

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230005719

APPLICANT REQUESTS: in effect, to have a medical evaluation board (MEB) and a physical evaluation board (PEB) instead of being transferred to the Retired Reserve.

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

- DD Form 293 (Application for the Review of Discharge from Armed Forces of the United States)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 7 May 2008
- DA Form 3349 (Physical Profile), 29 September 2009
- DA Form 3349, 3 October 2009
- Memorandum State Surgeon's Recommendation, 13 November 2011
- DA Form 2173 (Statement of Medical Examination and Duty Status), 18 April 2012
- Memorandum Line of Duty (LOD), 11 July 2012
- Email Suspense Date for Packet, 13 December 2012
- Memorandum Returned Medical Evaluation Board (MEB) Packet, 13 December 2012
- Letter from Department of Veterans Affairs (VA), 5 February 2013
- Memorandum for Record Justification for Missing Documentation, 6 March 2013
- Letters from VA, 23 May 2013, 12 August 2019, and 15 November 2022
- Self-Authored Statement, 17 Feb 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in her application and self-authored statement:

a. Her discharge should be changed due to the fact that she had a 90 percent service connected disability.

b. The State Surgeon recommended to the Deputy Stat Surgeon, Colonel (COL) [REDACTED] that the applicant go to a disability board. The applicant was forced to struggle to stay in the service although she was gravely ill.

c. She became 100% service-connected and the Deputy State Surgeon took no action. COL [REDACTED] failed to counsel the applicant and her commander on what needed to be done. The COL kept all the recommendations in the applicant's file and even lied to the medical board when they requested additional documents.

d. The applicant deployed to Iraq from April 2007 to May 2008. In January 2007, the President announced a controversial plan to temporarily increase the number of U.S. troops there by more than 20,000 an effort that became known as the surge. Despite heavy casualties initially, 2007 was the deadliest year for U.S. forces since 2004.

e. During training to go to Iraq, while in a simulator Humvee, two Soldiers fell on the applicant while they were upside down, during a vehicle rollover. The Soldiers had on their gear, 300 pounds of flak vest, and the applicant had on her gear. Her left arm was damaged and she was experiencing slight back pain. Upon her arrival in Iraq, their mission was to guard the burn pit. The Pact Act was just approved by Congress, and the open-air burn pit is known as the modern day Agent Orange of Vietnam.

f. Upon her arrival home, around November 2008, she started to feel sick. In 2010, she started to experience distress in her body. For instance, if her scalp itched, she started to panic. If she stopped at a stop light and there were cars in front and back of her, she would go into a panic. She started going to the doctors and the VA but everyone told her it was stress from the combat zone. She was told they would monitor it. When she flew, she felt like she was going to die in an enclosed area, the elevators were the same. In 2011, she suffered the same way.

g. In 2012, the symptoms escalated but her heart rate was high and her hair was falling out. She was bald on her head, she could not sleep, and she was a walking zombie. She had shivers, weak muscles, and pain in her joints. She was off-balanced, her brain could not function like normal, and she had a hard time remembering ordinary things. She was 39 years of age so they thought it might be menopause. In 2013, she was experiencing the same symptoms. By this time, they were escalating to daily occurrences and she spent every night in the emergency room. By day, she was in some random doctor's office.

h. In 2014 she was at death's door. Her heart rate was at 148 and above, her blood pressure was super high, and she lost over 70 pounds. She saw Drs [REDACTED] and [REDACTED] over and over along with other doctors. She wanted to commit suicide and with the help of Dr. [REDACTED] she started to seek therapy. Dr. [REDACTED] suggested the applicant go to [REDACTED] and there she was diagnosed with Graves' disease. By then the VA had given her a 90

percent rating and in 2018 a 100% disability rating. She was also diagnosed with psychiatric depression disorder and post-traumatic stress disorder (PTSD).

i. In 2017, she was not retained in the Army National Guard (ARNG) due to performance. She was forced to retire with an honorable discharge not being retained for non-performance. Although she received an honorable discharge, her service-connected disability was the cause of her nonperformance and she cannot get her retirement pay.

