

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008104

APPLICANT REQUESTS: correction of her records to show she was retired due to physical disability instead of discharged with severance pay.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 she was discharged based on a disability. She is requesting to have her discharge changed to medically retired due to the disabilities that prompted her discharge from the Army. During that time, the military was purposely assigning low disability ratings in order to avoid paying retirement benefits. Her application notes her request is related to Post-Traumatic Stress Disorder (PTSD).
3. The applicant enlisted in the Regular Army on 6 August 2002.
4. The applicant's Medical Evaluation Board (MEB) and/or Physical Evaluation Board (PEB) proceedings are not available.
5. Orders issued on 8 September 2005 directed the applicant's discharge from the Army effective 21 September 2005. The orders show she was authorized disability severance with a 10% disability rating.
6. The applicant's DD Form 214 shows she was discharged on 21 September 2005 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay.

7. The applicant did not specifically state whether the disability to which she refers in this case was related to a medical or behavioral health related condition.

8. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests medical disability retirement. She stated PTSD was related to her request.

2. The available record was summarized in the ABCMR ROP. Of note, the applicant entered a period of active duty for the Regular Army 06Aug2002. Her primary MOS was Signal Intelligence Recruit. She was discharged effective 21Sep2005 with disability severance pay under provisions of AR 635-40 para 4-24B(3). Her service was characterized as honorable.

3. The applicant requested medical retirement "due to disabilities that put me out of the Army"; however, she did not clearly identify the disabilities. Details of the MEB and PEB proceedings were not available for review; however, there was compelling evidence that the bilateral knee condition was the referred condition. There weren't many service treatment records available in JLV; and they often lacked details. JLV search showed the applicant was total combined service connected at 90% by the VA. The following conditions show ratings by the VA: Tinnitus 10%, Lower Leg Condition 20%; Lower Leg Condition 20%; Irritable Colon 30%; and PTSD 70%. *Tinnitus was not reviewed by the ARBA Medical Reviewer as it is extremely rare for the PEB to find this condition unfitting.*

a. Right and Left Lower Leg condition (bilateral knee condition).

- 25Sep2003 CDR 60th Medical Group. Bilateral knee films were normal. The reported history was "Bilateral knee pain for ten months, occasional locking. No history of trauma"
- 02Dec2004 MRI of both knees was obtained for 1.5-year history of bilateral knee pain right greater than left. Knee trauma was denied. The results were interpreted by orthopedics as "no articular injury requiring surgery".
- 10Dec2004 Orthopedics Bayne-Jones ACH. The applicant reported pain with running and occasional locking. She failed the APFT due to bilateral knee pain. She reported having previously received a P2 profile. The exam revealed crepitus of the patella and positive patella femoral grinding test. Also of note, both knees had full range of motion. Diagnosis: Bilateral Patellofemoral Syndrome. She was released with work duty limitations. The previous P2 was lost—the orthopedist reinitiated the P2 (permanent L2) physical profile.

- 29Apr2005 Orthopedics Bayne-Jones ACH. Follow up visit. No details were available for review. Diagnosis: Patellofemoral Syndrome.
- 07Jun2005 Physical Therapy. This was a MEB visit for ROM. No results were recorded, and the condition was not identified. However, the knee joint was the only joint condition listed in the problem list at that point.
- 06Feb2006 C&P Exam Cleveland VAMC. *The exam was four months after discharge from service.* Knee pain began 3-4 months after entering service. She reported that the knee pain has caused her to limit her physical activity. The note indicated the applicant was discharged because of knee pain. She tried using knee braces without relief. The exam showed ROM for both knees with flexion 0-90 degrees (normal is 0-140). Painful motion was present. Stability testing was normal. There was slight crepitus bilaterally. There were no effusions. There was tenderness along the medial aspect of the knee and anserine bursae bilaterally. Diagnosis: Bilateral Anserine Bursitis. Bilateral knee films at the time were read as unremarkable.
- 22Mar2006 VA Rating Decision showed 10% for Right Anserine Bursitis (claimed as Patellofemoral Syndrome) and 10% for Left Anserine Bursitis (claimed as Patellofemoral Syndrome) under VASRD diagnostic code 5019, effective 22Sep2005. The combined rating including the bilateral factor was 20%.

