

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20230007195

APPLICANT REQUESTS: reconsideration of her prior request for a change in her narrative reason for separation from active duty training (ADT) and [REDACTED] Army National Guard ([REDACTED] ARNG).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 5181-R (Screening Note of Acute Medical Care)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 3349 (Physical Profile)
- Notification of Medical Disqualification for Retention memorandum
- NGB Form 22 (Report of Separation and Record of Service)
- Board of Veteran's Appeals (BoVA) decision
- Department of Veterans Affairs (VA) Benefits letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190006956 on 27 January 2022.
2. The applicant states in 2005, she was deemed to be "medically unfit for retention" due to migraines and asthma. She was medically discharged from the Army National Guard. Prior to her military service, she never suffered from migraines. She was later rated for migraines at 50%. She asks that her NGB Form 22 be updated to reflect "discharge due to disability" instead of "medically unfit for retention". She is requesting the correction as the current verbiage of "medically unfit for retention" is misleading and prevents her from obtaining certain military benefits.
3. The applicant provides the above listed documents considered by the ABCMR in Docket Number AR20190006956 on 27 January 2022.

- DA Form 5181-R, 3 July 2001, showing she received medical treatment for knee, ankle, side pain, and migraine headaches
- DD Form 214, for the service period ending 20 August 2001
- DA Form 3349, 12 August 2005 – physical profile due to migraines
- Notification of Medical Disqualification for Retention, 6 September 2005
- NGB Form 22, for service period ending 30 November 2005
- BoVA Decision, 28 July 2016, granted service-connection for a left knee and right ankle disability and migraine headaches
- VA letter, 6 July 2021, assigned a combined service connected rating of 60% with monthly compensation

4. A review of the applicant's service record shows:

a. She enlisted in the ■■■ ARNG on 20 January 2000 for 8 years.

b. She entered active duty on 18 June 2001. She was honorably released from active duty on 20 August 2001. Her DD Form 214 shows she completed 2 months and 3 days of active service and was awarded military occupational specialty (MOS) 62B (Construction Equipment Repairer).

c. A DA Form 3349, dated 12 August 2005, shows she was assigned a permanent profile for asthma and migraines, with restrictions of Army Physical Fitness Test, no active duty of any type, no field duty, and no strenuous stressful activity of any type. The form did not indicate she needed a Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB).

d. In the Medical Disqualifying for Retention memorandum, dated 6 September 2005, a ■■■ ARNG medical officer, stated ■■■ ARNG MOS/Medical Retention Board Packet for the applicant had been reviewed. The review revealed she no longer met the Army medical standards for retention based on her current medical condition(s) of migraine headaches and asthma, in accordance with Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3.

e. On 6 September 2005, the applicant's intermediate commander notified the applicant that she no longer met Army medical standards for retention based on her current medical conditions. He advised the applicant of her rights.

f. On 7 November 2005, the applicant submitted a personal statement which indicated she elected to remain in the ■■■ ARNG until her expiration of term of service date of 21 January 2006, less than 3 months from the notification date.

g. On 30 November 2005, her discharge from the ■■■ ARNG was approved.

h. She was honorably discharged from the [REDACTED] ARNG, in pay grade E-3, on 30 November 2005, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26j(1), by reason of being Medically Unfit for Retention. Her NGB Form 22 shows she completed 5 years, 10 months, and 11 days of net service this period.

5. On 27 January 2022, the ABCMR denied the applicant's request for a change of the narrative reason for separation. The Board concurred with the medical advisory finding there was no probative evidence that her asthma, which was not service connected by the VBA, was caused or permanently aggravated by her military service. The VA will service connect a condition when the Veteran has the onset of symptoms during a period of service with little regard to the length of service during which the condition presented or the underlying etiology/pathology. 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. The Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's narrative reason for separation.

6. By regulation (NGR 600-200), action will be taken to separate a member for failure to meet medical procurement or retention standards in accordance with Army Regulation 40-501.

7. By regulation (AR 40-501), medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board. Once a determination of physical unfitness is made, disabilities are rated using the VA schedule of disability rating.

8. By regulation (AR 635-40), 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. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

a. The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

b. The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

9. 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.

10. Title 38, United States 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.

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

## 12. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting reconsideration of their prior denial of a referral to the Disability Evaluation System (DES) and a medical retirement. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her Report of Separation and Record of Service (NGB Form 22) shows the former drilling Guardsman entered the Army National Guard on 20 January 2000 and discharged from [REDACTED] Army National Guard ([REDACTED] ARNG) on 30 November 2005, having 5 years, 10 months, and 11 days of total service for retired pay. It shows she was discharged under authority provided in paragraph 8-

26j(1) of NGR-200, Enlisted Personnel Management: "Medically unfit for retention per AR 40-501, chapter 3." This paragraph is applied to drilling Guardsmen who have a non-duty related medical condition which fails the medical retention standards of AR 40-501, Standards of Medical Fitness, and is determined to be medically disqualifying for continued service.

c. This request was previously denied by the ABCMR on 27 January 2022 (AR20190006956). 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.

d. No new probative evidence was submitted with the application.

e. From the prior Medical Advisory:

f. On 12 August 2005, the applicant was placed on a permanent duty limiting physical profile for asthma and migraines.

g. In a 6 September 2005 memorandum from the J1 of the [REDACTED] ARNG, the applicant was notified that she no longer met Army medical standards for retention based on his current medical conditions of migraine headaches and asthma." The applicant elected to be discharged from the Army National Guard and as a reserve of the Army. She requested to be retained until reaching her current ETS of 21 January 2006.

h. Review of the records show she has a Veterans Benefits Administration (VBA) service-connected disability rating for migraine headaches based on the applicant having experienced a migraine headache in July 2001 during a period of active duty for training. However, there is no probative evidence that this condition or her asthma, which is not service connected by the VBA, were caused or permanently aggravated by her military service.

i. The requirements for an affirmative Army line of duty determination vice a VBA service connection determination, though similar, are different in several respects and neither entity is required to observe the findings of the other. The VA will service connect a condition when the Veteran has the onset of symptoms during a period of service with little regard to the length of service during which the condition presented or the underlying etiology/pathology. When looking at diseases presenting during a call to active service of less than 30 days, Army regulations require there be a cause-and-effect relationship between the Soldier's service and the onset or permanent service

aggravation of the condition in order for it to be determined to be an in the line of duty condition.

j. The applicant states and review of her medical records in JLV show the VBA has awarded her several additional service-connected disability ratings. However, the DES compensates an individual only for service incurred disability(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. These roles and authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

k. It remains the opinion of the Agency medical advisor that a referral of her to the DES is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the available documentation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s narrative reason for separation. The Board found that the requested relief is already properly annotated on the applicant’s NGB Form 22 (block 23); therefore, no further board correction is warranted.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The 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.

3/6/2025


  
 CHAIRPERSON
   


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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR if the decision has not previously been reconsidered. The applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. 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 Army Regulation 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 Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an 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 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.

3. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities. VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

4. Army Regulation 635-40 (Physical 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. Paragraph 3-1, provides that 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 member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

b. Paragraph 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose



service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

c. Paragraph 3-2b(1), provides that disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

d. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

6. National Guard Regulation 600-200 (Enlisted Personnel Management), states action will be taken to separate a member for failure to meet medical procurement or retention standards in accordance with Army Regulation 40-501.

//NOTHING FOLLOWS//