2021-1432

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ROBERT J. LABONTE, JR.,

Plaintiff-Appellant,

v.

THE UNITED STATES,

Defendant-Appellee.

APPEAL FROM THE UNITED STATES COURT OF FEDERAL CLAIMS, IN NO. 1:18 -CV-01784-RAH, JUDGE RICHARD A. HERTLING

BRIEF OF DEFENDANT-APPELLEE THE UNITED STATES

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STATEMENT OF RELATED CASES

Pursuant to Rule 47.5, counsel for defendant-appellee, the United States, states that he is unaware of any other appeal in or from this action that previously was before this Court or any other appellate court under the same or similar title. Defendant-Appellee's counsel is also unaware of any cases currently pending before this Court that will directly affect or that will be directly affected by the Court's decision in this appeal.

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STATEMENT OF THE ISSUE

1. Did the United States Court of Federal Claims correctly dismiss the complaint for failure to state a claim upon which relief may be granted, when a clear and unambiguous statute, 10 U.S.C. § 1552(f), precludes the Army Board for Correction of Military Records (ABCMR or board) from granting plaintiff-appellant, Robert J. LaBonte, Jr., the relief that he requested; namely, expunging

his court-martial conviction from the record that serves as the military's authoritative source of personnel information for administrative purposes?

STATEMENT OF CASE SETTING FORTH RELEVAT FACTS[1]

I. Nature Of The Case

This appeal arises from a military pay action. *See* Appx1. Mr. LaBonte was separated from the Army with a bad conduct discharge adjudged by a court-martial after he pled guilty to desertion after he returned to Fort Hood in 2006 following a long period of being absent without leave (AWOL). *See* Appx1-3. In 2014, years after his separation, the Army Discharge Review Board (ADRB), through its clemency authority, upgraded the characterization of Mr. LaBonte's discharge to General, Under Honorable Conditions. Appx3; Appx13 (citing Appx758). But the ADRB concluded that "[i]t could act only to change the characterization of service

[1] Pages of Mr. LaBonte's opening brief in this appeal are cited "Pl. Br. __." Pages of the joint appendix in this appeal are cited "Appx__." The numbering of the appendix differs from that of the administrative record as filed at the trial court. Therefore, when citing to a document referred to by the trial court in its decision, we cite to the appendix page number that contains the document cited by the trial court, not to the administrative record (or AR) page number in the trial court's decision. For example, the DD-214, a crucial document discussed by the trial court in its decision, and by the parties in their briefs in this appeal, is cited in the trial court's decision as AR 647, but it is found at page 754 of the joint appendix in this appeal, and we cite the document as Appx754. "RCFC" refers to the rules of the United States Court of Federal Claims. "Br. for Mil. Law. Practitioners __" refers to a page or pages of the opening amicus brief filed by Military Law Practitioners. "NVLSP Br. __" refers to a page or pages of the brief of National Veterans Legal Services Program and Protect Our Defenders (together NVLSP).

and not the reason for [his] separation from the Army because "[t]he ADRB may not upset the finality of a court-martial conviction" and, therefore "it could not change" Mr. LaBonte's "reason for discharge on his DD-214, even as an act of clemency." Appx13-14 (citing Appx763).

Based on the ADRB's action, Mr. LaBonte, in 2015, sought retroactive medical retirement from the ABCMR, alleging "that he had a permanent disability" that caused him to be absent without leave prior to going AWOL. Appx3. The ABCMR denied Mr. LaBonte's request for medical retirement and, in 2018, Mr. LaBonte commenced the action underlying this appeal. Appx4.

Following the trial court's order remanding the matter to the ABCMR for further proceedings, the board again denied Mr. LaBonte's claim, and Mr. LaBonte subsequently challenged the board's remand decision. Appx4.

On October 30, 2020, the trial court dismissed Mr. LaBonte's complaint seeking "correction of his military records to receive disability retirement, back pay, and retirement benefits" pursuant to RCFC 12(b)(6), for failure to state a claim on which relief may be granted, because the ABCMR lacked "the statutory authority to grant" Mr. LaBonte the relief he sought. *See* Appx1-2. The trial court also dismissed Mr. LaBonte's related due process claim, holding that did not possess jurisdiction to entertain that claim standing alone. Appx2. Judgment was entered the same day. Appx17. Mr. LaBonte appeals to this Court.

II. The Statutory And Regulatory Framework Relevant To The Records Correction Process

A. The Appeals Process In Military Criminal Justice Cases

The Constitution grants to Congress the authority "[t]o make Rules for the Government and Regulation of the land and naval Forces[.]" U.S. Const. Art. I, § 8, cl. 14. Exercising that authority, "Congress has taken great care both to define the rights of those subject to military law, and provide a complete system of review within the military system to secure those rights." *Burns v. Wilson*, 346 U.S. 137, 140 (1953). Courts-martial decisions are subject to "appellate review, thus forming part of an integrated 'court-martial system' that closely resembles civilian structures of justice." *Ortiz v. United States*, 138 S. Ct. 2165, 2170 (2018).

The military court system "begins with the court-martial itself, an officer-led tribunal convened to determine guilt or innocence and levy appropriate punishment, up to lifetime imprisonment or execution." *Ortiz*, 138 S. Ct. at 2171 (citing 10 U.S.C. §§ 816, 818, 856a). A decision by a military judge in court-martial proceedings may be reviewed by an appellate court created by Congress to serve that function. *See Schlesinger v. Councilman*, 420 U.S. 738, 746 (1975).

The next phase of military justice occurs at a service-specific appellate court, here, the Army Court of Criminal Appeals. *Ortiz*, 138 S. Ct. at 2171 (citing 10 U.S.C. §§ 876(a)–(c)). At the highest level of the military court-martial system

is the Court of Appeals for the Armed Forces (CAAF), a court "structural[ly] insulat[ed] from military influence[,]" *Hamdan v. Rumsfeld*, 548 U.S. 557, 587–88 (2006), comprised of five civilian judges each appointed to serve 15-year terms, *see Ortiz*, 138 S. Ct. at 2171 (citing 10 U.S.C. §§ 941, 942(a)–(b)). Further appeal may then be had to the United States Supreme Court. 10 U.S.C. § 867a, 28 U.S.C. § 1259.

Pursuant to 10 U.S.C. § 876, discharges executed under sentences by courts-martial are final and that "[o]rders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States," subject to exceptions not relevant to this appeal.

B. The Scope Of The ADRB's Authority

"The ADRB reviews discharges of former soldiers to determine whether they are proper and equitable." *Gay v. United States,* 116 Fed. Cl. 22, 29 (2014) (citing 10 U.S.C. § 1553; 32 C.F.R. § 581.2; *Shaw v. United States,* 100 Fed. Cl. 259, 262 (2011)). But the ADRB's authority is limited by statute. Specifically, the relevant statute in effect in September 2014, when the ADRB reviewed Mr. LaBonte, provided, in pertinent part, as follows:

> (a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the

> discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member . . . . *With respect to a discharge or dismissal adjudged by a court-martial case* tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), *action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.*
>
> (b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

10 U.S.C. § 1553 (2012) (emphasis added). These provisions in section 1553 delineate the limited scope of relief that the ADRB is authorized to grant with respect to discharges adjudged by court-martial, and expunging the record of a conviction from a former service member's service record in not among the relief specified. *See id.* The statutory language quoted above is substantially the same as the current version of section 1553, except that Congress amended the statute in 2019 to provide that the board shall consist "of not fewer than three members[.]" 10 U.S.C. § 1553.

C. The Scope Of The Secretary's And ABCMR's Authority

Pursuant to statute, service secretaries and correction boards also may correct records, to the extent permitted by statute. For example, 10 U.S.C. § 874 provides, in pertinent part, as follows:

> (a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer *may remit or suspend any part or amount of the unexecuted part of any sentence,* including all uncollected forfeitures other than a sentence approved by the President. . . .
>
> (b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

10 U.S.C. § 874 (emphasis added). Although this provision provides certain authority related to sentences, expunging the record of a conviction from a former service member's service record is not among the relief specified.

Finally, the correction board statute at issue in this appeal, 10 U.S.C. § 1552, provides, in relevant part, as follows:

> The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department.

10 U.S.C § 1552(a). However, Congress placed express limitations on the authority of corrections boards under section 1552 with respect to records pertaining to court-martial cases:

> *With respect to records of courts-martial and related administrative records pertaining to court-martial cases* tried or reviewed under chapter 47 of this title [10 U.S.C. §§ 801 *et seq.*] (or under the Uniform Code of Military

> Justice (Public Law 506 of the 81st Congress)), *action under subsection (a) may extend only to*--
>
> (1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title [10 U.S.C. § 801 et seq.] (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or
>
> (2) action on the sentence of a court-martial for purposes of clemency.

10 U.S.C. § 1552(f) (emphasis added). Thus, although correction boards have broad authority pursuant to subsection 1552(a), another subsection limits that authority "[w]ith respect to records of courts-martial and related administrative records pertaining to court-martial cases . . . ." 10 U.S.C. § 1552(f).

III. Statement Of Facts

A. Introduction

The trial court dismissed Mr. LaBonte's complaint because 10 U.S.C. § 1552(f) precludes the ABCMR from correcting his records to grant him the relief he sought due to his court-martial conviction and discharge for desertion. Because the trial court's decision was based on the board's lack of authority, the facts relevant to this appeal are straightforward. Although we disagree with Mr. LaBonte's assertions concerning the merits of his disability claim, they are not relevant in this appeal because the board's lack of authority to consider his claim is unrelated to the merits of the claim.

