

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230007632

APPLICANT REQUESTS: physical disability retirement in lieu of honorable discharge from the Army National Guard (ARNG) due to expiration of active service commitment in the Selected Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- numerous pages of Standard Forms 600 (Chronological Record of Medical Care), dated between 20 October 2017 – 10 February 2020
- DA Form 3349 (Physical Profile Record), dated 4 June 2019
- TXARNG Service Member Treatment Plan, dated 4 June 2019
- numerous letters from Licensed Clinical Social Worker (LCSW), Office of the State Surgeon, TXARNG, dated between June 2019 – October 2019
- Laurel Ridge Treatment Center Referral Recommendations and Crisis Safety Plan, dated 10 July 2019
- email correspondence dated August, September, and November 2019
- Department of Veterans Affairs (VA) Rating Decision, dated 9 January 2013

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:

a. She wants her discharge upgraded to medical retirement. Mental health issues, including post-traumatic stress disorder (PTSD) and related conditions such as major depressive disorder (MDD) affected her service. She has evidence of her diagnosis from a clinical psychologist, psychiatrist, or other specialist and proof in her service records pertaining to what caused her condition.

b. This situation is unfair because her command caused her Medical Evaluation Board (MEB) process to fail. She was informed that the MEB process might take up to 2 years, so she would have to reenlist. She could not reenlist because she was diagnosed with PTSD and other mental health difficulties. Her command urged her to separate with an honorable discharge at her expiration term of service (ETS).

c. After she received an honorable release, she learned via email that her MEB packet was already moving forward, but her command refused to complete the process. She was lied to. With an upgrade to medical retirement, she could receive medical benefits not just for herself, but for her family and not be limited to the VA. The Board should consider her application because since her release from the ARNG, her mental health has been a priority and now she is in the position to advocate for herself and inform the Board how her command failed her.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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 (P) or temporary (T).

4. A DD Form 2808 (Report of Medical Examination), dated 5 March 2014, shows the applicant underwent medical examination on the date of the form for the purpose of ARNG enlistment and was found qualified for service with a PULHES of 111111.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Army National Guard of the United States for a period of 8 years on 9 April 2014, of which 6 years would be served in the TXARNG and as a Reserve of the United States.

6. Numerous pages of Standard Forms 600, with entries dated between 20 October 2017 through 4 June 2019, have been provided in full to the Board for review and in pertinent part show:

a. The applicant was seen on 20 and 27 October 2017, regarding an unspecified injury she sustained while at Fort Jackson, SC.

b. The applicant was seen on 4 June 2019, by a LCSW for an extensive office visit pertaining to grief she was experiencing after her wife was struck and killed by a drunk driver 9 months prior and following the suicide of a fellow Soldier in June 2018. She reported symptoms of anxiety, startling easy to loud noises, feelings from numbness to irritations, sleeplessness, tearfulness, sadness, hopelessness, isolation, nightmares,

nausea and vomiting. She reported a history of multiple suicide attempts over the course of 9 months; each attempt was interrupted by friends or family. A Treatment Plan was discussed, and she was agreeable to opening a behavioral health case with a 90-day temporary profile requiring her to stay in the rear for annual training and away from weapons. She was agreeable to grief counseling. Her command team was notified of recommendations of no weapons and to be kept in the rear due to unmanaged behavioral health symptoms.

7. A DA Form 3349-SG, provides the applicant's physical profile status:

a. The applicant's combined PULHES on 4 June 2019 was 111111.

b. She temporarily could not carry and fire her individual assigned weapon, effective 4 June 2019, with an temporary profile expiration date of 2 September 2019.

c. The medical instructions to the unit commander show she was non-deployable due to decreased mission capability from a behavioral health condition. She should have access to all behavioral health appointments. No alcohol use: alcohol use can worsen behavioral health conditions. The profiling physician was to be notified immediately if there was a sudden deterioration of performance or fluctuating behavior. Ensure the opportunity for 8 consecutive hours of sleep every 24 hour period for the duration of the profile to maximize recovery. Treatment was expected to occur as determined by the treating civilian provider. The applicant should not be issued an individually assigned weapon, handle ammunition, attend any live fire drills, ranges, or participate in combat simulation events during the profile period. Develop housing plan, as appropriate, to ensure the applicant did not have immediate access to weapons during profile period. She may perform all other Military Occupational Specialty (MOS) related tasks. She may not stay overnight at the armory or in the field. This profile did not exempt her from attending drill or good order and discipline.

