



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON, DC 20310-0111

SAMR

14 APR 2016

MEMORANDUM FOR THE SECRETARY OF THE ARMY

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

1. **References:** See enclosure 1.

2. As directed in enclosure 2, I have completed a review and assessment of Soldiers with mental health conditions, such as Post-Traumatic Stress Disorder (PTSD) and/or Traumatic Brain Injury (TBI), separated from the Regular Army due to misconduct. This multidisciplinary review consolidates and analyzes inspection and audit reports, to include the Department of the Army Inspector General (DAIG) assessment of administrative separations at Fort Carson, Colorado and the Army Auditor General's independent audit to assess the Army's compliance with 10 U.S.C. § 1177.<sup>1</sup> You also directed me to assess the U.S. Government Accountability Office (GAO) review regarding the impact of certain mental and physical trauma on discharges from military service for misconduct. However, that review is still ongoing and is scheduled to be completed in the Fall of 2016. Once that review is completed, I will review the findings and recommendations and take appropriate actions, as necessary.

3. **Bottom Line Up Front.**

a. The Army remains confident in the administrative processes that define misconduct separation procedures. Although the Army was not always able to produce evidence that a mental health evaluation was considered by the separation authority, that finding alone does not mean the separation authority did not review it or that the Army was non-compliant with 10 U.S.C. § 1177.

b. Based on the DAIG and AAA reviews, the Army does not routinely separate Soldiers for misconduct, who have been diagnosed with PTSD and/or TBI<sup>2</sup>, to save time or resources. From 1 November 2009 through 31 July 2015, the Army administratively separated for misconduct 3,327 Soldiers who were diagnosed with PTSD and/or TBI and had deployed within the previous 2 years. Of these 3,327

---

<sup>1</sup> Enacted in 2009, 10 U.S.C. § 1177 requires a medical examination for Soldiers who are pending administrative separation with an other than honorable discharge who had been diagnosed with PTSD and/or TBI and who had deployed within the previous 24 months.

<sup>2</sup> The vast majority of Soldiers with PTSD and other behavioral health conditions do not commit acts of misconduct of any type. Experts agree that criminal behavior is not a symptom of PTSD.

## SAMR

**SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct**

Soldiers, 2,933, which represents 88% of the population, were separated under honorable conditions and were immediately eligible for medical care through the Veterans Administration. 394 Soldiers were separated under Other than Honorable (OTH) conditions.

c. The Army Audit Agency (AAA) reviewed the medical and administrative records of 293 of the 394 cases and found the Army was compliant with 10 U.S.C. § 1177 in 64% of all applicable cases in which it separated Soldiers pursuant to Army Regulation (AR) 635-200, chapter 14. There was a lower level of compliance, 44% for Soldiers separated under AR 635-200, chapter 10. This was due, in part, to confusion as to whether Chapter 10 separations were included in 10 U.S.C. § 1177 when it was enacted in 2009. This was clarified in 2013 when Congress amended 10 U.S.C. § 1177 to specifically include chapter 10 separations. The audit found inconsistent record keeping at the unit level and identified several Army regulations in need of revision to comply with 10 U.S.C. § 1177. The audit also found that Army-wide policy had not been properly updated to conform with the changes to 10 U.S.C. § 1177. Further, Army-wide implementing guidance was not published until 2011, and it was not specific as to how compliance should have been documented in the separation files. The recommendation section details the revisions that must be made to Army policies and regulations.

d. The DAIG Special Review and Inspection reviewed 12 separation cases for Soldiers who previously served at Ft. Carson, Colorado and were subsequently identified in the 28 October 2015 National Public Radio article or referenced in the 2 July 2014 AR 15-6 Report of Investigation directed by the Commanding General of U.S. Army Medical Command.<sup>3</sup> DAIG determined that 10 U.S.C. § 1177 applied to five of those cases, and found the Soldiers were properly processed for separation in all five cases.