Rationale/Opinion

JLV records showed both right and left knees were impacted while in service: The bilateral knee pain was chronic— persisting at least 2 years. Knee complaints were presented as bilateral, and the condition was evaluated by providers as involving both knees. Although one note indicated the right knee was worse than the left knee, the available records showed significant pain was reported for both knees. The knee condition failed medical retention standards because despite appropriate conservative treatment, the condition interfered with physical performance, specifically physical training (running and APFT) per AR 40-501 para 3-41e. For rating considerations, films did not show arthritis. In addition, the range of motion for each knee was below the minimum threshold required for 10% compensation. The PEB proceedings were not available for review; however orders show his disability rating at 10%. The VA applied 10% for painful motion for each knee. Based on review of the applicant's available records and VASRD principles, a 10% rating would have been warranted for each knee for painful motion. The combined total rating would have been 20% (including the addition of the bilateral factor).

b. Irritable Colon (while in service, the diagnosis was Hematochezia)

- 01Nov2004 Family Practice Bayne-Jones ACH. The applicant reported blood in stool (hematochezia) without associated pain or diarrhea. She had a history of chronic constipation.
- 02Dec2004 General Surgery. The applicant was seen for bright red blood per rectum and constipation. She reported she was seen by gastroenterology a year

prior (in California) and was diagnosed with hemorrhoids. Provisional diagnosis: Hematochezia. A recent colonoscopy was inadequate for interpretation; therefore, an additional barium enema study was performed which was negative.

- 14Dec2004 General Surgery. Outpatient flexible sigmoidoscopy was completed and was normal. The specialist recommended for the applicant to continue Colace daily, fiber supplementation, sitz baths and increased water intake.
- 04Aug2005 General Surgery Bayne-Jones ACH Telephone Note. The applicant was advised the colonoscopy was normal and to repeat the scope in 3 years.
- 06Feb2006 upper gastroenterology study was normal.

Rational/Opinion

While in service, the condition did not cause anemia—the applicant’s hemoglobin was normal while in service). The condition did not cause malnourishment or weight loss. The 08Sep2005 Enlisted Record Brief showed P1. Based on records available for review, there was insufficient evidence to support that the applicant’s gastrointestinal condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

4. BH conditions: PTSD and MST

- 21Apr2005 Psychology Bayne-Jones ACH visit revealed no details concerning BH issues, symptoms, treatment, or diagnosis.
- 29Apr2005 Screening Questionnaire. To the question, ‘Are you being physically/sexually/ verbally/emotionally/financially abused by someone? The applicant answered ‘No’.
- 06Feb2006 C&P Examination Note. “No mental disorder was noted or suspected”. She was going to school (business curriculum) at the time.
- 16Oct2007 Nursing Outpatient Note and Physician Outpatient Note. The applicant was presenting to establish care at the VA. She reported experiencing MST; however, she deferred treatment. Screenings for PTSD, depression and hazardous drinking were all negative. *The visit was 2 years after discharge.*
- 28Jan2020 C&P Initial PTSD DBQ, revealed that the applicant was 1 of 3 children raised in a dysfunctional family with an alcoholic father who murdered his brother, and experienced sexual abuse from age 9 to 10 by her stepfather’s nephew, and much criticism. Reported stressors in the military included that she was raped at Fort Polk in 2004 while on active duty by the boyfriend of a roommate. *Record found in HAIMS showed she sought treatment for STD check 02Jun2004.* After military service, a rape in 2010 resulted in her oldest son. Diagnoses: PTSD, MST and Major Depressive Disorder secondary to MST. She was also diagnosed with Opioid Dependence in Remission, severe by reported history. The substance use was deemed secondary to PTSD and Major Depressive disorder as self-medicating attempt. Her PTSD and Major Depressive Disorder symptoms were severe at the time of the exam.