j. The applicant continued to go to her monthly drills trying to get her 20 years, meanwhile, she felt like she was going to die. She went to work as a supervisor with TSA and worked for 18 years until June 2019 when they told her because of her service-connected disability, she had to retire based on disability. It got so bad, she went from perfect attendance to being sick all the time. She would leave work and go to the emergency room. She had to even call the ambulance for herself because her husband was working. It was very stressful for her husband because he was a correctional officer who worked a lot of hours. He was adamant she go to the emergency room, when she refused to go.

k. She had a Periodic Health Assessment (PHA), which is a four-part assessment including a self-reported health assessment, record review, mental health review, and a face-to-face or person-to-person consultation with a certified PHA health care provider. She saw Ms. [REDACTED] and Dr. [REDACTED] for behavioral health because, at that point, she had no will to live. She brought every civilian medical documentation to the PHA and to her unit. The PHA saved her life because they found irregularities with her heart. Her unit clerk gave her medical documents to the medical detachment. The state Deputy Surgeon's, who is in charge of the medical detachment, job is to counsel Soldiers and their unit commanders on the Soldier's medical readiness.

l. After losing her job in 2019, due her service connected disability, she started receiving social security. She notified Defense Finance and Accounting Service (DFAS) who oversees payments to Department of Defense servicemembers, employees, vendors, and contractors. She wanted to ensure that her military time was converted to her civilian federal time. She was told by the agent at DFAS that because of her service-connected disability, she should be receiving her retirement pay before the age of 60. She called and spoke to a sergeant first class (SFC) who said DFAS was correct. However, the SFC called the applicant back and stated the code on her retirement orders was incorrect. He also stated she was losing pay because there was a cap of five years to apply for retirement pay after separation from the service, which is already passed.

m. The applicant called the G1 section who was responsible for her retirement orders. The sergeant at G1 stated that COL [REDACTED] had never provided any documents

of disability. The applicant then contacted her unit clerk who suggested the applicant request her medical file, which she did . She found evidence that COL [REDACTED] was negligent and willful for not providing the recommendation options and medical board requirements needed so that her medical disability orders would have been granted. There was one document where the COL even lied and told the medical board the applicant did not provide any additional information. Emails requesting a response from the COL and what the medical board needed went unanswered. The COL also failed to comply with the State Surgeon's recommendation that the applicant go to the disability board the memorandum was in the applicant's medical file with no action taken.

n. The COL also failed to implement strategic direction and execute plans, policies, and resources for the applicant and her commander. The COL offered no care initiatives and programs dedicated to the support, care, or options the applicant could take although the COL had the information from the VA and the State Surgeon. The applicant had to struggle several years and still not get her rightful retirement code. So many months of struggling to stay compliant and COL [REDACTED] did nothing to help her. The COL was insensitive and when the applicant asked her for information, the COL never could tell the answer because she did not know.

o. The applicant just found out the COL was never a registered nurse; she just passed the test. If that is true, the COL was unqualified for all these years. The applicant is now going back and forth to fix her orders and meanwhile she is losing her rightful pay.

p. On 7 March 2023, the applicant requested her behavioral health records from the medical detachment. She got a response from [REDACTED] who stated they did not have any behavioral health records for the applicant. The applicant responded by explaining to [REDACTED] that Ms. [REDACTED] and Dr. [REDACTED] stated all behavioral health documents are sealed and turned over to the medical detachment person in charge. These documents are case-sensitive and must be kept separate from all the information. Ms. [REDACTED] then copied her into the email and she responded she does not have any behavioral health documents for the applicant.

q. The applicant remembers when they deployed Soldiers had other Soldiers' medical documents in their files. If a Soldier had some kind of disease, others knew. COL [REDACTED] had been doing this and getting away with her negligent and malicious behavior for years. There are other Soldiers who have horror stories of their own. The COL is negligent and unprofessionally and literally smirks in your face when you ask her for information. The applicant remembers the COL made the applicant apply for school, pay for her airfare, and register for the school only to tell her she could not go because of her permanent disability, yet the COL did nothing to get the applicant's orders corrected.

