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**UPDATE ON MILITARY
REVIEW BOARD AGENCIES**

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BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

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UPDATE ON MILITARY REVIEW BOARD AGENCIES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON MILITARY PERSONNEL,
Washington, DC, Thursday, September 27, 2018.

The subcommittee met, pursuant to call, at 4:30 p.m., in Room 2322, Rayburn House Office Building, Hon. Mike Coffman (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. MIKE COFFMAN, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, SUBCOMMITTEE ON MILITARY PERSONNEL

Mr. COFFMAN. I want to welcome everyone to today's hearing on the military review board agencies. Eighteen months ago, the subcommittee held a hearing designed to provide an overview of the review board agencies, including an understanding of their workload. The purpose of today's hearing is to follow up with the review boards to determine what improvements have been made to their processes and what challenges the boards still face.

Each of the services have a board for correction of military records and a discharge review board designed to correct errors in, and remove injustices from, military records. They receive thousands of applications each year from applicants requesting everything from name changes on personnel documents to discharge upgrades.

In reviewing the written statements of the witnesses today, I am encouraged by the level of effort and dedication that has gone into improving the efficiency and thoroughness of the boards' processes. I was also struck by the sheer volume of applications that the board receives each year.

However, despite the great strides that have been made, much work remains. I am still deeply concerned by the persistent backlog of applications and delays in processing. The services have been unable to meet many of the congressionally mandated processing timelines for the past few years. In some cases, veterans have waited 450 days or more for action on their applications. These delays have real consequences for both the applicants and their families.

While I appreciate the fact that case volume has increased significantly, and many of the cases are more complex, I look forward to hearing from the witnesses about your long-term plans to fix the backlogs. In addition, I would like to hear from each of the witnesses about how you are leveraging technology to improve efficiency. Finally, I look forward to acquiring a deeper understanding of what additional resources are needed to ensure the boards are able to meet processing timelines in the future.

Before I introduce our panel, let me offer the ranking member, Ms. Speier, when she is here—when she is here—not that Jackie. So what we are going to do, I think we are going to take testimony. And then Ms. Speier, when she gets here, will make her opening remarks.

We are joined today by an outstanding panel. We will give each witness the opportunity to present his or her testimony and each member an opportunity to question the witnesses. We would respectfully remind the witnesses to summarize, to the greatest extent possible, the high points of your written testimony in 5 minutes or less. Your written comments and statements will be made part of the hearing record.

Let me welcome our panel: Ms. Francine Blackmon, Deputy Assistant Secretary of the Army for Review Boards; Mr. Robert Woods, Principal Deputy Assistant Secretary of the Navy for Manpower and Reserve Affairs; Mr. John Fedrigo—did I say that right? close enough—Director of the Air Force Review Boards Agency.

With that, Ms. Blackmon, you may now make your opening statement.

[The prepared statement of Mr. Coffman can be found in the Appendix on page 19.]

STATEMENT OF FRANCINE C. BLACKMON, DEPUTY ASSISTANT SECRETARY OF THE ARMY, REVIEW BOARDS, DEPARTMENT OF THE ARMY

Ms. BLACKMON. Chairman Coffman, distinguished members of this committee, I thank you for the opportunity to appear before you on behalf of the Army Review Boards Agency and the Army Board for the Correction of Military Records. Since I last testified before this committee, the Army has added 20 new civilian positions, bringing us to 132 personnel. In 2017, the Secretary of the Army reported that the ABCMR [Army Board for Correction of Military Records] did not meet the 10-month timeliness standard for cases received in fiscal year 2015. This year, the Secretary of the Army reported that for cases received in fiscal year 2016, the ABCMR did not meet the 90 percent within 10 months or the 100 percent within 18 months timeliness standards.

The current ABCMR case backlog is 13,806. The reasons for the backlog include a substantial reduction in administrative case closures. We now hold incomplete applications open for 90 days while we work to add missing documents.

[Off mike] for over 15 years. This antiquated system costs ARBA [Army Review Boards Agency] millions of dollars in annual sustainment fees and lacks the agility to address changing business requirements.

Our upgraded case tracking system, ACTS [Army Case Tracking System] 2.0, will support our modernized new business processes and workflows. In fiscal year 2016, you extended the legislation which protects a review board agency's personnel authorizations. This provision expires on December 31, 2019, so at this point I would like to take a turn and look at the rates of relief on the placemats.

[The chart referred to can be found in the Appendix on page 45.]

Ms. BLACKMON. And so if you look at the ARBA, or the review board agency, our discharge grant rates. As I indicated, in fiscal year 2014, we were sitting at about 22 percent. We had a slight dip in December—between July and December 2015, but currently we are sitting at about a 52 percent grant rate.

So if I turn the chart over and actually look at the backlog itself, you can see that beginning in January 2012, we were actually meeting the congressional mandates. In 2015, where we really started to look at our processes, and really focusing on what could we do better for the applicants, you started to see the backlog increase.

[The chart referred to can be found in the Appendix on page 46.]

Ms. BLACKMON. At about January of 2018 or so, we started to say, what could we do without really additional resources? And so we were looking at things like quick win cases, where we could actually move the cases to lower levels for them to adjudicate, and quick hit cases where they were easy cases, things like Social Security numbers, name changes that we could kind of adjudicate very quickly. So as you can see, that number has started to drop, but we still have a significant backlog.

So with additional growth, funding of IT [information technology] systems, sustainment of current business processes, and continuation of existing legislative language, we will be in a powerful position to execute this vital mission to protect the men and women who serve our Nation along with their families. I thank you for your continued support of our All-Volunteer Army and the Army Review Boards Agency.

[The prepared statement of Ms. Blackmon can be found in the Appendix on page 20.]

Mr. COFFMAN. Thank you, Ms. Blackmon.

Mr. Woods, you are now recognized.

STATEMENT OF ROBERT L. WOODS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, MANPOWER AND RESERVE AFFAIRS, DEPARTMENT OF THE NAVY

Mr. WOODS. Good afternoon, Chairman Coffman and distinguished members of the committee. Again, my name is Robert Woods. I am the Principal Deputy Assistant Secretary for Manpower and Reserve Affairs. On behalf of Secretary Spencer and Assistant Secretary Slavonic, as well as the passionate day-to-day leaders of our boards, I want to thank you for the opportunity to appear before you today to provide you an update since our last hearing in March of 2017 on the progress we have made in reviewing petitions seeking various military discharge upgrades and relief.

Let me start by assuring you that leadership of the department remains committed to assisting our present and former sailors and Marines with fair and open processes that will allow for appropriate corrections to their military service records, and we appreciate your legislative efforts, as well, which have enhanced the resources available to us to streamline and modernize our processes with a view toward providing greater transparency, quality, and efficiency in the adjudication of matters presented before the boards.

Now, you may recall in our last hearing, Chairman Coffman expressed concern that in fiscal year 2016 the board petitions seeking changes to their military discharge in which petitioners presented evidence of service-connected post-traumatic stress or traumatic brain injury, the Department of the Navy had granted relief in only about 18 percent of those cases.

Members of the subcommittee also expressed similar concerns about a similar rate of relief pursuant to petitions presenting evidence of sexual assault while in military service.

I am pleased to report that in the period since our last hearing, we have improved significantly our review processes for these cases by providing specific training for our staff and board members on mental health and sexual assault issues and ensuring that our boards have the benefit of advisers from medical experts in all of these cases.

And as a result, in petitions adjudicated by the Board for Correction of Naval Records since the third quarter of fiscal year 2017 when last we met, we granted relief in just over 43 percent of the petitions presenting evidence of mental health issues and granted relief in just over 40 percent of those cases presenting evidence of sexual assault. And of course, this compares very favorably to the approximate 14 percent rate of relief granted in discharge petitions that did not involve mental health issues or sexual assault issues.

Aligned with Secretary Spencer's priorities, which focus on people, capabilities, and processes, the assistant secretary has directed the BCNR [Board for Correction of Naval Records] to conduct a comprehensive transformation effort. And in fiscal year 2017, we invested more than \$2 million in a business process reengineering effort designed to transform the BCNR into a more modern and highly functioning organization.

Additionally, the department funded 14 additional full-time civilian staff members, doubled the number of volunteer board members, and approved \$500,000 for a new case management system. With the additional \$1 million in appropriations this fiscal year, the BCNR began efforts to digitize existing records, migrate data systems, modernize our IT systems, and increase our manpower. Although these enhancements will significantly improve our execution of our mission, there is more that needs to be done and we recognize that.

One of the things we plan to do to try to get after our backlog is we are planning to contract for help in getting at those backlog cases so that we can process them more effectively, and we hope that within about 12 to 18 months of letting that contract, we will be able to eliminate our backlog of 4,500 cases that we now have and get to a more steady state of processing cases as they arrived within the timelines that have been established by the law.

So with that brief statement and opening, I thank you again for this opportunity and present myself for your questions.

[The prepared statement of Mr. Woods can be found in the Appendix on page 29.]

Mr. COFFMAN. Thank you. Mr. Fedrigo, you are now recognized for your opening statement.

**STATEMENT OF JOHN A. FEDRIGO, DIRECTOR, AIR FORCE
REVIEW BOARDS AGENCY, DEPARTMENT OF THE AIR FORCE**

Mr. FEDRIGO. Good afternoon, Chairman Coffman and Ranking Member Speier. On behalf of the men and women of the Air Force Review Boards Agency, thank you for the opportunity to appear before you today.

The Air Force BCMR [Board for the Correction of Military Records] has made great strides since we reported to Congress last September. The BCMR embarked on a large-scale transformation effort that identified innovative solutions across a wide spectrum, achieving significant results that have put us on a path of success. A thorough process reengineering effort led to a 50 percent increase in BCMR's production capacity. Total inventory has been reduced 48 percent from an all-time high of 7,000 cases at the end of fiscal year 2017 to 3,634 cases as of 26 September 2018.

The Air Force provided funds in late fiscal year 2018 for 1 year of surge support. By the end of that contract period, the BCMR projects that the entire backlog of noncompliant cases will be eliminated and aging cases that would otherwise have reached non-compliance will be processed within the required timeline.

The BCMR executed an organizational redesign to ensure the right structure was in place to most effectively support the new process. The reorganized structure ensures every team member contributes to case processing, and this includes the leadership team. It also has the added benefit of providing a career ladder for the civilian workforce, incentivizing high-performing individuals and keeping valuable knowledge within the organization.

The BCMR is projected to meet the congressionally mandated 18-month completion requirement for fiscal year 2018 cases. Even with all of the success and significant improvements achieved, we look forward to the opportunity to discuss possible future requirements to set the BCMR up for continued success and ensure that we can meet all congressional timeliness requirements while delivering high-quality decisions for our airmen.

Mr. Chairman, I thank you for the opportunity to appear before this committee and look forward to your questions.

[The prepared statement of Mr. Fedrigo can be found in the Appendix on page 36.]

Mr. COFFMAN. Thank you. I would now like to recognize Ms. Speier for her opening statement.

**STATEMENT OF HON. JACKIE SPEIER, A REPRESENTATIVE
FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON
MILITARY PERSONNEL**

Ms. SPEIER. Sorry for my late arrival, but my scooter had an accident, so—

Mr. COFFMAN. Oh, no.

Ms. SPEIER. Thank you, Mr. Chairman. When we last met to discuss this topic in March of 2017, I stated that your jobs are among the most important and difficult in the Pentagon. I still believe that, but I am also concerned with the systems that you oversee.

You are charged with ensuring the service of our military members is fairly characterized and accurately reflected in their rec-

ords. To serve the men and women who have sacrificed for our country, the process must be timely, fair, and transparent.