Mr. LaBonte nonetheless includes allegations, characterizations and conclusions that go to the merits of his claim, which the trial court never reached. For example, Mr. LaBonte's preliminary statement includes allegations regarding his alleged injuries and medical conditions, and contentions that the Army failed to provide him appropriate medical care, while minimizing the seriousness of his conviction for desertion by characterizing his underlying conduct as having "returned home for a family matter and overstayed without leave to recover from his injuries . . . ." *See* Pl. Br. 2-3. He also asserts that he is owed disability retirement, a legal conclusion that remains unproven, was not adjudicated on the merits by the trial court, and is not at issue in this appeal. *See* Pl. Br. 3.

Mr. LaBonte similarly sets forth allegations relating to his alleged injuries, conditions, medical treatment, and diagnoses. *See* Pl. Br. 6-10. Many of the details that he provides are not relevant to this appeal because the alleged nature and extent of Mr. LaBonte's injuries does not change whether the ABCMR lacked the authority to grant him the relief he seeks due to 10 U.S.C. § 1552(f)'s limitation of the board's power, regardless of whether the board could have granted relief in the absence of his court-martial and resulting discharge.

Finally, the trial court included a caveat in its decision emphasizing that "[b]ecause the Court grants the defendant's motion to dismiss under RCFC 12(b)(6), the facts as alleged in the complaint (ECF 1) are assumed to be true."

Appx2, n.1. And the trial court noted that its "recitation of the facts" were not "findings of fact" but were "a recitation of the facts as alleged by the plaintiff[,]" although the trial court acknowledged that it did draw from the administrative record "to add context and to provide a more complete background . . . ." Appx2.

B. The Relevant Facts

The facts relevant to this appeal are limited, for the most part are undisputed, and are set forth at length in the trial court's decision.

In 2002, Mr. LaBonte enlisted in the Army. Appx2 (citing Compl., Appx30 ¶ 17). In his complaint, Mr. LaBonte alleges that he was injured in a fall from a guard tower in 2004 while he was deployed in Iraq. *Id.* (citing Appx32 ¶ 25). After he returned from Iraq, he sought help for various symptoms that he allegedly was experiencing and was diagnosed with an adjustment disorder. *Id.* (citing Appx33-34 ¶¶ 31-34, 36-39).

After Mr. LaBonte learned that he was going to deploy again to Iraq, he advised his chain of command that he did not want to return to Iraq. *Id.* (citing Appx34 ¶ 40). Eventually, he went AWOL for about six months. *Id.* (citing Appx35 ¶ 42). After Mr. LaBonte returned to Fort Hood, he was charged with desertion, pled guilty at a court-martial proceeding, and "was separated by court-martial" from the Army with a bad conduct discharge. Appx2 (citing Appx 35 ¶¶ 46-47); Appx10; *see also* Pl. Br. 8. Mr. LaBonte did not fully exhaust his

appeals "through the means authorized under the" Uniform Code of Military Justice (UCMJ), "and the time for him to seek such review is long past." *See* Appx14.

Following his bad conduct discharge, Mr. LaBonte sought treatment and was diagnosed with Post Traumatic Stress Disorder (PTSD). Appx2 (citing Appx36-37 ¶¶ 52, 54). Thereafter, Mr. LaBonte sought review by the ADRB, which upgraded his characterization of service from bad conduct to General, Under Honorable Conditions. Appx3 (citing Appx38 ¶ 58), Appx13.

In 2015, with his upgraded status in hand, Mr. LaBonte requested that the ABCMR grant him retroactive medical retirement. Appx3 (citing Appx38 ¶ 59). During the ABCMR proceedings, Mr. LaBonte alleged that he had a permanent unfitting disability before going AWOL. *See* Appx3. The board initially denied him relief, finding that it lacked authority to set aside his conviction pursuant to 10 U.S.C. § 1552. Appx3. But the Deputy Assistant Secretary of the Army (DASA) ordered further proceedings. Appx3. The referral memorandum states, in part, as follows:

> Should a determination be made that the applicant should have been separated under the [Integrated Disability Evaluation System (IDES)], these proceedings will serve as authority to void his *administrative* separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowance and/or retired pay, less any entitlements

already received.

Appx128-129 ¶ 2.b (emphasis added). What the DASA did not realize, however, was that Mr. LaBonte was discharged as a result of a court-martial conviction rather than an administrative separation. *See* Appx 754, block 28. In any event, the ABCMR denied Mr. LaBonte's claim. Appx4.

IV. Course Of Proceedings And Decision Below

A. Mr. LaBonte's Complaint And The Trial Court's Remand

In 2018, Mr. Labonte filed his complaint at the trial court. Mr. LaBonte "alleged that the ABCMR's denial of his claim was arbitrary and capricious, in bad faith, unsupported by substantial evidence, and a violation of the due process clause of the [F]ifth [A]mendment." Appx4. In an order issued December 3, 2019, the trial court partially granted our motion to dismiss for lack of "jurisdiction due to" Mr. LaBonte's "conviction by court martial" but "preliminarily" found that it possessed jurisdiction to consider on of Mr. LaBonte's "claim that he should have been considered for medical retirement before being convicted by a court martial[,]" because the ABCMR had considered Mr. LaBonte's "claim on the merits." *See* Appx2716-2717. In addition, the trial court vacated the ABCMR's decision that the board had relied on a medical opinion that did not consider all of the medical evidence and remanded the matter for the board to obtain another medical opinion and then resolve Mr. LaBonte's claim. Appx4; *see also*

Appx2716.

After obtaining an advisory opinion from the Army's Office of Surgeon General on remand, in April 2020, the ABCMR issued a remand decision denying Mr. LaBonte's claim because there was insufficient medical evidence from his time in service to substantiate his claim, and because the evidence in the record establishing that Mr. LaBonte met the Army's medical retention standards prior to his discharge outweighed the evidence favorable to Mr. LaBonte's claim. *See* Appx4; s*ee also* Appx2724-2770.

Following the remand, Mr. LaBonte filed a motion for judgment on the administrative record challenging the ABCMR's remand decision. Appx4. In response, we renewed our pre-remand motion to dismiss and, in the alternative, we requested judgment on the administrative record. Appx4.

On October 30, 2020, the trial court dismissed Mr. LaBonte's complaint and issued a separate order that directed the clerk to enter final judgment in favor of the United States. Appx1 (decision); Appx16 (order). The trial court entered judgment the same day. Appx17.

B. Because The ABCMR Lacked Authority To Grant Mr. LaBonte The Relief He Requested The Trial Court Dismissed The Complaint

The trial court held that, because Mr. LaBonte's "DD-214 is an administrative record 'related' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge form the Army, the" ABCMR was "without authority to change the reason for separation due to the court-martial." Appx14. The trial court further held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation, due to court-martial, the Board is without the authority to grant the plaintiff the relief he seeks" and "[a]s a result, the Court may not grant the plaintiff relief . . . ." Appx14. Mr. LaBonte appeals this aspect of the trial court's decision.

Because the trial court dismissed Mr. LaBonte's disability-retirement claim, it also held that it lacked jurisdiction to entertain Mr. LaBonte's stand-alone due process claim under the Fifth Amendment. Appx14-15. Mr. LaBonte does not challenge this aspect of the trial court's decision.[2]

[2] Mr. Labonte has waived any challenge to the dismissal of his due process claim by failing to raise it in his opening brief. *See SmithKline Beecham Corp. v. Apotex Corp.,* 439 F.3d 1312, 1319 (Fed. Cir. 2006) ("Our law is well established that arguments not raised in the opening brief are waived.").

C. The Trial Court's Analysis Of The Statute's Plain Meaning

The trial court reasoned that, because Mr. LaBonte had not asked the ABCMR "to make a correction based on actions by reviewing authorities under the UCMJ or a correction for purposes of clemency" – the two types of corrections that 10 U.S.C. § 1552 authorized the board to make – the ABCMR "lack[ed] authority to make a correction to the plaintiff's records of courts-martial and related administrative records." Appx10-11.

The administrative record at issue in this appeal is the Department of Defense Form 214 (DD-214) that the Army issued to Mr. Labonte. *See* Appx11-14 (discussing the DD-214 at length). Department of Defense Instructions (DoDI) expressly state that every separated service member "shall be given a completed DD Form 214 describing relevant data regarding [his] service *and the circumstances of termination* . . . ," and "[t]he DD Form 214 will be *accurately* prepared to provide the [s]ervice member a clear concise summary of active service with the Military Service *at the time of transfer, release, [or] discharge*." DoDI 1336.01 ¶ 3(c)-(d) (emphasis added).

The trial court determined that Mr. LaBonte's "narrative reason for separation" is noted as 'Court-Martial, Other' on his DD-214." Appx11 (citing Appx754 (Mr. LaBonte's DD-214)). As the trial court explained, "[a] DD-214 is – without question – an administrative document; it is one that all service members

have" and "[t]he Department of Defense describes it as the '*authoritative source of personnel information for administrative purposes*.'" Appx12 (quoting DoDI 1336.01 ¶ 3(a) (Aug. 20, 2009) (emphasis added)). And as the trial court elaborated, the DD-214 "'provide[s] an accurate and complete summation of active military personnel service.'" Appx8 n.4 (quoting DoDI 1336 ¶ 3(a)).