r. The COL would tell others she did not care and that Soldiers who have medical issues should be put out of the military. The COL has never served one day in a combat zone, so she would never know the trials and tribulations. The applicant did not want this to continue for other Soldiers.

s. The applicant filed a Congressional and an Inspector General (IG) complaint and she is now seeking legal action against the COL and the Virgin Islands National Guard. For years they have enabled the COL and the cry of Soldiers was left unheard. The applicant wanted to kill herself, during this period, it was the worst time of her life. She could have died and the COL had the solution that could have avoided all of the applicant's pain and suffering. Finally, this situation has caused the applicant additional undue stress, she is fighting her war demons, and she lost her sister to colon cancer on 28 October 2022, her father on 3 December 2022, and her nephew on 19 December 2022.

t. The applicant requested her behavior health record on 7 March 2023, and the COL responded by email that she did not have any records. Yet the COL told COL [REDACTED] that [REDACTED] had them. The applicant went to the Virgin Islands National Guard on 20 March 2023. COL [REDACTED] is very condescending and has been known to falsify other Soldiers' files. The applicant has Soldiers who are willing to tell their stories.

u. Things were so bad for the applicant that she had a bag packed for going to the emergency room. The emergency room takes you into the next morning, so she would take her blanket, books to read, socks, and warm clothing. During annual training in Iowa, she realized her pressure was super high, this was the early stage before her diagnosis. The applicant suffered in silence because she was afraid they would put her out.

v. According to the *Washington Post* "Soldiers have a negative perception of the process for reporting medical issues" said Captain [REDACTED] Deployment Health Assessment Program manager for the Army Reserve. "Overall, there is a reluctance to seek help, which then becomes a barrier for reporting, diagnosing, and seeking medical care. Some Soldiers believe getting help will hinder career advancement and certain kinds of diagnosis or treatment will be reported as the Soldier not being fit for duty." This is true.

3. The applicant provides the following documents:

a. DA Form 3349, dated 29 September 2009, shows the applicant had a temporary profile for heel pain, back pain, wrist pain, anxiety, and panic attacks. The approving authority signed the profile on 5 January 2010 and the unit commander signed the profile on 9 January 2010. DA Form 3349, dated 3 October 2009, changed her profile to

a permanent profile. It was signed by the approving authority on 25 May 2010 and by the unit commander on 14 September 2010.

b. Memorandum subject State Surgeon's Recommendation, dated 13 November 2011 states the applicant had a medical condition of heel pain, pack pain (secondary to cervical disc bulging), wrist pain, anxiety, and panic attacks. After careful review of the applicant's medical record the Surgeon agreed on the permanent profile and recommended she go to the Physical Disability Evaluation System.

c. DA Form 2173 (Statement of Medical Examination and Duty Status), dated 18 April 2012 shows the applicant's injury occurred on 27 May 2007 at Fort Bragg, North Carolina. The details of the accident were while conducting the heat rollover training on 27 May 2007, the simulator was upside down and the gunner's strap broke. He fell on the applicant causing her left arm to be lodged behind the seat. When she got out of the simulator her left arm was swollen and in serious pain. The pain and swelling were so severe, she thought her arm was broken. A volar splint was put on her arm for two weeks. Her left arm up to her back began to give her a numb feeling. She also began to get severe migraines and back pain from running, standing, or sitting too long. A formal LOD was not required and the injury was considered to have been incurred in LOD.

d. Memorandum LOD, dated 11 July 2012 states the applicant's left wrist sprain, contusion, and cervicgia secondary to C6-C7 disc bulge that occurred during Operation Iraqi Freedom was approved in LOD.

e. Emails regarding suspense date for packet states, in pertinent part, on 12 December 2012, the [MEB] packet was being returned because the only recent document addressing the current medical condition provided in the packet was the PHA practitioner note dated 8 September 2012. All civilian and/or military/VA medical documentation from 2011 to present addressing all permanently profiled conditions to include current status, treatment and functional limitations was requested. The suspense date of the packet was 20 November 2012. The entire email chain is available for the Board's consideration.