#### **4. Background.**

a. In June 2014, the Army Surgeon General directed an investigation pursuant to Army Regulation 15-6 in response to a complaint alleging that one Soldier was not treated with dignity and respect by two behavioral health providers at Fort Carson, Colorado. The complainant alleged that Fort Carson behavioral health providers were conspiring with Fort Carson commanders to administratively separate Soldiers for misconduct who were diagnosed with PTSD or TBI and should instead should be separated for failure to meet medical retention standards. During the investigation, the complainant provided the investigating officer with a list of 11 additional Soldiers he

---

<sup>3</sup> The DAIG did not assess all administrative separations at Fort Carson as required in Enclosure 2 but deferred to the AAA audit that included Fort Carson.

## **SAMR**

**SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct**

alleged were diagnosed with PTSD or TBI and were wrongfully separated for misconduct by their commanders. It is these 12 cases that the DAIG specifically investigated (see paragraph 4b. below). The DAIG investigation concluded that the cases complied with 10 U.S.C. § 1177.

b. On 28 October 2015, National Public Radio (NPR) published a story alleging that, since January 2009, the Army had separated more than 22,000 Soldiers for misconduct after they returned from deployment in support of contingency operations and were diagnosed with mental health disorders or TBI. The article alleged that the Army routinely violated 10 U.S.C. § 1177 by improperly discharging Soldiers diagnosed with mental health problems not only at Fort Carson, but at bases throughout the country. 10 USC 1177 requires a medical examination for Soldiers who are pending administrative separation with an other than honorable (OTH) discharge who had been diagnosed with PTSD or TBI and who had deployed in the previous 24 months.

c. Following publication of the NPR Story, on 4 November 2015, 12 Senators sent a letter (enclosure 3) to the Acting Secretary of the Army and the Chief of Staff of the Army outlining their concerns with Soldiers separated from the Army who suffered from PTSD or TBI. The Senators requested that the DAIG investigate the matter to determine whether the Army violated section 512 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (later codified in 10 U.S.C. § 1177).

### **5. Applicable Law and Policy.**

a. Congress enacted 10 U.S.C. § 1177 on 28 October 2009 to ensure that Service Members being processed for administrative separation under OTH conditions, who had deployed overseas in support of a contingency operation within the previous 24 months and who had been diagnosed with PTSD and/or TBI, or who otherwise reasonably alleged the influence of such a condition underwent a medical examination to evaluate them for PTSD and/or TBI. The purpose of the medical examination under provision 10 U.S.C. § 1177(b) is to "assess whether the effects of post-traumatic stress disorder or traumatic brain injury constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable." Under the provisions of 10 U.S.C. § 1177(a)(2), Soldiers cannot be administratively separated from the Army with an OTH discharge until the results of their medical examinations are reviewed by the authority responsible for evaluating, reviewing, and approving their separations.

b. To implement 10 U.S.C. § 1177, the Office of the Surgeon General (OTSG) published Policy Memorandum 10-040 (Screening Requirements for PTSD and mild Traumatic Brain Injury (mTBI) for Administrative Separations of Soldiers), 9 June 2010. OTSG Policy Memorandum 10-040 prescribed procedures for evaluating Soldiers prior

## SAMR

**SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct**

to their involuntary separation from the Army. Specifically, OTSG Policy Memorandum 10-040 directed medical providers to screen Soldiers for PTSD and TBI if the Soldier had deployed overseas in support of a contingency operation, and was diagnosed with PTSD or TBI or otherwise reasonably alleged, based on their service while deployed, the existence of such a condition.

c. On 25 July 2010, the Under Secretary of Defense for Personnel and Readiness (USD (P&R)), published Directive Type Memorandum (DTM) 10-022, (Implementing Required Medical Exam before Administrative Separation for PTSD or TBI). DTM 10-022 was the first guidance provided by the Department of Defense in response to 10 U.S.C. § 1177 and it directed the Services to publish implementing guidance within 30 days of its publication. In response to the DTM, the Army sent a memorandum to USD (P&R) establishing OTSG Policy Memorandum 10-040 as the Army-wide policy. The Army did not, however publish Army-wide guidance that would have made the requirements of OTSG Policy Memorandum 10-040 applicable to commanders of non-medical units.