The trial court also noted that Mr. LaBonte's "disability-retirement claim necessarily embodies the argument that he should have been medically discharged and separated prior to his court-martial conviction." Appx11.

Summarizing the parties' opposing positions, the trial court observed that while Mr. LaBonte had alleged "that there is no regulation or statute preventing his records from reflecting both a court-martial conviction and medical-retirement status," the Government had argued that the ABCMR "would need to correct his DD-214 to reflect that [Mr. LaBonte] was medically separated instead of separated pursuant to a court-martial conviction." Appx11.

The trial court also explained that Mr. LaBonte had requested in his complaint that the ABCMR "'correct his DD-214 . . . to remove the reason for his separation (e.g. court-martial conviction).'" Appx11 (citing Appx38 ¶ 59). In light of these considerations, the trial court determined that "[t]he threshold question is whether the Board would need to correct [Mr. LaBonte's] DD-214 to

award him disability benefits." Appx11. The trial court concluded that the ABMCR would need to do so. *Id.*

Next, the trial court concluded that, because Mr. LaBonte's "DD-214 would need to be changed in order to grant" him "the relief he seeks, the next question is whether the DD-214 is a 'record[ ] of courts-martial' or a 'related administrative record[ ]" and that if his DD-214 was such a record, the ABCMR's authority to correct Mr. LaBonte's record was limited. Appx11.

The trial court resolved the first part of the inquiry, concluding that the DD-214 itself was not a record of courts-martial, and pointing out that neither party had argued otherwise. Appx10-11. Accordingly, the trial court explained that "[t]he question comes down to whether [Mr. LaBonte's] DD-214 is an administrative record 'related' to plaintiff's court-martial that the Board has no authority to change pursuant to the limitation of 10 U.S.C. § 1552(f)." Appx12. Having thus framed the central issue before it, the trial court proceeded to resolve that issue.

The trial court held that because Mr. LaBonte's DD-214 was "an administrative record 'related,' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge from the Army, the" ABCMR was "without authority to change the reason for separation due to the court-martial." Appx14. Further, the trial court held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation due to court-martial, the"

ABCMR was "without the authority to grant" Mr. LaBonte "the relief he seeks." *Id.* The trial court reached those conclusions only after further analyzing the language of section 1552(f).

First, the trial court observed that although Mr. LaBonte did not "dispute that a DD-214 is an administrative record," he argued that his DD-214 was "not 'related' in any way to his court-martial because every service member has a DD-214, and it is issued by an entity entirely separate from the court-martial authority." Appx12.

The trial court found that Mr. LaBonte proposed a narrow interpretation of subsection 1552(f) which would "only limit[ ] changes to the underlying factual record or alterations to the legal conclusions of a court-martial proceeding." *Id.* The trial court cited the "charging document from a court martial" as an example of a document that Mr. LaBonte considered to be "related administrative record[.]" *Id.* (citation omitted). As discussed below, the trial court rejected Mr. LaBonte's interpretation.

Specifically, because the phrase "related administrative record" was "not defined in Title 10" of the United States Code, the trial court looked to the dictionary definitions of the term "related." Appx12 (citing *Gumpenburger v. Wilkie,* 973 F.3d 1379, 1382 (Fed. Cir. 2020) (dictionaries may be of assistance in determining ordinary meaning of a statute). The trial court concluded that

dictionary definitions supported "a broad meaning of the word" and that reading "related" in a broad fashion also "gives full effect to the meaning of the statute[.]" Appx12 (quoting *Oxford English Dictionary* (3rd ed. 2009) (defining "'related'" to mean "'connected or having relation to something else.'"); *Black's Law Dictionary* (11th ed. 2019) (defining "'related' as meaning '[c]onnected in some way; having relationship to or with something else.'")). Citing the principle that "[c]ourts hesitate to adopt a statutory interpretation that renders another portion of the same law surplusage[,] *Maine Cmty. Health Options v. United States,* 140 S. Ct. 1308, 1323 (2020)[,]" the trial court concluded that Mr. LaBonte "would effectively read § 1552(f)'s limitation on 'related administrative records' out of the law." Appx12-13.

Relying on 10 U.S.C. § 801(14)'s definition of the term "record" in the context of court-martial proceedings to include "an official written transcript, written summary, or other writing relating to the proceedings" or to "an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced[,]" the trial court posed the following question: "What would otherwise fall under the rubric of administrative records 'related' to a court-martial not captured by § 801(14)?" Appx11-13.

As the trial court found, "the indictment or other charging document" would fit within section 801(14)'s definition – in particular under "the broad category of

'other writing relating to the proceeding'" – as "would the record of sentence." Appx13. The trial court concluded:

> For the phrase "related administrative record" to have any meaning, it must incorporate a broad definition of "related" to include any administrative document that is connected or has a relationship with a court-martial but is not part of, or contained within, the official records of the court-martial itself.
>
> This broad definition gives effect both to § 801(14) and § 1552(f) and the records each covers.

Appx13.

Stating that it was "giv[ing] effect both to § 801(14) and § 1552(f) and the records each covers," the trial court held that subsection 1552(f) captured "any administrative record that reflects the decision of the court-martial" and that Mr. LaBonte's DD-214 did so "by noting the court-martial as the reason for his separation." Appx13. As such, Mr. LaBonte's DD-214 constituted "an administrative record 'related' to [his] court-martial under § 1552(f)." *Id.*

Because Mr. LaBonte's "DD-214 is an administrative record 'related' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge form the Army," the trial court concluded that the ABCMR was "without authority to change the reason for separation due to the court-martial." Appx14. The trial court also held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation due to court-martial, the Board is

without the authority to grant the plaintiff the relief he seeks" and "[a]s a result, the Court may not grant the plaintiff relief . . . ." Appx14. Consequently, the trial court dismissed the complaint pursuant to RCFC 12(b)(6). Appx15.

D. After The Trial Court Interpreted Subsection 1552(f) Based On The Plain Language, The Trial Court Also Confirmed That Its Interpretation Did Not Conflict With The Legislative History

The trial expressly emphasized that its interpretation of subsection 1552(f) was "based on the statute's language on not on its legislative history" and that its "references to the legislative history" were to demonstrate "that it does not show a 'clearly expressed legislative intention' contrary to" the trial court's "interpretation of the statutory language." Appx13 (citing *Analyticial Graphics, Inc. v. United States,* 135 Fed. Cl. 378, 408 (2017) (*quoting INS v. Cardoza-Fonseca,* 380 U.S. 421, 432 n.12 (1987)). In particular, the trial court discussed the Report of the Senate Committee on Armed Services on the Military Justice Act of 1983 which "created the provision" at issue. Appx13. As the trial court observed:

> The Committee's report notes that the provision "make[s] it clear" that the boards of correction of military records and the discharge review boards "have no authority to modify, as a matter of law, findings or sentences of court-martial." . . . The exceptions in the statute left intact the authority for the boards to correct "personnel files"

Appx13 (citing S. Rep. No. 98-53, at 36,037).

The trial court explained that, in considering Mr. LaBonte's claim, the ADRB granted a limited form of clemency to Mr. LaBonte, but "concluded that '[a] change in the reason for discharge is not authorized under Federal statute.'" Appx13 (citing Appx758). As the trial court explained, the ADRB "could act only to change the characterization of service and not the reason for" Mr. LaBonte's "separation from the Army because '[t]he ADRB may not upset the finality of a court-martial conviction'" and, as a result, "could not change" Mr. LaBonte's reason for discharge on his DD-214, even as an act of clemency." Appx13-14 (citing Appx763).

As the trial court stated:

> The effect of the statutory language, as interpreted by the Court and the ADRB and understood by the Senate Committee responsible for the language, is to channel claims for post-conviction relief "into the judicial forums established for such actions by Congress in the UCMJ."

Appx14 (quoting S. Rep. No. 98-53, at 36).

In sum, the trial court found that the "DD-214 is an administrative record" and "[t]he notation on it reflecting a conviction by court-martial leading to a service member's removal from the armed forces is 'related' to the determination of the court-martial." Appx14. As such, the trial court held that the ABCMR was "without authority to change the reason for separation due to the court-martial[,]" something that would have been required for the ABCMR "to grant disability

retirement in place of separation due to court-martial," leaving the correction board "without authority to grant" Mr. LaBonte the relief that he sought. Appx14. And as a secondary matter, the trial court held that the legislative history did not conflict with its analysis of the statute's plain language. *See* Appx13-14.

SUMMARY OF THE ARGUMENT

The trial court properly dismissed Mr. LaBonte's challenge to the ABCMR's denial of its claim for disability retirement, pursuant to RCFC 12(b)(6), based upon a comprehensive analysis of the plain meaning of 10 U.S.C. § 1552(f). The trial court correctly concluded that subsection 1552(f) deprived the ABCMR of authority to grant Mr. LaBonte the relief he had requested; namely, to expunge from his DD-214 the fact that he was discharged pursuant to a court-martial.

In challenging the trial court's decision, Mr. LaBonte fails to establish any error in the trial court's interpretation of subsection 1552(f). Further, Mr. LaBonte's alternative interpretation is unsupported by the statutory text, and none of the arguments that he raises undermines the trial court's thorough analysis. The amicus briefs submitted by the Military Law Practitioners and NVLSP likewise do not undermine the trial court's sound legal analysis. Accordingly, this Court should affirm the well-reasoned judgment of the trial court.