f. Memorandum subject Returned MEB Packet, dated 13 December 2012, to Major (MAJ) [REDACTED] states the Reserve Components Soldier Medical Support Center had been unable to validate the MEB packet for the applicant for open requests for information. The MEB packet was being returned to the MAJ's attention. The author requested the MAJ work to correct the deficiency. If circumstances had changed or the noted deficiency had been corrected, the packet should be resubmitted and they would work to validate it.

g. Letter from the VA to Reserve Components Soldier Medical Support Center, dated 5 February 2013 states they conducted a research in response to a request dated 1 February 2013 for the applicant. The VA records showed the applicant was service connected for potentially unfitting conditions.

h. Memorandum for Record: Subject: Justification for Missing Documentation, from MAJ [REDACTED] dated 6 March 2013 states the applicant was unable to produce documents from 2012/2013 that indicate the current status, treatment plan, and functional limitations associated with her wrist pain. The applicant stated she had not been seen for the condition since the initial VA evaluation. The applicant was receiving pain medication from the VA for said condition. After a thorough review of the applicant's medical record, it was noted the applicant did not list this condition on her Functional Capacity Certification Form nor did she list the condition of limitation during her 2012 PHA.

i. Letter from the VA, dated 23 May 2013 shows they made a decision on the applicant's request to reopen a previously denied claim for increased service connected compensation. The letter informed the applicant of her monthly entitlement and the reason for the change effective 1 July 2012 was minor child adjustment, change in spouse status, spouse dependency was established, and compensation rating adjustment.

j. Letter from the VA, dated 12 August 2019, shows the applicant had a combined VA rating of 100 percent. A letter from the VA, dated 15 November 2022 was a statement verifying the applicant's service-connected disabilities.

k. A self-authored statement, dated 17 February 2023 regarding her returned MEB, states:

(1) In the letter of memorandum, dated 6 March 2013 from COL [MAJ] [REDACTED] she stated the applicant was unable to produce documents from 2012/2013 that indicated the applicant's current status. She asked the Board to consider the evidence submitted and the letter dated 5 February 2013 from the Reserve Components Soldier Medical Support Center.

(2) The memorandum for COL [REDACTED] was dated 13 December 2012 from the MEB. It was returning the applicant's MEB packet due to deficiency. A string of emails requested civilian and military medical documentation. The emails failed to include the applicant in the correspondence. The COL failed to counsel the applicant on what was needed although the applicant's unit clerk provided every document from the applicant's medical doctor to the COL. In order for the packet to be valid, it needed 17 documents listed on the MEB document checklist. At no time did the COL request documentation to support the request. The request had a suspense date of five days.

(3) In January 2010, the applicant was issued a permanent profile that listed her as nondeployable and outlined her limitations. On 13 November 2011, a memorandum from the State Surgeon recommended the applicant go to the Physical Disability Evaluation System. That never happened and the applicant was never counseled on what needed to get done.

(4) A memorandum, dated 11 July 2012 approved the applicant's LOD for the bulging disc in her back and her left arm injury due to an accident in the heat roll over training.

(5) The applicant provided documents listing her service-connected and disability percentage by the years. Those years were some of the hardest years of her life. Her first mission in Iraq was guarding the burn pit and visiting the emergency room every night with a heart rate of 148 and up was the worse feeling anyone could have. She is asking that this is rectified amicably without it getting to the litigation stage.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the ARNG on 2 December 1991. DA Forms 4836 (Oath of Extension of Enlistment or Reenlistment) show she remained in the ARNG.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant, as a member of the ARNG, entered active duty on 4 April 2007 and was honorably released from active duty on 7 May 2008 due to the completion of her required active service. She completed 1 year, 1 month and 4 days of net active service this period. She had service in Iraq from 22 July 2007 through 25 March 2008.

c. DA Form 3349, dated 3 October 2009, the applicant's permanent profile for heel pain, back pain, wrist pain, anxiety, and panic attacks. Her PULHES was 133122. She was not able to move with a fighting load at least 2 miles, construct an individual fighting position, do three to five second rushed under direct and indirect fire, and she was not healthy without any medical condition that prevented deployment.

