

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2022

DOCKET NUMBER: AR20220002271

APPLICANT REQUESTS: referral of her medical records to the Army Disability Evaluation System (DES).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum from the Chief, Medical Evaluation Board (MEB)/DES Branch, Fort Sam Houston, TX, 5 February 2016, subject: Referral to Physical Evaluation (PEB) (applicant)
- Email from the Physical Evaluation Board Liaison Officer (PEBLO), Fort Sam Houston, TX, 5 February 2016
- Email from her former unit commander, 20 February 2016

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states

a. She was placed on the Qualitative Management Program (QMP) list while going through a medical board. When the PEBLO requested for her QMP orders to be revoked, the request was ignored by her chain of command. She was not granted an extension and she was discharged while going through a medical review board. This was an injustice to her because she was not allowed the opportunity to complete her medical review and evaluations, which was against Army regulations. All reassignment or separation orders should have been cancelled and she should have been extended for the duration of the MEB in accordance with Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

b. She lost all hope and faith in the military system. It appeared to her that her commanders did not care for her medical board and used their rank to manipulate the system, and they succeeded. She gave up on everything that she worked for in the military because of the sour/bitter experience she had with this unit. The officers in her command used their rank to deny her continuation to complete her medical board. Once released from the Army, she attempted to get help immediately with this incident but everyone she spoke with stated "that they have never seen anything like this" and kept passing her around to different sections of the Army.

3. The applicant enlisted in the U.S. Army Reserve on 27 September 1986. Her record show she entered active duty in Active Guard/Reserve status in June 2001.

4. The applicant was issued her Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) on 1 November 2012.

5. The applicant provided:

a. A memorandum from the Chief, MEB/DES Branch, Fort Sam Houston, TX, dated 5 February 2016, subject: Referral to Physical Evaluation (PEB), and addressed to the applicant's unit commander, informing her commander that she was to be referred to a PEB in the near future. The commander was also informed that in accordance with Army Regulation 635-40, Soldiers being processed for medical disability will remain available to the medical treatment facility commander, or president of the applicable PEB, until all required action is completed. The commander was also advised that the applicant should not be allowed to separate or be reassigned until the DES process was finalized.

b. An email from the PEBLO, Fort Sam Houston, TX, dated 5 February 2016, notifying all parties concern, including her unit commander, of the applicant's MEB initiation. The PEBLO also advised that all orders to reassign or separate the applicant should be cancelled and that her orders should be extended for the duration of the MEB in accordance with Army Regulation 635-40.

c. Email from her former unit commander, dated 20 February 2016, to the Fort Sam Houston PEBLO, providing a DA Form 7652 (DES Commander's Performance and Functional Statement) pertaining to the applicant.

6. The applicant's complete separation proceedings are not available. However, orders issued by the U.S. Army Human Resources Command on 25 February 2016, directed her separation from the service with a scheduled date of separation of 1 May 2016.

7. The applicant's DD Form 214 shows she was discharged under the authority of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 19 (QMP), by reason of non-retention on active duty.

8. During the processing of this case, an advisory opinion was obtained from the U.S. Army Physical Disability Agency (USAPDA). It states:

a. The applicant was separated from military service on 1 May 2016 under the provisions of Army Regulation 635-200, Chapter 19. Her character of service was honorable. She stated she was going through the QMP process. On 5 February 2016, her chain of command was notified that she had entered the DES. It was specifically informed not to allow her to be separated. On 20 February 2016, the applicant's commander provided a DA Form 7652 (DES Commander's Performance and Functional Statement). Thus, the commander acknowledged he knew the applicant was referred into the DES.

b. In accordance with Army Regulation 635-40, DES processing takes priority over administrative separation and enlisted Soldiers should be allowed to complete the MEB process. The command knew that the applicant was referred to the DES; however, it appears the DES process was never fully started as she does not have a case file in ePEB. Her DD Form 214 shows she was separated approximately three months after being referred to the DES. Thus, it is likely the QMP process was never halted as it should have been.

c. Since the applicant's command was notified of her DES status and informed that she should not be separated until she had the opportunity to complete the DES process, the USAPDA find her request to be legally sufficient. It is recommended that a forensic examination of her case be conducted by an MEB and, if warranted, request Department of Veterans Affairs examinations be conducted with possible subsequent referral to the PEB.

9. The USAPDA advisory opinion was provided to the applicant and given the opportunity to provide additional comments or evidence. No response was received.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board noted that although the applicant was going through the QMP process and was ultimately separated, she was also going through the disability evaluation system (DES) process before separation and her chain of command was specifically informed not to allow her to be separated. By regulation, DES processing takes priority over

administrative separation and enlisted Soldiers should be allowed to complete the MEB process. The command knew that she was referred to the DES; however, it appears the DES process was never fully started. She was separated nearly 3 months after being referred to the DES. Since the applicant's command was notified of her DES status and informed that she should not be separated until she had the opportunity to complete the DES process, the Board agrees with the USAPDA's assessment that the applicant's records should be referred to the DES for potential disability separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by referring his records to The Office of the Surgeon General for review to determine if he should have been discharged or retired by reason of physical disability under the Legacy Disability Evaluation System (DES).

5/5/2023

X [REDACTED]

CHAIRPERSON
[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, United States Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, United States Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The USAPDA is responsible for administering the Army DES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

3. Army Regulation 635-40 establishes the Army DES and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating.

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

4. Army Regulation 635-40, dated 20 March 2012, in effect at the time, states in Appendix E (Personnel Processing Actions), paragraph E-4, Soldiers processed as outpatients will remain available to the medical treatment facility commander or president of the PEB until the PEB completes action in his or her case.

5. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications)

to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//