d. On 30 September 2011, the DoD updated Department of Defense Instruction (DoDI) 1332.14, (Enlisted Administrative Separations) to comply with DTM 10-022.

e. On 6 September 2011, the Army published a Rapid Action Revision (RAR) to AR 635-200. This revision updated the Army's policy on pre-separation medical examinations to include a requirement that Soldiers receive mental status evaluations prior to separation under AR 635-200 for chapters 13 and 14.<sup>4</sup> This revision also required commands to conduct mental status evaluations for Soldiers separated under AR 635-200, chapter 10,<sup>5</sup> when the Soldier requested a medical examination. AR 635-200 has not been updated to reflect the changes to 10 U.S.C. § 1177 that were enacted in the 2014 NDAA expanding the requirement for mental status evaluations to include chapter 10 separations.

f. On 2 January 2013, 10 U.S.C. § 1177 was amended to expand the types of medical providers qualified to perform mental status exams under 10 U.S.C. § 1177(a). The amendment included two additional types of medical practitioners - licensed clinical social workers and psychiatric advanced practice registered nurses.

g. On 3 June 2013, House Armed Services Committee (HASC) Professional Staff Members (PSMs) met with Army leaders and questioned whether the Army was correctly following 10 U.S.C. § 1177 with respect to separations in lieu of court-martial

---

<sup>4</sup> Chapter 13 of AR 635-200 prescribes the policies and procedures for separating Soldiers from the Army for unsatisfactory duty performance. Chapter 14 prescribes the policies and procedures for separating Soldiers from the Army for misconduct.

<sup>5</sup> Chapter 10 of AR 635-200 prescribes the policies and procedures for separating Soldiers from the Army in lieu of trial by court-martial.

## SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

(i.e., AR 635-200, chapter 10). The 3 June 2013 meeting was largely the result of concerns raised by a series of articles published in the Colorado Springs Gazette. The articles questioned whether commanders at Fort Carson were using separations under AR 635-200, chapter 10, as a means to avoid other bases of administrative separation which required processing through the Army's Disability Evaluation System.

h. On 13 August 2013, as a follow up to the 3 June 2013 meeting, Army staff leaders met with the HASC PSMs to explain the Army's policies concerning discharges in lieu of trial by court-martial to include when behavioral health examinations were necessary in the separation process. During this meeting, the PSMs acknowledged that the text of 10 U.S.C. § 1177 was unclear on the matter. Following this meeting, on 3 September 2013, the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) published a memorandum, subject: Required Medical Examination for Certain Soldiers Processed for Administrative Separation with Under Other than Honorable Characterization of Service. This memorandum directed the following actions: (1) that the Deputy Chief of Staff (DCS), G-1 in coordination with OTSG, to prepare and disseminate an All-Army Activities ALARACT message to specify that 10 U.S.C. § 1177 applied to separations under AR 635-200, Chapter 10; (2) that The Judge Advocate General provide appropriate notice of and guidance about the applicability of 10 U.S.C. § 1177 to Chapter 10s to the Judge Advocate General Corps; and (3) that the DCS, G-1 and OTSG update all applicable regulations, policies and procedures to include the applicability of 10 U.S.C. § 1177 to Chapter 10 separations.

i. As a result of the 13 August 2013 meeting and subsequent ASA (M&RA) memorandum, on 8 October 2013, the Army published ALARACT 262/2013, (Required Medical Examination for Soldiers Being Processed for Administrative Separations Under Conditions Other Than Honorable). Pursuant to this ALARACT, in cases where a separation authority is unaware of a Soldier's previous diagnoses of PTSD or TBI, the separation authority must consult the supporting medical treatment facility's behavioral health department. The behavioral health department must screen the Soldier's medical records and inform the separation authority if the Soldier has a prior diagnosis of PTSD or TBI. Prior to taking final action the separation authority will verify in writing that a Soldier does not allege PTSD/TBI as a result of deployment within the past 24 months. The ALARACT specifies that 10 U.S.C. § 1177 applies "to every administrative separation, regardless whether separation is involuntary or at the Soldier's request," to include separations under AR 635-200, chapter 10.

j. On 16 December 2013, the 2014 NDAA amended 10 U.S.C. § 1177 to include "administrative separation in lieu of court-martial," thereby making 10 U.S.C. § 1177 applicable to Soldiers separated under AR 635-200, chapter 10, with an OTH conditions discharge.

SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

k. On 27 January 2014, DoD updated DoDI 1332.14, to clarify that the provisions of 10 U.S.C. § 1177 applied to administrative separations in lieu of trial by court martial.

l. On 1 August 2014, the OTSG published Policy Memorandum 14-060 (Required Medical Examination for Certain Soldiers Processed for Administrative Separation Under Other than Honorable Conditions), which revised how medical providers, serving under the U.S. Army Medical Command (MEDCOM), would evaluate and examine Soldiers pending administrative separation with an OTH characterization of service. In accordance with OTSG Policy Memorandum 14-060, separation authorities must ensure Soldiers separated under AR 635-200, chapter 10, also receive medical examinations pursuant to 10 U.S.C. § 1177.

m. Since the 2014 NDAA amended the provisions of 10 U.S.C. § 1177, Army regulations have not been updated to reflect the applicability of 10 U.S.C. § 1177 to separations in lieu of trial by court-martial.

**6. Initial Assessment.** MEDCOM conducted an initial assessment of the Army's administrative separations relevant to 10 U.S.C. § 1177 since its inception in 2009. Of the 22,194 Soldiers, highlighted in the NPR story, who deployed (at least once in their career) and committed misconduct, there were 4,837 cases of PTSD and 2,624 cases of TBI for a total 6,364 Soldiers (some with both diagnoses). Of these 6,364 Soldiers 4,962 received honorable/general discharges and were immediately eligible for VA benefits. The remaining 15,830 discharged Soldiers were diagnosed with other types of behavioral health conditions, including those unrelated to deployment or military service, such as Attention Deficit and Hyperactivity Disorder, and developmental disorders, and other conditions. The actual number of cases for which 10 U.S.C. § 1177 applied is addressed in the AAA portion of this report.

**7. Comprehensive Review.** By memorandum dated 10 December 2015, the Acting Secretary of the Army assigned separate and distinct responsibilities to DAIG, AAA, and the Assistant Secretary of the Army (Manpower and Reserve Affairs (ASA (M&RA))) to assess whether the Army separated Soldiers who were diagnosed with mental health conditions, such as PTSD and TBI, for misconduct in order to save time and resources.

a. The ASA(M&RA) was responsible for synchronizing and coordinating all actions; consolidating all audit reports; analyzing the results; making alternate or additional recommendations for corrective actions, if necessary; and for overseeing the execution of all approved recommendations.

b. The DAIG was responsible for assessing whether administrative separations at Fort Carson, Colorado were processed in accordance with applicable statutory,

SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

regulatory and policy guidance. Additionally, the DAIG was responsible for reviewing the cases discussed in the 28 October 2015 NPR article and the cases referenced in the 2 July 2014 AR 15-6 investigation directed by the Commanding General, U.S. Army Medical Command.

c. The Auditor General was responsible for auditing the Army's compliance with 10 U.S.C. § 1177 for Soldiers administratively separated under OTH conditions for misconduct, including soldiers who were separated for misconduct in lieu of court martial.