ARGUMENT

I. Standard Of Review

We concur with Mr. LaBonte's standard of review. Pl. Br. 17.

II. The Trial Court Correctly Dismissed Mr. LaBonte's Claim For Correction Of His Military Records To Reflect Disability Retirement Because The Board Is Precluded By Statute From Granting That Relief Due To His Court Martial Conviction And Resulting Discharge

A. The Trial Court Correctly Held That The Plain Meaning Of 10 U.S.C. § 1552(f) Bars Mr. LaBonte's Claim

As previously discussed, the trial court explained that "[t]he question comes down to whether [Mr. LaBonte's] DD-214 is an administrative record 'related' to the plaintiff's court-martial that the Board has no authority to change pursuant to the limitation of 10 U.S.C. § 1552(f)." Appx12. The trial court's framing of the issue is consistent with relevant statutory provision and correctly defines the central question in this appeal. *See* 10 U.S.C. § 1552(f)(1)-(2).

Pursuant to statute, the board generally is empowered to change "any military record" to "correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1). However, this is not without exceptions. "With respect to records of courts-martial and related administrative records[,]" the board's power is expressly limited to (1) "correction of a record to reflect actions taken by reviewing authorities" under the Uniform Code of Military Justice or (2) "action on the sentence of a court-martial for purposes of clemency." 10 U.S.C. § 1552(f).

Thus, while subsection 1552(a) grants the board authority to correct records, in another subsection, 1552(f), Congress limited the authority of correction boards concerning service members who were court-martialed. Consistent with the statutory scheme, the trial court dismissed Mr. LaBonte's claim pursuant to RCFC 12(b)(6), correctly holding that, because Mr. LaBonte's "DD-214 is an administrative record 'related' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge from the Army, the" ABCMR was "without authority to change the reason for separation due to the court-martial." Appx14.

The trial court also held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation due to court-martial, the Board is without the authority to grant the plaintiff the relief he seeks" and "[a]s a result, the Court may not grant the plaintiff relief . . . ." Appx14. Mr. LaBonte fails to establish any basis to overturn the trial court's judgment.

Section 1552 did not always contain the language in subsection 1552(f) that is at issue in this appeal. The statute was amended by the Military Justice Act of 1983, which added subsection 1552(f) to limit the board's authority to change records relating to court-martials to corrections for clemency purposes. *See Cooper v. Marsh*, 807 F.2d 988, 991 (Fed. Cir. 1986) ("Before the amendment, [the Army Board of Corrections for Military Records] lacked the power to overturn a court-martial conviction . . . . After the amendment, it still lacks that power and

is now limited in the extent to which it can correct a court-martial record."); *see also* H.R. Rep. 98-549 at 20 (1983) ("In court-martial review the functions of the board . . . and the discharge review boards would be primarily limited to clemency actions.").

Therefore, except for cases where a service member obtains relief through the military justice process – such as through an appeal – the ABCMR may not amend military records of soldiers discharged by court-martial unless by grant of clemency upon the soldier's *sentence*. 10 U.S.C. § 1552(f)(2); *see Bolton v. Department of Navy Board for Naval Corrections*, 914 F.3d 401, 409 (6th Cir. 2019) (denying Naval Officer's request to expunge court-martial from record because board lacked statutory authority to do so). Put simply, the board may amend a court-martial sentence through clemency; it may not erase the conviction itself from related administrative records. *See id.* In particular, the ABCMR may not expunge from his DD-214 the fact of his discharge pursuant to a court-martial, and convert it into a disability retirement. *See id.*

In dismissing Mr. LaBonte's claim, the trial court thoroughly analyzed subsection 1552(f) and applied well-established statutory construction principles. As the trial court appropriately stated, "Courts generally interpret terms of a statute by their plain meaning." Appx11 (citing *Bostock v. Clayton Cnty.,* 140 S. Ct. 1731, 1739 (2020) ("[W]hen the meaning of the statute's terms is plain, our job is

at an end."); *quoting Food Mktg. Inst. v. Argus Leader Media,* 139 S. Ct. 2356, 2364 (2019) ("Courts begin with a 'careful examination of the ordinary meaning and structure of the law itself.'")).

Following its careful review, the trial court correctly determined that the section 1552's plain meaning precluded the ABCMR from granting Mr. LaBonte the relief he sought. *See* Appx10-15. As a result, the trial court dismissed Mr. LaBonte's claim pursuant to RCFC 12(b)(6). Appx2. The trial court's decision should be affirmed.

1. Subsection 1552(f) Expressly Limits The Board's Authority Under Subsection 1552(a)

Although correction boards have broad authority pursuant to subsection 1552(a), another provision of that statute, subsection 1552(f) limits that authority "[w]ith respect to records of courts-martial and related administrative records pertaining to court-martial cases . . . ." *See* 10 U.S.C. § 1552. However, in 1983 Congress amended section 1552 to make clear that "records of courts-martial and related administrative records" differently from records unrelated to courts-martial. *Id.*

In other words, Congress carved out an exception to the general authority of correction boards when it comes to service members who were subject to court-martial proceedings. Thus, if a service member was never court-martialed,

subsection 1552(f) would not come into play at all. But if a service member was court-martialed, then subsection 1552(f) places limits on the board's authority.

Because Mr. LaBonte was court-martialed for desertion, pled guilty, was sentenced to a discharge from the Army, and his conviction was never overturned on appeal (and he waived his right to appeal), and thuis his conviction and discharge became final pursuant to 10 U.S.C. § 876, the trial court was required to determine whether subsection 1552(f) denied the ABCMR authority to grant his request to expunge from the DD-214 the fact of his separation pursuant to court-martial**.**

2. The Trial Court's Correctly Interpreted Subsection 1552(f) And Appropriately Determined That The ABMCR Lacked The Authority To Grant Mr. LaBonte Relief

As previously discussed, the trial court correctly held that because Mr. LaBonte's DD-214 was "an administrative record 'related,' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge from the Army, the" ABCMR was "without authority to change the reason for separation due to the court-martial." Appx14. The trial court also correctly held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation due to court-martial, the" ABCMR was "without the authority to grant" Mr. LaBonte "the relief he seeks. *Id.*

The trial court appropriately rejected Mr. LaBonte's argument that his DD-214 was "not 'related' in any way to his court-martial because every service member has a DD-214, and it is issued by an entity entirely separate from the court-martial authority." *See* Appx12. Mr. LaBonte's argument has a logical fallacy. Whereas, not *every* service member is discharged pursuant to a court-martial, and not *every* DD-214 is related to a court-martial, that does not prove that *no* service members are discharged pursuant to court-martials, and *no* DD-214s are related to court-martials. Mr. LaBonte's DD-214 correctly reflects that he was discharged by a court-martial, and *his* DD-214 does not cease to be related to a court-martial just because *other* service members were not discharged by a court-martial. In all cases, the DD-214 relates to the circumstances of a particular service member's discharge, and there is no dispute that Mr. LaBonte's DD-214 *correctly* reflects that he was discharged pursuant to a court-martial.

Moreover, as discussed previously, the trial court correctly pointed out that courts, as a general matter, "hesitate to adopt a statutory interpretation that renders another portion of the same law surplusage[,] *Maine Cmty. Health Options v. United States,* 140 S. Ct. 1308, 1323 (2020)[,]" and properly concluded that Mr. LaBonte "would effectively read § 1552(f)'s limitation on 'related administrative records' out of the law." Appx12-13. In particular, citing 10 U.S.C. § 801(14)'s definition of the term "record" as defined in the context of court-

martial proceedings to include related to and reflecting a court-martial, the trial court asked: "What would otherwise fall under the rubric of administrative records 'related' to a court-martial not captured by § 801(14)?" Appx11-0013. Mr. LaBonte presents nothing that provides a satisfactory answer to the trial court's question, and instead, cites to court-martial records that are expressly included within the definition of section 801(14).

The amici try likewise but fail to convincingly identify materials that are not already captured by section 801(14). For example, in the amicus brief for Military Law Practitioners, after providing a history of the DD-214, an overview of the court-martial system, and an exhaustive list of documents generated throughout the court-martial process, they reach a simple yet incorrect conclusion: "The record of trial (other than the court-martial record itself) and the records attached to it constitute the 'related administrative records pertaining to a court-martial case." Br. for Mil. Law. Practitioners 20-21; *see also id*. at 22 ("[Congress] was specifying two known universes of documents – the technical court-martial record on the one hand, and the record of trial and affiliated documents of the other.").

The record of trial, however, is part of the official record of the court-martial under section 801(14). Under 10 U.S.C. § 854, entitled "Record of Trial," "[e]ach general or special court-martial shall keep a separate record of the proceedings in each case brought before it." *Id*. at § 854(a). This "record" contains matters

prescribed by the President, *id*. at § 854(c), which accounts for all of the court-martial documents cited by the Military Law Practitioners by reference to various Rules for Courts-Martial and provisions of Army Regulation 27-10. *See* Br. for Mil. Law Practitioners 19-22. Yet, fatal to their conclusion, the statutory definition of the word "record" used throughout section 854 is found in section 801(14). *See* 10 U.S.C. § 801 (providing definitions for terms "[i]n this chapter," meaning Chapter 47 (the Uniform Code of Military Justice), which includes Subchapter VII (Trial Procedure), where section 854 is found).

