AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 4435
OFFERED BY MR. WALZ OF MINNESOTA

Page 108, after line 17, insert the following:

SEC. 528. REVIEW BY PHYSICAL DISABILITY BOARD OF REVIEW OF MILITARY SEPARATION ON BASIS OF A MENTAL CONDITION NOT AMOUNTING TO DISABILITY.

(a) Members Entitled To Review by Physical Disability Board of Review.—Section 1554a of title 10, United States Code, as amended by section 521, is amended—

(1) in subsection (a)(1), by striking “disability determinations of covered individuals by Physical Evaluation Boards” and inserting “disability and separation determinations regarding certain members and former members of the armed forces described in subsection (b)”;

and

(2) by striking subsection (b) and inserting the following new subsection:

“(b) Covered Individuals.—For purposes of this section, covered individuals are members and former members of the armed forces who—
“(1) during the period beginning on September 11, 2001, and ending on December 31, 2014, are separated from the armed forces due to unfitness for duty because of a medical condition with a disability rating of 20 percent disabled or less and are found to be not eligible for retirement; or

“(2) before December 31, 2014, are separated from the armed forces due to unfitness for duty because of a mental condition not amounting to disability, including separation on the basis of a personality disorder or adjustment disorder.”.

(b) NATURE AND SCOPE OF REVIEW.—Such section is further amended—

(1) by redesignating subsections (f), (g), and (h), as designated by section 521(d), as subsections (g), (h), and (i), respectively;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following new subsection (d):

“(d) REVIEW OF SEPARATIONS DUE TO UNFITNESS FOR DUTY BECAUSE OF A MENTAL CONDITION NOT AMOUNTING TO DISABILITY.—(1) Upon the request of a covered individual described in paragraph (2) of subsection (b), or a surviving spouse, next of kin, or legal
representative of a covered individual described in such paragraph, the Physical Disability Board of Review shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual. In addition, the Physical Disability Board of Review may review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual described in such paragraph.

“(2) Whenever a review is conducted under paragraph (1), the members of the Physical Disability Board of Review must include at least one licensed psychologist and one licensed psychiatrist who has not had any fiduciary responsibility to the Department of Defense since December 31, 2001.

“(3) In conducting the review under paragraph (1), the Physical Disability Board of Review shall consider—

“(A) the findings of the psychologist or psychiatrist of the Department of Defense who diagnosed the mental condition;

“(B) the findings and decisions of the separation authority with respect to the covered individual; and

“(C) whether the separation authority correctly followed the process for separation as set forth in
law, including Department of Defense regulations, directives, and policies.

“(4) The review by the Physical Disability Board of Review under paragraph (1) shall be based on the records of the Department of Defense and the Department of Veterans Affairs and such other evidence as may be presented to the Physical Disability Board of Review. The board shall consider any and all evidence to be considered, including private mental health records submitted by the covered individual in support of the claim.

“(5) If the Physical Disability Board of Review proposes, upon its own motion, to conduct a review under paragraph (1) with respect to a covered individual, the board shall notify the covered individual, or a surviving spouse, next of kin, or legal representative of the covered individual, of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

“(6) After the Physical Disability Board of Review has completed the review under this subsection with respect to the separation of a covered individual, the board must provide the claimant with a statement of reasons concerning the board’s decision. The covered individual
has the right to raise with the board a motion for reconsideration if—

“(A) new evidence can be presented that would address the issues raised in the board’s statement of reasons; or

“(B) the board has made a plain error in making its recommendation.”.

(c) CORRECTION OF MILITARY RECORDS.—Subtitle (f) of such section, as redesignated by subsection (b)(2), is amended to read as follows:

“(f) CORRECTION OF MILITARY RECORDS.—(1) The Secretary of the military department concerned shall correct the military records of a covered individual in accordance with the recommendation made by the Physical Disability Board of Review under subsection (e) unless the Secretary determines that the board has made a clearly erroneous recommendation. Any such correction shall be made effective as of the date of the separation of the covered individual.

“(2) In the case of a covered individual previously separated with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such individual would be entitled based on the individual’s military record as corrected shall be adjusted to take into account receipt of such
lump-sum or other payment in such manner as the Secretary of the military department concerned considers appropriate.

“(3) If the Physical Disability Board of Review makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.”.

(d) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in subsection (c)—

(A) by inserting after “Review” the following: “OF SEPARATIONS DUE TO UNFITNESS FOR DUTY BECAUSE OF MEDICAL CONDITION WITH A LOW Disability Rating”; and

(B) in paragraph (1)—

(i) by inserting “described in paragraph (1) of subsection (b)” after “a covered individual” the first place it appears;

(ii) by inserting “described in such paragraph” after “a covered individual” the second place it appears; and

(iii) by striking the second sentence and inserting the following new sentence:
In addition, the Physical Disability Board of Review may review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual described in such paragraph.”; and

(2) in subsection (e), as redesignated by subsection (b)(2), by striking “under subsection (c)” and inserting “conducted under subsection (c) or (d)”.

(e) Notification of New Availability of Review.—

(1) Notification Requirement.—In the case of individuals described in subsection (b)(2) of section 1554a of title 10, United States Code, as amended by subsection (a), who have been separated from the Armed Forces during the period beginning on September 11, 2001, and ending on the date of the enactment of this Act or who are separated after that date, the Secretary of Defense shall ensure, to the greatest extent practicable, that such individuals receive oral and written notification of their right to a review of their separation from the Armed Forces under such section 1554a.
(2) **COMPLIANCE.**—The Secretary of the military department with jurisdiction over the Armed Force in which the individual served immediately before separation shall be responsible for providing to the individual the notification required by paragraph (1). The Secretary of Defense shall monitor compliance with this notification requirement and promptly notify Congress of any failures to comply.

(3) **LEGAL COUNSEL.**—The notification required by paragraph (1) shall—

(A) inform the individual of the right to obtain legal or non-legal counsel to represent the individual before the Physical Disability Board of Review; and

(B) include a list of organizations that may provide such counsel at no cost to the individual.

(f) **CLERICAL AMENDMENTS.**—

(1) **SECTION HEADING.**—The heading of such section is amended to read as follows:
§ 1554a. Physical Disability Board of Review: review of separations with disability rating of 20 percent or less and separations on basis of mental condition not amounting to disability”.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 79 of such title is amended by striking the item relating to section 1554a and inserting the following new item:

“1554a. Physical Disability Board of Review: review of separations with disability rating of 20 percent or less and separations on basis of mental condition not amounting to disability.”.

(g) OFFSET.—

(1) PROHIBITION ON DISABILITY COMPENSATION FOR HEMORRHoids.—During the 10-year period beginning on the date of the enactment of this Act, in determining claims for compensation (as defined in section 101 of title 38, United States Code), the Secretary of Veterans Affairs may not—

(A) consider hemorrhoids to have been incurred or aggravated by service in the Armed Forces;

(B) provide to a veteran a disability rating for hemorrhoids; or

(C) pay compensation for hemorrhoids.

(2) APPLICATION.—The prohibition in paragraph (1) shall apply with respect to claims for comp-
10

1 pension filed on or after the date of the enactment

2 of this Act.