During the last hearing, we focused on the way boards can make our veterans whole, especially those who have suffered from TBI [traumatic brain injury], PTSD [post-traumatic stress disorder], and other such conditions, either because of years of conflict or sexual assault. Today I would like to get an update on how each of you are addressing these issues with claims adjudication, but I would also like to discuss some of the congressionally mandated requirements and how those influence your processes.

Before beginning, I want to share a story with you that I believe is timely and just and reflects a real life-altering set of circumstances. Harmony Allen served in the Air Force and was discharged in 2011. She was brutally raped while she served and suffers from traumatic brain injury and post-traumatic stress disorder to this day.

Since April 2013, she has been attempting to get her records corrected to reflect the disabling injuries she sustained. Despite Harmony's persistent efforts to gather documents, request notes from doctors, and otherwise demonstrate that her condition originated while she served, the Air Force BCMR continued to deny her based on tenuous or outright false technical grounds.

This fight has taken a toll on Harmony and her family. She has provided my office with a memo documenting her experience in detail. I will work with the Air Force to ensure Harmony is provided an opportunity to have her case reviewed under the current rules and only request a fair determination.

We have made changes to the BCMR system since Harmony went through the worst of her ordeal, but I am still concerned that you are all focusing on closing cases instead of adjudicating them fairly. Timely responses do matter, but it is incumbent upon you, your staffs, and board members to fully and fairly review claims that come forward. All too often, cases disappear into a black box, the system spits out a negative result years later, and service members have no idea why or how to appeal the decision.

If making BCMRs fair and more transparent requires additional resources, consolidating boards across services, or even a special claims court that treated some cases differently, I want to hear your suggestions. I would like to hear from each of you on how you balance the requirements of meeting timelines versus a thorough review of each case.

I would also like to know how each of you implement liberal consideration and the training requirement for board members to include collaboration, if there is any, amongst the boards to ensure that there is some equity across all the services. I thank you again and look forward to the answers to those questions.

Mr. COFFMAN. Thank you, Ms. Speier.

Let me begin with questions. And this is for anyone. Some of the—well, let's start with Ms. Blackmon and go Mr. Woods and Mr. Fedrigo. Some of the witnesses have mentioned in their written statements that they have hired surge support to eliminate the application backlog. I appreciate those efforts, but what specific additional resources are needed to ensure a long-term fix so that applications are processed within congressionally mandated timelines?

Ms. BLACKMON. So, sir, within the Army, we are working with our senior leaders to actually bring on additional contract work to help us actually with the surge. In terms of the IT systems, I am happy to report that this past week we actually filled it, ACTS 2.0, which will help us immensely get after the backlog. And I am fairly confident, with the additional surge and workload in the IT system, that we will be able to reach a steady state.

Mr. COFFMAN. Mr. Woods.

Mr. WOODS. Thank you, sir. In fact, if you'd like to take a look at the placemat that you have that deals with case backlogs, the chart at the top of that page reflects the Navy's study that we have been trying to do to make sure that we understand all of the aspects of the process and how it moves forward. And so I mentioned in my opening statement that we are looking to engage some surge capability, as well, and that we hope that with that surge capability, we are going to be able to eliminate the backlog that we have.

[The chart referred to can be found in the Appendix on page 46.]

Mr. WOODS. Basically, given our present staffing and our abilities to process cases in our present form, we basically are able to take care of cases as they come within a fairly reasonable time, but we are having trouble killing the backlog.

And so the program that we are trying to do now is a multifaceted approach. First of all, we are looking at some surge capability that will help us process a lot of the backlog cases that we have now so that they can go to hearing and get on track to get that accomplished as a sort of separate entity.

Secondly, as I mentioned, we have some fairly significant upgrades to both our case processing databases and the software that we are using to process cases. And because of the business case analysis that we have done over the last year or so, and it is still ongoing and almost complete, we have determined sort of how to process the paperwork more efficiently within the resources that we have so that we can get them through these systems more quickly.

And to address—I am not sure that we need extra resources at this point from Congress necessarily, but rather to continue to engage in the way that we have decided to go forward to try and attack this. I think we have a pretty good plan. We are hopeful that within about 12 to 18 months of starting the surge process, which we hope to start within the next 6 months or so, we will be able to attack that backlog and get to that.

And then once we are there, the workforce that we have and that we are adding to when we get to our total numbers, I think we will be in a position to where we will have eliminated that backlog and we will be able to just continue and do cases and get them done within the timely aspect. So that is our goal, and that is what we think we have figured out a way to do here.

Mr. COFFMAN. Thank you. Mr. Fedrigo.

Mr. FEDRIGO. Mr. Chairman, the surge support that I mentioned in my opening statement is solely focused on working our backlog. The process reengineering work that we did was to get after how we are doing the incoming cases today. So we have a two-pronged approach. One is using the surge support to eliminate that backlog

that has, in effect, been hanging over the head of the workforce at the agency for many years now, and we are well on our way to reducing that backlog.

And as I said in my opening statement, we believe when we report our fiscal year 2018 numbers to you in 2020, we will be fully compliant. The process reengineering and the 50 percent improvement in efficiency that we have gained with our leadership team engaging in case processing, we believe is going to get us very close to being able to match the workforce to the steady-state incoming cases that we will be receiving once that backlog is gone.

Mr. COFFMAN. Thank you. Ms. Speier.

Ms. SPEIER. Mr. Fedrigo, what happens after the contract expires?

Mr. FEDRIGO. So, ma'am, once the contract is expired, those individuals that are providing that surge capacity will leave our workforce, but at the same time that they leave the workforce, we expect that that backlog that they are solely working on will be gone. They are working on those legacy cases that are already on—

Ms. SPEIER. Yeah, we understand that. So you are basically saying that once the contract is complete, that the backlog will have been addressed?

Mr. FEDRIGO. That is correct. Yes, ma'am.

Ms. SPEIER. All right. What I am concerned with—first of all, I would like to know why we shouldn't have just one system, one entity. I am concerned that the upgrade rates are different from each of the services. And I think a service member who served should have the confidence in knowing that I am being treated the same way if I were in the Army, the Air Force, or the Navy, and that is not suggested by the data.

So I would like to know your comments about whether or not we would be better served if we could just consolidate all of you into one system.

Mr. WOODS. I would like to address that for a moment if I may. I will start, anyway. So I would direct your attention to the other side of the sheet that we had in front of you to show, if you just look at the—this reflects the rates of relief for the three boards. And ours is in the lower right-hand corner.

And I think ours would illustrate, at least to some extent, an answer to your question, which is that I really don't know that consolidating it into one giant board would make us any more efficient or any more consistent across the board with regard to individualized cases.

My concern is that—

Ms. SPEIER. Why do you say that? I mean, if you look at this chart for your service, it is all over the map.

Mr. WOODS. Exactly, so that is my point. So that reflects the individualized nature of these cases. If we get cases that warrant relief, we are granted relief. So these charts are somewhat deceiving in that they show a spike up and down, et cetera. What they really reflect, at least in my opinion, anyway, is that—is the individualized nature of these cases.

And it is really the factual scenarios that are presented in each and every case which we take very seriously and spend time on—

Ms. SPEIER. Well, let's—let me interrupt you.

Mr. WOODS. Yes, ma'am, sure.

Ms. SPEIER. If we look at sexual assault and mental health across the services, Army is trending up, Navy is up and down, and Air Force has trended down. One of the requirements we made in one of the recent NDAA's [National Defense Authorization Acts] was for you to develop a liberal consideration across all of the services.

So if we have, in fact, done that, shouldn't there be a—shouldn't those cases all look relatively the same?

Mr. WOODS. So, yes, ma'am, I think to a certain extent. And this was one of the things that I addressed in my opening statement—

Ms. SPEIER. Sorry I missed it.

Mr. WOODS [continuing]. Which was—no, that is quite all right—and that is that when we were here last, one of the things that was of great concern—and understandably so—to the members was the rate of relief in these types of cases. And back then, as I indicated, Chairman Coffman had indicated, that for fiscal year 2016 the Navy's grants were down around 18 percent and a similarly low rate of relief given in cases involving sexual assault, et cetera.

And so in the period of time since our last hearing, which would have been third quarter of fiscal year 2017 through present, based on a number of things that we have done inside the board itself to try to get after this, we have improved those rates and our mental health rates now are at around—for that entire period were at about—just over 43 percent of the petitions receiving relief and for the sexual assault cases, just over 40 percent receiving relief.

And that was really a result of an educational push to train our staffs, both the permanent career staff of the board as well as the board members who act in a voluntary basis, to train them both on sexual assault issues and on PTSD and other mental health issues. We have professionals come in and train them.

Ms. SPEIER. All right. I have got a limited amount of time. Let me go to Mr. Fedrigo. Why is it down for the Air Force?

Mr. FEDRIGO. Ma'am, on that particular chart, I would like to make a correction. For fiscal year 2017 and 2018, the actual grant rates are 31 percent and 32 percent for the BCMRs, not those 20 percent line that is shown on that chart. So that was an anomaly in our data that we provided a late change to the chart, so it should be 31 percent and 32 percent.

But that shows all BCMR cases, ma'am, which when it comes to the BCMR, things like sexual trauma, discharge upgrades, PTSD is a very small portion of what they do. Out of roughly 6,000 cases that come in to the BCMR every year, about 140 of them fall into that category. And in that category, for instance, last year, in the last 4 quarters that we reported to OSD [Office of the Secretary of Defense], 36 percent of cases that reported sexual trauma were actually grants within the BCMR.

In our Discharge Review Board [DRB], we see a higher percentage of cases. About 62 percent of all the cases that come into the DRB have some mental health aspect to them. And when we pulled the data parts of this hearing, 8—excuse me, 50 percent, or 9 of the last 18 cases that involved military sexual trauma were actually grants from the DRB.

So we have seen a significant increase in the grant percentages in those cases.

Ms. SPEIER. All right. Ms. Blackmon.

Ms. BLACKMON. So, ma'am, I will tell you that we take liberal consideration seriously. With each of the cases that come in, we have our intake program that actually, you know, if there is something that the case is weak, we will actually reach out, hold the case open 30 to 60, 90 days to say to the applicant, here are some things that we think are missing.

We actually have our mental health medical providers scour the medical records to see if there is anything that is within the medical records. We also have very, very comprehensive training. I know the last time I was here, I had spoke about Dr. Lisak actually coming in and training let's say a military sexual trauma.

Last December, we had an individual to come in and brief us about PTSD and the impact of PTSD on the soldier. And this December, we are going to do something very similar, bringing Dr. Lisak back, given that we have about an additional 40 to 50 new members to the workforce, and so we just need to ensure that as we bring in new personnel, that they understand the impact of liberal consideration on these particular cases.

Ms. SPEIER. Okay. I am going to have to leave. I want to thank you all for your participation in this hearing. I want to thank the chairman. But I would really appreciate if you would give some thought to what consolidation would look like, what would be wrong with consolidation, what would be the advantages. There has been some talk of a special claims court to legally adjudicate tough cases that could separate out the ones that are more difficult and take more time.

I just want us to not be fixated into three separate entities when we are talking about a universe of service members who have served who want to be considered for upgrades. And we want to make sure they are all being treated the same. And these numbers, these charts reflect a lot of differences.

So with that, I yield back.

Mr. COFFMAN. Thank you, Ms. Speier.

Let me continue the questioning then. What—if you—why don't we start—we will go in the opposite, Mr. Fedrigo, we will start with you, Mr. Woods, Ms. Blackmon.

