UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRENT M. COBURN
1520 Richardson Drive, #1311
Richardson, TX 75080

Plaintiff,

v.

THE HONORABLE PETE GEREN
Secretary of the Army
120 Army Pentagon
Washington, DC 20310-1020

Defendant.

Civil Action No. _____

Case: 1:09-cv-01266
Assigned To : Leon, Richard J.
Assign. Date : 7/7/2009
Description: Admn. Agency Review

COMPLAINT

1. This complaint involves judicial review by the Court of final decisions of the Department of the Army Board for the Correction of Military Records ("ABCMR") denying Plaintiff's applications to correct his military records to show that he retired from the U.S. Army. The ABCMR is composed of civilians who decide applications on behalf of Defendant, the Secretary of the Army. See 10 U.S.C. § 1552. Plaintiff, Mr. Trent M. Coburn, was involuntarily separated from the Army under the Qualitative Management Program ("QMP") after 17 years, 11 months, and 25 days of honorable service. Plaintiff's separation was based on the finding, made under Article 15 of the Uniform Code of Military Justice (non-judicial punishment), that he used marijuana. A board of officers subsequently convened determined that Mr. Coburn did not use marijuana. At the time of his separation, Mr. Coburn needed only five additional days of active service to secure the protections of the 18-year "Sanctuary" statute, 10 U.S.C. §

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1176(a), which, absent criminal charges or other serious misconduct, would have required his retention on active duty. Plaintiff also was undergoing Army physical disability evaluation at the time of his involuntary separation.

THE PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, Trent M. Coburn, served in the U.S. Army for nearly 18 years. He resides at the address provided in the caption above. He was adversely affected by decisions of the ABCMR, which acts on behalf of Defendant.

3. Defendant, the Honorable Pete Geren, is the Secretary of the Army. He resides at the address provided in the caption above. Defendant denied Plaintiff's applications which are the subject of this action.

4. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1346. Plaintiff raises claims arising under federal statutes and Army regulations.

5. The Act of Congress upon which federal question jurisdiction rests is the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (2000), which permits a federal court to review decisions of the ABCMR. Plaintiff also raises claims under U.S. Army regulations, which have the force and effect of statute.

6. Venue is proper because Defendant resides in this judicial district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND STATUTE OF LIMITATIONS

7. Plaintiff was involuntarily separated from the Army on October 30, 2002.

8. On December 5, 2002, Plaintiff, acting *pro se*, requested that the ABCMR correct his records and restore him to active duty in order to complete physical disability evaluation processing.

9. On August 28, 2003, the ABCMR denied his application.

10. On January 5, 2006, Plaintiff, through legal counsel, requested that the ABCMR correct his records to rescind his October 30, 2002 discharge orders and grant him a medical retirement, or, in the alternative, correct his records to show that he was retired for 20 years of active service.

11. On March 7, 2007, the ABCMR denied Plaintiff's second application.

12. Plaintiff has exhausted all administrative remedies available to him.

13. 28 U.S.C § 2401 requires the filing of a claim in this court within six years after the claim first accrues.

14. Plaintiff's claims accrued on August 28, 2003, and March 7, 2007, when the ABCMR issued final decisions on his applications.

15. Plaintiff's claims are timely filed.

FACTUAL BACKGROUND

16. Plaintiff enlisted in the Army on November 6, 1984.

17. Plaintiff consistently performed his duties in an exemplary manner, as demonstrated by his evaluation reports, awards and commendations, and promotions to higher grade. At the time of his involuntary separation, Plaintiff held the rank of Sergeant First Class, grade E-7.

18. In early 1999, Plaintiff experienced lower back pain, and on February 21, 1999, he underwent an MRI examination of his lumbar spine. The MRI revealed injuries at the L4-5 and L5-S1 areas of his spine. A second MRI on April 26, 2000 confirmed that Plaintiff also suffered from degenerative disc disease with moderate midline disc protrusion at L5-S1, small disc protrusion at L4-5, and bilateral lateral recess stenosis at L4-5.

19. In early 2000, Plaintiff's urine purportedly tested positive for marijuana. A positive urinalysis result for marijuana creates a rebuttable presumption that the person knowingly and willfully ingested the drug.

