

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230009325

APPLICANT REQUESTS: correction of her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show her duty station as Camp Atterbury, IN in lieu of Fort Knox, KY.

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

- ARBA online application in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 14 November 1997, 9 August 2001, and 3 April 2008
- DD Forms 214 (Certificate of Release or Discharge from Active Duty), 21 April 1999, 21 April 2001, 11 August 2007, 30 September 2008, 31 March 2009, 24 January 2011
- NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) 8 August 2001
- DA Form 2173 (Statement of Medical Examination and Duty Status), 11 August 2010
- Operative Summary, 26 October 2010
- memorandum, subjected: Line of Duty, 7 December 2010
- DA Form 7652 (Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement)
- DA Form 3947 (Medical Evaluation Board Proceedings, 16 May 2018
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 27 June 2018
- DA Form 1506 (Statement of Service - for Computation of Length of Service for Pay Purposes), 9 August 2018
- DA Form 5892 (PEBLO Estimated Disability Compensation Worksheet)
- Department of Veterans Affairs (VA) rating letter, 25 June 2018
- Orders D 198-45, 17 July 2018
- Fourteen (14) Leave and Earning Statements (LESSs)

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 believes her Physical Evaluation Board Liaison Officer (PEBLO) misrepresented her during the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) processes, resulting in inaccurate information on her DA Form 3947, Narrative Summary (NARSUM) and DA Form 199.

b. The narrative in the DA Form 199 states that the NARSUM indicates she was stationed at Fort Knox, Kentucky. She has never been stationed at Fort Knox, Kentucky. She attempted to seek legal advice regarding this matter, but all of the legal personnel were on temporary duty (TDY) at the time she received her DA Form 199. This prevented her from obtaining the necessary guidance to address the issue promptly.

c. She requests a total reevaluation of her NARSUM and the DA Form 199. Her DA Form 2173 clearly indicates her deployment to Camp Atterbury, IN, in support of Operation Enduring Freedom (OEF), under Order Number A-06-019080 from 28 June 2010 to 18 August 2011.

d. She is trying to increase her CRSC but was denied due to erroneous information in her records.

3. The applicant enlisted in the [REDACTED] Army National Guard (ARNG) and as a Reserve of the United States Army on 14 November 1997. She served on active duty from 21 August 1998 to 21 April 1999 and 25 January 2000 to 21 April 2001.

4. The applicant was discharged from the [REDACTED] ARNG on 8 August 2001 for immediate enlistment in the Regular Army on 9 August 2001.

5. The applicant deployed in support of Operation Enduring Freedom (Afghanistan) from 15 March 2002 to 15 October 2002 and Operation Iraqi Freedom (Iraq) from 15 February 2003 to 5 December 2003.

6. The applicant was released from active duty and transferred to the Inactive Army Reserve on 11 August 2007. She was honorably discharged from the Inactive Army Reserve on 14 August 2007.

7. The applicant enlisted in the [REDACTED] Army National Guard (ARNG) and as a Reserve of the United States Army on 3 April 2008.

8. The applicant served on active duty from 12 May 2008 to 30 September 2008 and 13 October 2008 to 31 March 2009.

9. The applicant entered active service for operational support on 19 August 2009.

10. A DA Form 2173 (Statement of Medical Examination and Duty Status), shows the applicant was injured on 12 July 2010 at Camp Atterbury, IN while carrying a bookshelf.

11. An Operative Summary, provided by the applicant, shows she underwent surgery on 26 October 2010 for a right stellate ganglion block. It states the applicant had a longstanding history of right arm symptoms dating back about 2 years.

12. A memorandum, subject: Line of Duty, dated 7 December 2010, states the applicant's 12 July 2010 injury was found in the line of duty.

13. The applicant was released from active duty on 24 January 2011 and returned to her [REDACTED] ARNG unit.

14. A DA Form 2173, dated 10 July 2014, shows applicant experienced pain in her right hand, a compressed nerve in her right forearm. Surgery was done on 2 February 2010 and a second surgery was done 20 August 2010. A Spinal Stimulator was implanted in January 2012 and removed April 2012. She was found to have carpal tunnel syndrome (right side). Her condition was determined to have occurred in the line of duty and may be permanent and total.

15. The applicant provided an unsigned and undated DA Form 7652 (Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement) stating the applicant's profile restrictions prevents her from doing the majority of the tasks associated with her military occupational specialty (MOS) of a 94A (Land Combat Electrical Missile System Repairer) and cannot conduct Army Physical Fitness Test (APFT), weapons qualification, field exercises or participate with battle drills.

