

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230003622

APPLICANT REQUESTS: reconsideration of her previous request for correction of her DA Form 199 (Physical Evaluation Board (PEB) Proceedings) by adding fibromyalgia and endometriosis as unfitting, rated at least 30% disabling, resulting in her permanent retirement for physical disability instead of discharged with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- 11 pages of medical records

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 AR20210008489 on 31 January 2022.

2. The applicant states:

a. She is providing her military medical records from Iraq to prove her symptoms started on active duty and without a proper diagnosis The International Classification of Diseases- Tenth Revision (ICD-10) code for fibromyalgia is M79.7 (fibromyalgia). This code is used to describe a disorder that is characterized by chronic pain and fatigue. Fibromyalgia is a condition characterized by chronic pain and fatigue. It can be difficult to diagnose, as there is no definitive test for the condition. However, doctors can use a number of different methods to diagnose fibromyalgia, including a patient's medical history, physical examination, and lab tests.

b. She was issued a temporary physical profile with an expiration date of 20 December 2011, but the profile did not list the cause. This would have been available to the PEB. She was assigned a physical profile serial system code (PULHES) 333113. The profile in question is not in the medical records, but only available through the notes. Based on her PULHES codes, she should have been referred to the Medical Evaluation Board (MEB) for upper extremities(U), lower extremities (L), and psychiatric (S). She believes that the Board should reconsider her application because on page 6

section c of the response, it states that "She was told that endometriosis pain, if not response to medication, is difficult to treat. The MEB did not include medical records from Iraq in its decision. The unexplained bleeding started in 2005. She believes there was an injustice because not all medical documentation was included in the decision. Issues started in 2005 during Operation Iraqi Freedom and there are missing files due to the shutdown of the unit. Had there been a review of records other than for back pain, someone could have noticed the recurring themes. All symptoms lead to one major cause.

Note: The physical profile serial system (PULHES) is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric. 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.

c. Some of her deployment medical records are missing and the unit is no longer active. She spent the first few days in Iraq sick and on quarters for a couple days and the last days in Iraq she was sick and confined to quarters with widespread pain. She was taking Depo-Provera from 6 December 2004 to on or around 16 January 2008. Depo-Provera is a known treatment for endometriosis. If endometriosis was present during her service in Iraq, it would have not been noticed.

- on 13 July 2005, she was seen for bruising and fatigue
- on 1 October 2005, she was seen for gastrointestinal symptoms
- on 21 May 2005, a doctor noted intractable generalized pain and feeling tired (fatigue)
- on 17 October 2005, she was diagnosed with unexplained bleeding
- pelvic pain began on 2 June 2007, six months after leaving Iraq

d. Fibromyalgia is a condition characterized by chronic pain and fatigue. It can be difficult to diagnose, as there is no definitive test for the condition. However, doctors can use a number of different methods to diagnose fibromyalgia, including a patient's medical history, physical examination, and lab tests. Some other fibromyalgia symptoms include:

- trouble in sleeping
- fatigue
- headache
- sleeping for a long time without feeling fresh

- dry eyes
- mood disorders
- bladder disorders

e. The Army has never looked into what was causing the chronic fatigue nor insomnia. Chronic fatigue would have been disabling enough to cause her discharge from the service had it been diagnosed as it has been listed in the complaints over the course of the years.

3. Following service in the U.S. Army Reserve, which includes service in Iraq, the applicant enlisted in the Regular Army on 16 October 2007.
4. The applicant's MEB Proceedings are not available.
5. On 29 June 2012, a PEB found the applicant unfit for further military service due to degenerative disc and joint disease of the lumbar spine with chronic low back pain. Onset of the condition documented as September 2010 and unique to injury during physical training. The PEB recommended a 0% disability rating and her separation with severance pay.
6. The PEB determined the applicant's conditions of endometriosis, allergic rhinitis, right ankle pain, depression not otherwise specified, and insomnia were not unfitting because the conditions had no impact of her functionality and her MEB proceedings indicated the conditions met retention standards. The DA Form 199 contains the following statement: This case was adjudicated as part of Integrated Disability Evaluation System [IDES] (under the policy and procedural directive-type memorandum (DTM) of 19 December 2011.
7. On 6 July 2012, the applicant concurred with the PEB's findings and waived her right to a formal hearing of her case. She did not request reconsideration of her Department of Veterans Affairs (VA) ratings.
8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 15 October 2012 under the provisions of Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat (enhanced). She received severance pay in the amount of \$33,053.40.
9. During the processing of the applicant's previous case, an advisory opinion was obtained from the U.S. Army Physical Disability Agency (USAPDA) Legal Advisor. The legal advisor found the applicant's request legally insufficient and stated:

a. On 12 June 2012, the applicant was found unfit for her back condition. The condition was rated 0% and she was recommended for medical separation with severance pay. The PEB also considered five other conditions and found them not to be unfitting. None of the other conditions included fibromyalgia, but did include endometriosis. Her endometriosis was not referred by the MEB. The MEB, specifically, found that her endometriosis condition, "has not been duty limiting."

b. On 6 July 2012, she reviewed and accepted the findings. According to the VA's website, fibromyalgia is a presumptive illness for the Gulf War. "The condition must be at least 10% disabling and have first appeared sometime between active duty in the Southwest Asia theater of military operations and 31 December 2021." (See Fibromyalgia: What you need to know – Public Health (va.gov).

c. According to the applicant's record, she served in Iraq from 31 January 2005 through 20 January 2006. On 15 October 2012, she was medically separated from the service. On 9 July 2015, the VA diagnosed and service connected fibromyalgia due to her service in Iraq. She now appeals and argues that her fibromyalgia condition coupled with her then not unfitting endometriosis condition should be added as an unfitting condition, which would then mean she should be medically retired.

d. Analysis: The applicant provided no evidence that her fibromyalgia and endometriosis are medically related. Even assuming arguendo, she has not demonstrated that her endometriosis was somehow unfitting at the time of her separation. The MEB did not find that the condition failed retention standards. The PEB found the condition not to be unfitting. Disability Evaluation System (DES) ratings are a snapshot in time while VA ratings can ebb and flow over the course of one's lifetime. As is the case here, the applicant's medical conditions have been reexamined, reviewed and re-rated by the VA multiple times since her discharge. It is speculative to connect a condition (fibromyalgia) that has not been shown to be definitively related to another condition (endometriosis), especially when the conditions are not apparent at the same time of her service, but only appear together years later. Finally, just because a condition is presumptively service connected by the VA, does not equate that it is an unfitting condition or that it retroactively causes another condition to be unfitting.

10. During the processing of the applicant's previous case, the Army Review Boards Agency (ARBA) Medical Advisor reviewed her medical records and stated, in part:

a. On 29 June 2012, the applicant's informal PEB determined her "degenerative disc and joint disease of the lumbar spine" to be the sole unfitting for continued service. They determined the five remaining conditions were not unfitting for continued service; endometriosis, allergic rhinitis, right ankle pain, depression, and insomnia. The PEB then applied the VA derived rating of 0% to his disability and recommended she be

separated with disability severance pay. On 7 July 2012, after being counseled on the board's findings by her PEB liaison, she concurred with the PEB's findings.

b. A review of her records in Armed Forces Health Longitudinal Technology Application (AHLTA) found no material errors or discrepancies. There are no encounters for fibromyalgia and the condition is not listed on her medical problem list. There are numerous evaluation and treatment encounters related to her endometriosis, but there is no documented/probative evidence the condition failed the medical retention standard in chapter 3 of Army Regulation 40-501 (Standards of Medical Fitness). The regulation states that endometriosis fails medical retention standards when "symptomatic and incapacitating to a degree that necessitates recurrent absences of more than 1 day." Submitted medical documentation shows the applicant underwent a hysterectomy at a VA Medical Center on 13 October 2020.

c. The applicant states and documents confirm that she has been awarded multiple VA service connected disability ratings, including ratings for fibromyalgia and hysterectomy. However, the DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to 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 is granted by Congress to the VA and executed under a different set of laws.

d. Given no evidence of error or injustice, it is the opinion of the ARBA's Medical Advisor that neither an increase in her military disability rating nor a referral of her case back to the DES is warranted. *The complete medical review was provided to the Board for their review and consideration.*

11. 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 for correction of the records of the individual concerned was credible information that an offense was committed. The applicant's request was denied.

12. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

13. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

14. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities (VASRD). The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant desires to have Army medical retirement disposition. She requests to have Endometriosis and Fibromyalgia added as unfitting conditions to her Army disability rating. This request is a reconsideration. The applicant stated that she had a temporary profile that expired 20Dec2011 PULHES 333113 and should have been referred to the medical board because of it. She further contends that her unexplained bleeding started in Iraq. She believes that her Iraq medical records were not considered by the MEB. MEB Proceedings could not be found for this review.

b. The applicant's record was summarized in the ABCMR ROP. Of note, the applicant was a USAR member 22May2002 to 21May2007. She deployed to Iraq 31Jan2005 through 20Jan2006 while in the Reserves. The applicant entered the regular Army 16Oct2007. Her MOS was 12w10 Carpentry and Masonry. She was separated with severance pay on 15Oct2012 under provisions of AR 635-40, chapter 4. Her service was characterized as honorable.

c. Pertinent Iraq treatment notes and related

- 22Aug2002 CBC and ESR tests were normal
- 22Aug2002 Screening Note of Acute Medical Care, Moncrief AMCH. The applicant was seen for pelvic pain for 2 days. Diagnosis: Bacterial Vaginosis.
- 24Aug2002 TMC/BAS Ft Jackson SC. The applicant was seen for pelvic pain and chest pain for 1 week. An ITP diagnosis was noted. The provider assessed the lower abdominal pain appeared to be more musculoskeletal (related to working out as opposed to hormonal).
- 06Dec2004 Martin ACH. Depo-Provera injection visit. No problems noted.
- 07Mar2005 Chronological Record of Medical Care. Depo-Provera injection visit. No problems noted.
- 28May2005 Witmer Clinic, Camp Liberty, Iraq. Lab: Hemoglobin 13.8 (12-18)

- 13Jul2005 Chronological Record of Medical Care, Camp Liberty, Iraq. She was requesting a platelet count due unexplained bruising (for 6 years) and fatigue. She had a positive history of these symptoms. Her ITP diagnosis was noted.
- 28Jul2005 PDHA. She stated that her general health was excellent.
- 17Oct2005 Chronological Record of Medical Care, Camp Liberty, Iraq. She had unexplained menstrual bleeding for 1.5 days and fatigue. On Depo-Provera x 2 years. Exam: Tender in pelvic area. Diagnosis: Breakthrough Bleeding. No previous episode.
- 01Nov2005 and 24Dec2005 PDHAs. Of pertinence she reported having been seen for fatigue, headaches, and dizziness during the deployment. She indicated that her health 'stayed about the same or got better' during deployment. She was not on a profile or light duty. In the PDHA dated 01Nov2005, the applicant wrote that she was doing so well on the antidepressant, she was afraid to stop it.
- 23Nov2005 in for Depo-Provera injection. Some spotting, no other issues.
- 26Oct2006 PDHRA. She had not had any sick visits since her return from Iraq.

d. PEB convened 29Jun2012 found Degenerative Disc and Joint Disease of the Lumbar Spine unfitting for continued service at 0% under DC 5237. The case was adjudicated as part of the Integrated Disability Evaluation System (IDES); therefore, the percentage was determined by the VA and adapted by the PEB per regulation. The back pain started in September 2010 while performing the sit-up portion of her PT test. During her examination for the MEB, she had flexion to 100 degrees (normal is 90 degrees) and extension to 20 degrees (normal is 30 degrees). 01Mar2011 lumbar spine, 27Sep2010 lumbar spine CT and 09Mar2011 showed no abnormality. The applicant had difficulty sitting for prolonged periods and driving or sitting in a vehicle for prolonged periods. She was unable to run even for short periods and she was unable to lift more than 20 lbs. The MEB determined that the lumbar condition did not meet medical retention standards in accordance to AR 40-501 paragraph 3-41e(1).