Thus, the Military Law Practitioners' argument, much like that of Mr. LaBonte, fails to answer the basic question: "What would otherwise fall under the rubric of administrative records 'related' to a court-martial not captured by § 801(14)?" Rather than identifying such material, the Military Law Practitioners instead create two artificial categories—"[r]ecord of court-martial" and "record of trial"—which are, in fact, only one category and fall within the statutory definition of a "record" under 10 U.S.C. § 801(14). *See* Br. for Mil. Law Practitioners 19-22.

To be sure, we agree that Congress was aware of existing statutory definitions and "can be presumed to have incorporated them into Section 1552(f)." *See* Br. for Mil. Law Practitioners 22 (citation omitted). But, because the documents cited by the Military Law Practitioners are part of, or contained within, the official "records" of the court-martial as defined by section 801(14), it would

have been unnecessary for Congress to have included the term "related administrative record" in section 1552(f) if it had been referring to such documents.

After a court-martial, it necessarily follows that administrative records are generated that relate to the court-martial, just like Mr. LaBonte's DD-214, which expressly and accurately refers to the reason of his separation as a court-martial. *See* Appx754. That DD-214 form is related to a court-martial by virtue of the fact that Mr. Labonte was discharged pursuant to a court-martial. It is of no moment that service members who are not discharged pursuant to a court-martial receive a DD-214 that is not related to a court-martial; what matters is that the statute expressly contemplates that administrative records related to the court-martial exist, one such document is the DD-214, and the ABCMR does not have the authority to expunge from the DD-214 the true fact of his discharge pursuant to a court-martial.

Accordingly, this Court should reject the Military Law Practitioners mistaken construct, as accepting it would render the phrase "related administrative record" superfluous. "It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174

(2001)). Courts are "'reluctan[t] to treat statutory terms as surplusage' in any setting." *Duncan,* 533 U.S. at 174 (quoting *Babbitt v. Sweet Home Chapter, Communities for Great Ore*., 515 U.S. 687, 698 (1995)).

B. Mr. LaBonte Fails To Provide Any Basis To Overturn The Trial Court's Judgment, And His Arguments Conflict With The Plain Meaning Of Subsection 1552(f) And Otherwise Are Flawed

Mr. LaBonte presents no arguments that effectively rebut the trial court's analysis. Although he proposes an alternative interpretation of subsection 1552(f), he does not fully grapple with the trial court's reasoning, let alone undermine it, and his conclusions lack adequate support to overcome the trial court's thorough statutory analysis.

1. Mr. LaBonte's First Argument Merely Concerns The Board's General Authority To Correct Records Under Subsection 1552(a), But He Does Not Address Subsection 1552(f)'s Limitation Of The Board's Authority To Correct Records Of Service Members, Like Mr. LaBonte, Who Are Discharged Pursuant To A Court-Martial Conviction

In Point II.a. of his principal brief, Mr. LaBonte relies upon the board's general authority under section 1552(a), but he does not rebut the trial court's sound analysis of 10 U.S.C. § 1552(f). *See* Pl. Br. 17-20. The board's general statutory power to grant such relief, however, is not the issue in this appeal. The exception to that authority set forth in subsection 1552(f) is at issue.

For the vast majority of service members, the limitation on the board's authority in subsection 1552(f) never would come into play because most service members are not discharged pursuant to court-martial convictions. But Mr. LaBonte was discharged pursuant to a court-martial conviction, and he does not grapple with subsection 1552(f) in the first portion of his brief. *See* Pl. Br. 17-20.

For example, Mr. LaBonte makes the conclusory assertion but fails to establish that pursuant to section "1552 and Army Regulation 635-40, the ABCMR has the authority to grant" him "retroactive retirement pay." Pl. Br. 20. The trial court's analysis shows that Mr. LaBonte is incorrect because, while section 1552(a) grants general record-correction authority to the ABCMR, subsection 1552(f) strictly limits that authority when it comes to service members who were discharged pursuant to a court-martial. Mr. LaBonte cannot rely on the ABCMR's general authority without rebutting the trial court's holding that the ABCMR was barred by subsection 1552(f) from granting him relief due to his court-martial.

Mr. LaBonte also alleges that because "the ADRB granted clemency to correct the injustice of his Bad Conduct discharge, he is no longer under a sentence of punitive discharge." Pl. Br. 20. This argument is unavailing.

As the trial court explained, the ADRB expressly "concluded that '[a] change in the reason for discharge is not authorized under Federal statute.'"

Appx13 (citing Appx758). As the trial court also explained, the ADRB "could act only to change the characterization of service and not the reason for" Mr. LaBonte's "separation from the Army because '[t]he ADRB may not upset the finality of a court-martial conviction'" and, as a result, "could not change" Mr. LaBonte's reason for discharge on his DD-214, even as an act of clemency." Appx13-0014 (citing Appx763). In other words, the ADRB could not expunge his court-martial conviction as the reason for his discharge on his DD-214, and the ADRB did not do so.

Mr. LaBonte provides no convincing argument that the ADRB's decision – which included finding that it did not have the authority to change the reason for his discharge (court-martial) – provides the ABCMR with authority to grant him disability retirement in the face of subsection 1552(f)'s limitation on the board's authority.

Mr. LaBonte's reliance on the trial court's holding concerning Army Regulation 635-40 also lacks merit. In particular, Mr. LaBonte misconstrues the trial court's decision when he argues that trial court "held that because of Mr. LaBonte's clemency, the Army could award him disability evaluation and retirement under Army Regulation 635-40." Pl. Br. 20 (citing Appx8-0010).

The trial court simply held that the "Army regulation in effect at the time of" Mr. LaBonte's discharge itself did not preclude the relief that he sought and, as a

result, it did not provide an independent basis to justify dismissing his claim on that particular ground. *See* Appx8 (citing Army Reg. 635-40 (Feb. 8, 2006)); Appx10. The trial court, however, did not hold that the board actually could grant him relief on that basis. To the contrary, the trial court immediately moved to its analysis of subsection 1552(f), and then dismissed his claim based on that provision, and entered judgment in favor of the United States. *See* Appx14. Thus, Mr. LaBonte's reliance on Army Reg. 635-40 is misplaced.

2. Mr. LaBonte Fails To Provide Adequate Support For His Contention That The Board May Award Him Retirement Despite Subsection 1552(f)

In Point II.b., Mr. LaBonte asserts that section 1552(f) "does not obviate the Board's broader authority to correct" alleged "errors and injustices . . . ." Pl. Br. 21. Mr. LaBonte's argument overlooks the entire purpose of subsection 1552(f) to limit a correction board's general authority where court-martials are concerned. Indeed, if Mr. LaBonte were correct, subsection (f) would not have been included in section 1552.

Next, Mr. LaBonte quotes at length the text of subsection 1552(f) and asserts, but fails to establish, that "the ABCMR unquestionably has the authority to change references to court martial on DD-214s when it acts under its clemency authority to provide upgrades for Bad Conduct or Dishonorable discharges." Pl. Br. 21. Mr. LaBonte likewise alleges but fails to show that "the ABCMR could

have changed the narrative reason for separation on [his] DD-214 in order to reflect the ADRB grant of clemency, as correction boards have done before." Pl. Br. 22.

Mr. LaBonte relies on military correction board decisions to argue that correction boards allegedly can change the narrative reason for separation. Pl. Br. 22, 38-39 (citing Board for Correction of Naval Records (BCNR), 5448-14/8917-13 (Jun. 17, 2014); Air Force Board for the Correction of Military Records, BC199602552d5 (July 12, 2016)); *see also* NVLSP Br. 24 (citing BCNR 5448-14). Mr. LaBonte's reliance on those decisions is misplaced, for reasons explained immediately below.

First, those boards provided no analysis concerning the issue of whether they actually had authority to award such relief in light of the limitations set forth in subsection 1552(f) on the authority of correction boards to grant relief in court-martial cases. In other words, those boards did not address that threshold issue that is at the heart of Mr. LaBonte's appeal. In contrast, the trial correctly held that the ABCMR lacked such authority and provided a thorough and well-reasoned analysis to support its determination. *See* Appx10-14.

National Veterans Legal Services Program, and Protect our Defenders (together NVLSP) make essentially the same argument, which fails for precisely the same reasons. *See* NVLP Br. 23-24. For example, NVLSP attaches, as an

addendum (cited NVLSP Addendum) to its opening brief, a BCNR recommendation, dated November 23, 2020, to change the narrative reason for the service member's separation – from a court-martial to secretarial authority – in conjunction of the upgrade of the service member to an honorable discharge. NVLSP Br. 24 (citing Addendum 1, 3). The BCNR's recommendation, however, contains no discussion of the statutory limitations of the board's authority set forth in subsection 1552(f). *See* NVLSP Addendum 1-4.

Similarly, in citing Air Force Board of Correction of Military Records (AFBCMR), BC201903622 at 2 (Sept. 3, 2020) and AFBCMR, BC199602552 at 2 (Jul. 12, 2016), NVLSP fails to set forth any language from those cases that rebuts the trial court's statutory analysis of subsection 1552(f). Yet, that provision's limitations on the authority of the correction boards is what is at issue in this appeal. *See* NVLSP Br. 23-25. In sum, Mr. LaBonte's and NVLSP's arguments do nothing to undermine the trial court's robust analysis.