16. The applicant provided her MEB Proceedings, dated 16 May 2018, showing the Board found the following:

a. The following diagnosed medical conditions were found not to meet retention standards:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

b. The following diagnosed medical conditions were found to meet retention standards:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

c. The following claimed conditions were claimed and found to meet retention standards:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

17. The applicant's VA rating, dated 25 June 2018, shows she was awarded a 100 percent combined rating for the following service-connected conditions:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. A DA Form 199 shows an informal PEB convened on 27 June 2018, wherein the applicant was found physically unfit with a recommended rating of 30 percent and that her disposition be permanent disability retirement.

a. The applicant was found unfit for complex regional pain syndrome, right arm (MEB diagnosis 1). The NARSUM discussed right arm pain that began in 2010 due to a nerve injury sustained while conducting physical training at Fort Knox, Kentucky. She underwent a right median nerve decompression in February 2010. In September 2010 she had a second right median nerve decompression and neurolysis which resulted in improvement of her condition. She had a dorsal column stimulator implant replaced in 2013 yet remains unable to complete functional Soldier tasks.

b. She was found fit for:

- [REDACTED]
- [REDACTED]
- [REDACTED]

c. The PEB made the following administrative determinations:

(1) The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

(2) The disability did not result from a combat-related injury under in 26 USC 104 or 10 USC 10216.

d. The applicant concurred and waived a formal hearing of her case on 6 July 2018.

e. The applicant did not request reconsideration of her VA ratings.

f. The proceedings were finalized on 19 July 2018.

19. On 17 July 2018, the applicant was provided a memorandum, subjected: Permanent Physical Disability Retirement, providing the result of her PEB and a copy of Order D 198-45 placing her on the Permanent Disability Retired List.

20. The applicant provided a DA Form 1506, dated 9 August 2018 showing a 10 years 6 months 18 days total active federal service. She also provided a DA Form 5892 showing the PEBLO's estimate of her retired pay.

21. The applicant was honorably retired on 20 August 2018. Her NGB Form 22 shows she was credited 18 years 8 months 28 days total service for retired pay.

22. On 12 September 2018, the applicant applied for CRSC. On 25 September 2018, she was notified she was ineligible to for CRSC.

23. On 10 April 2019, the applicant was notified she was approved for CRSC for PTSD and tinnitus. She was denied CRSC for reflex sympathetic dystrophy, right upper extremity, secondary to proximal median nerve entrapment. The justification states this condition was a result of a nerve injury sustained while conducting physical training at Fort Knox, Kentucky.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found the evidence supports the applicant's assertion that she sustained a nerve injury at Camp Atterbury, IN, not at Fort Knox, KY. A majority of the Board determined her DA Form 199 should be corrected to reflect the correct location of the incident in which she was injured.

3. The member in the minority found insufficient evidence of error on the applicant's DA Form 199 and determined there is no basis for amending the form.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|   |   |   |                      |
|---|---|---|----------------------|
| █ | : | █ | GRANT FULL RELIEF    |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | █ | : | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending her DA Form 199 to show she incurred a nerve injury at Camp Atterbury, IN, vice Fort Knox, KY.

9/18/2024

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in

chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

3. 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.

4. 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.

5. AR 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

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

7. 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.

8. Department of Defense Financial Management Regulation (DoD FMR) provides in chapter 63, paragraph 630101 the CRSC was effective on 31 May 2003 to provide special compensation to members of the uniformed service who may have retired pay reduced by reason of receiving VA disability compensation where a portion of such VA compensation is the result of disabilities that are combat-related. Eligibility requirements have changed since its inception. CRSC is not military retired pay. It is payable from funds appropriated for pay and allowance payable by the Secretary of the Military Department concerned.

a. Paragraph 6302 (Determinations of Combat-Relatedness) The following criteria, terms, definitions, and explanations will apply to making combat related determinations in the CRSC Program. 630201 (Direct Result of Armed Conflict) subparagraph 630201(A) states the disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. The fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Paragraph 6303 (Entitlement) states CRSC is a monthly entitlement. A member must file an application with the Military Department from which the member retired to determine entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member: 630301 (A) has applied for and elected CRSC under these provisions (section 6304). 630301 (B) meeting the preliminary CRSC criteria (Section 6305) and 630301 (C) meets the final criteria (section 6306) that is, has a combat-related disability or disabilities.

c. Paragraph 630602 (Other Combat-Related Disabilities) states a combat-related disability is a disability with an assigned medical diagnosis code from VASRD that was incurred. The Military Departments will determine whether a disability is combat-related based on the following criteria:

- (1) As a direct result of armed conflict,
- (2) While engaged in hazardous service,

(3) In the performance of duty under conditions simulating war, or

(4) Through an instrumentality of war.

d. The Department shall record for each disability determined to be combat-related which of the circumstances provided above qualifies the disability as combat-related. A determination of combat-relatedness (see section 6302) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

e. Paragraph 631001 (Basis for Determination) states determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, and conjecture. The burden of proof that a disability is combat-related rests with the applicant and the member is required to provide copies of documents in their possession to the best of their ability. Military Departments may compile a list of typical documents used for CRSC verification.

9. Title 10, U.S. Code, section 1413a, as amended, established CRSC. CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payments under this section are not retired pay. Payment is made by the Military Department, not the VA, and is tax free. Eligible retirees are those who have combat related disabilities and are entitled to retired pay. The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense. A combat-related disability means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that –

a. is attributable to an injury for which the member was awarded the Purple Heart;  
or

b. was incurred (as determined under criteria prescribed by the Secretary of Defense) as a direct result of armed conflict, engaged in hazardous service, in the performance of duty under conditions simulating war or through an instrumentality of war.

//NOTHING FOLLOWS//