What are the services doing to identify the root cause of the dramatic increase in applications? Are service members being discharged without a good understanding of the consequences of their discharge characterization? Mr. Fedrigo.

Mr. FEDRIGO. Mr. Chairman, the increase that we see coming into the BCMR primarily, although we have seen somewhat of an uptick in all of our boards, we believe that is in large part due to our outreach programs. We do a pretty aggressive outreach effort to make sure that our service members that are currently serving understand all their options within the BCMR.

In fact, we have a separate track within the BCMR for currently serving airmen who are facing career decisions related to promotions, decorations, PCS [permanent change of station] movements, financial issues, to try to fast-track those cases and get

those answers to those currently serving airmen as quickly as possible.

But when they separate, whether that be through retirement or finishing an enlistment, they are also leading with that same knowledge of what the BCMR can do for them. So we believe the uptick in cases—and it has not been significant in numbers when it comes to the sheer volume of cases—is much to do with our outreach.

Our real timeliness challenges come with the complexity of these cases. We are seeing a much higher number of cases in our DRB and some in our BCMR that have mental health components. Right now, even with the fact that we have hired three new mental health providers, that still in many cases is adding 130 days to our process to get effective mental health advisories. So it is the complexity, Mr. Chairman, not necessarily just the numbers.

Mr. COFFMAN. Mr. Woods.

Mr. WOODS. So I agree with my colleague. I think the Navy has not noticed a substantial increase in numbers of cases, although we have had some increases. But more importantly, we have—and I would attribute those increases to, as Mr. Fedrigo said, our outreach efforts. We have a fairly extensive outreach efforts that we have done. We have met with many of the service support groups that are out there in the community, Human Rights Watch, places like that. We have put a lot up on the internet to try and ensure that folks know our defense counsel in military justice system are all aware of the opportunity to come and advise their clients to come to the Board for Correction of Naval Records, if that is necessary.

So we have had a very significant outreach effort. But I think, to Mr. Fedrigo's point, what we are seeing more is an increase in the complexity of the cases that are coming in, not so much in the volume, although the volume has increased somewhat. The more difficult aspect of it is that the nature of the cases involving various mental health issues, post-traumatic stress, things of that nature that are very difficult to deal with, those require more time, they require professional review by psychiatric specialists and so forth.

And so because we are giving those cases that attention and that expert review, it is increasing the time that it takes to process these cases. But we are attempting to do various things like doing a triage upfront of cases as they come in to see, for example, any case that is along the lines of the ones we have been talking about with the mental health issue or sexual assault type of thing.

We triage those and identify those early and immediately seek the medical review of those at that point, rather than waiting for them to go further down the line into the process and then go, oh, we need to get one of these reviews. And so we have been doing a number of things to try and streamline our processes, but, again, I will let it stand. I don't think a great number of increase, but really a great increase in complexity.

Mr. COFFMAN. Ms. Blackmon.

Ms. BLACKMON. Sir, I would also have to echo the words of my colleagues, first, in terms of outreach. Back in, I guess, Memorial Day weekend, we met with several hundred veterans during Roll-

ing Thunder, just to kind of describe some of the things that we have the ability for them to do. Just last week, we actually met with, again, several hundred veterans at our retiree affairs event.

But I would also add that last December we had a senior counsel from the Human Rights Watch that came in and briefed the entire workforce. And her comment was, she says, individuals that I have coming forward now have essentially said things have changed within the Army Review Board Agency; 5 or 6 years ago, everyone would say, why go to the review board agency? Because it is going to be a denial. And they are now reaching out to their peers to say, you need to resubmit, because the cases are being looked at very differently.

Mr. COFFMAN. All of the services have reviewed past cases to ensure veterans with PTSD, TBI, and survivors of sexual assault receive a thorough and fair review of their applications. How confident are you now that those who have a diagnosis of PTSD, TBI, or were survivors of sexual assault are receiving fair and full consideration of their application?

Mr. Woods, I will start with you.

Mr. WOODS. Thank you, sir. I think that we are doing a great job in doing that, I really do sincerely. We spend a lot of time on these cases. We pay close attention to them. We have the guidance from DOD [Department of Defense] with regard to liberal consideration and those efforts. And we take those things extremely seriously.

And as I said before, we have expert folks taking a look at these cases, as well, and providing advice to our board members. So I think that they are getting a very fair shake at these things, and we are—and I think that is evident in the fact that our numbers have increased—our numbers of grants of relief in those types of cases, as I said in my opening statement.

Mr. COFFMAN. Mr. Fedrigo.

Mr. FEDRIGO. Mr. Chairman, I would agree with Mr. Woods' comments. Every one of these cases gets a complete medical review from a licensed provider, as well as a complete legal review from an attorney on our staff in the Air Force Review Boards Agency. So by the time those cases come to our panels, they have professional advisories from the right folks with the right background to make sure that our panel members who are deciding these cases have the best information available to them. And as a result, as I mentioned earlier, our grant rates have come up significantly with these type of cases.

Mr. COFFMAN. Ms. Blackmon.

Ms. BLACKMON. Sir, again, I would have to echo the words of my colleague. One of the things, however, that we do is that if there is a disconnect between what the mental health provider has essentially said and the board has a bit of a disagreement with the input that the medical provider has indicated, those cases actually come forward to me for review.

And so I see every one of those disconnects to say exactly, what have we done with that particular case?

Mr. COFFMAN. Thank you, okay. The Army and Navy are partnering on a new standard case tracking system. Does the Air Force

need a similar system upgrade? And are you considering working with the other services on that? Mr. Fedrigo.

Mr. FEDRIGO. Mr. Chairman, we are paying close attention to what the Army and Navy are doing. We are just coming to the end of our development of our own case management system, that the last step is to go do a portal that we can allow electronic submission across all 10 of the boards we support at the Air Force Review Boards Agency, which would, of course, include the BCMR and the DRB.

But as the Navy and the Army have moved forward, we have people from AFRBA [Air Force Review Boards Agency] that are working with them to find out where we can all work together on these systems going forward.

Mr. COFFMAN. Well, I wish to thank the witnesses for their testimony this afternoon. This has been a very informative hearing. There being no further business, the subcommittee stands adjourned.

[Whereupon, at 5:11 p.m., the subcommittee was adjourned.]

A P P E N D I X

SEPTEMBER 27, 2018

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

SEPTEMBER 27, 2018

Opening Remarks – Chairman Mike Coffman
Military Personnel Subcommittee Hearing
Update on Military Review Board Agencies
September 27, 2018

I want to welcome everyone to today's hearing on the military review board agencies. Eighteen months ago, the subcommittee held a hearing designed to provide an overview of the review board agencies, including an understanding of their workload. The purpose of today's hearing is to follow up with the review boards to determine what improvements have been made to the process and what challenges the boards still face.

Each of the services have a board for correction of military records and a discharge review board designed to correct errors in, and remove injustices from, military records. They receive thousands of applications each year from applicants requesting everything from name changes on personnel documents to discharge upgrades.

In reviewing the written statements of the witnesses today, I am encouraged by the level of effort and dedication that has gone into improving the efficiency and thoroughness of the boards' processes. I was also struck by the sheer volume of applications that the boards receive each year.

However, despite the great strides that have been made, much work remains. I remain deeply concerned by the persistent backlog of applications and delays in processing. The services have been unable to meet many of the congressionally-mandated processing timelines for the past few years. In some cases, veterans have waited 450 days or more for action on their applications. These delays have real consequences for both the applicants and their families.

While I appreciate the fact that case volume has increased significantly and many of the cases are more complex, I look forward to hearing from the witnesses what your long-term plans are to fix the backlogs. In addition, I would like to hear from each of the witnesses how you are leveraging technology to improve efficiency. Finally, I look forward to hearing what additional resources are needed to ensure the boards are able to meet processing timelines in the future.

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RECORD VERSION

STATEMENT BY

MS. FRANCINE BLACKMON

DEPUTY ASSISTANT SECRETARY OF THE ARMY (REVIEW BOARDS)

UNITED STATES ARMY

BEFORE THE

PERSONNEL SUBCOMMITTEE

HOUSE ARMED SERVICES COMMITTEE

SECOND SESSION, 115TH CONGRESS

UPDATE ON MILITARY REVIEW BOARD AGENCIES

SEPTEMBER 27, 2018

NOT FOR PUBLICATION UNTIL RELEASED BY THE
HOUSE ARMED SERVICES COMMITTEE

Chairman Coffman, Representative Speier, Distinguished Members of this Committee, I thank you for the opportunity to appear before you on behalf of the Army Review Boards Agency and the Army Board for the Correction of Military Records. And, I am pleased today to have been able to bring several of my staff with me to watch today's hearing.

The Army Review Boards Agency provides the highest administrative level of review for personnel actions taken at lower levels of the Army. The Agency administers 12 boards, to include three statutory boards: the Army Board for Correction of Military Records, the Army Discharge Review Board and the Army Grade Determination Review Board. The remaining boards are policy boards, such as the Army Special Review Board (for evaluation appeals), the Suitability Evaluation Board (for removal of derogatory information from Soldier's personnel files), and the Ad Hoc Board (for consideration of officer elimination cases).

Since I last testified before this committee, the Army has added 20 new civilian positions to the Army Review Boards Agency, and our staff now consists of 132 civilian employees and 16 Soldiers. In addition, 120 Army employees serve as volunteer board members for the Army Board for Correction of Military Records (ABCMR). These volunteers are senior civilian employees drawn from across the Army Secretariat and Army Staff.

ABCMR case timeliness standards are prescribed in 10 U.S.C. § 1557. For applications received in a fiscal year (FY): (1) final action by the Corrections Board must be

completed for at least 90 percent of the applications within 10 months of receipt, and (2) all applications must be adjudicated within 18 months of receipt. The Secretary of the Army is required to submit a report to the House and Senate Armed Services Committees by June 1 following any FY when timeliness standards are not met, specifying the reason why and the corrective actions taken to ensure future compliance.

In 2017, the Secretary of the Army reported that the ABCMR did not meet the 10-month timeliness standard for cases received in FY 2015. This year (2018), the Secretary of the Army reported that for cases received in FY 2016, the ABCMR did not meet the 90 percent within 10 months or the 100 percent within 18 months timeliness standards.

The current ABCMR case backlog (i.e., inventory of cases over 300 days) is 13,806.

The reasons for the backlog include:

- a substantial reduction in Administrative case Closure (previously, in order to meet our congressional mandate, we used to immediately close applications that were not complete—for example, missing a social security number or personnel records were not available at the National Archives). We now hold incomplete applications open for 90 days while we work to add missing documents.
- a tremendous increase in cases in which we request advisory opinions from subject matter experts (this adds time to the case adjudication as we are required by law to refer these advisory opinions with the applicant and give them time to respond back). We started this practice in late 2014.

- increasing complexity of cases (especially involving post-traumatic stress, traumatic brain injury, and sexual assault trauma).
- ongoing business process reengineering efforts.
- subsequent to the previous hearing the agency completed the directed task to review more than 1400 California Army National Guard incentive cases before the end of July 2017. The successful completion of this time-sensitive and highly visible mission, required the allocation of a significant number of dedicated ABCMR staff. As a result, capacity for continued processing of older cases was reduced by 50 percent for an extended period.
- and finally a paradigm shift in focus, that is a focus on quality of adjudication decision over mere quantity. Two examples in which old practices would have resulted in a quick denial:
 - We recently granted a 2LT commission to a 98 year old WWII OCS graduate who was denied his commission because of his race, and
 - The President recently presented a Medal of Honor to a WW II veteran due in part to an ABCMR recommendation to upgrade his Distinguished Service Cross.