20. On January 3, 2000, Plaintiff was seen at the Fort Hood Alcohol and Drug Abuse Prevention and Control Unit. The clinical director noted that Plaintiff denied using marijuana, and determined that no further treatment was indicated.

21. The Army charged Plaintiff with violation of Article 112a of the Uniform Code of Military Justice ("UCMJ"). On March 24, 2000, the Army convened a hearing under Article 15 UCMJ, also known as "non-judicial punishment." Plaintiff pled not guilty to marijuana use and denied marijuana use, yet was found guilty by his commanding officer.

22. On August 20, 2000, the Army issued Plaintiff a non-commissioned officer evaluation report ("NCOER") that contained derogatory marks based solely on the Article 15 finding of guilty.

23. On September 8, 2000, the Army ordered Plaintiff to undergo an Administrative Separation Board to determine whether he should be retained in the Army. The Article 15 finding of marijuana use and the resulting NCOER were the sole bases for that action.

24. After a hearing that took place on October 26-27, 2000, the Administrative Separation Board determined that Plaintiff was not guilty of marijuana use and that he should be retained on active duty. According to the board, "the allegation that SFC Coburn wrongfully used marijuana is not supported by a preponderance of the evidence."

25. The findings of the board were never posted to Plaintiff's official military records.

26. On November 2, 2000, Plaintiff, through his defense counsel, petitioned his Brigade Commander to set aside the Article 15 based on the ASB findings. The Brigade Commander refused to do so, and Plaintiff appealed that decision on January 12, 2001. His appeal was denied.

27. On April 20, 2001, the Army informed Plaintiff that he was selected for denial of continued Army service under the Qualitative Management Program ("QMP"), pursuant to Army Regulation 635-200, Chapter 19. The reason for denial was the NCOER that reflected Plaintiff's Article 15 finding. There were no other performance issues affecting Plaintiff's qualification to continue his service.

28. In May 2001, Plaintiff petitioned the Commanding General of Fort Hood to set aside his Article 15 based on the ASB findings. On May 8, 2001, this request was denied.

29. On June 11, 2001, Plaintiff petitioned the Department of the Army Suitability Evaluation Board to transfer the Article 15 to the restricted portion of his official records based on the ASB findings. On August 15, 2001, the board denied the request.

30. On August 24, 2001, Plaintiff petitioned the ABCMR to set aside the Article 15 and remove it from his official records, or to transfer it to the restricted portion of his records. He also requested that the ABCMR remove the NCOER that was based on the Article 15 findings.

31. Plaintiff informed the ABCMR:

> Each of these records was issued in error because each resulted from the erroneous [conclusion] that I wrongfully used marijuana. The records create an injustice because they have resulted in my pending separation from the Army under the Qualitative Management Program. Had these records been set aside and removed from my OMPF [Official Military Personnel File] as I had earlier requested I would not have been targeted for separation under QMP.

32. On March 28, 2002, the ABCMR denied Plaintiff's application.

33. On June 3, 2002, the Army recommended that Plaintiff undergo physical disability evaluation. On June 28, 2002, while Plaintiff was still on active duty, an Army physician initiated Physical Disability Evaluation System proceedings for Plaintiff due to his back conditions.

34. After his referral, Plaintiff underwent continued treatment for his back condition at Darnall Army Medical Center and Brooke Army Medical Center. His condition did not improve.

35. The Army published orders on June 27, 2002 directing Plaintiff's discharge on July 2, 2002. Plaintiff complained to the Army Inspector General that the orders were unlawful. The orders were revoked the same day. Plaintiff also expressed his concerns to his Member of Congress.

36. On July 17, 2002, the Army informed Plaintiff's Member of Congress that Plaintiff was scheduled for involuntary separation on July 2, 2002 under the QMP. He further stated that Plaintiff was not separated on that date because he was eligible for disability evaluation processing.

37. The Army further informed the Member of Congress that Plaintiff was not being unfairly discharged, but was being afforded "every legal and medical recourse as he was being processed through the physical disability system."

38. Orders again were published on October 25, 2002 directing Plaintiff's discharge on November 4, 2002. On October 28, 2002, Plaintiff filed a complaint with the Army Inspector General, alleging that his discharge orders were unlawful. That was Plaintiff's

second Army Inspector General inquiry into the matter. The orders were revoked on October 29, 2002.

