

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230004729

APPLICANT REQUESTS:

- reconsideration of her previous request for medical retirement
- as a new issue, promotion to specialist (SPC)/E-4
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 August 2013
- Orders 115-509, 25 April 2017
- NGB Form 22 (National Guard Report of Separation and Record of Service), 10 May 2017
- Army National Guard (ARNG) Retirement Points History Statement, 22 December 2020
- Appeal of Formal Physical Evaluation Board (PEB) Decision, 9 November 2022
- Rebuttal to PEB Findings, 21 November 2022
- Department of Veterans Affairs (VA) Letter, 19 January 2023

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 AR20210010954 on 6 January 2022.

2. The applicant states her unit discharged her from service without a PEB. She was told from her unit that she had an end of service date of 10 May 2022 and that it will be a medical discharge. She submitted a correction to ABCMR and was granted partial relief. A PEB was held in November 2022 and she was told that she was not discharged from service and no medical documentation was filed with her unit. She has been out of the service since 10 May 2017. Her unit was giving her medical documentation and she was on a dead man profile. Her unit refused to give her time served because she was on a dead man profile and that she was not eligible for promotion. She found out in

November 2022 that no profile was on file and no medical was processed, she was not discharged from service. Her unit was aware of her falling ill coming from active duty.

3. On 21 November 2012, the applicant underwent an entrance medical examination under the provisions of Army Regulation (AR) 40-501 (Standards of Medical Fitness). She met the medical entrance requirements for enlistment with no noted medical deficiencies. She did not receive a restrictive physical profile and was found qualified for service.

4. She enlisted in the Alabama Army National Guard (ALARNG) on 25 January 2013.

5. On 28 April 2013 she entered a period of active duty training (ADT). She was honorably released from ADT on 28 August 2013 after completion of required active service totaling 4 months and 1 day. She was released back to her ALARNG unit.

6. Orders 115-509, issued by Joint Force Headquarters ALARNG, on 25 April 2017, shows she was honorably discharged from the ARNG and as a reserve of the Army effective 10 May 2017. Assignment/Loss Code shows: Medical, physical or mental condition retention. Authority shows AR 40-501, Chapter 3 and National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35L (8).

7. She was honorably released from the ALARNG on 10 May 2017. Her NGB Form 22 shows she completed 4 years, 3 months, and 16 days net service this period. Items 5a and 5b show her rank and pay grade was private first class/E-3.

8. There is no evidence of promotion to specialist/E-4 within her records.

9. The applicant applied to the ABCMR in Docket Number AR20210010954 and in the processing of her case a medical review was obtained. It stated while in service, she was treated for the following significant conditions:

a. Costochondritis. The applicant was performing the Army Physical Fitness Test run and began having chest pain and shortness of breath. The Statement of Medical Examination and Duty Status indicated costochondritis began on 9 February 2013, in Enterprise, AL. There was an in the line of duty finding for the costochondritis condition dated 6 March 2013. The ARBA reviewer did not find duty-limiting profile information for the condition.

b. Barrett's Esophagus. On 21 August 2013, the applicant was seen in the emergency room for left lower abdominal pain that started 15 minutes after eating. It was accompanied by nausea without vomiting or diarrhea. Her abdominal pain went from a 10 down to a 1 after suppositories produced a bowel movement. In the Statement of Medical Examination and Duty Status for Barrett's Esophagus, the

applicant claimed that her then recent diagnosis was related to the single episode of abdominal pain on 21 August 2013. On 15 November 2016, the Surgeon General opined that the applicant's abdominal pain and constipation was unrelated to the Barrett's Esophagus: "Barrett's esophagus is a chronic inflammatory condition related to acid reflux in the esophagus and it takes years to develop. It should be considered [existed prior to service] and the natural progression of the inflammatory process precludes the presumption of service aggravation." The 21 November 2016, Report of Investigation Line of Duty and Misconduct Status determined the Barrett's esophagus was not in the line of duty.

c. Near Syncopal Episode. She was seen for chest pain with significant air hunger with exercise on 25 February 2014. She had a history of one episode of near syncope (almost fainted). Ejection fraction and exercise stress testing was normal. She had a systolic murmur. She had mild tricuspid valve regurgitation (echocardiogram February 2014). Her symptoms were consistent with mild orthostatic hypotension likely due to insufficient central volume. She was 5' 5" and weighed 114 pounds (Body Mass Index 18). She was very thin and the cardiologist felt her symptoms would resolve when she gained weight. She had a temporary level 3 physical profile for Bicuspid and Tricuspid Valve Regurgitation dated 12 August 2014, set to expire 10 November 2014.