Unlike in the past, where the complete focus was on timeliness, the bottom line for the Army is that the Board for Correction of Military Records is now focused on how we can get to a fair result for the applicant. Since 2013, in fact, our overall grant rate has risen from 22% to its current 44%.

In view of the growing backlog of ABCMR cases and to improve the efficiency of ABCMR case adjudication, we have taken the following steps:

- completed agency transformation efforts. In the first three years of our effort, we focused on three major initiatives: electronic case processing, selection of our new case management system, and external stakeholder engagement. Our external stakeholder engagement has enabled countless improvements in streamlining touchpoints, clarifying authorities, and building relationships with 3rd parties for expediting case adjudication and/or avenues of administrative relief.
- refined application screening and streamlined advisory opinion requests to promote more timely processing; and expanded in-house medical staff to also support expedited processing.
- began streamlining the ABCMR's Record of Proceeding – to allow for ABCMR analysts to more quickly prepare cases to be boarded, and better identify the pertinent facts and issues for the ABCMR Board Members.
- recently implemented a quick wins initiative, designed to identify less-complex applications that do not require ABCMR consideration – an effort which has diverted more than 3,400 cases to other agencies for resolution at their level.
- simultaneously we implemented a Quick Hit initiative. We had approximately 6,000 cases in our inventory that met the same criteria as the quick win cases. The only difference was that we had already ordered the Army Military Human Resources Record and felt it was only appropriate that the ARBA Team service them instead of transferring to other Army organizations. Since February of this

year we have adjudicated 4500 of those 6,000, and will complete the remaining 1,500 by the end of this year.

- and finally increased the number of ABCMR Board sessions from 2 per week to 3 per week. This action increased monthly throughput by 33 percent, and we anticipate increasing this to 4 times per week in the coming months.

We are improving the board's operational capability by fielding of a modernized case tracking system and with a temporary manpower increase.

The ABCMR is currently supported by the legacy ARBA Case Tracking System (ACTS 1.0), which has been in use for over 15 years. This system was custom built 15 years ago strictly to track the hand-off of paper cases. At its inception, it was a huge leap forward; however, as the organization and technology evolved, ACTS no longer meets ARBA's mission objectives and stands in the way of ARBA transitioning to 100 percent digital business processes. This antiquated system costs ARBA millions of dollars in annual sustainment fees and lacks the agility to address changing business requirements and organizational roles. Our upgraded case tracking system (ACTS 2.0) will support our modernized new business processes and workflows. ACTS 2.0 will provide ARBA with a modern information technology system that will improve nearly every aspect of ARBA's mission. To upgrade this system we are partnering with the Board for Correction of Naval Records – both of us are using the same Government Off the Shelf system to upgrade our case tracking system - and we will be able to reuse many of the components they develop with their Navy Research, Development,

Technology and Evaluation (RDT&E) funding, just as the Navy might be able to do later with components developed with Army RDT&E funding.

Given current processing times, even with already approved ABCMR growth mentioned above, it would still take approximately 6 years to eliminate the backlog without additional resources. All of the actions outlined above will only ensure compliance with the law in a steady state. As we have learned over the past 24 months, only by eliminating the backlog will we be able to sustain compliance with the law.

With your support, we have been able to improve the adjudication ability of the ABCMR. Section 1559 of title 10 U.S. Code prohibits the Secretary of a military department from carrying out any reduction in the number of military and civilian personnel assigned to duty with the Service review agency below the baseline number for that agency until the Secretary submits to Congress a report that describes the reduction proposed to be made; provides the Secretary's rationale for that reduction; and specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and a period of 90 days has elapsed after the date on which the report is submitted. This restriction on reducing the number of employees in the review boards agency expires on December 31, 2019. ARBA baseline strength in 2002 was 142 personnel. The manpower study referenced above brought ARBA's assigned strength back to the 2002 baseline.

At the end of the day, the Army is about its people. The men and women who serve our Nation, along with their families, are our most important asset. The Army Review Boards Agency is one of the ways we take care of our most important asset. I thank all of you for your continued support of our All-Volunteer Army and the Army Review Boards Agency.

Francine C. Blackmon
Deputy Assistant Secretary of the Army (Review Boards)

Ms. Francine C. Blackmon was appointed as the Deputy Assistant Secretary of the Army (Review Boards) and Director of the Army Review Boards Agency (ARBA) on 15 December 2013. She is responsible for the operations of 14 Army personnel boards, including the Army Board for Correction of Military Records, the Army Discharge Review Board, the Army Special Review Boards, the Army Clemency and Parole Board, and the Army Grade Determination Review Board; and provides oversight of the Army's Law Enforcement and Corrections missions. Prior to her current assignment, she served as the Deputy Assistant Secretary, Air Force Management Integration.

Ms. Blackmon is originally from Sacramento, CA. Upon graduation from the University of Maryland, she was commissioned as an officer in the Air Force. Ms. Blackmon's 24-year military career was performed in the field of human resources. She served in such positions as the Chief of the Commander's Issues Team at the Air Force Personnel Center, Randolph AFB, TX; Mission Support Squadron Commander at Fairchild AFB, WA; and Chief of the Air Force Skills Management Division at Headquarters, US Air Force. Ms. Blackmon has extensive joint service experience including assignments in the Office of the Secretary of Defense, Under Secretary of Defense (Personnel and Readiness).

CAREER CHRONOLOGY:

- Dec 2013 – present: Deputy Assistant Secretary of the Army (review Boards), Arlington, VA
- Jun 2012 - Dec 2013, Deputy Assistant Secretary, Air Force, Force Management Integration, Washington, DC
- Dec 2007 - Jun 2012, Senior Adviser, Office of Human Resources, National Reconnaissance Office, Chantilly, VA
- Nov 2005 - Jun 2007, Commander, Air Force Element, and Deputy Director, Office of Human Resources, National Reconnaissance Office, Chantilly, VA
- Jun 2003 - Nov 2005, Military Assistant, Deputy Under Secretary of Defense for Military Personnel Policy, Washington, DC
- Jun 2002 - Jun 2003, Student, Air War College, Maxwell AFB, AL
- Jul 1999 - Jun 2002, Division Chief, Air Force Skills Management Branch, Deputy Chief of Staff for Personnel, Headquarters U.S. Air Force, Washington, DC
- Jun 1997 - Jul 1999, Commander, Mission Support Squadron, Fairchild AFB, WA
- Jul 1996 - Jun 1997, Student, Air Command and Staff College, Maxwell AFB, AL
- Apr 1992 - Jul 1996, Chief, Air Force Personnel Issues Team, Randolph AFB, TX
- Jul 1991 - Apr 1992, Executive Officer to the Commander, Air Education and Training Command, Randolph AFB, TX
- Apr 1986 - Jul 1991, Chief, Consolidated Personnel Officer, Kadena Air Base, Japan
- Oct 1983 - Apr 1986, Chief, Career Progression, Grissom AFB, IN

EDUCATION:

- Master of Strategic Studies, 2003, Air War College, Maxwell AFB, AL
- Master of Science in Education, 1986, Troy State University, AL
- Bachelor of Arts in Sociology, 1983, University of Maryland, College Park, MD

NOT FOR PUBLICATION UNTIL
RELEASED BY THE HOUSE
COMMITTEE ON ARMED SERVICES

STATEMENT OF
MR. ROBERT WOODS
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE NAVY
(MANPOWER & RESERVE AFFAIRS)
BEFORE THE
MILITARY PERSONNEL SUBCOMMITTEE
HOUSE COMMITTEE ON ARMED SERVICES
ON
REVIEW BOARD AGENCY

SEPTEMBER 27, 2018

NOT FOR PUBLICATION UNTIL
RELEASED BY THE HOUSE
COMMITTEE ON ARMED SERVICES

Good morning Chairman Coffman, Ranking Member Speier and distinguished members of the House Armed Services Military Personnel Subcommittee. I am Robert Woods, the Principal Deputy Assistant Secretary of the Navy for Manpower and Reserve Affairs. On behalf of the Secretary of the Navy, the Assistant Secretary of the Navy (Manpower & Reserve Affairs), and the Board for Correction of Naval Records (BCNR), I thank you for the opportunity to appear before you today.

Let me start by assuring you that the leadership of the Department of the Navy remains committed to assisting our present and former Sailors and Marines with fair and open processes that allow for appropriate corrections to their military service record, and we appreciate your legislative efforts, which have enhanced the resources available to us to streamline and modernize our processes. With the additional resources, we have developed a more comprehensive training plan for our Board members and staff, improved our business processes, and undertaken an effort to replace our legacy case management system. All these efforts are geared towards transparency, quality, and efficiency in the adjudication of matters presented to the BCNR.

Overview of the BCNR

Aligned with the Secretary of the Navy's priorities, which focus on People, Capabilities and Processes, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) directed the BCNR to conduct a comprehensive transformation effort. The goal is to modernize the Board's processes and legacy systems, while providing more transparency and accountability in the procedures we use to consider and adjudicate requests for corrections of Naval records.

In Fiscal Year (FY) 2017, leadership recognized the need to transform the BCNR into a more modern highly functioning organization by investing more than \$2M in a Business Process Re-engineering effort. Additionally, the Department of the Navy funded 14 additional full-time civilian positions, doubled the number of Board members, and approved \$500K for a new case management system. With the additional \$1M in appropriations this fiscal year, the BCNR began efforts to digitize existing records, migrate data systems, modernize IT systems, and

increase manpower. Although these enhancements will significantly improve the BCNR's execution of its mission, there is more that needs to be done to improve compliance with statutory timeliness and offer exceptional customer service to our current and former Sailors and Marines.

Overview of the BCNR Board Process

Pursuant to 10 U.S.C. § 1552 the BCNR corrects military records for present and former Sailors and Marines when it determines that an error or injustice warrants such a change. More than 12,000 individuals petition the Board for corrections each year, and of those applications, 50 percent relate issues involving pay, performance or disability affecting current Sailors and Marines. The remaining applications involve discharges from service.

The BCNR processes all discharge applications that are more than 15-years old or when the petitioner has not received the relief sought from the Naval Discharge Review Board (NDRB). In accordance with 10 U.S.C. § 1553, the NDRB is the Board of first resort for all discharges issued less than 15 years ago. Both the NDRB and the BCNR apply the same review standards for discharge upgrades and follow similar procedures for reviewing these petitions. Although it is the applicant's responsibility to present all relevant evidence in support of their petitions, the staffs of both Boards go to considerable lengths to assist petitioners, especially in securing military service records and military and Department of Veterans Affairs (DVA) medical records.

BCNR Processing Timelines

10 U.S.C. § 1557 requires the BCNR finalize 90% of cases within ten months of receipt, and 100 percent of cases within 18 months of receipt. BCNR is making steady progress and our compliance rates are trending upwards, although our current backlog of more than 5,000 cases hinders our ability to successfully comply with these mandated timeframes. In FY 15, we achieved a 62 percent compliance rate for cases boarded within ten months, and in FY 16, our compliance rate increased to 68 percent. Of note, in FY 15 and FY 16, the BCNR slated all

cases for review within 18 months of receipt as required by law. We have improved our timeliness through staff training and by revising our internal procedures. Should we successfully eliminate our backlog of 5,000 cases, we anticipate full compliance with the mandated processing times.