d. Memorandum subject Selection for Retention, dated 26 May 2016 states the 2016 Qualitative Retention Board (QRB) had recommended the applicant for retention for a period of one year. As a result of the approval, the applicant's records would go before the 2017 QRB. The reason for the recommendation was the applicant's deficiency in meeting established standards. This was an opportunity for the applicant to remedy any shortcomings hampering her from being the best she could be.

e. Memorandum subject Nonselection for Continued Unit Participation, dated



16 March 2017 states, while the applicant was a fully qualified Soldier of the ARNG regulation provided only the best qualified be retained in units. The applicant was considered for qualitative retention and was not selected. Accordingly, no later than 31 December 2017, the applicant would be discharged from the [REDACTED] ARNG.

f. NGB Form 22 (National Guard Report of Separation and Record of Service) shows the applicant was honorably transferred to the Retired Reserve on 31 December 2017. She had 22 years total service for retired pay. The authority and reason for separation was not selected for retention by a QRB and the applicant elected to be reassigned to the Retired Reserve.

g. The applicant's service record was void of medical documentation or any evidence she was approved and received a PEB.

5. Based on the applicant's assertion she suffers from PTSD and other medical issues at the time of discharge, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

#### 6. 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 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 in essence requesting referral to the Disability Evaluation System (DES). She states:

"My Discharged should be changed due to the fact I was 90% service connected. The State Surgeon Recommended to the Deputy State Surgeon Co [REDACTED] that I go to a Disability Board. I was forced to struggle to stay in service although I was gravely ill. I became 100% service-connected and the Deputy State Surgeon took no action. Col [REDACTED] she Failed to counsel me and my Commander on what needed to be done. She kept all the recommendations in my files and even lied to the Medical Board when they requested additional documents."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her National Guard Report of Separation and Record of

Service (NGB Form 22) shows she entered the Army National Guard on 2 December 1991 and was honorably discharged from the [REDACTED] Army National Guard (VIARNG) on 31 December 2017 under provisions provided in paragraph 6-36r of NGR 600-200, Enlisted Personnel Management (31 July 2009): Not selected for retention by a qualitative retention board (See AR 135-205, chapter 2) and the Soldier elects to be reassigned to the USAR Control Group (Reinforcement) or the Retired Reserve. It shows she had 22 years, 0 months, and 0 days for retired pay.

d. A DD 214 shows the applicant was mobilized in support of Operation Iraqi Freedom from 4 April 2007 thru 7 May 2008 with Service in Kuwait from 3 July 2007 thru 21 July 2007 and in Iraq from 22 July 2007 thru 25 March 2008. The EMR shows she had left wrist radiographs obtained 27 May 2007 to rule out fracture. The radiologist reported:

“Positioning is suboptimal. There is possible volar displacement of the distal pronator fat pad and some widening of the distal radioulnar joint. No discernible fracture. Recommend repeat examination if patient remains symptomatic. This could represent a ligamentous injury of the distal radioulnar joint.

e. There was no corresponding clinical encounter in the EMR. Encounters in September and November of 2007 show she had been treated for a wrist sprain with a cast or brace. From the 30 November 2007 encounter:

“Pt [patient] states MOI [mechanism of injury] = during roll-over training gunner fell and crushed her hand between Kevlar and vehicle. Pt states that she was in a cast for one month.

- Pain in the right wrist joint(s), when actively moved, and when passively moved but does not improve during exercise.
- Wrist joint pain increased by bending the wrist down, by bending the wrist up, and by lifting an object.

This patient was seen at the Phipps TMC [troop medical clinic] several weeks ago for a follow-up from Ft Bragg for a left wrist sprain. The patient was given a wrist splint for isolation and protection while working. She states that she was doing better until she had to take a PT test [Army Physical Fitness Test or APFT] in which she had to do push-ups. She states that the push-ups reinjured her wrist.

Objective [Examination]

Left wrist: FPRM [full passive range of motion], pain elicited with full flexion and extension. There is no soft tissue swelling or ecchymosis.