d. Asthma. On 11 March 2014, she was seen for cough, shortness of breath and wheezing. Symptoms were severe at times and were aggravated by physical activity. Lung testing showed normal spirometry and mild restrictive ventilator defect. It was determined that her respiratory symptoms were due to her severe gastritis and resulting Barrett's Esophagus condition. She had a temporary level 2 physical profile for Asthma dated 18 June 2014. The DA Form 3349 indicated she was pending medical clearance or medical retention determination point. There were multiple functional activity limitations.

e. Pertinent profile history.

(1) A temporary level 2 physical profile for Asthma; Barrett's Esophagus dated 11 February 2015, showed no functional activity limitations.

(2) A temporary level 3 physical profile for Asthma; Barrett's Esophagus dated 1 August 2015, showed that one functional activity was prohibited (deployment). She was pending a Physical Evaluation Board (PEB).

(3) 1 August 2015, Chronological Record of Medical Care. She had a history of Barrett's Esophagus; Asthma; and Anemia. It was annotated that she needed a PEB.

(4) She had a level 3 permanent physical profile dated 3 September 2015, for Barrett's esophagus due to chronic gastroesophageal reflux disease (GERD), Asthma,

and Anemia. She did not meet retention standards of AR 40-501, chapter 3. It was annotated "refer to PEB"; but it was indicated that a MEB was NOT applicable (refer to AR 40-501, chapters 9 and 10). It was indicated that her medical/administrative board status was "pending Non-Duty PEB."

(5) And finally, the record showed a permanent level 3 physical profile for Barrett's Esophagus due to chronic GERO (Bilateral); and Persistent Asthma dated 17 January 2017, with multiple functional activity limitations, to include not being able to wear helmet, body armor, and load bearing equipment.

f. Based on available records, the applicant had medical conditions which did not meet medical retention standards per AR 40-501 chapter 3: Barrett's Esophagus due to chronic GERO (Bilateral); and Persistent Asthma. She had permanent level 3 profiles for the conditions. It was determined that the Barrett's Esophagus condition existed prior to service and was not aggravated by service. The Persistent Asthma condition was secondary to the severe gastritis and resultant Barrett's Esophagus condition. Records indicated that she was to undergo a non-duty related PEB. A search in ePEB did not reveal that she had completed a PEB. Soldiers do have the option to opt out of a non-duty related PEB. The ARBA reviewer did not find documentation that she had opted out. Recommend referral for non-duty related PEB for Barrett's Esophagus due to chronic GERO (Bilateral), and Persistent Asthma.

g. The Board concurred with the conclusion of the ARBA Medical Advisor and determined the applicant's records should be referred to a non-duty related PEB to review the conditions for which she had been assigned a permanent level 3 physical profile.

10. On 1 November 2022, a non-duty related Informal PEB convened and determined she was physically unfit and that her disposition be referred for case disposition under reserve component regulations. Her unfitting condition of Barrett's esophagus (non-compensable, existed prior to service and not permanently service aggravated). It was also determined:

a. Incurred or aggravated in the line of duty in a duty status authorized by 10 USC 1201 (c) or 10 USC 1204. No.

b. Due to intentional misconduct, willful neglect, or unauthorized absence. No.

c. For pre-existing findings without aggravation: The condition was noted at time of entrance on active duty (AD); or clear and unmistakable evidence demonstrates that disability existed prior to entrance on AD and was not aggravated by active military service. No.

11. The applicant did not concur and demanded a formal hearing. On 9 November 2022, the applicant appealed the PEB decision and requested reconsideration. She requested that the PEB/PDA find that the unfitting conditions of Barret's esophagus was incurred while entitled to base pay as requested in her contention memo. Additionally, she requests that the PDA find major depressive disorder and costochondritis as unfitting conditions. She requests that the PEB refer the case to Human Resources Command for an advisory opinion regarding Barret's esophagus. If any of the conditions that are found as unfitting are in line of duty, the PDA should restart the case as an IDES case. Counsel stated the line of duty opinion provided by the ALARNG is flawed, not supported by objective evidence, and should be totally disregarded.