39. The Army Inspector General case summary, cited by the ABCMR, states that Plaintiff should have been retained in the Army until his physical disability processing was complete.

40. On October 30, 2002, orders were published directing that Plaintiff be discharged the same day.

41. On October 30, 2002, the Army physician who initiated Plaintiff's MEB "terminated" that processing, even though he had not seen Plaintiff in over four months. In his letter to Plaintiff's Physical Evaluation Board Liaison Officer ("PEBLO"), the physician stated, "[p]lease terminate the MEB action on SFC Coburn. Presently his medical issues are stable and maybe [sic] followed by the VA system once the soldier leaves the military." The Deputy Commander for Clinical Services at Fort Hood approved the physician's request.

42. Most unusually, the Army involuntarily separated Plaintiff that same day under the QMP. Plaintiff had 17 years, 11 months, and 25 days of active duty service. If Plaintiff had served an additional 5 days, the Army would have been prohibited from separating him under the QMP.

43. Subsequent to his involuntary separation, Plaintiff was evaluated by the Veterans Administration and found disabled due his back and shoulder conditions. The Veterans Administration determined that the conditions were connected to his military service. His back and shoulder conditions persist to this day and the Veterans Administration currently rates Plaintiff as 90% disabled.

Post-Separation Applications to the ABCMR

44. After his involuntary separation, Plaintiff petitioned the ABCMR on two occasions. First, on or around May 6, 2003, Plaintiff, acting *pro se*, requested that the ABCMR reinstate him on active duty in order to complete disability evaluation processing. Plaintiff argued, based on Army regulations, that the termination of his disability evaluation was unlawful.

45. On August 21, 2003, the ABCMR denied Plaintiff's application.

46. Second, on January 5, 2006, Plaintiff, through legal counsel, petitioned the ABCMR for reconsideration of its August 21, 2003 denial.

47. Counsel argued that the termination of Plaintiff's physical disability evaluation was unlawful, and that his separation based on his alleged marijuana use was error and injustice warranting relief. Plaintiff requested that the ABCMR assign him a physical disability rating of 50%, in accordance with the rating of Plaintiff by the Veterans Administration at that time, with medical retirement, or alternatively, that his records be corrected to show that he retired based on 20 years of active service.

48. On March 7, 2007, the ABCMR denied Plaintiff's application.

LEGAL CLAIMS

1. THE ARMY UNLAWFULLY SEPARATED PLAINTIFF FOR MARIJUANA USE AFTER HE WAS CLEARED OF THAT CHARGE BY A BOARD OF OFFICERS THROUGH A FORMAL HEARING.

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. Article 112a of the Uniform Code of Military Justice ("UCMJ") makes it an offense for a person to wrongfully use or possess marijuana.

51. A positive urinalysis for marijuana creates a rebuttable presumption that the person knowingly and willfully used the drug. See United States v. Brewer, 61 M.J. 425 (C.A.A.F. 2005).

52. Plaintiff was charged under Article 112a after his urine tested positive for marijuana.

53. Plaintiff consistently denied knowing and willful use of marijuana.

54. Plaintiff pled not guilty to marijuana use at his March 24, 2000, Article 15 hearing.

55. Non-judicial punishment under Article 15 UCMJ is a procedure whereby commanders may expeditiously dispose of minor disciplinary infractions.

56. A person required to appear at an Article 15 proceeding is not entitled to representation by legal counsel. Rather, he or she is entitled only to consult with legal counsel prior to the hearing.

57. The beyond a reasonable doubt standard of proof applies to offenses charged at an Article 15 proceeding. See Army Regulation 27-10, Chapter 3-18(l).

58. Plaintiff's commanding officer found him guilty of marijuana use at the Article 15 hearing held on March 24, 2000.

59. Based on Plaintiff's alleged marijuana use, the Army ordered him to undergo an Administrative Separation Board ("ASB") to determine whether he should be retained in the Army or administratively discharged for misconduct (marijuana use only).

60. Plaintiff enjoyed numerous rights during the ASB proceeding that he did not enjoy at the Article 15 proceeding.

61. Plaintiff was entitled to representation by legal counsel, and was so represented. Plaintiff was entitled to examine and cross-examine witnesses. See Army Regulation 635-200, Chapter 2-10.

