Army Military Human Resource Record (AMHRR).
5. On 24 August 2021, the Secretary of Defense mandated that all service members receive the COVID-19 vaccine. The Secretary of Defense later rescinded the mandate on January 10, 2023. It states, "the vaccine mandate was an unfair, overbroad, and completely unnecessary burden on our service members. Further, the military unjustly discharged those who refused the vaccine, regardless of the years of service given to

our Nation, after failing to grant many of them an exemption that they should have received. Federal Government redress of any wrongful dismissals is overdue”.

6. On 27 January 2025, President Donald J. Trump signed Executive Order (EO) 14184, “Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate.”

7. On 6 February 2025 the Secretary of Defense issued Memorandum, "Providing Remedies for Service Members and Veterans Negatively Impacted by the Department's Defunct Coronavirus Disease 2019 Vaccination Mandate Based Executive Order."

8. On 1 April 2025 the Office of the Under Secretary of Defense issued a Memorandum for Secretaries of the Military Departments, “Updated Guidance on Correction of Military Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements.” It provides:

a. As directed by the Secretary of Defense, the Department of Defense shall take all actions necessary to make reinstatement available to all members of the military (Active and Reserve Components) who were discharged solely for refusal to receive the coronavirus disease 2019 (COVID-19) vaccine and who request to be reinstated. The Secretaries of the Military Departments will process reinstatements for individuals either involuntarily discharged or those who voluntary left the service or allowed their service to lapse, rather than be vaccinated under the vaccine mandate, consistent with this guidance.

b. In cases where the Service member was involuntarily separated, the Secretaries of the Military Departments will contact such Service members and make available to them reinstatement via the Boards for Correction of Military/Naval Records (BCM/NRs) process. The BCM/NRs should exercise their broad discretion to order all appropriate retroactive corrections of the Service member's record as described in the guidance.

c. The BCM/NRs will give COVID-19 reinstatement cases priority consideration, subject to existing statutorily specified priority consideration for post-traumatic stress disorder, traumatic brain injury, and military sexual trauma.

d. The BCM/NRs, using the attached guidance in the memorandum, will assess each case to determine if an error or injustice exists within the former Service member's record and order all appropriate records corrections, which may include but is not limited to reinstatement with no break in service, restoration of the member's previous grade or rank, and credit for lost service time due to separation.

9. On 7 May 2025 the Office of the Under Secretary of Defense issued a Memorandum for Secretaries of Military Departments, “Supplemental Guidance to the Military

Department Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests from Service Members Adversely Impacted by Coronavirus Disease 2019 Vaccination Requirements.” It provides:

a. On January 27, 2025, the President issued reference (a), concerning the Department of Defense's since-rescinded coronavirus disease 2019 (COVID-19) vaccination mandate, which was unlawful as implemented, and "an unfair, overbroad, and completely unnecessary burden" on Service members. The Secretary of Defense has taken decisive action to execute the President's guidance to correct this injustice:

(1) All former Service members discharged solely for refusing to receive the COVID-19 vaccine may pursue reinstatement in the military, and be considered for eligibility to receive backpay; and

(2) Former Service members who attest that they voluntarily left the military or allowed their service to lapse according to appropriate procedures due to the military's previous COVID-19 vaccination mandate may pursue a return to military service.

b. In addition, some Service members were separated with less than a fully honorable discharge characterization for their refusal to take a COVID-19 vaccine, depriving them of veterans' benefits. Other Service members, who remained in service and requested religious, administrative, or medical accommodations related to the COVID-19 vaccine requirement, may still have adverse information in their records connected to those requests.

c. To remedy these harms, on April 23, 2025, the Secretary of Defense directed the Under Secretary of Defense for Personnel and Readiness to issue additional guidance to the Military Department Review Boards concerning the review of requests from Service members and former Service members adversely impacted by the COVID-19 vaccine mandate. The following is directed:

(1) The Secretaries of Military Departments will, through their Boards for Correction of Military/Naval Records, continue to apply guidance, which was issued to facilitate the reinstatement or return of eligible individuals who wish to continue their military service.

(2) Carefully consider claims by individuals who filed formal requests for administrative or medical accommodation, including requests for religious accommodation, related to the Department's previous COVID-19 vaccine mandate, yet continued to serve. Adverse actions in a Service member's records solely associated with their refusal to take a COVID-19 vaccination or seek an exemption from that COVID-19 vaccine mandate should be removed.

d. This guidance is not intended to interfere with or impede the BCM/NRs' statutory independence, nor does it limit the Boards from considering additional claims related to harms caused by the Department's previous COVID-19 vaccine mandate and providing appropriate remedies.

e. Discharge Upgrade Requests:

(1) Service members who were involuntarily separated solely for refusing to be vaccinated, did not receive the same treatment across the Department. While some Service members were assigned "honorable" discharge characterizations, others received "general (under honorable conditions)" characterization and as a result, lost access to important educational benefits under the Post-9/11 GI Bill and the Montgomery GI Bill, and potentially other veterans benefits.