Rationale/Opinion

In the PTSD C&P exam, the applicant reported that she told a counselor about the rape while in the military but did not disclose it to command. There were no service treatment records for a mental health condition that were available for review; however, JLV medication profile review showed nortriptyline (an antidepressant, also used for pain and as a sleep med) was prescribed briefly in November 2003. Paroxetine (a psychotropic) was prescribed in May 2004 and in May 2005, but each time was not refilled. There was no history of psychiatric hospitalization. The 08Sep2005 Enlisted Record Brief showed S1 physical profile. Based on records available for review, there was insufficient evidence to support the applicant's BH condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

5. The applicant was seen for the following conditions while in service, but JLV did not show a VA rating for them:

a. Lumbosacral (back) condition/Lumbar Strain

- 16Apr2004 Bayne-Jones ACH lumbosacral spine film was normal.
- 20Apr2004 Bayne-Jones ACH thoracic spine film was normal. There was no history of trauma.
- 11May2004 Byrd Regional Hospital lumbar spine MRI was normal.
- 22Jun2004 Chronological Record of Medical Care. The applicant was seen for back pain since November 2003. The pain worsened in December 2003/January 2004 and was managed with pain medication. She reinjured the back while moving in March 2004. The exam showed tenderness to palpation L5-S1 and decreased ROM secondary to pain. She was on anti-inflammatory and muscle relaxant medications. Physical therapy was ordered. The current temporary profile was to be continued.
- 06Feb2006 C&P Exam Cleveland VAMC. She reported occasional lumbar pain. ROM showed forward flexion 0-54 (90 is normal); extension 0-25 degrees (30 is normal); right and left lateral flexion 0-15 degrees (normal is 30); right lateral rotation 0-70 degrees (normal is 30); and left lateral rotation 0-50 degrees. Painful motion was present except with lateral rotation. There was no spinal tenderness. The motor exam showed normal muscle strength. Straight leg testing was negative (normal) bilaterally. Diagnosis: Lumbar Strain.

Rationale/Opinion

Conservative treatment measures were in progress. The lumbar spine MRI did not show pathology. Based on records available for review, medical evidence was insufficient to support the lumbar spine condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

b. Cervical spine (neck) condition/Cervical Strain

- 06Feb2006 Normal examination of the thoracic spine.

- 06Feb2006 C&P Exam Cleveland VAMC. Cervical spine showed straightening of the cervical lordosis (consistent with mild spasm). The disc spaces were maintained. Neck ROM was forward flexion 0-45 degrees (normal is 45); extension 0-20 degrees (normal is 45); right and left lateral flexion 0-45 degrees (normal is 45); right lateral rotation 0-74 degrees (normal is 80) and left lateral rotation 0-64 degrees. Painful motion was present. Diagnosis: Cervical Strain.

Rationale/Opinion

There were no associated treatment visits for this condition while she was in service that were available for review. Based on records available for review, medical evidence was insufficient to support the cervical spine condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

c. Cervical (uterine) condition.

- 17May2005 Family Practice Baynes-Jones ACH. She was advised her 04Apr2005 PAP results showed high grade squamous intraepithelial lesion.
- 23Jun2005 Gynecology Baynes-Jones ACH. Colposcopy results were negative (normal). It was recommended that she have a follow-up colposcopy in 6-12 months to make sure everything was negative at that time.

Rationale/Opinion

Based on records available for review, medical evidence was insufficient to support the cervical uterine condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge.

6. Summary

Aside from the right and left knee conditions, the review did not reveal other conditions which failed medical retention standards of AR 40-501 chapter 3. In the ARBA Medical Reviewer's opinion, no change is recommended to the current physical disability 10% rating for the following reasons: Although the reviewer did find compelling evidence that the bilateral knee condition was likely the referred condition and concurs with the combined 20% VA rating; the actual MEB/PEB proceedings were not available for review. It was also noted that the available treatment record details were sparse. And finally, a change from 10% to 20% in physical disability rating would still result in disposition separation with severance pay and not the applicant's desired medical retirement.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant 's condition failed medical retention standards. The Board determined there was no error or injustice in the applicant's separation proceedings.

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.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, 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.

3. 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.

a. 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 or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. 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.

4. 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%.

5. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//