IN THE CASE OF: [redacted]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230007357

APPLICANT REQUESTS: in effect -

a. correction of the DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show:

- her condition of Lyme disease was duty related, it occurred in the line of duty, and it was and compensable
- she received a combined disability rating of 75 percent (%)

b. placement on the Permanent Disability Retired List (PDRL)

c. award and payment of disability retired pay or any other benefits to which she is entitled, retroactive to 18 November 2022

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief (43 pages)
- Orders 7150020, 3 May 2017
- Orders 188-314, 7 July 2017
- Orders 345-1106, 11 December 2017
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 December 2017
- Department of Veterans Affairs (VA) rating decision letter, 13 August 2021
- DA Form 3349 (Physical Profile Record), 29 July 2022
- Line of Duty (LOD) Determination, 9 August 2022
- Statement of Understanding and Election of Options Acknowledgement of Notification of Medical Unfitness for Retention, 24 September 2022
- Non-Duty Related Condition(s), Notification of Medical Disqualification, 3 October 2022
- Memorandum Prepared in accordance with NDR Case Format, 4 October 2022
- DA Form 199, 28 October 2022 (copy marked failure to elect)

- Physical Evaluation Board Recommendation for Non-Duty Related Case, 28 October 2022
- memorandum, subjected: Failure to submit an election of NDR Informal Physical Evaluation Board (PEB) Proceedings (DA 199), 9 November 2022
- Chronology of [applicant's] IPEB Election
- emails (1 November 2022 - 27 February 2023)
- DD Form 199, 28 October 2022 (copy with elections)
- Orders 0004119212.00, 2 March 2023
- medical records (25 pages)
- excerpts from the below publications and/or studies:

    - Magri et al., Lyme Disease Knowledge, Beliefs and Practices of New Hampshire Primary Care Physicians, Journal of the American Board of Family Practitioners, Vol. 15 (2002)
    - Wormser et al., The Clinical Assessment, Treatment, and Prevention of Lyme Disease, Human Granulocytic Anaplasmosis, and Babesiosis: Clinical Practice Guidelines by the Infectious Diseases Society of America, Clinical Infectious Diseases, Vol. 43 (Nov. 2006)
    - Steere et al., Prospective Study of Serologic Tests for Lyme Disease, Clinical Infectious Diseases (June 2008)
    - Shapiro, Borrelia Burgdorferi (Lyme Disease), Pediatrics in Review, Vol. 35, No. 12 (Dec. 2014)
    - Rebman et al., The Clinical, Symptom, and Quality-of-Life Characterization of a Well-Defined Group of Patients with Posttreatment Lyme Disease Syndrome, Frontiers in Medicine, Vol. 4, Art. 224 (Dec. 2017)
    - Dessau et al., To test or not to test? Laboratory support for the diagnosis of Lyme borreliosis: a position paper of ESGBOR, the ESCMID study group for Lyme borreliosis, Clinical Microbiology and Infection, 24 (2018)
    - Bobe et al., Recent Progress in Lyme Disease and Remaining Challenges, Frontiers in Medicine, Vol.8, Article 666554 (August 2021)

FACTS:

1. Counsel states, in summary:

a. An Informal Physical Evaluation Board (IPEB) determined on 28 October 2022 that the applicant's unfitting condition of Lyme disease was not duty related or incurred in the line of duty and was not compensable because at the time she was diagnosed with this condition she was not in an active duty status for more than 30 days or entitled to base pay. The IPEB decision relied on the determination by the Army Reserve Medical Management Center (ARMMC) that her Lyme disease was not duty related and

required disposition in a non-duty related proceeding. She was medically separated without benefits from the Army Reserve and denied a disability retirement.