### 1. WRIST SPRAIN - LEFT

Comments: This patient was told to continue using her wrist splint while working. She was also given wrist rehab exercises to perform.”

f. The applicant was not seen for this issue again during this mobilization, and despite establishing care at with the Veterans Hospital Administration (VHA) upon her return where she was evaluated and treated for a number of conditions, this issue was not addressed until she underwent a VA Compensation and Pension examination on 28 July 2009 in which again there was again no mention of a cervical spine injury cervical spine related neurological symptoms:

“39-year-old female with complaining of left arm and wrist pain since injury during heat rollover training at Fort Bragg, NC May 2007. She states this training consisted of being in a HMMV {sic} [High Mobility Multipurpose Wheeled Vehicle or HMMWV] simulator (training the soldiers on how to brace selves during a rollover of a HMMV vehicle. The gunner (which was above her) strap broke doing the roll and she landed on Ms. [Applicant] with her body weight falling on her left arm (she had full gear on) and the gunner's Kevlar hit her on her wrist. She states she had immediate pain and swelling of her left arm. She was taken to the hospital where x-rays were done, these were negative but a cast was put on for 2 weeks. The swelling was down after those 2 weeks but she has had problems with her left arm specifically her left elbow and wrist since then. She states pain becomes worse with over exertion and/or with cold/rainy weather. Pain is described as throbbing and tingling sensation in elbow and wrist.”

g. There was no mention of a cervical injury or cervical spine related issues in either the September or November 2007 encounter and no contemporaneous cervical radiographs in the EMR. The first mention of a cervical spine related issue is in a 26 May 2009 VHA encounter at which time she presented with “headaches and left arm tingling sensation and numbness since she had the accident while active on duty ... Now she states progressive arm and hand numbness with tingling sensation, plus headache and neck pain.” There is no evidence she had returned to a qualified duty status after her 2007-2008 mobilization.

h. A cervical MRI obtained on 3 June 2009 was reported normal expect at the C-C7 level: “There is a focal bulge of the central and right paracentral aspect of the C6-C7 disk that indents the anterior thecal sac. There is slight central spinal stenosis at the C6-C7 level. At the C6-C7 level, there is no evidence of neural foraminal narrowing.” Given her complaint of left arm tingling and examination, this finding was benign and the right paracentral bulge was not the cause of her left army symptoms. The applicant was place on a duty limiting permanent physical profile for “Heel pain, back pain, wrist pain”

on 25 May 2010. The profile also shows she had been diagnosed with non-duty limiting “anxiety, panic attacks.”

i. In a 13 November 2011 memorandum, the [REDACTED] ARNG State Surgeon recommended she be referred to the “Physical Disability Evaluation System”, the old name for the DES which was no longer in use and had not been so for some time.

j. In the spring of 2012, the applicant attempted to obtain a Line of Duty for her cervical spine and left wrist pain. The details of the accident as stated on the 18 April 2012 Statement of Medical Examination and Duty Status:

“While conducting the heat rollover training on 27 May 2007 at 1230, the simulator was upside down and the gunner's strap broke. He fell on SPC [Applicant] causing her left arm to be lodged behind the seat. When she got out the simulator, her left arm was swollen and in serious pain. The pain and swelling was {sic} so severe that she thought her arm was broken. A volar splint was put on her arm for two weeks. Her left arm up to her back began to give her a numb feeling. She also began to get severe migraines and back pain from running, standing or sitting too long.”

k. This line of duty was later approved by the National Guard Bureau on 11 July 2012:

“Enclosed is a DA Form 2173 on SPC Coggins-John for Left Wrist Sprain, Contusion and Cervicalgia Secondary to C6-C7 Disc Bulge that occurred during Operation Iraqi Freedom is approved "IN LINE OF DUTY".

l. The medical documentation used to support this conclusion was in MEDCHART and placed in ACTS. It does not support the cervical spine affirmative line of duty finding. The 27 May 2007 Emergency Care & Treatment encounter from the Womack Army Medical Center at Ft. Bragg, NC, does not mention any injury to or complaints related to her cervical spine. This encounter in total:

“37-year-old female to clinic complaining of left wrist pain and swelling following accidental trauma when other SM [Service Member] landed on back and wrist. Pain radiates up arm. Denies extremity numbness.