Second, as the trial court pointed out, when the ABCMR initially addressed Mr. LaBonte's case, it concluded that he was *not eligible* for disability processing due to his court-martial and denied him relief on that basis. *See* Appx3, Appx11, Appx231-232 (excerpts of ABCMR's original Record of Proceedings concluding that the board was not empowered to grant the relief that Mr. LaBonte sought concerning his disability retirement claim or to change the narrative reason for his

separation). Although later events – including the board's subsequent remand decision – eventually resulted in the ABCMR decision denying Mr. LaBonte's claim on the merits, *see* Appx4, the board's original conclusion that it lacked authority was correct, as the trial court's analysis makes clear.

Third, as the trial court recently held in another military pay case, *Hirsch v. United States,* 153 Fed. Cl. 345, 349 (2021), *reconsideration den.* No. 19-236C, 2021 WL 2326395 (Jun. 8, 2021), *appeal filed* (Fed. Cir. Jul. 23, 2021), "a court gives no deference to the ABCMR's statutory construction of an unambiguous statute and reviews the administrative decision *de novo* to resolve the legal issue presented." (quoting 5 U.S.C. § 706 ("'To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.'"); *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) ("'If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'"); *Hawkins v. United States*, 469 F.3d 993, 1000 (Fed. Cir. 2006) ("'Statutory construction is a matter of law that we review *de novo*.'")).

The arguments advanced in the brief of NVLSP fail for similar reasons. They opine about various Department of Defense memoranda, and they conflate

the military service boards' clemency authority as it relates to court-martial sentences and the boards' broad authority to make corrections to records in administrative discharge cases – including the authority to change the reason for discharge in the latter category of cases. *See* NVLSP Br. 17-20 (citing the "Hagel," "Kurta," and "Wilkie" memos).

NVLSP, however, fails to establish that the memoranda authorize the board to change the narrative reason for discharge in a court-martial case. Instead, NVLSP strings together broad statements – which address both court-martial clemency and administrative discharges – and offers a strained reading to suggest that boards possess authority to change the narrative reason in a court-martial case not otherwise granted by the law. *See* NVLSP Br. 18-20.

Moreover, even if the Court were to accept NVLSP's interpretation of the memoranda, those memoranda, which were issued decades after Congress passed the statutory provision at issue, cannot change the plain meaning of the statutory language, or grant authority to the ABCMR that is expressly denied by subsection 1552(f). *See Chevron*, 467 U.S. at 842-43 (courts and agencies "must give effect to the unambiguously expressed intent of Congress"). There is no indication in the Department of Defense memoranda that the military ever intended such an extraordinary result.

Again, this is a case of statutory construction, which the Court reviews *de novo*. Because the trial court correctly interpreted the plain meaning of subsection 1552(f), any alleged inconstant interpretations by agencies over the decades since the statutory provision was issued cannot change the plain meaning of the statute.

Next, Mr. LaBonte argues that his claim for disability benefits allegedly does not implicate subsection 1552(f) because it purportedly does not require any "action on 'records of courts-martial and related administrative records'" since, according to Mr. LaBonte, a DD-214 does not fit within either of those categories of records. *See* Pl. Br. 22-23.

As discussed at length above, however, the trial court demonstrated through a thorough analysis of the statutory language that the "DD-214 is an administrative record" and "[t]he notation on it reflecting a conviction by court-martial leading to a service member's removal from the armed forces is 'related' to the determination of the court-martial." Appx14. As such, the ABCMR was "without authority to change the reason for separation due to the court-martial[,]" which would have been required for the ABCMR "to grant disability retirement in place of separation due to court-martial," leaving the correction board "without authority to grant" Mr. LaBonte the relief that he seeks. Appx14.

In an unsuccessful attempt to undermine the trial court's decision, Mr. LaBonte focuses on the phrase "'related administrative record *pertaining to*

court-martial cases.'" Pl. Br. 23 (citing Appx11). He argues that the trial court ignored the "pertaining to" language in subsection 1552(f), but his argument is unconvincing, especially given that he cites the precise page of the trial court's decision setting forth the entire statutory text, including those words on which Mr. LaBonte relies. Thus, Mr. LaBonte is grasping at straws.

He then cites to a definition that pertain "means 'to belong, to be connected (in various ways); e.g. as a native or inhabitant, as part of a whole, as an appendage or accessory, as dependent[.]'" Pl. Br. 24 (quoting *Pertain,* Oxford English Dictionary (2nd ed. 1989)). And although Mr. LaBonte contends that the DD-214 is not a product of a court-martial because all service members are issued a DD-214 upon separation, even if they are not court-martialed, his argument misses the mark.

Specifically, the definition of "pertain" is very board – "to belong, to be connected (in various ways)" – and Mr. LaBonte's attempt to narrow it is futile. Further, that service members who were not court-martialed receive a DD-214 does not mean that the Mr. LaBonte's particular DD-214 is not connected to his court-martial. Indeed, the very reason that his DD-214 reflects his court-martial is because he was discharged pursuant to his court-martial. Therefore, the two are connected.

Mr. LaBonte's related argument that the DD-214 was "produced by a separate entity from the court-martial convening authority" likewise fails. *See* Pl. Br. 24. The trial court appropriately concluded that "[f]or the phrase 'related administrative record' to have any meaning, it must incorporate a broad definition of 'related' to include any administrative document that is connected or has a relationship with a court martial but is not part of, or contained within, the official records of the court-martial itself." Appx13. The trial court's analysis is consistent with the statute, while Mr. LaBonte's argument is not.

Indeed, as the trial court explained, Mr. LaBonte's proposed interpretation of subsection 1552(f) "would effectively read 1552(f)'s limitation on 'related administrative records' out of the law." Appx13. If Congress would have intended such a narrow reading, as Mr. Labonte prefers, it could have defined administrative records narrowly or otherwise could have used statutory language that is narrower than the expansive terms, "related" and "pertain." *See* 10 U.S.C. § 1552(f)(2).

Mr. LaBonte's arguments amount to little more than an attempt to narrow the meaning of words with a broad application, such as "related," so that they don't apply to his circumstances. For example, his reliance on *Mellouli v. Lynch,* 135 S. Ct. 1980, 1990 (2015), for the proposition that the term "related," if read "to the furthest stretch of [its] indeterminacy," would "stop nowhere[,]" does not apply where subsection 1552(f) is concerned. *See* Pl. Br. 25. Mr. LaBonte's DD-214 is

tied to his court-martial, and the trial court in this case did not stretch the meaning of a statutory term. The DD-214 is not an unusual administrative record that might be unknown to Congress; the DD-214 is ubiquitous, and for every service member who is discharged pursuant to a court-martial conviction, the DD-214 must state accurately the narrative reason for the separation. Mr. LaBonte's argument – that the DD-214 somehow does not relate or pertain to his court-martial when that administrative document specifically refers to his court-martial – defies both common sense and the plain language of the statute.

Concerning Mr. LaBonte's DD-214, the trial court pointed out that "[t]he Department of Defense describes [the DD-214] as the 'authoritative source of personnel information for administrative purposes.'" Appx12 (citing DoDI 1336.01 ¶ 3(a) (Aug. 20, 2009). Mr. LaBonte's court-martial conviction and resulting discharge indisputably were major events in his military career. As such, the DD-214, an authoritative administrative record, would be incomplete and inaccurate if it did not reflect the unalterable fact that he was discharged due to his court-martial conviction.

Mr. LaBonte's next line of argument, essentially that policy supports a "narrower reading of 'related' that excludes a DD-214[,]" and limits subsection 1552(f)'s application "to prevent only overturning legal judgments and sullying the integrity of the military-justice process[,]" simply fails to acknowledge that

subsection 1552(f) applies not only to court martial records themselves, but administrative records. *See* Pl. Br. 25-26. Further, had Congress intended for the provision to mean what Mr. LaBonte claims, it could have used narrower language to do so.

And Mr. LaBonte's related contention, in Point II.b.i. of his opening brief, that changing his "narrative reason for separation on his current DD-214" allegedly would fall "far outside of the class of corrections Congress designed § 1552(f) to prevent[,]" is inadequately supported and avoids grappling with the trial court's analysis of the statute's plain meaning, which was the actual basis for the trial court's decision. *See* Pl. Br. 26; Appx10-14.

Mr. LaBonte's discussion of the statutory history suffers from the same flaw. In arguing that the statutory history of subsection 1552(f) allegedly reflects that Congress "meant to stop the boards from making corrections only where such corrections would legally overturn court-martial proceedings[,]" Mr. LaBonte ignores that by its terms, the provision is not so limited. *See* Pl. Br. 27. And other than the two narrow situations described in the provision, subsection 1552(f) prohibits boards from taking action "[w]ith respect to records of courts-martials and related administrative records pertaining to court-martial cases[,]" which by its plain meaning extends well beyond legally overturning court-martial proceedings.

Mr. LaBonte's reliance on *Bolton v. Department of Navy Board for Correction Of Naval Records,* 914 F.3d 401, 408 (6th Cir. 2019) and other cases that cite subsection 1552(f) for the proposition that boards may not overturn court martial convictions do not provide support for Mr. LaBonte's position. *See* Pl. Br. 28. We agree with Mr. LaBonte that under subsection 1552(f), correction boards cannot overturn convictions by court-martial, but that is not the issue in this case.