e. The MEB Proceedings (DD Form 3947) could not be found for this review. The ARBA Medical Reviewer focused on conditions mentioned by the applicant in her application reconsideration request dated 26Feb2023 and whether they met retention standards of AR 40-501 chapter 3 near the time of discharge.

f. Endometriosis

The applicant was seen for unexplained menstrual bleeding in 2005 while in Iraq. She had been on Depo-Provera since October 2003. Depo-Provera is a 3-month injectable hormone used for long-term contraception (usually a minimum of 2 years). It is a well-established treatment for the progression of signs/symptoms of endometriosis; and is also commonly thought that use of Depo-Provera may reduce risk of development of endometriosis. She stopped Depo-Provera May 2007, and then restarted it July 2008. She was then seen for irregular spotting for 6 months in May 2009 with 2 emergency

room (ER) visits (21May2009 and 08Jun2009). She ultimately underwent laparoscopy 14Aug2009 during which her Endometriosis condition was definitively diagnosed and operatively treated to include lysis of adhesions. After surgery, she tried OCP (oral contraceptive pills), estrogen patch and NuvaRing without adequate results— there were 3 ER visits (30Nov2009, 25Mar2010 and 24Apr2010). On 15Nov2011, a 6-month trial of Lupron trial was started with improvement in symptoms. She received the final 3-month injection 09Jan2012. After separation from service, she was seen 06Jun2014 OB GYN Consult VAMC during which she deferred treatment for Endometriosis. She was not reporting pelvic pain or abnormal vaginal bleeding at the visit. She ultimately underwent total laparoscopic hysterectomy, bilateral salpingectomy, and cystoscopy 13Oct2020 at VAMC.

g. Rationale/Opinion

The VA evaluated Endometriosis at 30% effective 08Sep2013. The cause of endometriosis (implantation of endometrial tissue outside the [uterus](#)) is unknown. One theory is the condition develops in utero, so theoretically it is possible that the applicant had endometriosis while in Iraq. However, more likely than not, the applicant was experiencing breakthrough bleeding (BTB, also referred to as irregular menstrual bleeding or abnormal uterine bleeding) at the time from the Depo-Provera injection. BTB is the most common adverse effect while on long-term injectable hormone contraception. She was not anemic—her hemoglobin was borderline to normal at the time. According to PDHAs and PDHRA, while deployed, the applicant's considered her health status to be 'good' or 'excellent'. The applicant did have abnormal uterine bleeding in association with increasing pelvic pain in 2009. The applicant's Endometriosis ultimately responded to Lupron injection. The MEB determined this condition DID meet retention standards of AR 40-501 chapter 3.

h. Idiopathic Thrombocytopenia Purpura (ITP) or Immune Thrombocytopenia Purpura ITP diagnosis was noted in the record in an August 2002 note, 3 months after her entrance into the Reserves. Of note, this diagnosis is generally disqualifying for entrance into service. ITP is defined by low platelet count. The 28May2002 and 22Aug2002 platelet count 139 X10<sup>3</sup>/mm<sup>3</sup> (normal 150-450). Platelets are necessary for clotting. ITP is characterized by easy bruising or bleeding. The entrance exam on 22May2002 (Report of Medical Exam) revealed a recent, healing contusion (also known as a bruise) on her right elbow. Individuals with ITP can also experience fatigue, severe headaches, and heavy menstrual bleeding. On 13Jul2005, the applicant requested a platelet count because of unexplained bruises and fatigue.