The BCNR case lifecycle includes five phases: case workup; triage; adjudication preparation and Board review; post-Board adjudication and final decision; and case closure. The current lifecycle averages 14 months from the receipt of the application to delivery of a decision to the applicant. The timelines for each phase varies depending on the complexity of the case, the information provided by the applicant, and the ability to retrieve records. Recent legislative and policy changes regarding cases that involve invisible wound contentions have been very beneficial to the Service member. Often, these cases are complex in nature, involve multiple contentions, may lack supporting information and may require expert medical opinions. As a result, in order for the boards to fully consider the issues presented in such petitions, processing timelines are impacted.

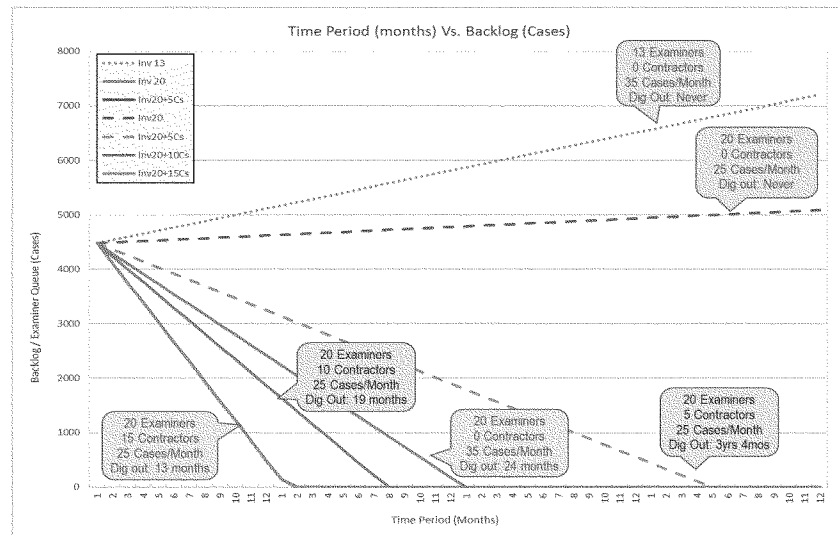
The case workup phase averages three months, which consists of validating whether BCNR or another forum is appropriate for addressing the petition, docketing the matter in the BCNR case management system, and ordering the relevant service and medical records. The triage phase averages three months, and involves identifying whether an advisory opinion is required and whether any additional information is necessary for Board review. BCNR requests advisory opinions from subject matter experts only if an applicable regulation is unclear or a medical opinion is needed. Additionally, the BCNR triages and prioritizes all cases involving invisible wounds, such as Post-Traumatic Stress Disorder, Military Sexual Trauma, or mental health issues, and requests advisory opinions from a licensed psychiatrist. The Board review and adjudication phase averages four months. The examiner prepares the record of proceedings, including a timeline of the applicant's service relevant to the matter presented, any advisory opinions, and any evidence offered by the applicant. The examiner then presents the case to the Board for adjudication. The post-Board adjudication and final decision phase averages three months and includes drafting the Board's decision, obtaining administrative and legal reviews, as well as final approval at the appropriate level. The case closure phase averages one month,

which involves updating the case management system, notifying the applicant, and redaction of final decision for posting to the Department of Defense (DoD) Reading Room.

Volume and Resource Constraints:

As of September 2018, the current BCNR backlog of more than 5,000 cases includes 1,200 matters that are more than ten-months old. Today, the BCNR receives approximately 1,000 applications per month and adjudicates more than 450 cases a month. The BCNR is in the process of hiring the 14 additional full-time civilians for FY 19, these employees would only enable the BCNR to keep up with the monthly intake of cases and would not address the case backlog, which continues to grow (see graph below).

We appreciate the tremendous support from congress and are confident that the BCNR is headed in the right direction in providing our active duty, reserve, and veterans a timelier and transparent board experience.



Summary:

Mr. Chairman, the Department of the Navy is committed to providing our present and former Sailors and Marines with a full and fair consideration of their petition in as timely a manner as possible. The Navy continues to invest time, money, and resources to help the BCNR improve customer service, provide more thorough records of proceedings, and increase their timeliness compliance rates.

Once again, I appreciate the opportunity to discuss the Department of the Navy's views on ensuring our present and former Sailors and Marines receive the recognition and benefits they deserve both while in service and upon discharge. This concludes my statement.

Robert L. Woods
Principal Deputy Assistant Secretary (Manpower and Reserve Affairs)
Department of the Navy

Mr. Woods was appointed as the Principal Deputy Assistant Secretary (Manpower and Reserve Affairs) on April 30, 2017 and concurrently served as the Acting Assistant Secretary until June 10, 2018. As Principal Deputy, he is the principal advisor to the Assistant Secretary in executing responsibilities for the overall supervision and oversight of manpower and reserve component affairs of the Department of the Navy, including the development of programs and policy related to military personnel (active, reserve, retired), their family members, and the civilian workforce; the tracking of the contractor workforce; and, the oversight of Human Resources systems within the Department. Prior to this appointment, he served as the Assistant General Counsel (M&RA) from November 22, 2009. As Assistant General Counsel, Mr. Woods was the legal advisor to the Secretariat for matters concerning military and civilian personnel policy. Additionally, he coordinated the efforts of Navy attorneys world-wide in administrative and federal court employment litigation.

Mr. Woods was appointed as a member of the Senior Executive Service and as Special Counsel Litigation on June 21, 2009. As Special Counsel, he was responsible the most important litigation matters under the cognizance of the General Counsel. Prior to his appointment as Special Counsel, he served as the Department of the Navy's (DON) Deputy Assistant General Counsel (M&RA) from June 2007, and as Counsel for the Office of Civilian Human Resources (OCHR) from March 2003. As OCHR Counsel he served as the principal legal advisor to the staff of the Deputy Assistant Secretary of the Navy (Civilian Human Resources), and the Director, OCHR. Prior to becoming OCHR Counsel, Mr. Woods served an Associate Counsel within the Office of the Assistant General Counsel (M&RA). He began his service with the DON and the Navy Office of General Counsel (OGC) in February 1999. In the year prior to his employment with the DON, he served as an Assistant Counsel handling labor and employment litigation with the General Services Administration and the Department of Commerce.

Mr. Woods retired from the U.S. Air Force in February 1998, after more than 20 years of active duty. He attended law school under the Air Force Funded Legal Education Program, graduating from Rutgers Law School in 1983 and being admitted to practice law in Pennsylvania and New Jersey. Following assignments as an Assistant Staff Judge Advocate and Staff Judge Advocate, Mr. Woods was selected to attend Georgetown Law Center. There he earned his LL.M. in Labor and Employment Law in 1989. Following assignments as a labor and employment trial attorney at Air Force Headquarters and Staff Judge Advocate at RAF Alconbury, UK, Mr. Woods concluded his career as the Chief of the Air Force Central Labor Law Office. During his Air Force career, Mr. Woods was awarded the Air Force Commendation Medal and the Meritorious Service Medal with four oak leaf clusters. He is also a graduate of the Air Force Squadron Officers' School, Air Command and Staff College, and Air War College. Mr. Woods earned his Bachelor of Science degree in Psychology from King's College in Wilkes-Barre, PA and his Master of Arts in Human Resources Management from Pepperdine University in Malibu, CA.

**DEPARTMENT OF THE AIR FORCE
PRESENTATION TO THE SUBCOMMITTEE
ON
MILITARY PERSONNEL
COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

SUBJECT: UPDATE ON MILITARY REVIEW BOARD AGENCIES

**STATEMENT OF: MR. JOHN A. FEDRIGO
DIRECTOR, AIR FORCE REVIEW BOARDS
AGENCY**

SEPTEMBER 27, 2018

**NOT FOR PUBLICATION UNTIL RELEASED
BY THE SUBCOMMITTEE ON MILITARY PERSONNEL
COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

Good morning Chairman Coffman, Ranking Member Speier. On behalf of the men and women of the Air Force Review Boards Agency, thank you for the opportunity to appear before you today.

The Air Force Review Boards Agency is responsible for the administration, oversight, leadership, and operations of ten appellate level administrative review boards, eight on behalf of the Secretary of the Air Force and two on behalf of the Secretary of Defense. Two of the boards are statutory, the Discharge Review Board and the Board for Correction of Military Records (BCMR). The non-statutory Air Force boards adjudicate a wide variety of decisions on behalf of the Secretary, and include the Personnel Board, the Decorations Board, the Remissions Board, the Clemency and Parole Board, and the Personnel Security Appeal Board, which were directed by executive order. The Agency receives approximately 15,000 cases annually from actively serving Airmen, veterans, and their families.

In September of 2017, the BCMR reported 2% compliance for the congressionally mandated requirement of processing 90% of all cases within ten months. At the end of FY17, the BCMR had a case inventory of 7,000 with substantial backlogs. Largely, this was due to a surge in applications. Other causes included the increasing complexity of cases (e.g., mental health related contentions), additional processing requirements (e.g., having a mental health professional review all cases with a mental health related aspect), IT challenges associated with replacing a legacy case management system, and a significant Agency manpower shortfall. Process improvement efforts generated some additional capacity, but was not sufficient to overcome the vast backlog of cases or to keep pace with incoming cases.

The BCMR conducted a large-scale process overhaul, examining how and why the organization does business the way it does and looking for a more efficient method. The

redesigned process standardized work and eliminated non value-added work. Additionally, to support the reengineered process, the BCMR executed an organizational redesign to ensure the right structure was in place to most effectively support the new business processes. By realigning personnel with higher levels of expertise where they could be leveraged most effectively, the BCMR created a process that ensured cases were analyzed and adjudicated more efficiently without sacrificing high quality analysis and adjudication. To reinforce the changes and ensure the organization was set up for success, the BCMR trained personnel on the new process and work standard, creating a clear expectation of performance.

The Air Force also provided funds in late FY18 for one year of contractor surge support. This provided the BCMR with flexibility to manage their large case backlog without sacrificing the timeliness requirement for incoming cases.

The efficiencies the BCMR realized were a step in improving performance. However, as the BCMR advanced in their operations, it became apparent that this new level of production was in danger of overwhelming the external organizations they rely on for critical case input. Having optimized for the legacy production levels, these partner organizations found it increasingly difficult to keep pace with the increased level of work the BCMR required of them. BCMR leadership partnered with those organizations and helped conduct mini process improvement efforts. Leadership used the same creative, collaborative problem solving skills employed in the BCMR to identify efficiencies in each external organizations' processes. This helped increase case processing and reduction of inventory.

All of the improvement efforts have led to significant operational advances. BCMR production capacity has increased 50%. Total inventory has been reduced 30%, from an all-time high of 7,000 cases at the end of FY17 to 4,915 cases as of 1 Sep 18. By the end of the surge

contract, the BCMR projects that the entire backlog of noncompliant cases will be eliminated and aging cases that would otherwise have reached noncompliance will be processed within the required timeline. The new organizational structure ensures every team member contributes to case processing, including leadership. It also adds the benefit of providing a career ladder for the civilian workforce, incentivizing high performing individuals and keeping valuable knowledge within the organization. Relationships between the BCMR and the external organizations they rely on is stronger than ever, resulting in greater collaboration, best practice sharing, and communication.

If the current performance trend lines continue, the BCMR will be compliant with the mandatory completion date statutory requirement for FY18 cases.

Finally, we would like to thank you for Title 10 U.S. Code, Section 1559 statutory protections for the Review Boards Agencies' personnel remain in place. This restriction on reducing the number of employees in the Agency expires on 31 December 2019.