62. Plaintiff again contended that he did not knowingly and willfully use marijuana.

63. The ASB determined that Plaintiff did not knowingly and willfully use marijuana, and that Plaintiff did not engage in misconduct.

64. The ASB further determined that Plaintiff should be retained in the Army and transferred to a different unit. The transfer did not occur.

65. The Army may not separate a soldier based on allegations of misconduct that an ASB has considered and for which the board found insufficient evidence. See Army Regulation 635-200, Chapter 2-6(d).

66. ASB determinations therefore are final and conclusive as to all matters considered and decided by the ASB.

67. The ASB employed the preponderance of the evidence standard in determining whether Plaintiff knowingly and willfully used marijuana. See Army Regulation 635-200, Chapter 2-12(a)(1).

68. The Army was obligated by Army Regulation 600-8-104, Chapter 2, to place a copy of the ASB's report in Plaintiff's Official Military Personnel File. The Army failed to do so.

69. Plaintiff requested on two occasions that the Army set aside the Article 15 findings based on the ASB's determination that he did not use marijuana. The Army refused to do so. Plaintiff also requested that the ABCMR set aside the Article 15 findings and the NCOER that was based solely on those findings.

70. Army Regulation 27-10, Chapter 3-28, governs the setting aside of Article 15 findings. Chapter 3-28(a) provides:

> The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier.

71. (Emphasis added.) Plaintiff presented an injustice that was as clear as it possibly could be. A board of officers determined after a contested hearing that the preponderance of the evidence did not support the finding that Plaintiff knowingly and willfully used marijuana and that Plaintiff should be retained in the Army. That hearing was a far more detailed inquiry into the matter than was the Article 15 proceeding, and in fact was dispositive of the issue for purposes of separation.

72. Plaintiff was involuntarily separated for misconduct that he was found not to have committed. The Army's refusal to set aside Plaintiff's Article 15 finding in light of the determination of the ASB, and remove the record of that finding from his official military records, was unlawful, and constituted error and injustice in the extreme.

73. The ABCMR's determination that Plaintiff was not unlawfully discharged based on marijuana use was contrary to law, unsupported by substantial evidence, arbitrary, and capricious.

2. THE ARMY UNLAWFULLY TERMINATED PLAINTIFF'S PHYSICAL DISABILITY EVALUATION PROCESSING.

74. Paragraphs 1 through 48 are incorporated herein by reference.

75. Plaintiff suffered from severe back pain and potentially disabling medical conditions as early as January 1999.

76. At the time of his involuntary separation from the Army, Plaintiff suffered from the same back pain and potentially disabling medical conditions. In fact, at the time of his separation he was undergoing evaluation through the Army Physical Disability Evaluation System and was on a permanent, restrictive physical activity profile.

77. The Army Physical Disability Evaluation System is governed by Army Regulation 635-40, "Physical Evaluation for Retention, Retirement, and Separation."

78. Army Regulation 635-40, Chapter 4-7, provides that medical providers may initiate medical evaluation to determine whether the soldier is physically capable of performing the duties of his or her grade, rank, and military occupational specialty.

79. On June 28, 2002, Plaintiff was referred for medical evaluation board processing through the Army Physical Disability Evaluation System. The Army physician who initiated the process documented his actions through a "Medical Evaluation Board Notification," using a form designated as FH MDA FL 290 (Revised) 1 Oct 99.

80. The form states Plaintiff's diagnosis at that moment to have been "Disc herniation [with] osteophyte formation of L4-L5, L5-S1." The physician noted that Plaintiff had

received the following consultations from medical specialists: (1) Neurosurgery: seen May 02; (2) Physical therapy [seen] 08 April 02; (3) Physical Med: seen June 14, 2002."

81. The notification form completed by the physician stated: "A Medical Evaluation Board has been initiated on the following soldier. His/Her case is forwarded for further processing in the Physical Disability System."

