

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230001875

APPLICANT REQUESTS: reconsideration of her previous request for correction of her DA Form 199 (Physical Evaluation Board (PEB) Proceedings) to add her "back" as a rated disability.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Reconsideration Letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200004576, on 27 August 2021.

2. The applicant states:

a. The fact that the vehicle she was riding in was rear-ended by a military truck that was going way over the posted 15 miles per hour on a gravel road should be enough to warrant a rating. The Board spoke about the bulging disc in her neck, which the doctor stated on the day of her accident that it appeared to be old. On December 21, 1992, she had a tubal ligation, and the anesthesiologist did a spinal tap, 3 days after being released from the hospital at Fort Riley, KS, she had taken all the prescribed codeine; after this she was unable to hold up her head due to the excruciating pain running from her neck down her back. She called her mother, she told her to try some Aleve to see if that would help, it did. When the doctor said, "a bulging disc in your neck but it seems to be old", this gave her clarity of what she believes caused the earlier trauma to her neck.

b. She was disappointed that her request to be rated on her back was disapproved and the explanation given was not appropriately justified. She believes her case was not appropriately rated with an opened mind, which started off by saying she did not submit her application in the three-year widow, which is not a true statement. She would like for the focus to be on her back only. Again, she believes her back should be rated due to the injury that occurred in March 2015, for injuries that occurred due to being rear-ended by a speeding truck going at least 45 miles an hour on a gravel road with a posted speed limit sign of 15 miles per hour, that the impact was so forceful his truck

bounced off the one she was in, ran through the gate that they were about to enter, knocking the entire gate down with the lock still attached, crushing the driver's truck (a military vehicle) causing the driver to kick out the window just to get out. The impact was so hard that in an instant she reached out for the dashboard, but the safety belt (seat belt) was tactfully in place it yanked her back so hard she was pinned against the seat, had she not been wearing her seatbelt, she may not be here today. For the first 1.5 years, she woke every night in pain with anger and frustration because of the excruciating pain that woke her or not allowed her to rest properly and now with medication and chiropractic treatment the pain isn't always as excruciating, meaning good and bad days she will have for the rest of her life. Her back injuries have caused pain to her hips. She has constant pain running down her legs to her feet. She can go on about what this impact has done to her, but some of the other ailments were mentioned in her first request. Her request to the Board is to be rated on the issues of her back that occurred in March 2015, not future issues.

3. Review of the applicant's service records shows:

a. Having had prior service in the Regular Army and the Army National Guard (ARNG), the applicant was appointed as a Reserve Warrant Officer in the ARNG on 4 August 2000. She held military occupational specialty 420A, Military Personnel Technician.

b. She served in a variety of assignments, and she was advanced to chief warrant officer three (CW3) in September 2007.

c. On 15 June 2005, the applicant was issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), informing her she completed the required years of service and was eligible to retire upon application upon reaching the age of 60.

d. A memorandum issued by Joint Force Headquarters, KSARNG on 25 February 2016, shows the applicant did not meet retention standards per Army Regulation (AR) 40-501 (Standards of Medical Fitness), chapter 3, due to her physical profile, which resulted from her in the Line of Duty medical condition. She was recommended for a medical evaluation through the MEB process in accordance with (IAW) AR 40-501, chapters 3 and 10 (Army National Guard).

e. A DA Form 261 (Report of Investigation - Line of Duty and Misconduct Status), dated 27 October 2016, shows her medical diagnosis of "Sprain of neck - Displacement of cervical intervertebral disc without myelopathy," was the result of a vehicle accident on 19 March 2015. Her injury occurred while she was on duty and performing assigned tasks without any misconduct or negligence on her part. Her injury was determined to be "'In LINE OF DUTY' for acute cervical strain."

f. A DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), page 5 of 5, illegible date, shows her commander noted that she was "diagnosed with chronic cervical degenerative with radiculopathy and chronic shoulder and lumbar pain," and she is in constant pain. She cannot stand or sit for long periods of time, which doesn't allow her to stand in formation for long periods of time. In the commander's opinion, the applicant was not retainable due to her medical condition. The applicant was unable to be deployed, fire a weapon, wear load bearing equipment (LBE), or take an APFT (Army Physical Fitness Test).

g. The applicant's Personal Qualification Record - Officers/Warrant Officers, dated 18 January 2017 shows the following profile for PULHES – 1-3-3-1-1-1 (P-3 for upper and lower body).

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

h. The applicant's Narrative Summary (NARSUM), dated 13 March 2017, noted all the medical conditions which medical officials determined to be medically acceptable and those medically unacceptable. The DA Form 3947 (MEB Proceedings), dated 14 March 2017, includes the conditions considered in the NARSUM. The MEB recommended her referral to a physical evaluation board (PEB).