#### **8. Summary of Army Audit Agency Report:**

a. The scope of the AAA's audit (enclosure 4) included a review of cases of administrative separation processed from 1 November 2009 to 31 July 2015. To perform its audit, AAA identified Soldiers who had been administratively separated who met the following conditions: (1) had been administratively separated under OTH conditions; (2) had deployed in support of contingency operations within 24 months of their discharge from the Army; (3) had been diagnosed with PTSD and/or TBI. From 1 November 2009 to 31 July 2015, there were 3,327 Soldiers who met this criteria and were separated from the Army under AR 635-200, chapters 10 (in lieu of court-martial) and 14 (misconduct). Of these 3,327 Soldiers, the Army separated 2,933 under honorable conditions. Accordingly, their cases were not included in AAA's review. The remaining 394 Soldiers who were administratively separated under OTH conditions had been separated from the Army at 27 different locations. Of these separations, AAA audited the cases at the 10 locations with the greatest number of separated soldiers. In total, 293 Soldiers meeting the foregoing criteria were separated from these 10 locations.

b. The AAA audit assessed whether Soldiers undergoing administrative separations received a medical examination to evaluate a diagnosis of PTSD and/or TBI; and, if so, whether this medical examination was considered by the separation authority. From 2009 to July 2015, the Army separated 106 Soldiers pursuant to AR 635-200, chapter 14, with an OTH discharge for which 10 U.S.C. § 1177 was applicable. Of these 106 Soldiers, 100 received medical examinations (94% of the sample audited). Although there is a requirement under 10 U.S.C. § 1177 for separation authorities to consider the results of a Soldier's medical examination prior to taking action, there is no requirement for the separation authorities to document their consideration of the results of these medical examinations in writing. AAA was unable to locate documents that could prove separation authorities considered the results of the medical examinations conducted pursuant to 10 U.S.C. § 1177 for all separations approved under AR 635-200, chapter 14, since 2009. AAA was only able to locate such documents in 64% of the separations pursuant to AR 635-200, chapter 14.

## SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

c. In December 2013, Congress revised 10 U.S.C. § 1177 to include administrative separations in lieu of trial by court-martial (also known as chapter 10 separations under provision AR 635-200). In October 2013, as a result of the meeting with HASC PSMs and in preparation for the upcoming change to 10 U.S.C. § 1177, Headquarters, Department of the Army, published ALARACT 262/2013, which directed Army commanders to complete medical examinations under 10 U.S.C. § 1177 regardless of whether the separation was involuntary or at the Soldier's request. From November 2013 to July 2015, the Army completed medical examinations that complied with the requirements of 10 U.S.C. § 1177 in 76% of its separations under AR 635-200, chapter 10, and in 95% of its cases under AR 635-200, chapter 14. Nonetheless, as discussed above, there was no requirement, either in law or Army policy, that required separation authorities to document in writing that they considered

the results of a Soldier's medical examination pursuant to 10 U.S.C. § 1177. Due to lack of documentation, since November 2013, AAA was only able to locate documents proving compliance with 10 U.S.C. § 1177 in 44% of the Army's separations under AR 635-200, chapter 10, and in 77% of cases under AR 635-200, chapter 14.

d. The AAA further determined that "the processes followed for administrative separations varied at each installation as well as the records maintained." AAA found that Army policy from 2009 to 2015 required commanders to keep and maintain hardcopies of all separation files according to business needs, usually between two to three years,<sup>6</sup> and that case files for approved separations were required to be uploaded in the Interactive Personnel Electronic Records Management System (iPERMS) as part of the Soldier's Army Military Human Resource Record (AMHRR).<sup>7</sup> AAA concluded however, that Army regulations were "unclear about which documents should be uploaded into iPERMS."<sup>8</sup> Although AR600-8-104, as currently written, requires the

---

<sup>6</sup> For example the Military Justice Files Systems of Record Notice (SORN), 79 Fed. Reg. 63907 (27 October 2014), requires "Staff Judge Advocate offices at major Army commands" to keep military justice files, to include administrative separation files, for a period of two years. A system of records (SOR) is a group of records, whatever the storage media (e.g., paper, electronic, etc.), under the control of a DoD component from which personal information about an individual is retrieved by the name of the individual or by some other identifying number or symbol. The DoD publishes SORNs in the Federal Register for each of the SORs it maintains on service members. Each SORN established the length of time each agency is responsible for storing the respective records.

<sup>7</sup> See, e.g., AR 600-8-104 (Army Military Human Resource Records Management), 7 April 2014; and AR 635-8 (Separation Processing Documents), 10 February 2014.