Throughout all of the improvement efforts and successes achieved, the BCMR continues to assess their performance, look for ways to improve, and push the envelope on innovative business practices that maintain or improve high quality analysis and decisions. At the end of day, we will never abandon our commitment to the current and former Airmen who are awaiting resolution of errors and injustices in their military records. They deserve – and we shall continue to provide – due process, justice, equity, and fairness. Thanks to the transformative efforts of the past year, and the support of the Secretary of the Air Force, we are once again doing so within the required congressional timeframe.

Mr. Chairman, I thank you again for the opportunity to appear before this committee and look forward to your questions.

John A. Fedrigo
Director, Air Force Review Boards Agency
Office of the Assistant Secretary of the Air Force for Manpower and Reserve Affairs

John A. Fedrigo, a member of the Senior Executive Service, is the Director, Air Force Review Boards Agency, Office of the Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C. He is responsible for the management and operation of multiple military and civilian appellate processes that ensure due process, equity, fairness and impartial treatment for all applicants. He oversees the Air Force Personnel Council, Air Force Board for Correction of Military Records, Air Force Civilian Appellate Review Office, Air Force Security Protection Directorate and the Department of Defense Physical Disability Board of Review.

Mr. Fedrigo has served for more than 37 years in the Air Force and Department of Defense, including multiple Air Force assignments as well as several positions with the Defense Threat Reduction Agency. Prior to his current assignment he was the Deputy Assistant Secretary of the Air Force for Reserve Affairs and Airman Readiness where he led the team supporting the Air National Guard, Air Force Reserve and Civil Air Patrol as well as Total Force family, health care, education, resiliency and veterans programs.

EDUCATION

1990 Associate of Applied Science degree in industrial security, Community College of the Air Force
 1995 Bachelor of Science degree in liberal arts/political science, University of the State of New York
 1998 Federal Bureau of Investigation National Academy, Quantico, Va.
 1999 Master of Arts degree in management, Webster University, St. Louis, Mo.
 2005 National Security Management Course, The Maxwell School, Syracuse University, N.Y.
 2011 Executive Course on National and International Security, The Elliott School, The George Washington University, Washington, D.C.
 2012 U.S. Department of Justice, FBI National Executive Institute, Quantico, Va.
 2012 Leadership Decision Making, John F. Kennedy School of Government, Harvard University, Cambridge, Mass.

CAREER CHRONOLOGY

1. May 1981 - July 1984, ceremonial guardsman, U.S. Air Force Honor Guard, Bolling AFB, Washington, D.C.
2. July 1984 - September 1988, security police controller and squad leader, 379th Security Police Squadron, Wurtsmith AFB, Mich.
3. September 1988 - September 1989, security police trainer and quality control evaluator, 7061st Munitions Support Squadron, Araxos Air Base, Greece
4. September 1989 - June 1993, Chief, Security Operations, 380th Security Police Squadron, Plattsburgh AFB, N.Y. (March 1992 - July 1992, Flight Chief, 4404th Composite Wing, Southwest Asia)
5. June 1993 - June 1996, staff officer, Air Force Security Police Agency, Kirtland AFB, N.M.
6. June 1996 - September 2000, Superintendent, Nuclear Security Branch, Headquarters U.S. Air Force, Washington, D.C.
7. September 2000 - June 2004, Nuclear Security Program Manager, Defense Threat Reduction Agency, Fort Belvoir, Va.
8. June 2004 - November 2006, Chief, Nuclear Surety Branch, Defense Threat Reduction Agency, Fort Belvoir, Va.
9. November 2006 - December 2008, Chief, Nuclear Programs Division, Defense Threat Reduction Agency, Fort Belvoir, Va.
10. December 2008 - October 2010, Deputy Director, Nuclear Support Directorate, Defense Threat Reduction Agency, Fort Belvoir, Va.
11. October 2010 - May 2014, Deputy Director of Security Forces, Deputy Chief of Staff for Logistics, Installations and Mission Support, Headquarters U.S. Air Force, Washington, D.C.
12. May 2014 - February 2018, Deputy Assistant Secretary of the Air Force for Reserve Affairs and

Airman Readiness, Office of the Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.

13. February 2018 - present, Director, Air Force Review Boards Agency, Office of the Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.

AWARDS AND HONORS

Defense Meritorious Service Medal
Meritorious Service Medal with two oak leaf clusters
National Defense Service Medal
Southwest Asia Service Medal
Kuwait Liberation Medal (Government of Kuwait)
Meritorious Civilian Service Medal (three awards)

OTHER ACHIEVEMENTS

Founders Award, Defense Threat Reduction Agency

PROFESSIONAL MEMBERSHIPS AND ASSOCIATIONS

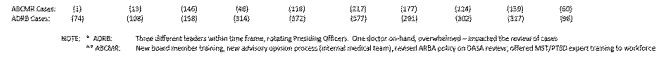
Federal Bureau of Investigation National Academy Associates
International Association of Chiefs of Police
Air Force Security Forces Association

(Current as of February 2018)

DOCUMENTS SUBMITTED FOR THE RECORD

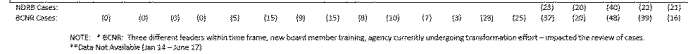
SEPTEMBER 27, 2018

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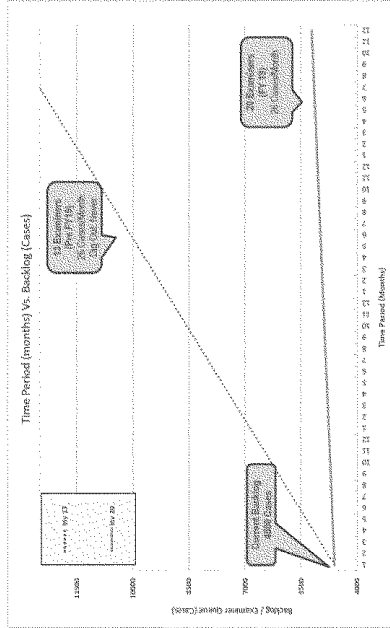
BCMR Grant Decisions

Fiscal Year	Percentage
FY2014	32%
FY2015	28%
FY2016	34%
FY2017	20%
FY2018	20%

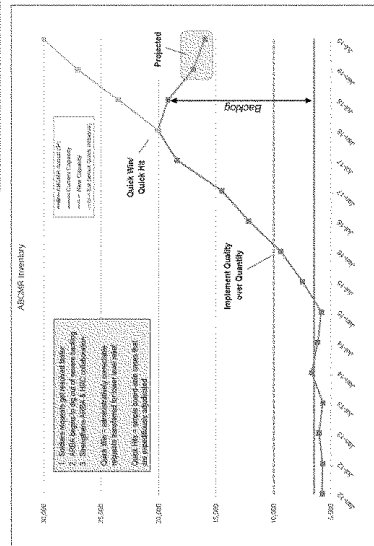


Case Backlogs

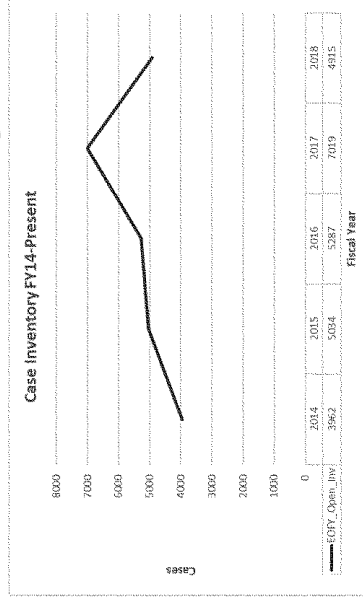
BCMR BACKLOG AS OF SEP 2018



ABCMR Backlog



Air Force Case Backlog



QUESTIONS SUBMITTED BY MEMBERS POST HEARING

SEPTEMBER 27, 2018

QUESTIONS SUBMITTED BY MS. SPEIER

Ms. SPEIER. What proportion of BCMR and DRB cases relate to MST, TBI, or PTSD?

Ms. BLACKMON. About six percent of ABCMR and ADRB cases relate to discharge upgrade requests citing MST, TBI or PTSD. By ARBA policy, all are prioritized and receive expedited adjudication.

Ms. SPEIER. Can you describe how your service interprets “liberal consideration” and how you train your board members to apply this concept?

Ms. BLACKMON. We take liberal consideration seriously with each of the cases that come in. In every case, we do whatever we can to get to the best possible outcome for the applicant. Our liberal consideration begins with our intake team, as they perform the initial review of the case. If they see that the case file is weak, we reach out to the applicant, hold the case open thirty/sixty/ninety days to say to the applicant “here are some things that we think are missing.” Liberal consideration continues with case preparation by the ARBA medical office. We have our mental health medical providers scour the medical records to see if there’s anything that’s within the medical records. We also have a very comprehensive training for ARBA staff. That training has included whole of agency training by a world-renowned expert on MST, and an expert on the impact of PTSD on the soldier. We repeat this training periodically given the new staff we continually bring in. All ARBA staff are trained on the DOD Liberal Consideration guidance, and all board members are provided similar training.

Ms. SPEIER. DC District Court judge found that BCMRs are bound by previous decisions in *Wilhelmus v. Geren*. Do you believe your members and staff are bound by precedent when deciding cases? Do you have systems in place to ensure staff and members can refer to previous decisions when deciding cases?

Ms. BLACKMON. In *Wilhelmus v. Geren*, the U.S. District Court for the District of Columbia held that an agency normally must adhere to its precedents when adjudicating cases before it. If an agency deviates from its precedents, it must provide a rational reason for doing so. According to the Court, this requirement becomes especially acute when an applicant has pointed to a specific prior decision as being very similar to his or her own situation. At ARBA, we view the holding in *Wilhelmus* as a reaffirmation of the ABCMR’s duty to fully address all issues and arguments raised by the applicant. If an applicant cites previous ABCMR decisions in support of his or her application, we are bound to either follow those precedents or to distinguish them from the applicant’s own situation. In either event, the ABCMR is obligated to address all of the applicant’s arguments and to provide a clear explanation for its ultimate decision. Although it does not have a sophisticated term-searchable database with which to catalogue and retrieve previous decisions, the ABCMR does access previous decisions by name or case number if an applicant cites one as precedent.

Ms. SPEIER. Findings in favor of applicants are reviewed before being finalized, but when boards rule against veterans, there is no system of review. I’m disturbed that there isn’t a check in place to ensure fair treatment. How do you guarantee that your boards’ decisions are consistent and high quality? Do you have internal audits? Are there standards boards are supposed to refer to? Training standards that have to be met? How do you check compliance? Is there an external ombudsperson?

Ms. BLACKMON. For the ABCMR, all ABCMR Board recommendations are reviewed by the Director, ABCMR to ensure consistency and fair treatment. Board members receive training on current policy and their responsibilities regarding case reviews. Board Members take and sign an oath that requires them to exercise their independent judgement in all cases they consider. They are required to certify they have read and understand all policy guidance related to liberal consideration, equity, justice and clemency determinations. In accordance with current ARBA policy, special category cases (MST, PTSD, OBH), cases counter to an advisory opinion, or non-unanimous panel votes are provided to the ARBA Deputy or Deputy Assistant Secretary of the Army (DASA) for review. Cases where the ABCMR Director disagrees with the Board recommendation are forwarded to the DASA for further re-

view/decision. The Army Discharge Review Board (ADRB) is organized and staffed to maximize consistency and high quality. There are three levels of review for each case within the ADRB: Team Chief (TC), Presiding Officer (PO), and ADRB President. Once the ADRB votes, then the PO reviews the case and submits it to the ADRB President for final review. In the event the ADRB President does not agree with the board vote, he can submit his reasons to the DASA (RB). She has the Secretarial Review Authority (SRA) to ultimately decide the merits of the case. As described previously, ADRB's organization has several layers of checks and balances to ensure consistent and high quality decisions. The TC reviews the Analysts, the PO reviews the TC, and the ADRB President reviews the PO. Additionally, the ADRB has training standards for Analysts, Board Members, and Presiding Officers that are detailed in standard operating procedures (SOPs) that are updated annually. In addition to internal training standards, ARBA has quarterly training and annual training stand-down days to address emerging policies and clarifying guidance. The DASA (RB), the ABCMR Director, and the President ADRB ensure all personnel receive the required training to promote consistency and fairness in case processing and adjudication. There is no external ombudsperson, however DOD provides oversight to ARBA. In accordance with the National Defense Authorization Act for Fiscal Year 2017, we submit quarterly reports to OSD to track the discharge upgrade percentages for special cases (PTSD, MST, and TBI). Finally, we are in the process of adding a training/standardization/quality control officer to the ARBA staff.