12. On 21 November 2022, the USFDA responded to the appeal and in conclusion the case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System (PDES) in making its determination. The findings and recommendations of the FPEB were supported by a preponderance of evidence and are therefore affirmed. The issues raised in the 9 November 2022; appeal was adequately addressed in the FPEB proceedings. If it is felt that the findings are in error, any future submission for correction may be directed to the ABCMR.

13. On 29 November 2022, the applicant was notified that the ABCMR directed a review of her previous PEB proceedings. The resulting formal PEB determination was a non-duty related unfit determination. This determination was approved for the Secretary of the Army.

14. The applicant provides:

a. ARNG Retirement Points History Statement, 22 December 2020. Showing she had 4 years, 3 months, and 16 days creditable service for retired pay.

b. VA letter, 19 January 2023, showing she was 100% combined service-connected for disability effective 9 November 2022.

15. 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.

16. 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.

17. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The DVA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the DVA, 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 DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

18. By regulation, AR 15-185 (ABCMR) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

19. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows the former drilling Guardsman enlisted in the Army National Guard on 25 January 2013 and was honorably discharged from the Alabama Army National Guard (ALARNG) on 10 May 2017 under the provisions of paragraph 6-35I(8) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Medically unfit for retention per AR 40-501, Standards of Medical Fitness. It shows the applicant had 04 years, 3 months, and 16 days of total service for retired pay.

d. Her request for enrollment into the DES and a medical retirement was partially granted by the ABCMR on 6 January 2022 when her case was referred to a Non-Duty Related Physical Evaluation Board (NDR PEB) (AR20210010954). 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 and the ABCMR directed NDR PEB.

e. The applicant was referred to a non-duty related physical evaluation board (NDR PEB) for Barrett's esophagitis. From the Mayo Clinic's website:

"Barrett's esophagus is a condition in which the flat pink lining of esophagus becomes damaged by acid reflux, which causes the lining to thicken and become red. Between the esophagus and the stomach is a critically important valve, the lower esophageal sphincter (LES). Over time, the LES may begin to fail, leading to acid and chemical damage of the esophagus, a condition called gastroesophageal reflux disease (GERD). GERD is often accompanied by symptoms such as heartburn or regurgitation. In some people, this GERD may trigger a change in the cells lining the lower esophagus, causing Barrett's esophagus.
(<https://www.mayoclinic.org/diseases-conditions/barretts-esophagus/symptoms-causes/syc-20352841>)

f. An NDR PEB allows Reserve Component (RC) Service Members who are not currently on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions but desire to remain in their component to enter the Disability Evaluation System (DES) for a determination of fitness. The NDR PEB affords these Soldiers the opportunity to have their fitness for duty determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES for a duty related medical condition. After 2014, these boards also look to see if the referred condition(s) were duty related. When there is some evidence one or more conditions was likely duty related, they return them to the sending organization for entrance into the duty related processes of the DES.

g. On 30 June 2022, her informal NDR PEB found her Barrett's esophagus to be her sole unfitting for continued service and that it remained non-compensable as it had existed prior (EPTS) to service and had not been permanently aggravated by her service (PSA).

h. Paragraph 4-8b(4)(a)(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (12 November 2020) states:

"(1) The term "EPTS" may be added to a medical diagnosis if there is a preponderance of evidence the injury, illness, or disease or underlying condition existed prior to the current period of military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly pre-vents a conclusion that the injury, illness, or disease started during short tours of authorized training or duty."

i. The AR 600-8-4 glossary definition of existed prior to service:

“Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)”

j. Paragraph 4-8b(4)(a)(4) of AR 600-8-4 (12 November 2020) addresses permanent service aggravation:

“4. Service aggravation is defined as a permanent worsening of a pre-service medical condition over and above the natural progression caused by trauma or the nature of military service. A permanent worsening of a condition, as a result of the performance of military duties, is required to find there is service aggravation.

k. The applicant non-concurred with the PEB’s finding the condition was not duty related and requested that additional conditions - Depression and Costochondritis - be considered by the PEB. She demanded a formal hearing with the assistance of regularly appointed counsel.

l. On 1 November 2022, her formal PEB reconfirmed the condition was unfitting for continued military service and had not been incurred in the line of duty. The also found neither her depression nor costochondritis to be unfitting for continued service.

“FORMAL (ABCMR): Regarding the Soldier's contention that she is maintained as unfit for Barrett's esophagus, that this condition was incurred while entitled to base pay, and that she is unfit for costochondritis and major depressive disorder:

Based upon a review of the objective evidence of record, including the Soldier's testimony provided during Formal Board proceedings, and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of DoDI 1332.18, Enc. 3, App. 2, to include combined overall effect, the Formal Board maintains the Soldier's Barrett's esophagus is unfitting and non-duty related, and her costochondritis and major depressive disorder are not unfitting ...