b. While undergoing Basic Combat Training (BCT) at Fort Jackson, SC, the applicant was diagnosed on 25 July 2017 with Lyme disease based on her exposure to a tick bite and manifestation of the classic Lyme disease symptom of erythema chronicum migrains rash. The Army Reserve and ARMMC acknowledged that the applicant incurred Lyme disease while on active duty in a Reserve Component Integrated DES Referral Memorandum (IDRM) dated 9 August 2022, stating: While serving on Federally Funded orders from 30 May 2017 to 13 December 2017, the applicant was treated for Lyme's Disease. Medical records indicate that in March 2017 while in Basic Training at Ft. Jackson, SC, the applicant sustained a tick bite. She was diagnosed by a dermatologist with erythema migrans rash that was consistent with Lyme's disease. She continued to follow up on 21, 23, and 25 July 2017; and was treated with a 30-day regimen of doxycycline, indicating that Lyme's disease occurred while the applicant served on active-duty orders greater than 30 days, and/or as a result of service while on active-duty orders greater than 30 days.

c. The applicant met the criteria necessary to require her case be referred to the Integrated Disability Evaluation System (IDES) as a duty related proceeding because her Lyme disease was of lasting significance, was documented during a period of qualified active service of more than 30 days and was connected to a current permanent profiled condition.

d. The ARMMC referred the applicant’s case for a non-duty related disposition and the IPEB determined her case was non-compensable, based on the justification that her clinical diagnosis was not support by a positive laboratory test result. Counsel contends reliance on a positive test result is contrary to accepted medical principle and the Centers for Disease Control and Prevention (CDC). Additionally, Lyme disease testing using urine is not approved by the Food and Drug Administration (FDA). The National Institute of Allergy and Infectious Disease concludes urine cannot be used to accurately diagnose Lyme disease.

e. The applicant gained access to her IPEB findings on 17 November 2022. She sent her elections via email to ARMMC the same day indicating she did not concur and demanded a formal hearing. Her election was rejected as untimely as she did not submit her election by the 7 November 2022 deadline. She was advised to appeal the IPEB decision with the ABCMR.

2. The applicant underwent a medical examination on 22 December 2016 for enlistment. Her DD Form 2807-1 (Report of Medical History) shows she reported she was in good health without significant defect. The corresponding DD Form 2808 (Report

of Medical Examination) shows she was found qualified for service and assigned a physical profile of 111111.

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

3. The applicant enlisted in the Army Reserve on 4 January 2017. She was ordered to initial active duty for training (IADT) effective 30 May 2017 at Fort Jackson, SC. She completed BCT and was transferred to Fort Sam Houston, TX for Advanced Individual Training (AIT) effective 11 August 2017.

4. On 13 December 2017, the applicant was honorably released from active duty and transferred to her reserve unit at Fort Snelling, MN.

5. A Department of Veterans Affairs (VA) rating decision letter, dated 13 August 2021, shows the applicant was granted an evaluation of 100 percent effective 16 March 2021 for Post Treatment Lyme Disease Syndrome (active disease).

6. A DA Form 3349 (Physical Profile Record) shows the applicant was assigned a permanent profile of 311111 for Lyme's disease and hypersomnia (bilateral) on 29 July 2022. It had been determined that the applicant had been treated for this chronic condition and there is sufficient documentation to support this permanent profile.

7. A Line of Duty (LOD) Determination, dated 9 August 2022, states:

a. The applicant had been referred to the Disability Evaluation System (DES) for Lyme's disease and did not have an approved informal LOD or line of duty investigation for this condition.

b. The applicant was treated for Lyme's disease in March 2017 while in BCT at Fort Jackson, SC following a tick bite. She developed a rash on her right leg that spread over most of her body, joint pain, fatigue, and muscle aches. She was diagnosed with erythema migrans rash consistent with Lyme's disease. She attended follow up appointments on 21, 23 and 25 July 2017 and was treated with a 30 day regimen of doxycycline indicating that Lyme disease occurred while she served on active duty orders greater than 30 days. She received a permanent profile on 29 July 2020 for Lyme's disease.

c. The applicant's condition of Lyme's disease is not presumed to have been incurred or aggravated during a qualified duty status grater than 30 days and establishes service connection for DES referral.

d. Review of medical documentation showed the diagnostic test was negative. The treatment facility provider ordered a Borrelia Burgdorferi Ab on 25 July 2017, 28 August 2017, and 11 March 2021; all negative. Without the diagnostic results for urine mycotoxin testing markers, this case cannot be supported for IDRM adjudication.