Ms. SPEIER. There are proposals to consolidate the BCMRs into a unified, not service-specific, system with regional jurisdictions, or even create a special claims court to legally adjudicate tough cases. Those alternatives may create efficiencies and help applicants receive just hearings. What is your evaluation of those proposals? How would a consolidated BCMR with regional offices function? What are the costs and benefits?

Ms. BLACKMON. All these proposals seek to promote greater consistency amongst Services when it relates to discharge upgrades involving post-traumatic stress disorder, traumatic brain injury, and/or military sexual trauma. The disparate discharge upgrade rates amongst the Services, at the root of these proposals, is not a structural problem, but rather a cultural problem. The Army currently has the highest grant rates of the three Services. But it has not always been that way. ARBA has been successful through 5 pillars: leadership, analysts, board members, medical, and legal. The leadership provides guidance based on liberal consideration and trains personnel uniformly. The leadership has also invested much organizational energy into hiring for character and training for skills—in terms of analysts, behavioral health professionals (psychiatrist and psychologists), and attorneys. You have to have the “right” people to execute effectively in accordance with DOD liberal consideration guidance and Congressional intent. We have established systems that provide internal oversight to decisions to allow for the maximum opportunity for an upgrade. To promote greater consistency amongst the Services we recommend we consider repurposing the Physical Disability Board of Review to become the DOD Discharge Upgrade Appellate Authority (DUAA). All discharge upgrade requests denied by Service Boards for Correction of Military/Naval Records or Service Discharge Review Boards automatically would be sent to the DUAA for reconsiderations (without referral to the applicant). The DUAA would take final action (upgrade the discharge, or sustain the service denial) on this class of cases. The DUAA could be placed under the OUSD (P&R)'s Joint Service Review Activity, the Defense Office of Hearings and Appeals (OSD GC), or the Army Review Boards Agency (as the Service with the highest grant rate). The pros of such a proposal are consistency and standardization of process for applicants, stops disparate treatment of applicants, utilizes existing assets (PDBR + oversight body). The cons of such a proposal are resources (DOD has planned to sunset PDBR and harvest current funding for other personnel programs), loss of Service Secretary authority, and the solution does not recognize Service culture.

Ms. SPEIER. It's not clear what work staff do and whether boards members independently evaluate the evidence before reaching their decisions. Will each of you please provide a yes or no answer to the following: 1. Do board members receive case materials at least 24 hours before the day they decide on those cases? 2. Are board members required to review these applications before the day they decide on cases? If no, why not? 3. Do staff provide board members with case summaries? 4. Are those summaries written in persuasive form or do they include recommendations?

Ms. BLACKMON. For question 1: yes for both ADRB and ABCMR. For question 2: yes for both ADRB and ABCMR. For question 3: yes for both ADRB and ABCMR. For question 4, no for the ADRB (that is, the staff presents facts only). For the

ABCMR, the staff presentations are currently in persuasive form, but moving to a fact-only format.

Ms. SPEIER. In what percentage of cases do board members decide against staff recommendations?

Ms. BLACKMON. ABCMR and ADRB analysts do not provide recommendations to the board for review.

Ms. SPEIER. How much staff time goes into an average case? How much time does a board spend deciding a case on average? How many cases does a board evaluate in a day?

Ms. BLACKMON. Depending on the complexity of the case, the ABCMR and ADRB staffs spend 3–9 hours per case. Again, depending on the complexity of the case, the board spends 15–30 minutes per case. Finally, the boards evaluate 20–40 cases per day.

Ms. SPEIER. Another part of this problem is that individuals with cases before BCMRs have an incredibly difficult time researching cases to find and apply relevant cases. Federal law requires you to post cases online, but cases are posted late and difficult to navigate. Can you commit to creating a modern, regularly updated, easily searchable, online system of past cases? What resources would you need to create that system?

Ms. BLACKMON. Yes, I can commit to creating a modern, regularly updated, easily searchable, online system of past cases. We estimate that to do so would require approximately 1 million dollars of contract labor.

Ms. SPEIER. How often do boards concur or differ with expert medical evaluators? What about outside experts' whose testimony is included in applicants' packages?

Ms. BLACKMON. ARBA boards rarely non-concur with expert medical evaluators. For the ABCMR, in those cases where the Board recommendation is counter to the advisory, by ARBA policy those cases are referred to the DASA for review/decision. Cases involving claims of behavioral health issues, traumatic brain injuries, sexual assault, or physical injuries are referred to the internal ARBA medical staff for advisory opinions. If the applicant includes evidence from outside experts (civilian providers or the VA) regarding a condition or experience, that evidence is reviewed by the ARBA medical staff/ABCMR staff and included in the case summaries presented for board consideration. For the ADRB, when they do non-concur, it is typically to provide more relief based on liberal guidance. For example, a medical advisor may not mitigate offenses based on their medical opinion. However, the board will vote to upgrade a discharge based on compassion, clemency, or liberal guidance. In accordance with the National Defense Authorization Act for Fiscal Year 2018, the Boards evaluate civilian medical testimony equal to Army or VA testimony.

Ms. SPEIER. How many personal appearances has your BCMR held in the past year? The past decade?

Ms. BLACKMON. The ABCMR held two personal hearings in the past year and since October 2009 has held a total of 12 personal appearance hearings. As a part of the California Army National Guard Incentive review directed in the National Defense Authorization Act for Fiscal Year 2017, the Special Board of Review (ABCMR) conducted 20 personal appearance hearings between June and September 2017. Finally, we are adding opportunities for ABCMR applicants to make personal appearances at locations around the United States in conjunction with the ADRB's quarterly traveling panels.

Ms. SPEIER. What proportion of BCMR and DRB cases relate to MST, TBI, or PTSD?

Mr. FEDRIGO. The number of cases and proportion of cases are based on all cases adjudicated in FY2018.

	Number of Cases		Percent of Cases	
	BCMR	DRB	BCMR	DRB
MST	19	12	0.86%	4.2%
TBI	6	4	0.27%	1.4%
PTSD	65	36	2.9%	12.5%

Ms. SPEIER. Can you describe how your service interprets "liberal consideration" and how you train your board members to apply this concept?

Mr. FEDRIGO. AFBCMR and AFDRB board members are provided training and guidance on new or modified law, regulation, and/or policy that impacts the adjudication of cases. The AFBCMR provided board members liberal consideration-specific training at an annual day-long board member symposium. The training included how to identify cases where liberal consideration applies and proper application of the consideration. AFDRB also provides liberal consideration training to board members as well as copies of all applicable commander's memos and policies. Board members understand that while liberal consideration does not mandate an upgrade, medical knowledge and societal/military norms have changed in how these cases are adjudicated. The Air Force does not demand the same level of medical scrutiny as years past when evaluating the intersection of mental health conditions and misconduct. Similarly, we do not expect the same level of proof or documentation of sexual assault or sexual harassment suffered before current options for restricted reporting, heightened protection for victims, and greater support for victims existed. Board members are asked to address the following set of questions for all liberal consideration cases: 1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? 2. Did that condition exist/experience occur during military service? 3. Does that condition or experience actually excuse or mitigate the discharge? 4. Does that condition or experience outweigh the discharge?

Ms. SPEIER. DC District Court judge found that BCMRs are bound by previous decisions in *Wilhelmus v. Geren*. Do you believe your members and staff are bound by precedent when deciding cases? Do you have systems in place to ensure staff and members can refer to previous decisions when deciding cases?

Mr. FEDRIGO. The AFBCMR strives to adjudicate cases consistently with adherence to precedent where warranted. We acknowledge that two cases that are substantively the same should result in similar relief. The need for a consistent set of standards and consistent application of those standards is critical to the integrity of the Board. We also acknowledge that no two Airman's military service, personal history, medical needs, medical treatment, and overall life journey are the same. Therefore, each case must be analyzed and adjudicated on its own merits, to ensure fairness, and/or equity are maintained. The AFBCMR continuously monitors for consistency and utilizes the public reading room, internal case management system, and performance dashboards to reference previous cases and their decisions. AFBCMR staff personnel also monitor all board deliberations and use these observations to identify future training opportunities for board members. The AFBCMR notes the DC District Court has also held that agencies are permitted to change course when handling similar cases. In *Gilbert v. Wilson*, 292 F. Supp. 3d 426 (D.D.C. 2018), the DC District Court upheld the AFBCMR's decision to deny waivers to applicants because the Board articulated a reasonable explanation for its decision to reassess its approach to waivers. The court reasoned, the "classic direction for a court reviewing such an agency action is that an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored." If the court is satisfied the agency has taken "a hard look at the issues with the use of reasons and standards" the court will uphold its findings so long as "the agency's path may be reasonably discerned."

Ms. SPEIER. Findings in favor of applicants are reviewed before being finalized, but when boards rule against veterans, there is no system of review. I'm disturbed that there isn't a check in place to ensure fair treatment. How do you guarantee that your boards' decisions are consistent and high quality? Do you have internal audits? Are there standards boards are supposed to refer to? Training standards that have to be met? How do you check compliance? Is there an external ombudsperson?

Mr. FEDRIGO. Providing fair and equitable treatment in every case is the highest priority for the AFBCMR. Therefore, the AFBCMR conducts multiple leadership reviews and provides rigorous training for all staff personnel across the process. Each case decision is, at a minimum, reviewed by an AFBCMR Board Operations Manager, a GS-14 with decades of experience in the Air Force personnel career field. Additionally, the AFBCMR Director, a GS-15 with decades of Air Force personnel experience, and a person outside of the deliberation process, reviews all decisions. If an inconsistent outcome is detected the case is immediately routed for legal and senior leadership review. Well trained board members are key to fair and consistent decisions. The AFBCMR far exceeds the mandatory training requirement for board members as set by Congress, providing annual training and additional electronic newsletters on changes to policy, environment/operating conditions, key topics and other subjects pertinent to board members. Prior to becoming a board member, each person must complete a day-long training session conducted by AFBCMR staff, Air Force attorneys, mental health professionals, OSD P&R, DOD IG, and the Air Force

Personnel Center (AFPC). The AFBCMR provides robust onboarding and reinforces the information through ongoing training and communication.

Ms. SPEIER. There are proposals to consolidate the BCMRs into a unified, not service-specific, system with regional jurisdictions, or even create a special claims court to legally adjudicate tough cases. Those alternatives may create efficiencies and help applicants receive just hearings. What is your evaluation of those proposals? How would a consolidated BCMR with regional offices function? What are the costs and benefits?