(1) Two medical conditions were found not medically acceptable:

- Degenerative Arthritis/ Intervertebral Disc Syndrome (IVDS)/Degenerative Disc Disease with Bulging Disc of the Cervical Spine (Referred as Sprain of neck/Displacement of cervical intervertebral disc)
- Right Glenohumeral Joint Osteoarthritis (Claimed as Right Shoulder Condition)

(2) Several medical conditions we found medically acceptable:

- Strain/ Degenerative Arthritis/ intervertebral Disc Syndrome (IVDS)/ Degenerative Disc Disease of the Lumbosacral Spine (Claimed as Middle/Lower Back Condition)
- Bilateral Upper Extremity Radiculopathy (VA Diagnosis)
- Bilateral Lower Extremity Radiculopathy (Sciatica) (VA Diagnosis)

- Left Shoulder Strain (VA Diagnosis)
- Bilateral Patellofemoral Pain Syndrome (Claimed as Bilateral Knee Condition)
- Right Foot Hallux Valgus, History of Stress Fracture First Metatarsal Phalangeal, and Degenerative Arthritis (Claimed as Right Foot Bunion)
- Hypertension
- Umbilical Hernia
- External Hemorrhoids
- Hemorrhoids
- Tinnitus
- Hearing Loss (No medical Basis to consider)

i. On 9 June 2018, an informal physical evaluation board (PEB) convened and determined the applicant's two conditions that failed retention standards were unfitting. The informal PEB recommended the following disability rating:

- Cervical Spine Disability. PEB referred as: Degenerative Arthritis/ Intervertebral Disc Syndrome (IVDS)/ Degenerative Disc Disease with Bulging Disc of the Cervical Spine – 20%
- Shoulder Condition Right. PEB referred as Right Glenohumeral Joint Osteoarthritis - 20%

(1) The PEB considered the conditions that did not fail medical retention standards (as listed on the MEB) and determined the applicant was fit for those conditions. These conditions meet retention standards. The record does not indicate that any of these conditions cause profile limitations (functional activities a-f); and does not indicate that performance issues, if any, are due to these conditions.

(2) The PEB found the applicant physically unfit and recommended a combined rating 40% and that the applicant's disposition be permanent disability retirement.

(3) The applicant concurred with the PEB's finding and recommendation and waived her right to a formal hearing of her case.

j. On 10 August 2017, the U.S. Army Physical Disability Agency published Orders D 221-27, placing the applicant on the retired list, effective 14 September 2017, with a 40% percentage of disability.

k. Also on 14 September 2017, orders separated the applicant from the ARNG. Her NGB Form 22 (Report of Separation and Record of Service) shows she was honorably separated and transferred to the Retired Reserve on 14 September 2017 by reason of being medically disqualified for further military service.

4. On 27 August 2021, the Board considered her case.

a. Prior to adjudicating her case, the Army Review Boards Agency (ARBA) medical advisor reviewed the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). After a thorough review of her medical condition(s) (detailed in the previous Record of Proceedings), the ARBA Medical Advisor determined that given no evidence of error or injustice, neither an increase in her military disability rating nor a referral of her case back to the DES is warranted.

b. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicants request, supporting documents, evidence in the records, and a medical advisory opinion. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence to support an increase in the disability rating. Although she has been awarded multiple VA service connected disability ratings, this does not mean these service-connection disabilities were unfitting at the time of her separation. The disability system compensates an individual only for condition(s) which have been determined to disqualify him or her from further military service. It does not compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. That role and authority belongs to the VA, within its own, different set of laws. Based on a preponderance of evidence, the Board found no evidence of error or injustice. For that reason, the Board voted to deny her request.

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR requesting an increase in her military disability ratings. She states:

"I was disappointed that my request to be rated on my back was disapproved and the explanation given was not appropriately justified. I believe my case was not

appropriately rated with an opened mind, which started off by saying I did not submit my application in the three-year widow, which is not a true statement. I would like for the focus to be on my back only.

Again, I believe my back should be rated due to the injury that occurred in March 2015, for injuries that occurred due to being rear-ended by a speeding truck going at least 45 miles an hour on a gravel road with a posted speed limit sign of 15 miles per hour ...”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Retirement orders show the former drilling Army National Guard Soldier was permanently retired for physical disability on 14 September 2017 with a 40% military disability rating under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. This request was previously denied in full on 27 August 2021 (AR20200004576). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The only new evidence provided in this application is the applicant’s self-authored request for reconsideration in which she describes the mechanism of injury (MOI) to her lumbar spine. The MOI does not affect the prior clinical and administrative determinations in her 2017 IDES case as addressed in the prior medical advisory opinion.

f. It is the opinion of the ARBA Medical Advisor that either an increase in her military disability rating or a referral of her case back to the DES remain unwarranted.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant’s contentions, the military record, and regulatory guidance. The Board noted the applicant’s reference to the rating she received by the Department of Veterans affairs. Although the Board is cognizant of the applicant’s VA disability rating, the Army and VA disability rating processes serve two different purposes and operate under different authorities, thus ratings vary. After due consideration of the case, the Board found insufficient evidence of any new or compelling documentation that would warrant a referral to the Disability Evaluation System or an increase in her disability rating and a recommendation for relief is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200004576, on 27 August 2021.



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. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his/her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
2. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect then, establishes the Disability Evaluation System (PDES) 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/her

office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his/her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his/her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

3. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

//NOTHING FOLLOWS//