8. A Statement of Understanding and Election of Options Acknowledgement of Notification of Medical Unfitness for Retention, dated 24 September 2022, shows the applicant acknowledged receipt of the Notification of medical Unfitness for Retention and understood counseling was available to her. She elected referral to the DES for final determination of her medical fitness for retention and/or separation.

9. A memorandum for the applicant, subjected: Non-Duty Related Condition(s), Notification of Medical Disqualification, dated 3 October 2022, shows she was notified she no longer met Army medical standards due to her P3 condition. Per medical records review her condition has been determined to be Non-Duty Related (NDR), did not have an approved LOD, and did not meet IDES referral criteria.

10. A Memorandum Prepared in accordance with NDR Case Format, dated 4 October 2022, shows the applicant served on active duty for more than 30 days from 30 May 2017 to 13 December 2017 and was diagnosed with Lyme disease and idiopathic hypersomnia.

a. The applicant was seen for a possible insect bite to her left posterior thigh, which was itchy, nonpainful, and growing over a 2-3 week period, being 21 July 2017. She was treated with a methylprednisolone injection, triamcinolone ointment and a course of oral clindamycin. The rash continued to enlarge. She denied seeing a tick at the site of the lesion, but she had been in the field training. She was referred to a dermatologist. Her test results for Borrelia Burgdorferi Ab were negative for Lyme but the provider felt her symptoms were consistent with Lyme disease and treated her accordingly. The rash resolved but she had complaints of daily headaches and diffuse joint pains.

b. She started seeing an Integrative Medicine provider on 8 March 2021, stating it had been 3 1/2 years since the onset of systemic systems which never improved after the rash resolved. She was diagnosed with Post Treatment Lyme Disease Syndrome. Laboratory tests were ordered and all returned negative.

c. The provider opined the applicant's tick exposure and infectious transmission occurred during BCT. The evaluator who conducted the applicant's VA examination on 13 July 2021 concluded it was less likely than not that the current Lyme disease

diagnosis was incurred in or caused by military service condition since the current etiology is unknown.

d. Due to these stipulations, the case is to proceed to the NDR-PEB.

11. The applicant's officially recorded, DA Form 199 shows an Informal PEB convened on 28 October 2022, wherein the applicant was found physically unfit and that her case be referred for disposition under Reserve Component Regulations. She was found unfit for:

a. Lyme disease (non-compensable). The applicant first sought treatment for symptoms related to this condition in July 2017. She and her civilian provider believe this condition was caused by an insect bite she was exposed to while attending Basic Training. Ultimately, she never tested positive for Lyme disease while in a duty status or following one. A LOD Determination was completed on 9 August 2022 and was deemed not service connected. Therefore, the condition is not compensable because at the time she was diagnosed with this condition she was not in an Active Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within her available case file that indicates that military service has aggravated the condition.

b. Idiopathic hypersomnia (non-compensable). The applicant first sought treatment for this condition in August 2016. She sought treatment due to nonrestorative sleep and falling asleep while driving. The condition is not compensable because at the time she was diagnosed with this condition she was not in an Active Duty status for more than 30 days or entitled to base pay, and there is no LOD Investigation for this condition. Additionally, there is no evidence within her available case file that indicates that military service has aggravated the condition.

12. A memorandum for the applicant, subjected: Physical Evaluation Board Recommendation for Non-Duty Related Case, dated 28 October 2022, states the PEB had completed its fitness for duty evaluation. She is advised she has six (6) days from receipt to return the election form of the DA Form 199 and if she failed to respond her case would be forward to USAPDA for final processing. USAPA has final authority and would notify her in writing of the final decision.

13. A memorandum, subjected: Failure to submit an election of NDR Informal Physical Evaluation Board (PEB) Proceedings (DA 199), dated 9 November 2022, states the applicant had failed to make an election on her DA Form 199 and provided email traffic with attempts to obtain an election from her.

14. Counsel provides a Chronology of [applicant's] IPEB Election and emails from 1 November 2022 through 27 February 2023. The emails show the following:

a. On 1 November 2022:

(1) At 1416 hours, an email is sent from Army Reserve Medical Management Center (ARMMC) Non-Duty Physical Evaluation Board (ND-PEB), subjected: SUSPENSE: 7 November 2022: Informal DA 199 and NDR Memo to the applicant's military email address, and her Commanding Officer (CO) and Non-Commissioned Officer (NCO). It advises all parties the DA Form 199 was completed and required review and election within 6 days.