The Soldier claims that the Barrett's esophagitis is related to the gastrointestinal symptoms treated in AIT [Advance Individual Training]. She further testified that

although the medical literature states it typically takes several years of reflux prior to a diagnosis of Barrett's, she did not have any gastrointestinal symptoms prior to AIT. She further testified she did not fit the usual patient profile and risk factors for Barrett's.

However, no additional medical records were provided to refute the National Guard Bureau (NGB) Surgeon's medical opinion dated 15 November 2016 which provides medical reasoning why this condition should be considered to have existed prior to service and was not considered permanently service aggravated. Following this NGB medical opinion, a line of duty determination rendered by the National Guard Bureau on 21 November 2016 found the condition was not related to her treatment while at AIT and not in line of duty ...

The Soldier testified that her costochondritis began in February 2013 while conducting physical training at her unit during a drill weekend and that she was treated at a local emergency room at the time. This condition was not contended in the ABCMR Record of Proceedings. A review of the Soldier's file shows no in service treatment records or physical profile history for this condition. There is no medical assessment of this condition at the time of separation to support an unfit finding. Therefore, the FPEB finds the Soldier was fit at the time of discharge for this condition.

The Soldier testified that her major depressive disorder began while in service and is associated with her personal health stressors at the time. She first sought behavioral health treatment in 2021 with the VA for this condition, approximately 4 years after her military discharge, and was treated with psychotropic medication. This condition was not contended in the ABCMR Record of Proceedings. There was no behavioral health evaluation available to review at or near the time of military separation to support an unfit condition. A review of the Soldier's file shows no in service treatment records, physical profile, or line of duty for this condition. Therefore, the FPEB finds the Soldier was fit at the time of discharge for this behavioral health condition.”

m. Review of the EMR and JLV confirmed the formal board's medical findings that neither of these conditions was unfitting for continued service prior to her 10 May 2017 discharge.

n. The applicant non-concurred and appealed to the United States Army Physical Disability Agency. In their 21 November 2022 response to the applicant's counsel, the USAPDA maintained her Barrett's esophagitis was not duty related and that neither of the other two conditions was unfitting at the time of her 2017 discharge. The USAPDA authenticated the Formal PEB's findings and recommendation for the Secretary of the Army on 29 November 2022.

o. There is no probative evidence the applicant's Barret's esophagitis, a chronic condition which develops over years, was duty related in this former drilling ARNG Soldier. Thus, it was correctly determined to have existed prior to service and be non-compensable.

p. JLV shows she has been awarded three VA service-connected disability rating: Chest muscle impairment effective 13 January 2017, Major Depressive Disorder effective 8 March 2021; and fibromyalgia effective 31 October 2022. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

q. It is the opinion of the Agency Medical Advisor there is insufficient evidence upon which to reverse the USAPDA's determinations that the applicant's unfitting disability had not been incurred in the line of duty and that neither her depression nor costochondritis was unfitting prior to her 2017 discharge.

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence to reverse the decision of the U.S. Army Physical Disability Agency.

2. The applicant's record reflects she was discharged from the Army National Guard on 10 May 2017 due to medical unfitness. In a previous request by the applicant to the Army Board for Correction of Military Records, a grant of relief was implemented referring the applicant's records to a non-duty related Physical Evaluation Board (PEB) to review the conditions for which she had been assigned a permanent level 3 physical profile. On 1 November 2022, the informal PEB convened and found the applicant physically unfit and recommended disposition through Reserve Component regulations.

3. The Board considered the applicant's request for promotion to specialist (SPC)/E-4; however, found no documentation to support the applicant was promoted to or recommended for promotion to SPC/E-4 and denied relief.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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 amendment of the ABCMR decision rendered in Docket Number AR20210010954 on 6 January 2022.