<sup>8</sup> Under provision AR 600-8-104, paragraph 1-6a, "the AMHRR is archived in iPERMS, which has been identified as a records management application for the Army." The Official Personnel Military File (OMPF) serves as the "permanent documentation within the AMHRR that documents facts related to a Soldier during the course of his/her entire Army career, from time of accession into the Army until final separation, discharge, or retirement." The OMPF remains in Army control for 62 years from a Soldier's final separation date. At the end of 62 years, the OMPF is transferred to the control of the National Archives and Records Administration as public record.



## SAMR

**SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct**

Army to upload "any additional documents that supported the separation action" in iPERMS, it fails to identify which specific documents must be uploaded.

e. The AAA further noted that Army policy has not been updated to clearly include the requirements of 10 U.S.C. § 1177. As discussed above, although 10 U.S.C. § 1177 was published in October 2009, DoD did not issue its initial implementing guidance until July 2010. OTSG issued the Army's first guidance in June 2010. This implementing guidance, however, only applied to medical treatment facilities and healthcare providers. No guidance was published at the Army level to apply to unit commanders.

f. Although, the Army published a RAR to AR 635-200 in September 2011, the revision only required mental status evaluations for Soldiers processed for discharge under chapter 10 when the Soldier requested a medical examination. In its report AAA concluded that this policy was inconsistent with 10 U.S.C. § 1177 and DTM 10-022.

g. In October 2013, the Army issued ALARACT 262/2013, (Required Medical Examination for Soldiers Being Processed for Administrative Separation under Conditions other than Honorable) that clearly outlined the requirements of 10 U.S.C. § 1177. However, not all of these requirements are currently reflected in Army regulations.

### **9. Summary of the Department of the Army Inspector General's Findings and Recommendations.**

a. The DAIG conducted a Special Interest Item (SII) Inspection (enclosure 5) to determine whether 12 Soldiers diagnosed with mental health conditions were administratively separated in accordance with applicable law and policy guidance. DAIG reviewed the 12 separation cases for Soldiers who had served at Fort Carson, Colorado and were identified in the 28 October 2015 NPR article or referenced in the 2 July 2014 AR 15-6 directed by the Army Surgeon General.

b. The DAIG inspection team conducted comprehensive reviews of all 12 Soldiers' medical and service records, and conducted telephonic interviews with six of the 12 Soldiers who were willing to discuss their separations. The DAIG mailed certified letters to the remaining six Soldiers asking them to contact the DAIG. To date, none of the six former Soldiers have responded to the DAIG's request.

c. Of the 12 cases reviewed by DAIG, five Soldiers were clinically diagnosed with PTSD and/or TBI, which implicated the requirements of 10 U.S.C. § 1177. Of the five cases in which 10 U.S.C. § 1177 applied, all five soldiers were processed for separation in accordance with law and policy. The DAIG did not find evidence to support the

## SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

allegation that the Army violated 10 U.S.C. § 1177 in these cases.<sup>9</sup> Although one Soldier was separated with an OTH discharge, the Soldier's commander determined that his diagnosis of PTSD did not constitute matters in extenuation that related to the basis of his separation under OTH conditions or the overall characterization of service of the member as OTH. 10 U.S.C. § 1177 did not apply to the remaining cases because the Soldiers were not diagnosed with PTSD or TBI.

d. The Army administratively separated 10 of 12 Soldiers with a characterization of discharge that allowed for immediate access to VA healthcare benefits assuming they were otherwise qualified. Of the two Soldiers without immediate access to VA benefits, one Soldier recently obtained authorization for benefits from the VA. The final Soldier may apply for VA benefits. The DAIG did not find evidence that the Army routinely separates Soldiers without access to medical retirement benefits. In many of the cases reviewed by DAIG, the recommended characterization of discharge was upgraded, by the decision of the separation authority, to one in which the Soldier could immediately receive benefits assuming they were otherwise qualified.

e. Of the 12 cases reviewed by the DAIG, there is documentation that established that 11 of the 12 Soldiers had ample access to behavioral health care.<sup>10</sup> DAIG reviewed the total number of behavioral health appointments that each of the 11 Soldiers had prior to separation. The number of appointments ranged from 38 to 323, depending on the Soldier.