(2) At 1418 hours, an email is sent from the ARMMC NDPEB, subjected: SUSPENSE: 7 November 2022: Informal DA 199 and NDR Memo to the applicant's personal email address, and her CO and NCO stating time sensitive PEB documents have been sent to her enterprise email. Due to the sensitive data on the documents, they could not be sent to her civilian email addresses and to contact her unit to retrieve the documents.

(3) At 1517 hours, an email was sent from ARMMC NDPEB subjected: SUSPENSE: 7 November 2022: Informal DA 199 and NDR Memo to the applicant's military email address, and CO and NCO requesting assistant in making the applicant aware of all attachments pertaining to the Informal PEB.

b. On 2 November 2022, the applicant's NCO sent an email stating see the forwarded email, it looks like they did not have your correct email. The email address and subject are missing and it is unknow whom he sent this email.

c. On 9 November 2022, the PEB sent an email subjected: Failure to Elect ----RE: SUSUPENSE: 7 November 22: Informal DA 199 and NDR Memo to the ARMMC NDPEB, the applicant, and her CO and NCO providing the failure to elect memorandum. All parties were advised the case would be forwarded for final processing.

d. On 16 November 2022, an email from ARMMC NDPEB to the applicant states since an election was not receive on her DA Form 199 it was processes as a failure to elect, which is processed the same as a concurrence. An email was sent to her civilian email address advising her she had sensitive documents sent to her enterprise email.

e. On 17 November 2022, the applicant responded to ARMMC NDPEB's email and provided her election. She states she recently got a new Common Access Card (CAC) and had been having issues accessing her email. She states she had not had a chance to speak with counsel but had spoken to counsel about a month prior. The applicant provided a DD Form 199 showing she did not concur and demanded a formal hearing.

f. On 18 November 2022,

(1) At 1107 hours, the applicant emailed ARMMC NDPEB, her CO and NCO to determine if she could stop the failure to elect process and proceed with her elections or what other options were available to her.

(2) At 1243 hours, the applicant emailed CAR and Fort Gordon MEB Counsel providing a copy of her elections and advising of the issue with accessing her military email account to retrieve the documents. She requests information on how she can submit her medical records.

g. On 21 November 2022, ARMMC NDPEB sent an email to the applicant, and her CO and NCO to advise an attempt to pull her case back was pending and she would be notified of the Board decision.

h. The applicant responded to ARMMC NDPEB on 29 November 2022 expressing her thanks.

i. ARMMC NDPEB emailed the applicant and her CO and NCO on 12 January 2023 advising her the Physical Disability Agency (PDA) voted not to reopen her case as there was no good cause to reopen. She was advised finalized documents would be sent to her enterprise account and that she may appeal with the ABCMR.

15. Orders 0004119212.00 show the applicant was honorably discharged effective 9 March 2023.

16. 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.

17. 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, the Army Aeromedical Resource Office (AERO), 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 a reversal of the United States Army Reserve's and the United States Army Physical Disability Agency's determinations that that her Lyme Disease (a blood infection with Borrelia burgdorferi) was not "Not in Line of Duty – Not due to own Misconduct." She states:

> "Contrary to the erroneous decision of an Informal Physical Evaluation Board (IPEB), my unfitting Lyme disease was a compensable disability because it was duty related and incurred in the line of duty as shown by my Army medical records, which document that two Army physicians in July and August 2017, clinically diagnosed me with Lyme disease when I was on active duty for more than 30 days undergoing BCT [Basic Combat Training] at Fort Jackson, SC.
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> Based on this evidence and the lack of any evidence my Lyme disease existed prior to service, the IPEB violated DoDI 1332.18, Appx. 3 to Encl. 3, 17.c.(1), which required the Army to presume that my Lyme disease was incurred in the line of duty, thereby making my disability compensable and making me eligible for a disability retirement."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows the former USAR Soldier entered active duty for Advanced Individual Training (AIT) on 30 May 2017, completed her training, was awarded the military occupational specialty of 68X – Behavioral Health Specialist, and was released from active-duty training on 13 December 2017. Orders published on 2 March 2023 show the applicant was separated from the Army effective 9 March 2023.

d. The applicant is correct: Her Lyme Disease was incurred in the line of duty.

e. The applicant's pre-entrance Report of Medical History and Report of Medical Examination were completed in December 2016. They show she was in good health, without significant medical history or 7onditions.