82. Army Regulation 40-501 establishes the criteria for referral to the Army Physical Disability Evaluation System.

83. Army Regulation 40-501, Chapter 3-39, addresses conditions of the spine, scapulae, ribs, and sacroiliac joints. It provides that causes for referral to an MEB are:

> *e. Herniation of nucleus pulposus.* More than mild symptoms following appropriate treatment or remedial measures, with sufficient objective findings to demonstrate interference with the satisfactory performance of duty.
>
> *h. Nonradicular pain involving the cervical, thoracic, lumbosacral, or coccygeal spine, whether idiopathic or secondary to degenerative disc or joint disease, that fails to respond to adequate conservative treatment and necessitates significant limitations of physical activity.*

84. Army Regulation 40-400, "Patient Administration," further provides, at Chapter 7-5, that medical evaluation board referral is necessary for:

> (2) Those involving patients with medical conditions or physical defects that are usually progressive in nature and expectations for reasonable recovery cannot be established. The MEB must ensure that adequate documentation is made of the nature, extent, and cause of all medical conditions or physical defects in question. (3) Those involving patients whose medical fitness for return to duty is questionable, problematical, or controversial. When a member's fitness for further military duty is questionable, it becomes essential that all abnormalities in his or her condition be thoroughly evaluated.

85. The referring physician correctly determined that Plaintiff's conditions were serious enough to warrant full medical disability evaluation, and that such action was required by law. The physician noted Plaintiff's diagnosis of herniation of nucleus pulposus (disc herniation) and the previous, unsuccessful alternative treatments and remedial measures he had undergone, such as physical therapy and invasive spinal injections.

86. At the time of his referral, the Army had placed Plaintiff on restrictive (limited duty and activity) physical profiles due to his back condition.

87. Plaintiff's NCOER for the period of his referral to a MEB noted, "profile hindered soldier from performing MOS duties."

88. Plaintiff underwent additional evaluation and treatment after the MEB process was initiated on June 28, 2002.

89. Plaintiff's condition did not improve or simply go away between June 28, 2002, when the physician assigned Plaintiff a permanent physical limitation profile, and October 30, 2002, when the physician directed that Plaintiff be removed from the Army Physical Disability Evaluation System, which he lacked authority to do.

90. Plaintiff remained under a restrictive, permanent physical profile (P3) during that entire period of time, and at the time of his involuntary separation.

91. Army Regulation 40-501, Chapter 7, governs the assignment of physical profiles. Chapter 7-3d provides for the assignment of numerical values reflecting a soldier's physical activity limitations:

> (3) A profile containing one or more numerical designators of "3" signifies that the individual has one or more medical conditions or physical defects that may require significant limitations. The

> individual should receive assignments commensurate with his or her physical capability for military duty.

92. Army Regulation 40-501, Chapter 7-1, governs permanent profiles. Chapter 7-1(a)(1) provides:

> If the profile is permanent the profiling officer must assess if the Soldier meets retention standards by chapter 3. Those Soldiers on active duty who do not meet retention standards must be referred to an MEB as per chapter 3.

93. (Emphasis added.) Army Regulation 635-40, Chapter 4–9, also requires medical examination of a soldier who may have medical conditions or injuries limiting his or her performance of duties:

> The MTF [Military Treatment Facility] commander having primary medical care responsibility will conduct an examination of a Soldier referred for evaluation. The commander will advise the Soldier's commanding officer of the results of the evaluation and the proposed disposition. If it appears the Soldier is not medically qualified to perform duty, the MTF commander will refer the Soldier to a MEBD.

94. Plaintiff was so referred.

95. According to Army Regulation 635-40, Chapter 4-10:

> The medical evaluation boards (MEBD) 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 the criteria in AR 40–501, chapter 3. If the MEBD determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB. For MEBD's rules for documentation, recommendations, and disposition of the evaluated Soldier, see AR 40–400, chapter 7.

96. Although Plaintiff was determined by an Army physician to require MEB evaluation, and such evaluation was initiated, it never occurred.

97. Neither Department of Defense nor Army regulations provide for the termination of disability processing once initiated. Such termination may only occur when a soldier is found by a MEB to be fit for retention, see Army Regulation 635-40, Chapter 4-10, or by a Physical Evaluation Board ("PEB") to be fit for duty. See Army Regulation 635-40, Chapter 4-19.

98. The Army physician also noted that Plaintiff's condition "was stable." Yet stability of an injury or condition has no bearing on whether the injury or condition may disqualify a soldier from retention in the Army. As Plaintiff's counsel argued before the ABCMR, "[a] soldier who loses an arm may become 'stable' at some point; this does not make him fit for duty."