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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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Department of Defense Instruction (DoDI) Number 1241.01, subject: Reserve Component (RC) Line of Duty Determinations for Medical and Dental Treatments and Incapacitation Pay Entitlements, dated 19 April 2016. It is DoD policy that an RC Service member is entitled to medical and dental treatment for an injury, illness, or disease that was incurred or aggravated while in a qualified duty status and that is not the result of gross negligence or misconduct. A determination that establishes a covered condition will be referred to in this instruction as an "in LOD [line of duty] determination." An "in LOD determination" will establish eligibility for appropriate medical and dental treatment. An RC Service member will receive required emergency medical and dental treatment while serving in a qualified duty status. If it is subsequently determined that the RC Service member was not entitled to emergency medical and dental treatment in accordance with Titled 10, U.S. Code, section 1074a because it did not involve a covered condition, financial adjustments will be made so that the costs of the emergency medical care are paid by the member, the member's health insurance plan, or any other third party payers.

3. 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 U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military

Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/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 or not 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. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. 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.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. AR 40-501 (Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. USAR or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed as follows: Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 or discharged from the USAR per Army Regulation 135-175 (Separation of Officers) or Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

b. Reservists who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in

the line of duty. Reservists with nonduty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with this regulation.

c. RC Soldiers with nonduty related medical conditions, MEBs are not required and cases are not sent through the PEBLOs (Physical Evaluation Board Liaison Officers) at the military treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB by the U.S. Army Reserve Command, Regional Support Command or the U.S. Army Human Resources Command Surgeon's office and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

5. AR 135-178 (Enlisted Administrative Separations), establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the ARNG and the USAR.

a. Chapter 15 (Separation for Other Reasons) includes medical unfitness for retention as a reason for separation. It states discharge will be accomplished when it has been determined that a Soldier is no longer qualified for retention by reason of medical unfitness per Army Regulation 40-501 unless the Soldier requests and is afforded the following:

- granted a waiver under Army Regulation 40-501, as applicable
- determined fit for duty under a non-duty related PEB fitness determination under the provisions of Army Regulation 635-40
- eligible for transfer to the Retired Reserve

b. Soldiers who do not meet the medical fitness standards for retention due to a condition incurred while on active duty, any type of active duty training, or inactive duty training, will be processed as specified in Army Regulation 635-40. if otherwise qualified.

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes the Army Disability Evaluation System 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (Disability Evaluation System (DES)) and; DoD Manual 1332.18 (DES Volumes 1 through 3).

a. The DES compensates disabilities when they cause or contribute to career termination. Servicemembers who are pending retirement at the time they are referred for disability evaluation are presumed fit for military Service.

b. The Director, Army National Guard Bureau on behalf of the Chief, National Guard Bureau will ensure that eligible Soldiers are referred for evaluation by the DES in a timely manner and in accordance with this regulation.

c. The Surgeon General of the Army will establish and interpret medical standards for Soldiers of all components.

d. The Commanding General, USAPDA will serve as the appellate authority for formal or informal PEB proceedings. The commanding general will make the final decision for the Secretary of the Army concerning a Soldier's fitness for duty. Then accomplish final administrative actions to include authorizing installations (or State ARNG Headquarters) to issue applicable orders.

e. The Legacy DES process includes the Reserve Component non-duty related referral process. No disability ratings are assigned for non-duty related cases.

f. The evidentiary standards for determining unfitness because of physical disability includes fact finding, preponderance of evidence, referral following an illness or injury referral for a chronic impairment, and a cause and effect relationship.

g. The Reserve Component non-duty related disability process is established by policy. It affords Reserve Component Soldiers not on call to active duty of more than 30 days and who are pending separation by the Reserve Component for non-duty related medical conditions to enter the DES for a determination of fitness and whether the condition is duty-related. A line of duty investigation resulting in a finding of not in the line of duty is not required when it is clear that the disqualifying disability is non-duty related.

(1) Except for the circumstances listed below, referral to the Reserve Component non-duty related process is upon the request of the Soldier. If the Soldier does not request referral, they are subject to separation for medical disqualification under Reserve Component regulations.

(2) An MEB is not required to establish that the Soldier does not meet medical retention standards. However, the medical documentation must be sufficient for the PEB to adjudicate fitness.

(3) The PEB will issue its decision on fitness using the applicable DA Form 199, DA Form 199-1, or DA Form 199-2.

(4) Medical documentation must provide a clear and adequate description of the medical condition(s) that cause the Soldier not to meet medical retention standards. Cases received by the PEB in which the medical evaluation is inadequate for a determination of fitness by the PEB will be returned to the referring organization with a memorandum documenting the insufficiency.

(5) The Reserve Component is responsible for counseling its Soldiers on their right to a PEB. Counseling will also include advising the Soldier that they may consult with an attorney from the Office of Special Counsel at no cost to the Soldier.

7. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

//NOTHING FOLLOWS//