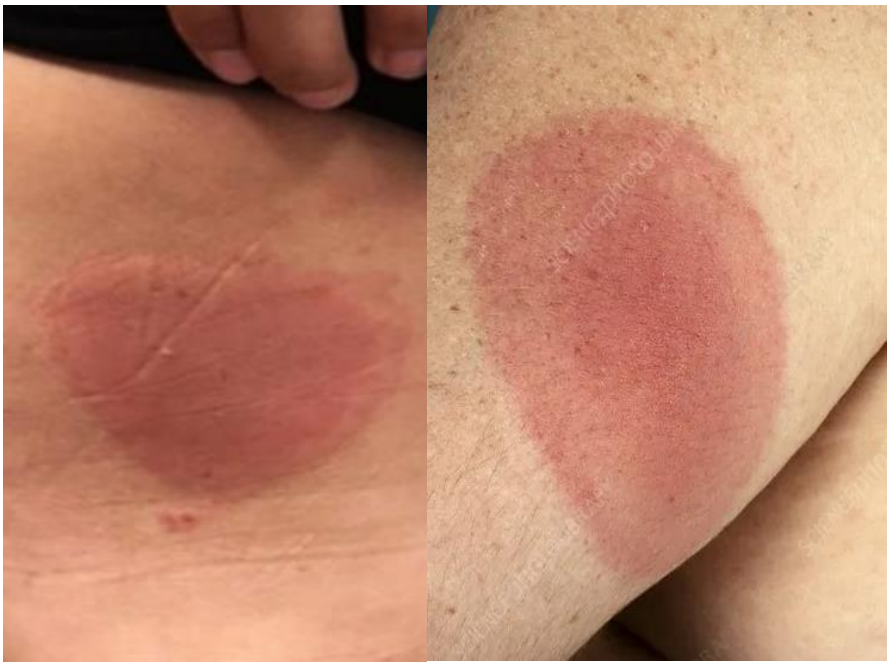
f. Though they came to the wrong conclusion, the United States Army Reserve's 9 August 2009 Line of Duty of Duty Determination nicely lays out the clinical history:

> While serving on Federally Funded orders from 20170530 to 20171213, SGT [Applicant] was treated for Lyme's Disease. Medical records indicate that in March 2017 while in Basic Training at Ft. Jackson, SC, the Soldier sustained a tick bite. She developed a rash on her right leg, that spread over most of her body, joint pain, fatigue and muscle aches. She was diagnosed by a

Dermatologist with erythema migrans rash that was consistent with Lyme's Disease.

The Soldier continued to follow up on 20170721, 20170723, and 20170725; and was treated with a 30-day regimen of doxycycline, indicating that Lyme's Disease occurred while the Soldier served on active-duty orders greater than 30 days, and/or as a result of service while on active-duty orders greater than 30 days. SGT Moe received a permanent profile on 20220729 for Lyme's Disease.

g. The provider who diagnosed the applicant with Lyme Disease included in an encounter a photograph of the classic erythema migrans rash, the most common early sign of Lyme Disease:



The image on the left is the applicant and that on the right is a stock photograph from the Science Photo Library [redacted]

h. Despite the applicant's clinical diagnosis of Lyme Disease by two physicians, the USAR did a 180º turn and declared her disease had not been incurred in the line of duty because the insensitive antibody test, one with a 30-50% false negative rate, i.e., the patient has the disease but the test is negative, was negative:

"During the review of the medical documentation provided, the diagnostic test to provide Lyme Disease as a diagnosis for the Service Members rash and

associated symptoms were negative. The treatment facility provider ordered a Borrelia burgdorferi Ab on July 25, 2017 Aug 28, 2017.J and March 11, 2021 all negative.

i. Lyme Disease as described on the lymedisease.org website:

"Lyme disease is a clinical diagnosis based on a medical history, symptoms, and exposure to ticks. Because the typical Lyme disease diagnostic tests are so insensitive, a negative test result does not mean a patient does not have Lyme Disease. There are many reasons why someone who actually has Lyme may have a negative test result. There may not have been time for antibodies to develop; the immune system may be suppressed; or the person may be infected with a strain the test doesn't measure.