(2) To correct this injustice and enhance uniformity across the Military services, the Review Boards should generally grant a discharge upgrade request from a former Service member when:

- The former Service member was involuntarily separated
- The separation was based solely on a refusal to receive the COVID-19 vaccine; and
- There are no aggravating factors in the Service member's record, such as misconduct

(3) Review Boards should normally grant requests to upgrade the characterization of service to "honorable," change the narrative reason for enlisted separation (i.e., to "Secretarial Authority"), and change the reentry code to an immediately-eligible-to-reenter code under these specific circumstances. Officer records should be changed to have similar effect.

(4) If an applicant's military records reflect multiple reasons for involuntary separation (i.e., when separation was not solely due to the fact that the former Service member refused to receive the COVID-19 vaccine), the Review Boards should apply existing policies that require the former Service member to establish evidence of an error, impropriety, inequity, or injustice in their discharge in order to warrant relief.

f. Removal of Adverse Actions and Information Solely Associated with COVID-19 Vaccine Mandate:

(1) The Department's COVID-19 vaccine mandate also caused harms that were not reflected on separation documents. For instance, some Service members received administrative letters of reprimand, negative or inconsistent evaluations, or withholding

of opportunities for Reserve Component personnel to perform inactive duty training for pay to achieve a “good year” for participation and retirement purposes.

(2) While previous guidance required the Secretaries of the Military Departments to update Service member personnel records to remove adverse actions solely associated with denials of requests for exemption from the COVID-19 vaccine mandate on religious, administrative, or medical grounds, this relief should not have been limited to Service members who formally filed an exemption request. The inadequacy of the consideration afforded to those who submitted accommodation requests undermined the faith of many Service members, and they should not be penalized for deciding not to request an exemption that had little or no likelihood of success.

(3) To ensure that present and former Service members are not penalized for pursuing religious and other exemptions to the COVID-19 vaccine mandate in good faith, the BCM/NRs will carefully consider applications by individuals who request correction of records containing adverse information or reflecting adverse action solely associated with a request for exemption from the COVID-19 vaccination mandate, or with appeals of denials of such requests. Additionally, any present or former Service member who attests that they would have filed a request for exemption from the COVID-19 vaccine mandate were it not for the Department’s very high rate of disapproval of such requests shall be evaluated as if they had requested, and been denied, such an exemption.

(4) If adverse information associated solely with a request for exemption from the COVID-19 vaccination mandate is found within an applicant’s official military personnel file, the BCM/NR should, as appropriate, exercise its broad discretion to assess the potential impact on the Service member’s career and correct impacted personnel records appropriately.

g. Other Harms or Injustices Suffered by Service Members Not Specifically Addressed in this Guidance:

(1) Present and former Service members may have suffered other harms from the COVID-19 vaccine mandate that are not specifically addressed in this guidance. Adverse action may include the overt withholding of favorable personnel actions, including such actions as removing individuals from approved lists to attend training or professional military education, to assume leadership positions, or to conduct a permanent change of station transfer on schedule.

(2) Many Service members may have been denied these opportunities while waiting for the adjudication of their administrative or medical exemption requests. Even more concerning, some have reported that they were pressured to voluntarily separate

from the military due to their COVID-19 vaccine status, even while awaiting adjudication of their exemptions.

(3) The BCMR/NRs should exercise broad discretion in providing appropriate corrections to the records of Service members and former Service members who suffered harms resulting from the Department's COVID-19 vaccine mandate.

10. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. Paragraph 1-1 states, in relevant part, that the intent of Army Regulation 600-37 is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. Paragraph 1-4 stipulates that the objectives of Army Regulation 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in Service or advanced to positions of leadership, trust, and responsibility.

11. Army Regulation 600-8-104 (Army Military Human Resource Records Management), in effect at the time, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

12. Army Regulation 600-8-10 (Leaves and Passes) prescribes the policies and mandated operating tasks for the leave and pass function of the Military Personnel System. It provides a single-source operating document to the field, and as such, is binding on all communities involved in granting leaves and passes. It applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Re-serve, unless otherwise stated.

a. Transition leave (formerly called terminal leave) is a chargeable leave granted together with transition from the Service, including retirement. The unit commander or designee is the approval authority for transition leave requests.

b. The leave and pass program is designed to allow Soldiers to use their authorized leave to the maximum extent possible.

c. Soldiers who do not take leave, may lose leave at the end of the fiscal year (FY). Also, Soldiers who maintain a 60-day leave balance, and wait late in the FY to take leave, will be informed that they risk loss of leave over 60 days if the operational situation requires their presence. Accrued leave that exceeds 60 days at the end of the fiscal year is lost except as authorized.

13. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. 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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct.

14. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

15. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

16. Title 10, 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. 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).

17. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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 AR 40-501, chapter 3, as evidenced in a medical evaluation board (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 onetime 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.

18. Title 10, USC, 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, USC, 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

19. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

//NOTHING FOLLOWS//