Mr. FEDRIGO. As more functions become centralized and consolidated to provide services or perform functions across the DOD, one of the common factors that those efforts have is non service-specific or limited service-specific knowledge, needs, or dependencies. The service BCMRs make decisions based heavily, if not sometimes solely, on service-specific policy and guidance. In addition, each service has different historical and personnel records, tracks different data points, works in different systems, applies service-specific policy, utilizes distinct operations and processes (e.g., how enlisted and officers are promoted and taking different physical fitness tests), and has fundamentally different missions. The Air Force has not conducted nor is aware of any studies that look at potential efficiencies or cost savings. There is significant benefit for the AFBCMR to be located in the National Capital Region. The AFBCMR relies on collateral board members, all of whom must be at least a GS-15 or higher, we are able to leverage the larger population of experienced AF senior leadership in the National Capital Region to maintain experienced board members and recruit replacements as needed. This would be difficult almost anywhere else. There could be opportunities to have some joint operations across the types of issues that the various BCMRs adjudicate where regulation, policy, and guidance is consistent across the services. The OSD Physical Disability Board of Review (PDBR) has shown that for specific types of cases, joint operation is both more efficient and yields high quality, fair decisions. The types of cases where regulation and policy is currently consistent across services are the cases dealing with medical issues, to include mental health, military sexual trauma, PTSD, etc. These are the case types where there is the most opportunity for joint adjudication.

Ms. SPEIER. It's not clear what work staff do and whether boards members independently evaluate the evidence before reaching their decisions. Will each of you please provide a yes or no answer to the following: 1. Do board members receive case materials at least 24 hours before the day they decide on those cases? 2. Are board members required to review these applications before the day they decide on cases? If no, why not? 3. Do staff provide board members with case summaries? 4. Are those summaries written in persuasive form or do they include recommendations?

Mr. FEDRIGO. The following answers are for both the AFBCMR and AFDRB. Q1. Yes, Q2. Yes, Q3. Yes, Q4. No.

Ms. SPEIER. In what percentage of cases do board members decide against staff recommendations?

Mr. FEDRIGO. The AFBCMR Staff does not provide any recommendations.

Ms. SPEIER. How much staff time goes into an average case? How much time does a board spend deciding a case on average? How many cases does a board evaluate in a day?

Mr. FEDRIGO. Each examiner spends anywhere from eight hours reviewing and analyzing a simple case to 40 hours or more reviewing and analyzing more difficult cases. If an applicant has one clear contention on a common issue, the review and analysis are fairly straight forward. However, cases require exponentially more time with each contention presented by the applicant and the analysis becomes more involved. Our Panels consist of 3 GS-15/SES board members. On average, each panel adjudicates 25-30 cases per session, which are provided to the voting panel members at least 7 calendar days prior to the panel's convening date. Each panel member spends multiple hours preparing for the panel—reviewing the case summaries, analyzing records, and examining advisories from Air Force subject matter experts. The actual panel time ranges depending on the breadth and difficulty of cases being adjudicated. The AFBCMR does not track length of panels. Anecdotally, some boards take as long as 2 hours, while others can be completed in 30 minutes if panel members agree unanimously or the board is adjudicating cases that all pertain to the same issue (e.g., name change), where the application of policy is fairly straight forward.

Ms. SPEIER. Another part of this problem is that individuals with cases before BCMRs have an incredibly difficult time researching cases to find and apply relevant cases. Federal law requires you to post cases online, but cases are posted late and difficult to navigate. Can you commit to creating a modern, regularly updated,

easily searchable, online system of past cases? What resources would you need to create that system?

Mr. FEDRIGO. All of the services utilize a joint DOD system and the Army is the executive agent responsible for operations and maintenance. The AFBCMR embraces the effort to modernize the online reading room to make the site more navigable and user friendly. We defer to the DOD and Army to determine the resources needed. The AFBCMR has updated its redaction process and established standard operating procedures to redact and post closed cases to the reading room on a monthly basis.

Ms. SPEIER. How often do boards concur or differ with expert medical evaluators? What about outside experts' whose testimony is included in applicants' packages?

Mr. FEDRIGO. All medical cases and documents are reviewed by a medical doctor and mental health professionals per congressional requirement. The Board has not tracked how often boards concur or differ with expert medical evaluators, but cases boarded that do not concur with the medical advisory receive additional review from leadership.

Ms. SPEIER. How many personal appearances has your BCMR held in the past year? The past decade?

Mr. FEDRIGO. The AFBCMR grants requests for personal appearances on a discretionary basis, predicated upon the Board finding that the applicant's presence, with or without counsel, would materially add to its understanding of the issues involved. The AFBCMR has not conducted any personal appearances within the last year and has conducted 3 personal appearances in the past decade. Deliberate efforts are underway to increase the number of personal appearances for the next fiscal year, to include VTC and other remote teleconferencing options.

Ms. SPEIER. What proportion of BCMR and DRB cases relate to MST, TBI, or PTSD?

Mr. WOODS.

		Proportion % calculated from total adjudicated cases per FY.					
NDRB	CASES ADJUDICATED	PTSD		MST		TBI	
FY 2017	1453	141	10%	28	2%	16	1%
FY 2018	1147	195	17%	33	3%	14	1%

		Proportion % calculated from total adjudicated cases per FY.					
BCNR	CASES ADJUDICATED	PTSD		MST		TBI	
FY 2017	1527	164	11%	35	2%	4	<1%

Ms. SPEIER. Can you describe how your service interprets "liberal consideration" and how you train your board members to apply this concept?

Mr. WOODS. On August 25, 2017, the Office of the Under Secretary for Defense issued clarifying guidance to the Boards concerning requests by veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment. It is consistent with this guidance that the BCNR applies liberal consideration to petitions for relief where a veteran claims the petition is based in whole, or in part, on matters relating to mental health conditions, including PTSD, TBI, sexual assault, or sexual harassment. Utilizing this standard, the BCNR may consider evidence from a wide range of sources, but upgrades are not mandated. IAW Fiscal Year 2017 National Defense Authorization Act and in line with OSD guidance, the Navy developed a comprehensive training curriculum during FY17 and it was presented to all Board members and staff at a two-day conference in August 2017. There were also two make up sessions and another is tentatively scheduled for the spring of 2019. The BCNR will conduct future training curriculum every two years. Board members are briefed before each Board on the liberal consideration policy, reiterating the concepts set forth in the August 25, 2017 memorandum.

Ms. SPEIER. DC District Court judge found that BCMRs are bound by previous decisions in *Wilhelmus v. Geren*. Do you believe your members and staff are bound

by precedent when deciding cases? Do you have systems in place to ensure staff and members can refer to previous decisions when deciding cases?

Mr. WOODS. While the BCNR's case search capabilities are not as sophisticated as the Federal courts case publishing systems, the BCNR does comport with the holding *Wilhelmus*. Recognizing that no two service member's records are identical, the BCNR analyzes and adjudicates each case on its own merit to ensure fairness and equity to the petitioner. In so doing, the BCNR will consider prior cases known to the board, as well as those cited by the petitioner, when the facts presented are sufficiently analogous and a similar result is appropriate. BCNR endeavors to promote consistent results by conducting/participating in regular training and monitoring board deliberations in similar matters. Together, these efforts ensure that BCNR decisions are well-reasoned and aligned with applicable policies, standards, and board precedent.

Ms. SPEIER. Findings in favor of applicants are reviewed before being finalized, but when boards rule against veterans, there is no system of review. I'm disturbed that there isn't a check in place to ensure fair treatment. How do you guarantee that your boards' decisions are consistent and high quality? Do you have internal audits? Are there standards boards are supposed to refer to? Training standards that have to be met? How do you check compliance? Is there an external ombudsperson?

Mr. WOODS. Each decision is based on the individual petitioner's entire service record and all evidence provided by the applicant. Every case is comprehensively reviewed prior to the final decision being sent to the member(s). This process involves preparation of the case by the assigned staff member, a review by the individual section supervisor and, as appropriate, an additional review by the Deputy Director and/or a staff attorney prior to the Executive Director's final review and endorsement. This multi-step quality review process ensures the petitioners' applications are fully considered and that the final decisions deliver fair and equitable results.

Ms. SPEIER. There are proposals to consolidate the BCMRs into a unified, not service-specific, system with regional jurisdictions, or even create a special claims court to legally adjudicate tough cases. Those alternatives may create efficiencies and help applicants receive just hearings. What is your evaluation of those proposals? How would a consolidated BCMR with regional offices function? What are the costs and benefits?

Mr. WOODS. We recognize many alternatives may be under consideration and it is difficult to offer an opinion without an actual proposal to evaluate and offer an informed view. As structured, the service specific BCMRS offer a foundation in that the staff members are well versed in the service rules, regulations, and processes. A consolidated BCMR would take away the service-specific expertise currently in place and eliminate the accountability provided by the individual service Boards.

Ms. SPEIER. It's not clear what work staff do and whether boards members independently evaluate the evidence before reaching their decisions. Will each of you please provide a yes or no answer to the following: 1. Do board members receive case materials at least 24 hours before the day they decide on those cases? 2. Are board members required to review these applications before the day they decide on cases? If no, why not? 3. Do staff provide board members with case summaries? 4. Are those summaries written in persuasive form or do they include recommendations?

Mr. WOODS. 1) Yes and no. Cases are provided in advance where the complexity of the matter requires advance preparation. We are currently moving to a digitized process, which, once fully implemented, members will receive all cases at least 24 hours in advance of deliberations. 2) Yes and no—depends on complexity. See answer #1. 3) Yes. 4) The executive summaries only include the facts of the case. A recommendation is not provided to the board as the decision is solely within the board's discretion to evaluate and decide.

Ms. SPEIER. In what percentage of cases do board members decide against staff recommendations?

Mr. WOODS. All decisions are based solely on the Board members. Staff recommendations are not provided.

Ms. SPEIER. How much staff time goes into an average case? How much time does a board spend deciding a case on average? How many cases does a board evaluate in a day?

Mr. WOODS. The average case preparation timeframe by staff ranges from 5–8 hours. Simple matters may take only a few hours to review; complex matters may take as long as 5 business days. Case preparation depends on case complexity and the amount of documentation involved. Generally, the boards review an average of 20 cases per day. The boards are not limited in the amount of time allowed for adjudication of any particular matter.

Ms. SPEIER. Another part of this problem is that individuals with cases before BCMRs have an incredibly difficult time researching cases to find and apply relevant cases. Federal law requires you to post cases online, but cases are posted late and difficult to navigate. Can you commit to creating a modern, regularly updated, easily searchable, online system of past cases? What resources would you need to create that system?

Mr. WOODS. The Office of Legal Policy Under Secretary of Defense for Personnel & Readiness is actively working on enhancing the Department of Defense (DOD) Reading Room site to provide text accessible search tool and case catalog, which will offer a more modern, easily searchable and online system to review cases.

Ms. SPEIER. How often do boards concur or differ with expert medical evaluators? What about outside experts' whose testimony is included in applicants' packages?

Mr. WOODS. The Board considers all material submitted by the applicant and all relevant naval records, including medical evaluations, as well as applicable laws, rules, regulations, and policies. Cases presented may or may not include the views of an expert medical evaluator. Because the boards consider cases based upon the totality of information presented, we do not measure how often the boards accept the view of an expert medical evaluator as this may only be one factor in the overall decision reached by the board.

Ms. SPEIER. How many personal appearances has your BCMR held in the past year? The past decade?

Mr. WOODS. FY 2017 NDRB held 153 Personal Appearance Hearings—61 conducted via Telephone. FY 2018 NDRB held 156 Personal Appearance Hearings—85 conducted via Telephone. Until recently, the BCNR had not granted any requests for a personal appearance. Most recently, the BCNR granted one request for a personal appearance during the past fiscal year.