Lyme disease is known to inhibit the immune system and 20-30% of patients have falsely negative antibody tests. [redacted]

j. From the Columbia University Irving Medical Center's website:

"Diagnosis of Lyme disease is made through a clinical decision-making process that includes a medical history, physical exam, review of past diagnostic tests and consultations, and results from newly ordered tests. In early Lyme disease, one can make the diagnosis of Lyme disease with near 100% certainty when the expanding red rash is present.

When faced with a patient with an expanding red rash from a Lyme-endemic region, physicians should draw the conclusion that this is most likely an erythema migrans Lyme rash and start antibiotic treatment immediately; they should not wait to see the results of a blood test, as in early Lyme disease the test is negative 50-65% of the time. Why? Because it can take two to three weeks before the antibodies develop." [redacted]

k. And from the paper "Current Guidelines, Common Clinical Pitfalls, and Future Directions for Laboratory Diagnosis of Lyme Disease, United States:"

"Patients with an erythema migrans lesion and epidemiologic risk can receive a diagnosis without laboratory testing. For all other patients, laboratory testing is necessary to confirm the diagnosis, but proper interpretation depends on symptoms and timing of illness.

> The recommended laboratory test in the United States is 2-tiered serologic analysis consisting of an enzyme-linked immunoassay or immunofluorescence assay, followed by reflexive immunoblotting. Sensitivity of 2-tiered testing is low (30%–40%) during early infection while the antibody response is developing (window period). For disseminated Lyme disease, sensitivity is 70%–100%
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> (Moore A, Nelson C, Molins C, Mead P, Schriefer M. Current Guidelines, Common Clinical Pitfalls, and Future Directions for Laboratory Diagnosis of Lyme Disease, United States. Emerg Infect Dis. 2016 Jul;22(7):1169–77.)"

l. Having been placed on a duty-limiting permanent physical profile for Lyme Disease on 29 July 2022, the applicant elected a non-duty related physical evaluation board as her organization had errantly determined her condition had not been incurred in the line of duty.

m. On 28 October 2022, the informal PEB determined her Idiopathic Hypersomnia and Lyme Disease were unfitting conditions for continued military service and that both had not been incurred in the line of duty and therefore were non-compensatory: For the Idiopathic hypersomnia, they noted the onset of the condition was prior to her entering the Army in 2017: "The Soldier first sought treatment for this condition in August 2016."

n. For her Lyme disease, they carried over the errant finding of the USAR:

> "The Soldier first sought treatment for symptoms related to this condition in July 2017. The Soldier and her civilian provider believe this condition was caused by an insect bite the Soldier was exposed to while attending Basic Training. Ultimately, the Soldier never tested positive for Lyme disease while in a duty status or following one."

o. The tests for Lyme Disease have a high false negative rate and the diagnosis of this condition, like many, is a clinical diagnosis. The EMR shows the applicant was clinically diagnosed with and treated for Lyme Disease while on active duty by two different providers (Dr. [redacted], a dermatologist, on 26 July 2017; and Dr. [redacted] on 28 August 2017.) That her antibody test remained negative, as it may in roughly 30% of diagnosed cases of Lyme disease, is irrelevant.

p. Paragraph 2-4 of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 March 2019) is titled "Standards applicable to line of duty determinations:"

A Soldier's injury, illness, disease, or death is presumed to have occurred ILD [in line of duty] unless rebutted by the evidence.

(1) Injury, illness, disease, or death proximately caused by the Soldier's misconduct or gross negligence is "not in line of duty-due to own misconduct (NLD–DOM)."

(2) Simple negligence, alone, does not constitute misconduct and is, therefore, still considered to be ILD.

Standard of proof. Unless another regulation or directive, or an instruction of the appointing authority, establishes a different standard, the findings of investigations governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion (such as, by a preponderance of the evidence). The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating factors, which as a whole shows that the fact sought to be proved is more probable than not.