To be clear, Mr. LaBonte cites no language from those cases that addressed whether subsection 1552(f) precludes correction boards from granting the type of relief that Mr. LaBonte seeks in this case. And that correction boards cannot overturn a conviction does not mean that the ABCMR can grant Mr. LaBonte disability retirement despite his court-martial conviction and resulting discharge. Thus, Mr. LaBonte's argument is logically flawed.

In Point II.b.ii.a. of his brief, Mr. LaBonte unsuccessfully attempts to establish that his DD-214 is not a record related to a court-martial that falls within the scope of subsection 1552(f). Pl. Br. 29.

Specifically, Mr. LaBonte disputes the trial court's interpretation of the phrase "[r]elated administrative records," by arguing that the phrase is "confined to the documents that serve a role in a court martial other than documenting the trial." Pl. Br. 31. Mr. LaBonte, however, does not cite to any authority that justifies such

an interpretation, which the trial court found "would effectively read § 1552(f)'s limitation on 'related administrative records' out of the law." *See* Appx13.

And Mr. LaBonte's attempt to equate 10 U.S.C. § 864's language concerning "'[t]he record of trial and *related documents* in each case" with subsection 1552(f)'s reference to "related administrative record" leads nowhere. *See* Pl. Br. 31. The language in section 864 quoted by Mr. LaBonte does not include the words "administrative record" at all. *See* Pl. Br. 31. Indeed, as we have established above, the "record of trial" under section 854, and its related documents prescribed by the President, refer to documents that are part of a court-martial record, whereas subsection 1552's reference to "related administrative record" refers to records which, as the trial court appropriately held, were not part of the court-martial proceedings. *See* Appx13.

Mr. LaBonte's reliance on the Manual for Courts-Martial (MCM) further demonstrates this flaw, and fares no better. Pl. Br. 31-32. Much like amici, Mr. LaBonte contends that because the "record of trial" referred to in the MCM includes not just court-martial transcripts and similar documents, but also documents such as trial exhibits, proofs of serve, and post-trial recommendations – which he asserts in conclusory fashion are "administrative records" – it is those types of documents that allegedly are the related administrative records "that the ABCMR is precluded from amending under § 1552(f)." Pl. 32-33.

According to Mr. LaBonte, section 1552(f) is not meant to preclude correction boards from amending administrative records such as a DD-214. Rather, it is meant to prevent correction boards from altering documents such as trial exhibits, proofs of service, "post-trial recommendations by reviewing authorities, and any recommendations for clemency." *See* Pl. Br. 32. Not only does Mr. LaBonte fail to support his proposition, his argument is invalidated by the fact that, by definition, the record of trial (including those documents cited by Mr. LaBonte) are part of the court-martial "record" under 10 U.S.C. § 801(14), as we previously explained when discussing the amici's similar argument.

In Point II.b.ii.b. of his brief, Mr. LaBonte confirms the broad nature and importance of the DD-214 which, among other things "serves as 'an authoritative source of personnel information for *administrative* purposes.'" Pl. Br. 33 (quoting DoDI 1336.01, Enclosure 3, 3(c)). He further states that "[t]he DD-214 is a critical administrative record needed to access a number of both military and civilian services" but that it "serves no role in the administration of military justice." Pl. Br. 33-34 (citing DoDI 1336.01, Enclosure 2, 3(b)).

Mr. LaBonte's nearly two-page description of the DD-214 actually is consistent with the trial court's finding that his DD-214 is an administrative record related to his court martial. *See* Pl. Br. 33-34. And although Mr. LaBonte concludes this portion of his brief by asserting that the trial court's interpretation

"of 'related' . . . stretches" too far, he fails to provide any convincing argument why that would be the case, as previously discussed. *See* Pl. Br. 34.

Mr. LaBonte also contends that "[u]nder the trial court's reasoning, any record that even mentions a court martial would beyond the correction of the Board – even if clearly in error – unless related to clemency or appellate review[,]" and he also vaguely asserts, without explanation and without providing an example, that this would mean "records of deliberation and decisions of the Board itself involving courts martial could not be amended to correct an error." Pl. Br. 34.

The trial court, however, merely held Mr. LaBonte's DD-214 was covered by subsection 1552(f). It did not address whether other types of records would be covered. And Mr. LaBonte's unproven hypothetical that a correction board could not correct its own errors defies logic. *See* Pl. Br. 34. If a correction board has authority to address a particular matter relating to a court-martial in the first place and it makes an error in doing so, it presumably would have authority to correct its own error. Conversely, if the correction board has no authority to address a particular matter due to subsection 1552(f), there would be no opportunity for the correction board to make an error that would need correction. Thus, Mr. LaBonte's argument is a red herring.

Further, as the trial court observed, the ADRB granted Mr. LaBonte a form of clemency by upgrading his "characterization of service" on his DD-214

pursuant to subsection 1552(f)(2), but "it could not change . . . the reason for his discharge on his DD-214, even as an act of clemency." *See* Appx13-14. Mr. LaBonte does not (and cannot) cite to any contrary authority.

In sum, Mr. LaBonte already has received the only relief available to him under subsection 1552(f) – an act of clemency, which is now reflected on his DD-214, a "related administrative record." *See* Appx13-0014. The other type of relief provided for by subsection 1552(f)(1) – a correction to reflect actions by the military justice system – is not applicable to him. Subsection 1552(f) provides no other forms of relief that the board is authorized to grant to someone in Mr. LaBonte's position.

In Point II.b.iii of his brief, Mr. LaBonte sets forth a lengthy discussion of general canons of statutory construction, but he fails to establish that those canons support his reading of subsection 1552(f) or that they undermine the trial court's decision. *See* Pl. Br. 35-40. In other words, Mr. LaBonte's discussion provides no basis to overturn the trial court's decision.

First, Mr. LaBonte contends that the correction board's "authority under § 1552(a) to correct errors and injustices should be construed broadly, because the statute seeks to support members of the Armed Services and is remedial in nature." Pl. Br. 35. Mr. LaBonte overstates the case as it relates to his circumstances.

To be clear, Mr. LaBonte's discussion of the remedial nature of subsection 1552(a), and his citation of authorities discussing how statutes generally are to be construed for service members and veterans, omits any meaningful discussion of how those principles supposedly apply in the factual context of this case – which, significantly includes Mr. LaBonte's court-martial conviction and resulting discharge.

Thus, while Mr. LaBonte cites authority for the general proposition that service members and veterans "'are to be construed in the beneficiaries' favor[,]'" he does not establish that the canons he cites require that service members in his position – that is, service members discharged pursuant to a court-martial conviction – must be treated the same as those who separated for other reasons. *See* Pl. Br. 35 (citing *King v. St. Vincent's Hosp.,* 502 U.S. 215, 220 n.9 (1991)). Indeed, Congress recognized that court-martial situations are different and narrowed the ABCMR's authority with respect to them. 10 U.S.C. § 1552(f).

Further, the existence of subsection 1552(f) shows that Congress chose to limit the board's authority concerning a very specific class of service members – those involved in courts-martial and especially those, like Mr. LaBonte, whose convictions are beyond the reach of the military criminal appellate system.

Thus, while Mr. LaBonte quotes *Kirkendall v. Dep't of Army,* 479 F.3d 830, 843-844 (Fed. Cir. 2007) (citation omitted), to argue that "it is a 'longstanding

canon' that 'legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need[,]'" *see* Pl. Br. 35, he overlooks that the quoted language does not apply to his own circumstances, given that *Kirkendall* involved an appeal from the Merit Systems Protection Board and an equitable tolling issue, and there is no indication that the petitioner had been discharged from the military pursuant to a court-martial. 479 F.3d 834-836. Mr. LaBonte also ignores that while legislation may be liberally construed, under appropriate circumstances, Congress is vested with the authority to limit its expanse, as it has done here, concerning the correction of records of service members who were discharged pursuant to a court-martial.

Mr. LaBonte's argument that ABCMR's "power under § 1552(a) to correct errors and injustices should . . . be read broadly because it is a remedial statute" suffers from the same lack of context. *See* Pl. Br. 35. And Mr. LaBonte's argument that "[r]estricting the Board's § 1552(a) authority to amend a DD-214 after a servicemember has been granted clemency would disrupt the primary operation of § 1552, a remedial statute intended to correct errors and remove injustices[,]" ignores that the ADRB's grant of clemency already is reflected in his DD-214. *See* Pl. Br. 36. Thus, the DD-214 accurately reflects Mr. LaBonte's updated service history. And his arguments about equity toward veterans cannot override the statutory command in section 1552(f).

While Mr. LaBonte may not agree with the legislative choice, reflected in subsection 1552(f), to carve out from the board's general authority a specific exception that applies to court martial records and related administrative records, it certainly was within the authority of Congress to draw a distinction between service members who were discharged pursuant to a court-martial and those who were not. It is not this Court's role to rewrite the law that Congress enacted based upon Mr. LaBonte's view that equitable considerations favor a convicted deserter.

Mr. LaBonte next attempts to argue that there is a conflict between 10 U.S.C. § 1201, providing for disability retirement in appropriate cases, and the trial court's reading of subsection 1552(f) because the trial court's interpretation allegedly "prevents service members who are otherwise eligible for disability retirement under § 1201 from receiving it[,]" although he acknowledges that the two provisions, "[o]n their face, do not conflict." Pl. Br. 36-37. Regardless, there is no such conflict.