i. Rationale/Opinion

On 03Feb2012, the applicant's Chronic ITP condition was evaluated during the MEB process. It was noted that the platelet count stayed from about 94 to 134 since 2002. The risk of developing bleeding symptoms increases, especially below 50,000-70,000 platelet count. No excess bleeding or clotting problems were noted as surgical



complications for the laparoscopic cholecystectomy in April 2009 or during the laparoscopic surgery for endometriosis in August 2010. While in service, the applicant's symptoms attributable to the ITP included low platelet count and easy bruising. There were no work limitations attributable to this condition. The MEB assessed that this condition DID meet medical retention standards of AR 40-501 chapter 3.

j. Fibromyalgia

The exact cause of Fibromyalgia is unknown, but theories include genetics, infection or physical or psychological stress origin. Fibromyalgia was not addressed by the MEB—the condition was diagnosed three years after discharge from service, in 2015. The rheumatologist diagnosed the condition based on the development of diffuse muscle pain (reported 19Feb2015), depression, OSA and sleep disturbance. Also noted was her history of Iraq deployment (rule out Gulf War Illness), fatigue of 6 months duration, and elevated labs (ESR and CRP). Of significance, in May 2005 while in Iraq, the applicant was seen for onset of a gastrointestinal illness with chest pain, insomnia/sleep disturbance, headache and “intractable generalized pain” (13May, 19May, 25May2005 Theatre notes). The applicant was also seen for extreme fatigue while in Iraq (13Jul2005, 17Oct2005). At the time, ITP was considered as a possible cause of her fatigue. However, the fatigue was likely not due to ITP because her platelet count was only mildly low. She was also not anemic (her hemoglobin was normal) at the time and she was not reporting heavy menstrual bleeding. The ARBA Medical Reviewer observed that symptoms documented in August 2002 (gastrointestinal symptoms, chest pain, migraines, and concurrent anxiety attacks) prompted a provider to order an ESR (erythrocyte sedimentation rate). An ESR is ordered when an inflammatory or immune system response condition is suspected. ESR was normal 22Aug2002, elevated (14Dec2011 and 19Oct2012) and 2x normal or positive on 25Feb2015.

k. Rationale/Opinion

The VA evaluated Fibromyalgia at 40% effective 09Jul2015. The 16Oct2015 C&P Fibromyalgia DBQ examiner attributed the following symptoms to the condition: Daily fatigue and lassitude with extensive aches and muscles pain throughout her body and multiple trigger points. They also noted her sleep disturbance, depression, and anxiety. It can be reasonably argued that early symptoms suggestive of Fibromyalgia were present in 2002 as well as while deployed in Iraq in 2005. However, symptoms abated each time. There were no permanent work limitations or work schedule accommodations attributable to these symptoms. Diagnostic criteria for Fibromyalgia were not met until 2015, 3 years after discharge from service. Based on review of records, evidence is insufficient to support that symptoms which occurred while in service and were suggestive of Fibromyalgia, failed medical retention standards of AR 40-501 chapter 3 at the time of discharge..

l. Depression, Not Otherwise Specified (claimed as Adjustment Disorder/Depressed Mood and Insomnia)