(1) Consider all the evidence.

(a) All direct evidence, that is, evidence based on actual knowledge or observation of witnesses.

(b) All indirect evidence, that is, facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

(c) No distinction will be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than direct evidence (for example, statement of a witness).

(2) Evaluate factors such as a witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and relationship to the matter to be decided.

q. Bringing the specifics into focus on this case:

> "A Soldier's injury, illness, disease, or death is presumed to have occurred ILD [in line of duty] unless rebutted by the evidence (paragraph 2-4a).
>
> To overcome this presumption, i.e., "rebutted by the evidence," "the findings of investigations governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion (such as, by a preponderance of the evidence) (paragraph 2-4b).
>
> In this case, the applicant was clinically diagnosed with and treated for Lyme Disease while on active duty by two different providers.
>
> There was no rebuttal evidence: Negative testing with a test with a known high false negative rate does not rise to the level of evidence.
>
> And consider all the evidence, including all direct evidence, that is, evidence based on actual knowledge or observation of witnesses (paragraph2-4b(1)(a). In this case, it was her two treating physicians.

r. There is no evidence the applicant had Lyme Disease prior to entering active duty in in 2017. Thus, any disease which developed during the period of her Initial Entry Training is presumed to have occurred ILD unless rebutted by evidence. That her antibody test was negative can not and does not outweigh the clinical diagnoses of the two credentialed physicians who were treating her.

s. It is the firm conviction of the ARBA medical advisor the applicant's Lyme Disease was incurred while the applicant was training to serve her country. This affirmative line of determination would make the applicant's unfitting Lyme Disease compensable by the DOD via a permanent retirement for physical disability.

t. In the DES, all conditions, both claimed and referred, are rated using the VA Schedule for Rating Disabilities (VASRD). The VA rates all IDES cases and the PEBs rate legacy cases using the same VASRD.

u. JVL shows the applicant was granted a 100% VA service-connected disability rating for Lyme Disease (Active Disease) effective 16 March 2021. The VASRD for Lyme Disease:

> 6319 Lyme Disease:
>
> As active disease 100
>
> Thereafter rate residuals such as arthritis under the appropriate system

v. The above rating is 35 months old, and the current status of her disease is unknown. Her most recent encounter at the VA was on 2 February 2022 and shows she is not on any Lyme disease or pain treatment related medications:

> "Lyme Disease - Followed by a team in Minnetonka who has aided her in filing for disability for this. She is currently on treatment with an extensive vitamin regimen. She will follow up with her Lyme team.

w. It is therefore recommended by the ARBA medical advisor the applicant's case be referred to the DES for duty incurred Lyme Disease.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 the applicant's Lyme Disease was incurred while the applicant was training to serve her country. The Board found no evidence the applicant had Lyme Disease prior to entering active duty in in 2017. Furthermore, the Board determined the applicant's Lyme disease is within the line of duty and should be corrected to reflect in line of duty. The Board agreed with the opine and determined the applicant's case should be referred to the DES for duty incurred Lyme Disease. Therefore, the Board granted partial relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
[redacted]	[redacted]	[redacted]	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be correcting the applicant's record to show her incurred Lyme Disease was in the line of duty and by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board concerned to determine whether the applicant's conditions(s), met medical retention standard at the time-of-service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of her case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void her administrative separation and to issue her the appropriate separation retroactive to her original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of the DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show:

- she received a combined disability rating of 75 percent (%)
- placement on the Permanent Disability Retired List (PDRL)
- award and payment of disability retired pay or any other benefits to which she is entitled, retroactive to 18 November 2022

3/1/2024

X [redacted]

CHAIRPERSON

[redacted]

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, 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 DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation). 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.

2. Army Regulation 635-40 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. 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.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line of duty (LOD) 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 was incurred in the LOD in a time of war or national emergency or was incurred in the LOD aft4er 14 September 1978.

(3) 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.

3. Army Regulation 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 Regulation135–175 (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. Reserve Component Soldiers with nonduty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of Reserve Component 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 USARC 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.

4. Title 38 USC, 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.

5. Title 38 USC, 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.

6. Section 1556 of Title 10, USC, 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//