8. A TXARNG Service Member Treatment Plan, dated 4 June 2019, shows:

- a behavioral health case was opened for the applicant
- she was given a 90-day physical profile with restrictions including no weapons, no deployment, no overnight stay
- an appointment with primary care manager was to be set up
- a therapy appointment was scheduled for Monday, 10 June 2019
- she would participate in weekly visits with Behavioral Health Services, San Antonio Armory

9. Numerous additional pages of Standard Forms 600, with entries covering the dates between 5 June 2019 and 10 July 2019, have been provided in full to the Board for review and in pertinent part show:

a. The LCSW was in contact with the applicant's commander on 5 June 2019, who advised who would not attend annual training that year.

b. On 13 June 2019, the applicant reported continued symptoms of insomnia and crying and scored in the high range for all suicidal drivers.

c. On 19 June 2019, she reported panic attacks and reported becoming more anxious when she put on her uniform.

d. On 3 July 2019, she reported increased nightmares and agreed to additional counseling.

e. On 10 July 2019, the LCSW had a clinical case consultation with a treating therapist where the recommendation was given for the applicant's referral to Laurel Ridge Treatment Center for intensive outpatient therapy (IOP). Applicant was agreeable.

10. Laurel Ridge Treatment Center Referral Recommendations and Crisis Safety Plan, dated 10 July 2019, shows the applicant was referred to the Laurel Ridge Treatment Center partial hospitalization program (PHP), with triggers of noises and people talking about death, and warning signs of nervousness, sweaty hands, and nausea.

11. Numerous additional pages of Standard Forms 600, with entries covering the dates between 12 July 2019 through 20 October 2019, have been provided in full to the Board for review, and in pertinent part show:

a. On 12 July 2019, after evaluation at Laurel Ridge, a recommendation was made for the applicant to go inpatient, which she refused, and Laurel Ridge did not seek involuntary hold. Per commander's approval, the applicant was to attend medical appointments in lieu of drill.

b. On 16 July 2019, the applicant expressed she no longer wanted to be in the TXARNG and found it difficult to continue serving.

c. On 1 August 2019, she reported doctor prescribed Seroquel.

d. On 8 August 2019 session, LCSW said she would schedule possible behavioral health evaluation for consideration of permanent profile.

e. She was seen on 10 August 2019 for behavioral health evaluation. She was diagnosed with depressive disorder not expected to be resolved within the next year and other medical conditions which are service connected. She would possibly need an MEB to formally end her military career.

- f. 26 August 2019, permanent profile signed and effective.
 - g. 30 September 2019 notes show line of duty (LOD) pending with unit commander for review of lower back; there is no profile for lower back.
 - h. 17-20 October 2019 session notes include discussion of administrative separation process.
12. Numerous letters from Licensed Clinical Social Worker, Office of the State Surgeon, TXARNG, dated between June 2019 – October 2019, reflect the applicant's regularly scheduled visits with a LCSW for behavioral health conditions on 14 occasions between 4 June 2019 and 21 October 2019, as also documented in the corresponding Standard Forms 600 entries for that timeframe.
13. The applicant provided several pages of email correspondence dated between August - November 2019, overlapping the dates of some of the documents above, which show:
- a. On 14 August 2019, the applicant's LCSW email members of the applicant's chain of command advising the applicant desired an MEB, was issued a permanent physical profile, and her depressive disorder was not expected to be resolved in the next year.
 - b. On 12 September 2019, the LCSW emailed the chain of command again requesting an update on the applicant's TXARNG separation and that her permanent profile was completed 1 month prior.
 - d. On 10 October 2019, the applicant was advised her Physical Evaluation Board (PEB) packet was being put together and would be submitted to the Battalion Medical Readiness Noncommissioned Officer once complete so the medical board could make a determination.
 - e. On 20 November 2019, the applicant's email shows she the LCSW advised she wanted an MEB, and she was unaware she had to write a memorandum to that effect.
14. Additional Standard Forms 600, containing entries from November 2019 through February 2020, show continued requests for LOD initiation/completion, further grief counseling, and request for medical board processing.
15. TXARNG Orders 0000372818.00, dated 5 May 2020, transferred the applicant from the TXARNG to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve (IRR)) effective 8 April 2020, due to completion of 6-year Ready Reserve obligation.

16. The applicant's National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service) shows she was honorably discharged from the TXARNG and transferred to the USAR Control Group (Annual Training) effective 8 April 2020, due to expiration of active status commitment in the Selected Reserve. She was credited with 6 years of net service and 5 years of total service for retired pay.

17. U.S. Army Human Resources Command (AHRC) Orders D-04-209976, dated 12 April 2022, honorably released her from the USAR Control Group (Annual Training) effective the date of the orders.