A few months after entry into the Reserves, the applicant experienced chest pain and anxiety attacks (22Aug, 24Aug, 29Aug and 03Sep 2002). It was annotated that the applicant "wants out of the Army, has lot of personal problems". Then in 2005, while deployed in Iraq, she was diagnosed with Major Depressive Disorder, Recurrent Episode, Moderate. Stressors were Recurrence of Migraine Headaches (onset age 17 (12May2005 Theatre note); a medical condition that was not specified (please see 5c notes above); emotional stress from caregiving; and problems with in-laws. She was started on psychotropic medication. Notes from her 05Dec2011 Mental Disorders DBQ included the following: She experienced sexual abuse ages 3-7 years by stepfather and a cousin. In the military, she deployed to Iraq but denied any direct combat exposure or imminent threats to her life. This was also reflected in her related negative responses in the PDHAs and PDHRA. She was later diagnosed with Anxiety Disorder NOS on 27Feb2009. Stressors at that time related to being a single parent and having problems at work in her unit. She underwent a Command Directed Mental Health Evaluation on 15Aug2011 at WAMC and was diagnosed with Adjustment Disorder with Depressed Mood. It was noted she had experienced similar symptoms due to stressors (work conflicts, relational issues) in the past. Symptoms had persisted beyond six months. Global Assessment Functioning (GAF) score was 78 during VA DBQ exam. The 05Dec2011 Mental Disorders DBQ examiner diagnosed Depressive Disorder NOS and opined that her symptoms were not severe enough to interfere with occupational and social functioning. Symptoms included: Depressed mood, insomnia, and fatigue. At the time, she was on profile for her back, she was not on profile for mental health. She was enrolled in Master of Arts program in music production and denied academic problems. A 12Dec2011 Womack AMC BH note recorded current stressors: Recent marriage and marital separation in the same month, recent bankruptcy and perception of ongoing financial problems, and possible lack of support. The GAF score was 71. In addition to her service commitment, she worked nights as a local DJ (04May2012 WTB Occupational Therapy Clinic). She was on Celexa 20mg with good result, and without complaint of depressed mood (27Jul2012 Psychiatry). She was pending discharge and relocating to Florida with her son and denied need for continued service (22Aug2012 BH visit). The 05Jun2015 Mental Disorders DBQ indicated that since separation, she had continued to work towards a master's degree in web design (her back-up plan), however only taking an average of two classes per semester due to fatigue. The VA initially evaluated Depressive Disorder, NOS, at 10% and currently evaluates it at 50%.

m. Rationale/Opinion

While in service, there was one ER visit for mental health: On 25Dec2011 the applicant was depressed because her son could not be with her for Christmas. She expressed concern that she may take all of her pills. That episode aside, overall, her depression and anxiety were responsive to Celexa and counseling. The insomnia's response to treatment was variable. There were no suicide attempts, psychiatric hospitalizations or recurrent emergency room visits for BH symptoms. Near the time of discharge, both the VA and Army assessed that her GAF score was consistent with no more than slight

impairment in social or occupational functioning. The MEB indicated that this condition DID meet medical retention standards of AR 40-501 chapter 3.

n. The applicant's report of a temporary profile showing PULHES 333113 that expired 20Dec2011 is acknowledged; however, a permanent P3 or P4 physical profile is required for entry into the IDES. The applicant's lumbar condition, Degenerative Disc and Joint Disease of the Lumbar Spine, failed medical retention standards of AR 40-501 chapter 3. Based on records available for review which included treatment records while in the Reserves as well as in-theatre records from Iraq; the ARBA Medical Reviewer concurs with the MEB, there were no other conditions which failed medical retention standards at the time of separation from service. The VA rating for the unfitting lumbar condition was reviewed, and there did not appear to be an error per VASRD (*Veterans Affairs Schedule for Rating Disabilities*) guidance. The applicant's medical conditions were duly considered during medical separation processing and no change to the narrative reason for separation is recommended.

#### BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding there were no other conditions which failed medical retention standards at the time of separation from service. The VA rating for the unfitting lumbar condition was reviewed, and there did not appear to be an error per VASRD (*Veterans Affairs Schedule for Rating Disabilities*) guidance. The opine noted, the applicant's medical conditions were duly considered during medical separation processing and no change to the narrative reason for separation is recommended.

2. The Board determined there is insufficient evidence to support the applicant's contentions for reconsideration of her previous request for correction of her DA Form 199 by adding fibromyalgia and endometriosis as unfitting, rated at least 30% disabling, resulting in her permanent retirement for physical disability instead of discharged with severance pay. The Board determined reversal of the previous Board decision is without merit and denied relief.

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 found 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 of the ABCMR set forth in Docket Number AR20210008489 on 31 January 2022.

2/18/2024

X █

CHAIRPERSON

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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, U.S. 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 physical 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.
2. 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.

3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30% percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

4. Directive-type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDES. It states:

a. The IDES is the joint Department of Defense (DOD)-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances. Service members whose cases were initiated under the legacy DES process will not enter the IDES.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of his or her military records through his or her respective Military Department BCMR.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

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//