Objective: 37-year-old female in no acute distress (+) swelling & tenderness over dorsal wrist, decreased ROM [range of motion] secondary to pain on flexion, decreased grip strength, neurovascularly intact, no deformity.  
Xray – No acute fracture

Assessment/Diagnosis

Left wrist/back pain – Contusion.

Instructions to Patient:

- (1) Apply ice to affected area
- (2) Wear Splint
- (3) Naproxen 500mg #60 1 twice a day with meals  
Percocet #30 1 every 4-6 hours.”

m. The applicant's case was sent to the Reserve Component Soldier Medical Management Center (RC SMSC) for processing into IDES in 2012. On 31 October 2012, she and her medical care coordinator in her unit were informed that her via email that her packet was missing several of the 17 documents required by MEDCOM for a case to be entered into IDES. The items, called RFIs (request for information), included medical documentation addressing her profiled medical conditions and a completed Commander's Performance and Functions Statement (DA Form 7652).

n. They received a second email informing them the RFI's had not been received as of 19 November 2012. The [REDACTED] ARNG medical care coordinator requested an extension which because she had previously been granted one extension, this request was denied. Despite that, the RC SMSC held the packet until 13 December 2012 for missing RFI's. From the 13 December 2012 memorandum which accompanied the returned packet.

“1. The Reserve Components Soldier Medical Support Center (RC SMSC) has been unable to validate the MEB packet for SPC [Applicant] (XXXX) for the following reason:

Open RFI's (See attached documents)

2. The MEB packet is being returned to your attention. Please work to correct the deficiency. If circumstances have changed or the above noted deficiency has been corrected, the packet should be re-submitted and we will work to validate it.

3. Should you have any questions regarding this letter or wish to contact the RC SMSC call 1-877-891-3281, select #1 for main menu, #3 for Reserve Components Soldier Medical Support Center. The fax number is 1-727-563-3958, and the email address is [REDACTED]. The hours of operation are Monday through Friday from 0800 to 1700 Eastern Time.”

o. A 6 March 2013 Memorandum for Record prepared by the [REDACTED] ARNG Deputy State Surgeon shows there continued to be a problem with obtaining accurate documentation:

1. SGT [Applicant] was unable to produce documents from 2012/2013 that indicate the current status, treatment plan and functional limitations associated with the wrist pain. The Soldier stated that she has not been seen for the condition since the initial VA evaluation. Soldier is receiving pain medication from VA for said condition.

2. After a thorough review of SM medical record, it is noted that SM did not list this condition on her Functional Capacity Certification Form (CrF507) nor did the SM list this condition or limitation during her 2012 Periodic Health Assessment under the section: Current Health.”

p. The Adjutant General (TAG) for the [REDACTED] National Guard informed her in a 26 May 2016 memorandum that:

“The 2016 Qualitative Retention Board (QRB) has recommended you for retention for a period of one year. I have approved the recommendation of the board. As a result of this approval, your records will go before the 2017 Qualitative Retention Board.

The reason for this recommendation is your deficiency in meeting established standards. This is an opportunity for you to remedy any shortcomings that may be hampering you from being the best you can be. I have provided the corresponding regulation so that you can fully understand what is required of you for success.”

q. The nature of the deficiency was not identified nor found in the supporting documents or iPERMS. It does not appear to have been related to body composition or APFT failures. The last Army Physical Fitness Test Scorecard (DA Form 705) available for review shows she met body composition standards and passed her most recent APFT on 7 November 2015 by successfully completing the sit-up and 2.5 mile walk events.

r. On 16 March 2017, TAG informed her the QRB had not selected her for retention and she would be discharged no later than 31 December 2017 with the option to either transfer as a Reserve of the Army to Control Group in the Individual Ready Reserve, or transferred to the Retired Reserve, of the U.S. Army Reserve. Orders published by Joint Force Headquarters [REDACTED] National Guard show she was transferred to the Retired Reserve effective 31 December 2017.