99. The ABCMR cited findings made by an Army Inspector General that the Army physician who initiated Plaintiff's MEB processing terminated that processing because "...he had determined that the applicant was fit for duty."

100. The Army physician's action was unlawful. It was not based on a current, complete medical evaluation, as the Army physician had not seen Plaintiff for over three months. It also was contrary to Army Regulation 635-40, Chapter 4-19a(1), which provides that the PEB alone shall make the determination of whether Plaintiff was fit for duty.

101. At all times Plaintiff was fully eligible for disability evaluation processing.

102. The ABCMR's finding that the termination of Plaintiff's disability evaluation processing was not error or injustice requiring the granting of relief was arbitrary, capricious, unsupported by substantial evidence, contrary to law, and contrary to mandatory procedure.

3. ARMY REGULATIONS 635-40 AND 635-200 PROHIBITED PLAINTIFF'S ADMINISTRATIVE SEPARATION.

103. Paragraphs 1 through 48 are incorporated herein by reference.

104. Army Regulation 635-40, Chapter 4-3a, identifies those soldiers ineligible for Army physical disability evaluation processing, providing:

> Except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

105. All other active duty enlisted soldiers therefore are eligible for disability evaluation processing.

106. Plaintiff was not eligible to receive a characterization of service of under other than honorable conditions. The Army therefore was required to continue his physical disability evaluation processing.

107. Department of Defense Instruction 1332.38 governs physical disability evaluation processing, and addresses potential ineligibility of soldiers being separated under regulatory provisions authorizing a service characterization of under other than honorable conditions. Section E3.P2.4.3 provides:

> Except as provided under Service regulations, the member is pending separation under provisions that authorize a characterization of service of Under Other Than Honorable (UOTH). This restriction is based on the provisions under which the member is being separated and not on the actual characterization the member receives. For example, because separation for misconduct authorizes a UOTH, a member who is being separated for misconduct with a general characterization is ineligible for referral into the DES except as provided under the regulations of the respective Service.

108. (Emphasis added.) Army Regulation 635-200, Chapter 19, governs QMP separations and does not authorize a service characterization of under other than honorable conditions.

109. Plaintiff was fully eligible for disability evaluation processing.

110. Army Regulation 635-200, Chapter 1-33a provides:

> Except in separation actions under Chapter 10 and as provided in para 1-34b, disposition through medical channels takes precedence over administrative separation processing.

111. The exceptions noted in the selection above did not apply to Plaintiff.

112. Army Regulation 635-200, Chapter 19, which governed the QMP separation process, does not provide an exception to that rule.

113. MEB and PEB processing may be waived only with the soldier's informed consent. See Department of Defense Instruction 1332.38, at E3.P2.7. Plaintiff did not waive such processing.

114. Plaintiff argued before the ABCMR that his separation under the QMP program was unlawful because disposition through medical channels took precedence.

115. The Army was required by law to retain Plaintiff on active duty and complete his physical disability evaluation processing.

116. If the Army had retained Plaintiff to complete his disability processing, he would have secured, in five days from the date of his separation, the "sanctuary" protections of 10 U.S.C. § 1176(a). The Army then could not have involuntarily separated him under the QMP.

117. The ABCMR's rejection of Plaintiff's claim that the Army was precluded by law from separating him under the QMP because he was undergoing disability evaluation was

arbitrary, capricious, unsupported by substantial evidence, contrary to law, and contrary to mandatory procedure.

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court grant the following relief:

1) Enter judgment in his favor on all counts;

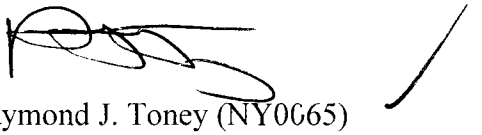
2) Remand the matter to the ABCMR for further action consistent with the Court's decision and order;

3) Upon proper application, award Plaintiff attorney fees in accordance with the Equal Access to Justice Act;

4) Assign all costs associated with this action to Defendant; and

5) Any other relief deemed by the Court to be appropriate.

Respectfully submitted,



Raymond J. Toney (NY0065)
The Law Office of Raymond J. Toney
986 Losoya Drive
Woodland, CA 95776
Tel: 530-668-0984; Fax: 718-504-4735
E-mail: rjtoney@rjtlaw.net

Counsel for Plaintiff