

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010476

APPLICANT REQUESTS: correction of her record to show she was approved for Continuation on Active Duty (COAD) to obtain a 20-year Active Federal Service (AFS) retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- Physical Disability Information Report
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant states in effect, when she was being processed through the Physical Evaluation Board (PEB) she had over 18-years of AFS. During the process, she was counseled by her Physical Evaluation Board Liaison Officer (PEBLO) the COAD program was not good for her and the chances of a request of this nature getting approved was significantly low. She followed the guidance of her PEBLO and she was medically retired with 18-years, 11-months, and 11-days of AFS. She now is employed as a Department of the Army civilian and she is now more informed about the program and believes the COAD program could have been favorable for her. Due to the improper counsel, inaccurate, and misguided information that was provided to her by the PEBLO which she was not afforded the opportunity to apply for COAD, she requests to be retired with a 20-year AFS.

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

a. On 28 August 2002, the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP). On 4 February 2003, the applicant was discharged from the USAR DEP and enlisted in the Regular Army. She served continuously through reenlistments and extensions.

b. On 16 May 2021, the MEB found the applicant physically unfit for retention for fibromyalgia and lumbosacral strain. The board referred the applicant to the PEB. The applicant did not concur with the findings of the MEB and submitted a rebuttal on 28 May 2021.

c. On 31 August 2021, the informal PEB found the applicant physically unfit for retention for fibromyalgia and lumbosacral strain and recommended she be permanently retired for physical disability and placed on the retired list with 50 percent disability. The applicant concurred with the findings of the PEB, waived a formal hearing, and did not request reconsideration of the Veterans Affairs ratings.

d. On 29 September 2021, Orders Number 272-0252, issued by Headquarters, U.S. Army Garrison, Fort Bragg, the applicant was placed on the retired list, effective 15 January 2022 with a 50 percent disability due to physical disability incurred while entitled to basic pay. The applicant's disability retirement was based on 18-years, 11-months, and 11-days of service.

e. Her DD Form 214 shows she honorably retired under the provisions of Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, on 14 January 2022, by reason of disability, permanent. Her DD Form 214 shows the applicant completed 18-years, 11-months, and 11-days of active service. It also shows in item 18 (Remarks): the applicant's service was extended at the request and for the convenience of the Government.

3. The applicant provides the Physical Disability Information Report dated 15 September 2021 which shows the applicant was separated with 50 percent disability and placed on the retired list effective 15 January 2022. However, the report is void of her service time for basic pay or disability retirement.

4. On 1 December 2023, in the processing of this case the U.S. Army Physical Disability Agency provided an advisory opinion regarding the applicant's request for a 20-year AFS retirement. The advisory official stated the applicant concurred with the findings of the PEB and was medically retired. According to the DA Form 5893 (Soldier's Medical Evaluation Board/Physical Evaluation Board Counseling Checklist) the applicant was informed of, and she acknowledged she understood the criteria and procedures for requesting COAD. She now maintains she should receive a 20-year AFS retirement because she was not properly counseled concerning the COAD program which if accepted would have enabled her to obtain 20-years and eligible for length of service retirement. She provides no supporting evidence the PEBLO advised her COAD was not a good fit for her and approval chances were low. Even if she was told that she is a noncommissioned officer with over 18-years of service who is capable of making her own assessment and decisions. The PEBLO provides the information and does not decide whether or not a service member should apply for COAD. Even if she would

have applied, there was no guarantee she would have been approved for COAD. The applicant's request is legally insufficient. Consequently, there is no basis for the applicant's request.

5. On 14 December 2023, in the processing of this case the U.S. Army Human Resources Command (HRC) provided an advisory opinion regarding the applicant's request for a 20-year AFS retirement. The advisory official stated HRC did not receive the applicant's COAD request within 10 days of receiving her disability rating and counseling, in accordance with the Memorandum of Instruction. She was not informed by her assigned PEBLO of the COAD Program upon receipt of the Informal PEB Proceedings. She found out from a different source about the COAD Program and then reached back to her PEBLO to inquire about the program. At the time the applicant contacted her PEBLO, it was too late to submit a COAD packet since it was a few weeks after the receipt of the DA Form 199 (Informal PEB Proceedings). That said, had this command received the request, we would have favorably considered it in accordance with AR 635-40, Chapter 6, 6-3. Eligibility Criteria for request to be considered (adjudicated). The applicant met the eligibility criteria at the time and had chain of command support. It is not uncommon to hear PEBLO's are not properly counseling Soldier's regarding COAD as they have received multiple complaints from service members which has caused them to be forced to medically retire when they had the opportunity to apply for COAD.