s. The only duty related condition for which she would have been eligible for referral to IDES appears to have been the left wrist injury, but this appears to have not affected her ability to perform or complete a valid APFT as required.

t. Her final two non-commissioned officer evaluation reports (NCOERs) were annuals cover 11 October 2014 thru 9 October 2016 show he was successful in all rated area and rated as a fully capable NCO.

u. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

v. There is insufficient probative evidence the applicant left wrist condition or other duty incurred medical condition would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

w. Review of her records in JLV shows he has been awarded multiple VA service-connected disability ratings, including rating related to her cervical spine and left wrist injury. However, the DES compensates an individual only for 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 Department of Veterans Affairs and executed under a different set of laws.

x. It is the opinion of the ARBA Medical Advisor that a referral of her case to the DES is not warranted.

#### 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 insufficient probative evidence the applicant left wrist condition or other duty incurred medical

condition would have failed the medical retention standards. The opine noted there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

2. The Board agreed there is insufficient evidence for referral of the applicant's cases to DES based on the preponderance of evidence and the medical opine that would support the applicant's contentions to have a medical evaluation board (MEB) and a physical evaluation board (PEB) instead of being transferred to the Retired Reserve. Based on this, the Board denied relief.

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 correction of the records of the individual concerned.

3/25/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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

2. Title 10, USC, 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 Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

3. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes 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. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty 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 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. Service members 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 and length of military service. Individuals who are "separated" receive a onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Title 10, USC, 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, USC, 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 percent.

5. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.

6. AR 135-180 (Retirement for Non-Regular Service) implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS) or the U.S. Army Reserve (USAR).

a. Paragraph 2-2 (Basic qualifying service requirements) states, to be eligible for retired pay at or after the age (60 years of age) specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following: (1) A minimum of 20 years of qualifying service computed under Title 10, USC, section 12732; or, (2) Fifteen (15) years of qualifying service, and less than 20, computed under Title 10, USC, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in 10 USC 12731b(b) exist.

b. Paragraph 2-3 (Other service requirements) states in pertinent part, additional Reserve Component (RC) service requirements include — (1) For Soldiers who completed the years of qualifying service on or after 5 October 1994, but before 25 April 2005, the last 6 years of qualifying service must have been in a component other than a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve. (2) For Soldiers who completed the years of qualifying service on or after 25 April 2005, there is no minimum RC service requirement. (3) The service required in paragraphs 2–3a(1) and 2–3a(2) do not need to be continuous years of qualifying service. (4) Any period of service as a member of a regular component between periods of Reserve service counted toward the 8 or 6 years requirement will be included in the determination of the Soldier's years of qualifying service in paragraph 2–2 toward eligibility for non-regular retired pay, but will not count toward the last 8 or 6 years. Any Reserve service served in conjunction with regular service will not count toward the last 8 or 6 years (that is, partial year credit). An applicant must (1) not be entitled to retired pay from the Armed Forces under any other provision of law; (2) not have elected to receive disability severance pay in lieu of non-regular retired pay. Reserve personnel involuntarily relieved from active service who are not eligible for retired pay at time of release, but who are paid readjustment pay are eligible to receive retired pay under this regulation provided they are otherwise qualified at a later date; (3) not be a person who is convicted of an offense under the Uniform Code of Military Justice (Title 10, USC, Chapter 47) and whose sentence includes death; or is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal, because Title 10, USC, section 12740 provides that such persons are not eligible for non-regular retired pay.

c. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter)) states, (1) Under Title 10, USC, section 12731a RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185 or National Guard Regulation (NGR) 680–2. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by: (a) HRC for all USAR Soldiers except for those who are within 2 years of qualifying for an active duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC. (b) The State Adjutant General (Military Personnel Management Office (MPMO/G1) for all Army National Guard (ARNG) Soldiers serving in an active status in the State, where the eligible Soldier was assigned at the time they become eligible. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format shown in NGR 680–2. (2) After a Soldier has been notified of their eligibility for retired pay for non-regular service, the Soldier's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation,

misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation of the individual concerned. However, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date they are granted retired pay.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency

grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

10. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//