18. A VA Rating Decision, dated 9 January 2023, shows the applicant was granted service-connection for PTSD with major depressive disorder, recurrent, moderate, with an evaluation of 100 percent effective 6 December 2021. She was also granted entitlement to special monthly compensation based on housebound criteria being met from 6 December 2022.

19. 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.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability retirement in lieu of a honorable discharge from the Army National Guard (ARNG) due to expiration of active service commitment in the Selected Reserve. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA), MEDCHART, the VA's Joint Legacy Viewer (JLV), hardcopy behavioral health military records, and documentation provided by the applicant were also examined.

b. The applicant states she incurred Major Depressive Disorder (MDD) and PTSD in the line of duty, and she should have completed her MEB process rather than be discharged due to her expiration of service. The applicant enlisted in the Army National Guard of the United States for a period of 8 years on 9 April 2014, of which 6 years would be served in the TXARNG and as a Reserve of the United States. The applicant and her wife were initially seen at FAP on 13 July 2017 for domestic violence. They were provided counseling for 4 sessions, but they did not complete the program before discontinuing in August 2017.

c. In June 2019, the applicant was noted by a civilian LCSW associated with the TXARNG to be diagnosed with MDD. The applicant was described as experiencing complicated grief associated with witnessing the death of her wife and also experiencing another military stressor. The applicant was not currently engaged in behavioral health treatment at that time, but she had discussed her symptoms with her PCM. The applicant also disclosed a history of an interrupted suicide attempts. The applicant was recommended for behavioral health treatment to include counseling and psychiatric medication and placement on a temporary behavioral health profile. The applicant's command was notified, and her access to weapons in her home was limited and secured. It was also recommended the applicant not be involved in the Annual Training event away from her home area, and she be allowed to stay back on the Rear-Detachment so she could attend regular behavioral health appointments and as a result of her weapons limiting profile.

d. Despite recommendations for continued behavioral health counseling and psychiatric medication, the applicant was not consistent with treatment or was noncompliant from June-August 2019. She declined inpatient or intensive outpatient therapy. She did regularly speak to her LCSW but this was predominately for case management purposes or supportive counseling. The applicant did report an increase with her symptoms of anxiety, depression, and suicidality. The LCSW recommended she be evaluated for her suitability for continued service. She was evaluated by a military behavioral health officer (BHO) on 10 August 2019 and was recommended for a referral to IDES. The BHO signed a permanent psychiatric profile and a second signature was obtained as well. The applicant's command was notified. The applicant was discharged on 08 April 2020 due to expiration of service.

e. A review of JLV provided concurrent evidence that the applicant has been diagnosed and treated for service-connected PTSD with major depressive disorder, recurrent, moderate, with an evaluation of 100 percent effective 6 December 2021. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has a history of PTSD and MDD which occurred during her military service. The applicant was found to not meet retention standards from a psychiatric perspective. However, there is insufficient evidence the applicant was evaluated by IDES prior to her discharge from the TXARNG. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with the following potentially mitigating BH conditions: PTSD and MDD.

(2) Did the condition exist or experience occur during military service? Yes, the VA's granting of service connection for PTSD with MDD(100% Service Connected) establishes it occurred during military service. In addition, there is clear evidence in the applicant was reporting symptoms of PTSD and MDD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient information that the applicant has incurred behavioral health concerns while on active service. She had been evaluated by two behavioral health providers and placed on a permanent psychiatric profile. She was recommended for referral to IDES and her Command was notified. There is however insufficient evidence that she was actually sent to IDES before she was discharged from the TXARNG. It is likely that she was unable to reenlist due to sufficient evidence that she did not meet retention standards. Therefore, it is recommended the applicant be referred to IDES at this time to be properly evaluated.

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 the medical review, the Board concurred with the advising official finding that the applicant had a history of PTSD while on active service and placed on a permanent psychiatric profile. Based on this, the Board granted relief of referral of her case to the Disability Evaluation System (DES) as recommended by the medical reviewer.

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:

1. The Board determined that the evidence presented was 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 corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board concerned to determine whether the applicant's condition(s) met medical retention standards 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 his 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 his administrative separation and to issue him the appropriate separation retroactive to his 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 that 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 changing his type of discharge without evaluation under the DES.

[REDACTED]

[REDACTED]

[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, 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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (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, sexual assault, or sexual harassment. 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.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Disability 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated"

receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

4. 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 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.

5. Army Regulation 40-501 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. U.S. Army Reserve (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 in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers 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. Reserve Component Soldiers with non-duty 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 paragraph 9-12.

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

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

8. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease

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

9. 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//