6. On 6 December 2023, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. The applicant responded on 19 December 2023 stating she requests to be awarded a 20-year length of service retirement. As the advisory opinion stated she did have over 18-years of service when she was medically separated. What the advisory opinion did not include was that being introduced to the Integrated Disability Evaluation System process hit her like a ton of bricks as it was her goals to serve beyond 20-years and she was not prepared for the concept of being separated from the service. During the medical process, her husband was deployed and she had to care for their two school age children alone, one of which is enrolled in the exceptional family member program. Also, Coronavirus Disease 2019 hit which impacted the flow of information as she went through the process. Though the leaders in her unit were supporting, they were preparing for deployment. This left her with no guidance and was forced to make life changing decisions with no information required to make an informed decision. The program manager for COAD even supports her claim of not being properly informed about the COAD program and being forced to medically retire.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant retired due to disability with 18 years and 11 months of service. The PEB Proceedings show she was informed of, and she acknowledged she understood the criteria and procedures for requesting COAD. She contends that she was not counseled but she does not provide supporting evidence the PEBLO advised her COAD was not a good fit for her and that its approval chances were low. The Board also reviewed and agreed with the HRC COAD Manager that while it is true that HRC did not receive her COAD request within 10 days of receiving her disability rating and counseling, the Board accepted her contention that she was improperly counseled by the PEBLO and only found out from a different source about the COAD Program and then reached back to her PEBLO to inquire about the program. By the time she contacted her PEBLO, it was too late to submit a COAD packet. Additionally, the HRC COAD manager confirmed that she met the criteria for the COAD, and she had support from her chain of command. Had they timely received her request, they would have favorably considered it.

b. Based on the totality of the situation and since HRC acknowledged that it is not uncommon for HRC to hear PEBLO's not properly counseling Soldier's in regard to the COAD, that HRC received multiple complaints of Soldiers not being informed of the COAD Program and were forced to medically retire when they had an opportunity to continue to serve, the Board determined although there is no error in her disability processing, an injustice occurred in not properly counseling her regarding eligibility for the COAD program.

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:

- showing the applicant timely submitted to HRC a request for continuation on active duty (COAD) to be retained on active duty to 20 years of active service, provided all other criteria is met
- showing the appropriate office (HRC) timely received, adjudicated, and approved her COAD request, provided all other criteria is met
- adjusting the applicant’s disability retirement orders and resultant DD Form 214 as a result of this correction

█

█ █

█

█

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. AR 635-40 (Disability Evaluation for Retention, Retirement or Separation), 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 or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected. Chapter 6 states the criteria for Soldiers to be COAD subsequent to being found unfit after completion of the duty related IDES process. The purpose of this exception to policy is to conserve manpower by the use of needed skills or experience in a limited duty status. A Soldier who has been found unfit by a PEB for further military service has no inherent or vested right to continued service. Soldiers must elect to be considered for COAD and requests are approved at the needs of the Army. Enlisted Soldiers, who are active army, are eligible to request COAD. The Soldier must meet the criteria listed below to have their request for COAD or COAR, as applicable, considered. The USAPDA will screen all requests and return requests ineligible for consideration to the Soldier through the Soldier's PEBLO.

- pending placement on the temporary disability retired list
- request must be submitted within the timeline and with all required documents
- disability must not be found to be due to Soldier's misconduct, willful negligence or incurred when absent without leave
- must meet at least one of the below:
 - at least 15-years but less than 20-years of active service,
 - qualified in a critical skill or shortage military occupational specialty or
 - disability resulted from combat or terrorism

The approval or disapproval authority for active component Soldier's is the Commander, U.S. Army Human Resources Command. Approval of an eligible request remains subject to the needs of the Army. Considerations consist of:

- Time in service
- Level of performance, trends in efficiency, and professional values and/or attributes
- Performance prior to injury
- Ability to attend professional military education
- The ability to lead or positively influence Soldiers

2. Department of the Army Pamphlet 635-40 (Procedures for Disability Evaluation for Retention, Retirement, or Separation) states, the earliest the request for COAD can be

submitted to the PEB is with their MEB file and the latest is 10-days from the Soldier's receipt of the informal or formal PEB findings. Whichever, is the last level of PEB adjudication.

//NOTHING FOLLOWS//