Mr. LaBonte was never deemed eligible for disability retirement prior to his discharge. And the Army discharged him pursuant to his court-martial conviction years before the ADRB granted him partial relief, and years before he "applied to the ABCMR for retroactive medical retirement." *See* Appx2-0003.

And while Mr. LaBonte argues that "[t]he canon against implied repeal favors a narrower reading of § 1552(f) that gives full effect to both statutes and

avoids a conflict between them[,]" his interpretation actually would create conflict, while no such conflict exists under the trial court's interpretation. *See* Pl. Br. 37.

Specifically, that subsection 1552(f) bars correction boards from making changes to administrative records relating to court-martials, except under certain narrow circumstances, does not conflict with section 1201 or subsection 1552(a). Rather, subsection 1552(f) simply limits the board's power in court-martial situations. Thus, subsection 1552(f) does not create a conflict. It merely creates a statutory exception, and the statutory provisions work in perfect harmony even with that exception.

Mr. LaBonte's reliance in his opening brief on *Epic Sys. Corp. v. Lewis,* 138 S. Ct. 1612, 1624 (2018), and *United States v. Fausto,* 484 U.S. 439, 452-453 (1988), likewise fails. Those cases were not military pay cases, they did not involve military disability retirement issues, and they did not address the statutory provisions at issue in this case. Nor does Mr. LaBonte claim that they do. *See* Pl. Br. 37. Simply put, Mr. LaBonte was court-martialed for going AWOL, was convicted, sentenced to a bad-conduct discharge, which became final and executed pursuant to his discharge certificate. Mr. LaBonte did not leave military service due to a disability, which is what he was asking the ABCMR to effectively find. The trial court correctly determined that the ABCMR lacked the authority to erase that fact.

Mr. LaBonte also alleges that "before the passage of § 1552(f), the correction boards had statutory power to grant retroactive disabilities retirements" and that they "retained that power after § 1552(f)'s passage, and nothing in the legislative history or purpose of § 1552(f) establishes otherwise or purports to change the scope of the boards' power." Pl. Br. 37-38. Mr. LaBonte, however, avoids addressing the trial court's interpretation of the plain meaning of the statutory language in making that argument. Yet, the plain language of subsection 1552(f) clearly limited the board's power concerning service-members convicted pursuant to a court-martial. That is why the provisions exists.

Mr. LaBonte's argument that the trial court's construction of "related administrative records" "would invite an 'absurd result,'" also misses the mark. *See* Pl. Br. 38 (quoting *Dupuch-Carron v. Sec. of Health and Human Servs.,* 969 F.3d 1318, 1330 (Fed. Cir. 2020)). Mr. LaBonte suggests that it is "unfair" and "absurd for the Boards to lack the authority to amend a DD-214 in cases like Mr. LaBonte's, where a clear error or injustice remains present, and where doing so would not disrupt the legal findings of a court martial." Pl. Br. 38. Yet, he does not identify any error; his DD-214 accurately reflects that he was discharged pursuant to a court-martial.

Mr. LaBonte once again fails to provide the relevant factual context to his argument. Restating his argument with the factual context included, it is

Mr. LaBonte's position that it is "absurd" for the subsection 1552(f) to prohibit the board from changing his DD-214 and awarding him disability retirement – thereby effectively erasing his court-martial conviction as the reason for his discharge from the military's "authoritative source of personnel information" – when he was never retired from the Army for disability or otherwise, but instead was convicted following his guilty plea and discharged by court-martial.

Finally, Mr. LaBonte contends that subsection "1552 unambiguously allows the board to grant [him] the relief he seeks." Pl. Br. 39. Mr. LaBonte is incorrect. The trial court correctly provided a detailed analysis that establishes just the opposite. In his brief, Mr. LaBonte disputes the trial court's conclusions and analysis, but he puts forth nothing that undermines the trial court's statutory analysis. Instead, he largely relies on canons of statutory construction that he fails to show apply in his case, and on unproven assertions along the lines that the trial court's decision would lead to "absurd" results when the results are not absurd at all. Such unsubstantiated arguments provide no basis to overturn the trial court's decision.

Mr. LaBonte has not established that the trial court erred in its statutory analysis, or by dismissing the complaint. Consequently, the trial court's decision must be affirmed.

III. Mr. LaBonte's Alternative Argument That The Board Can Grant Disability Retirement Without Amending His DD-214 Should Be Rejected

In Point III of his opening brief, Mr. LaBonte alleges that "[n]othing prevents the Board from granting [him] disability retirement without removing the court-martial reference on his DD-214." Pl. Br. 40-41. The trial court concluded otherwise, correctly holding that his "DD-214 would need to be changed in order to grant" Mr. LaBonte "the relief he seeks . . . ." Appx11.

The trial court also concluded that because Mr. LaBonte's "DD-214 is an administrative record 'related,' under 10 U.S.C. § 1552(f), to his conviction by court-martial and discharge from the Army, the Board is without authority to change the reason for his discharge due to court-martial." Appx14. The trial court relatedly held that "[b]ecause such a change would be necessary for the Board to grant disability retirement in place of separation, due to court martial, the Board is without authority to grant" Mr. LaBonte "the relief he seeks." Appx14.

Mr. LaBonte fails to show any error in the trial court's statutory analysis concerning section 1552(f). Instead, he contends that the board can "grant disability retirement by issuing retirement orders without ordering a specific correction to the veteran's DD-214" Pl. Br. 41. For support, Mr. LaBonte cites ABCMR decisions and Army Regulation 635-40, ¶ 4-24(b). Pl. Br. 41. But his discussion of those decisions does not contend that they involved a claim for

disability retirement benefits by a service member who was discharged by a court-martial, or that the decision implicated subsection 1552(f)'s limitations. And Mr. LaBonte's reliance on the Army Regulation likewise fails to grapple with the trial court's finding that such relief was not available pursuant to statute, for reasons discussed at length in Point II.B.1., above.

Similarly, Mr. LaBonte's allegation that the board did not state that "amending the DD-214 form was *necessary* to grant disability retirement" is beside the point. *See* Pl. Br. 42. As we previously established, correction board decisions are not given deference when the issue concerns the plain meaning of a statute, which was the basis for the trial court's decision. *See Hirsch,* 153 Fed. Cl. at 349.

Mr. LaBonte's assertion that the "Court should not afford any weight to" what he alleges is the Government's "*post hoc* position" should be rejected for similar reasons. *See* Pl. Br. 42. He cites to the website of the Army Review Boards Agency to allege that service members with court martial convictions may "request clemency from the ADRB then retirement from the ABCMR" but he fails to establish that any statements posted on a Government website can change the plain meaning of a statute, or bind Federal courts when it comes to interpreting the plain meaning of a statute. *See* Pl. Br. 42-43. To the contrary, the board's authority is established by the relevant statutory and regulatory framework, and cannot be supplanted by a statement on a website. *See Hirsch,* 153 Fed. Cl. at 349.

Mr. LaBonte's final argument, in which he relies on *Strickland v. United States,* 69 Fed. Cl. 684, 706 (2006), for the proposition that "correction boards" have "a duty to determine whether there has been an error or injustice and, if there has been, to grant thorough and fitting relief[,]" misses the mark for reasons similar to most of Mr. LaBonte's other arguments.[3] Mr. LaBonte's argument is based on the faulty premise that the board possesses unlimited authority to grant him the relief that he seeks, but the trial court correctly found otherwise, and Mr. LaBonte has failed to demonstrate that the trial court erred in its legal analysis. Because the board lacked such authority, it was precluded from acting on Mr. LaBonte's claim.

Further, Mr. LaBonte's reliance on *Strickland* fails for another reason. That case involved an *administrative* separation, not a discharge pursuant to a court-

[3] As demonstrated throughout, Mr. LaBonte has not shown where the ABCMR violated a statute or regulation when rejecting his claim that he should have been separated with a disability rating despite being court-martialed. To the extent that Mr. LaBonte might be arguing that he ABCMR should have granted him equitable relief in the form of disability retirement, that claim fails as a matter of law. The failure to identify a legal error is significant because the trial court may review decisions by boards or service secretaries only "for failure to correct plain legal error committed by the military." *Dodson v. U.S. Gov't, Dep't of Army*, 988 F.2d 1199, 1204 (Fed. Cir. 1993) (citing *Arens v. U.S.*, 969 F.2d 1034, 1037 (Fed. Cir. 1992)); *Grieg v. U.S.*, 640 F.2d 1261, 1266 (Ct. Cl. 1981); *Sanders v. U.S.*, 594 F.2d 804, 813 (Ct. Cl. 1979). "Such legal error includes the military's 'violation of statute, or regulation, or published mandatory procedure, or unauthorized act.'" *Dodson,* 988 F.2d at 1204 (quoting *Skinner v. United States*, 594 F.2d 824, 830 (Ct. Cl. 1979). In other words, without any allegations of legal error, the trial court may not remedy what it may perceive to be an injustice resulting from the ABCMR's decision. *See Grieg*, 640 F.2d at 1265-1266.

martial conviction. *See Strickland,* 69 Fed. Cl. at 690-691. As such, it does not apply to his case. Thus, in relying on *Stickland* to support his conclusory assertion that the ABCMR avoided "its statutory duty to provide medical retirement to qualified servicemembers" like himself, Mr. LaBonte once again has ignores the crucial context in which he asserted his claim. *See* Pl. Br. 43.

CONCLUSION

For these reasons, we respectfully request that the Court affirm the judgment of the trial court.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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