### 10. Analysis.

a. The Army remains confident in the administrative processes that define misconduct separation procedures. Our current compliance with 10 U.S.C. § 1177 demonstrates that separation authorities are reviewing and considering a Soldier's history of PTSD and/or TBI that may have been a factor in the Soldier's misconduct leading to his administrative separation. In fact, AAA found that 88% of the 3327 Soldiers with a PTSD/TBI diagnosis who were separated for misconduct were separated under honorable conditions and were immediately eligible for VA benefits, assuming they were otherwise qualified. There were only 394 cases in which commanders decided that the misconduct warranted an OTH. Of the cases AAA reviewed, in which 10 U.S.C. § 1177 was applicable, 85% had appropriate behavioral

---

<sup>9</sup> In contrast to the AAA audit, the DAIG review presumed regularity with regard to compliance of the 12 separation cases with 10 U.S.C. § 1177. In one of those cases, however, the Soldier was separated before the statute was enacted.

<sup>10</sup> For the one case that was unable to be reviewed by the DAIG, it was due to the fact that the Soldier was separated prior to the implementation of electronic medical records so the number of behavioral health appointments for this Soldier is unknown.

## SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

health evaluations available to commanders.<sup>11,12,13</sup> This demonstrates the Army's commitment to the Soldier and compliance with 10 U.S.C. § 1177.

b. Although the Army was not always able to produce evidence that the mental health evaluation was considered by the separation authority, that does not mean the separation authority did not review it or that the Army was non-compliant with 10 U.S.C. § 1177. There is currently no requirement for separating authorities to document that they had considered the Soldier's mental health evaluation in the separation process. Further, Army regulations require hardcopy records to be kept according to business needs, usually between 2 to 3 years. However, documents to support separation actions are required to be uploaded in the Army's interactive Personnel Electronic Records Management System (iPERMS) as part of the Soldiers official military personnel file. Notwithstanding, Army regulations are unclear about which documents should be uploaded into iPERMS. U.S. Army Human Resource Command has guidance that separation actions should be uploaded into iPERMS, but it doesn't clearly define the documents to be include

c. The AAA review identified a number of cases for which there was insufficient documentation of compliance with 10 U.S.C. § 1177. Additionally the AAA sampling did not include 101 cases. Clearly the 101 cases should be reviewed for compliance with statute and the AAA is in the process of completing this review. In each of these cases, a review is required of the impact of any decisions on Soldier benefits such as VA health care.

---

<sup>11</sup> This includes all Chapter 14 separations that AAA audited and those Chapter 10 separations that occurred after the change to Army policy in October 2013.

<sup>12</sup> In 2009, Congress passed a new section to 10 USC 1177 which requires special processing for certain administrative separations of Soldiers who have deployed in the past two years and been diagnosed with or allege to have PTSD or TBI. The language of the statute was not clear as to its applicability to administrative separations under the provisions of Chapter 10, AR 635-200; however, in 2013, Congress amended the statute to add the following language to subparagraph (a) (2): "including an administrative separation in lieu of courts-martial." On December 10, 2015, the Acting Secretary of the Army directed the Office of the Inspector General and the Army Audit Agency to conduct a review of Army separations covered by the terms of 10 USC 1177. The AAA analysis contends that 10 USC 1177 applied to Chapter 10 separations prior to the amendment in 2013 that included administrative separations in lieu of court martial.

<sup>13</sup> However, input from Staff Judge Advocates in the field indicate that generally, from 2009 to 2013, separations completed under the provisions of Chapter 10 were not considered to be subject to the requirements of the statute. Servicing command Staff Judge Advocate records support this position. The prevailing advice from the Office off General Counsel and a former 2013 House Armed Services Committee (HASC) Professional Staff member, regarding the applicability of 10 U.S.C. § 1177 to Chapter 10 separations prior to 2013, is that the statute did not apply to Chapter 10 separations prior to the 2014 NDAA.

SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct

#### 11. Recommendations.

a. The ASA M&RA and AAA have developed recommendations on the entire review and solutions for your consideration. Upon your approval, I will ensure implementation of corrective actions noted below.

b. Ensure that Army policy is updated to include the requirements of 10 USC 1177 by taking the following actions.

(1) G-1 will reissue ALARACT 262/2013, no later than (NLT) 1 May 2016. The updated ALARACT will include a provision requiring separation authorities to document, in writing, that they reviewed the results of medical examinations conducted pursuant to 10 U.S.C. § 1177.

(2) G-1 will complete necessary revisions to AR 635-200 NLT 1 July 2016, to add specific language consistent with 10 U.S.C. § 1177 to the references, Chapter 1, Section VI, and Chapters 10 and 14.

(3) G-1 will publish an expedite revision to AR 635-8 NLT 1 August 2016. The expedite revision will specify documents to be included in separation packets (e.g., separation authority acknowledgement, in writing, regarding the review of the medical examination conducted pursuant to 10 USC, 1177; DA Form 3822) and responsibilities for transfer of these documents to the applicable Transition Center for uploading into the interactive Personnel Electronic Records Management System (iPERMS).

(4) OTSG will publish a mandated revision to AR 40-501 NLT 1 August 2016. The mandated revision will identify the DoD and DA forms that must be included in a Soldier's medical records prior to his separation from the Army.

(5) G-1 will revise AR 600-8-104 to reference the documents to be included in separation packets (as outlined in AR 635-8) and uploaded into iPERMS including administrative separation actions under AR 635-200, Chapters 10 and 14 NLT 1 January 2017.

c. AAA will complete the audit of the 101 Soldiers, not included in the original audit, to determine the extent that 10 USC 1177 requirements were followed and to determine the disposition for all separation cases that did not comply with 10 USC 1177 requirements NLT 1 June 2016.

d. For those cases in which Soldiers separated for misconduct with PTSD/TBI, for which 10 U.S.C. § 1177 applies, and there was noncompliance or there may be some doubt about compliance, I will prepare a document for your signature referring these cases to the Army Review Board Agency (ARBA).

SAMR

SUBJECT: Special Review and Assessment of Soldiers with Mental Health Conditions Separated from Active Duty for Misconduct


e. Upon receipt, ARBA will prioritize each case identified during application intake and screening; carefully review the personnel and medical records and documents provided by the applicant for each case considered; obtain an advisory opinion from a psychologist or psychiatrist for consideration by the respective Board; and determine if the Soldier's discharge should be upgraded based on the evidence of record. The Army will refer named cases from the AAA audit to ARBA, in which Soldiers diagnosed with PTSD and/or TBI were separated for misconduct, and whose separations may not have complied with 10 U.S.C. § 1177.

12. My office will continue to work with G-1, AAA, DAIG, OTSG, and ARBA to ensure that issues identified are addressed and an oversight mechanism is in place to ensure compliance with 10 U.S.C. § 1177.

13. My point of contact for this action is COL (b) (6), (b) (6), (b) (6) @mail.mil.

Encls:

1. References
2. SA Directive
3. Senators' Letter
4. AAA Report
5. DAIG Findings and Recommendations



DEBRA S. WADA  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

SECRETARY OF THE ARMY RECOMMENDATION: Approve recommendations.

Approve: EP Disapprove: \_\_\_\_\_ Other \_\_\_\_\_

CF:

UNDER SECRETARY OF THE ARMY  
CHIEF OF STAFF OF THE ARMY  
ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)  
GENERAL COUNSEL  
VICE CHIEF STAFF OF THE ARMY  
THE INSPECTOR GENERAL  
THE AUDITOR GENERAL  
DIRECTOR OF THE ARMY STAFF  
DEPUTY CHIEF OF STAFF, G-1  
THE SURGEON GENERAL  
JUDGE ADVOCATE GENERAL