

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230010572

APPLICANT REQUESTS:

- physical disability retirement from the Regular Army in lieu of honorable release from active duty due to completion of required service
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- North Atlantic Regional Medical Command memorandum, 6 May 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), covering the period ending 2 November 2005
- Department of Veterans Affairs (VA) Rating Decision, dated 28 June 2006
- two witness statements/statements of support, dated 20 September 2008 and 1 October 2008
- marriage certificate, dated 21 May 2010

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 is requesting her discharge be amended to medical retirement. She was injured in a mortar attack while deployed to Iraq in 2005. At the time, she was 22 years old and naïve to the differences in discharges. All she knew was that she wanted to have an honorable discharge.

b. After surgery and physical therapy at Walter Reed Army Medical Center (WRAMC), she returned to her duty station at Fort Irwin, CA. It was there that someone asked her if she wanted to be medical discharged. This option was not explained to her,

and she was under the impression that a medical discharge would look bad on her DD Form 214, so she declined.

c. In 2005, she was in a hurry to get away from the base and the sounds that resembled the attack and injuries she sustained in Mosul, Iraq. She was unable to complete her service extension because the sounds of training were unbearable to her at the time. She desperately wanted to get away and go home to mentally heal. However, she was not properly informed of the lifelong benefits she would have received for herself and her family if she had chosen medical retirement. She would have requested the correction sooner, but she had no idea it was an option until today.

3. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 1 April 2002, with an order to active duty for enlistment in the Regular Army for a period of not less than 2 years. On 20 August 2002, she was discharged from the DEP and enlisted in the Regular Army for a period of 3 years.

4. A DA Form 1695 (Oath of Extension) shows on 4 August 2004, the applicant voluntarily extended her initial 3-year enlistment dated 20 August 2002, by a period of 6 months, rendering her new expiration term of service (ETS) date as 19 February 2006. Her request for extension was for the reason of contingency deployment conditions.

5. The applicant deployed to Iraq from 13 January 2005 through 16 April 2005.

6. The applicant's available records do not contain documentation pertaining the injuries she sustained in combat in Iraq, her medical evacuation, her subsequent surgery, treatments, and therapy, or a resultant DA Form 3349 (Physical Profile) detailing her functional limitations and profile ratings.

7. 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).

8. A North Atlantic Regional Medical Command memorandum, dated 6 May 2005, shows:

a. Enclosed were the Purple Heart permanent orders and medal set for the applicant. [The orders for the Purple Heart are not in her available service records for review].

b. The applicant was a patient at WRAMC for treatment of wounds received in combat and was discharged from WRAMC prior to being awarded the Purple Heart in a proper ceremony. It was requested she be provided a proper ceremony to acknowledge her sacrifices.

9. The applicant's DD Form 214 shows she was honorably released from active duty on 2 November 2005, due to completion of required active service, with corresponding separation code of MHK, and transferred to the USAR Control Group (Reinforcement). She was credited with 3 years, 2 months, and 13 days of net active service and among her listed awards and decorations is the Purple Heart.

10. The applicant's available service records do not show:

- she was issued a permanent physical profile rating
- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by his MOS and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)
- she was diagnosed with a condition that failed retention standards and/or was unfitting

11. A VA Rating Decision, dated 28 June 2006, shows the applicant was granted a service-connected disability rating, the combined rating of which is not listed on the document, for the following conditions effective 3 November 2005:

- post traumatic stress disorder (PTSD), 70 percent
- residuals, shrapnel wounds, left lower extremity with scars, 10 percent
- residuals, shrapnel wound with tenderness, left cervical spine, 10 percent
- residuals, shrapnel wounds, face (right cheek, left cheek, and lateral to left eye), 10 percent
- residuals, shrapnel wounds, left upper extremity, 0 percent
- residuals, shrapnel wounds, right lower extremity, 0 percent
- post-traumatic minor cataract and subconjunctival ferrous foreign matter, right eye (status post removal of shrapnel), 0 percent

12. U.S. Army Human Resources Command (AHRC) Orders C-11-730655, dated 7 November 2007, released the applicant from the USAR Control Group (Reinforcement) due to voluntary request, and transferred to a Troop Program Unit (TPU) in the USAR, effective 6 November 2007.

13. A USAR Periodic Health Assessment (PHA), dated 7 September 2008, shows:

a. Overall Health Comments show: Vehicle accident May 2003; scar on eye; mortar explosion April 2005; deployment related; shrapnel to left arm, left leg, left foot, right eye, left side of neck.

b. Overall Health Provider Comments show: no traumatic brain injury (TBI); no limitations; no chronic pain; no meds; mental health treatment 3 years ago.

c. Hospitalization/Surgery Comments show: Surgery on right eye- shrapnel removed.

d. Hospitalization/Surgery Provider Comments show: normal vision; no limitations.

e. VA Disability Comments show: VA compensation/disability.

f. VA Disability Provider Comments: 80 percent disability; last seen at VA 2 years ago; no limitations; no meds; no chronic pain.

g. In the Behavioral Health section, the applicant annotated she had been seen by a behavioral health provider and she sometimes was depressed, down, or hopeless and sometimes had little interest or pleasure in doing things in the last 2 weeks.

h. She did not have a physical profile or medical condition that kept her from taking any part of the Army Physical Fitness Test (APFT) or from doing her military job or duties.

i. Her PULHES was 111111.

14. A Standard Form 507 (Medical Record), dated 7 September 2008, provides the applicant's Functional Capacity Certificate, and shows:

- she was not on a physical profile, permanent or otherwise
- the examiner found no diagnoses to contribute to any physical limitations
- the applicant signed the form on 7 September 2008, concurring with the assessment

15. A Reserve Health Readiness Program memorandum, dated 23 February 2009, provides the results of her PHA, and shows:

- the applicant was physically fit for retention under the provisions of Army Regulation 40-501 (Standards of Medical Fitness)
- she was able to deploy to an austere environment within the next 6 months
- physical abnormalities are noted; however, there are no documented limitations for profiling at this time; she notes a response in the Behavioral Health Section on the PHA which may need further evaluation

16. Headquarters, Army Reserve Medical Command Orders 09-131-00004, dated 11 May 2009 honorably discharged the applicant from the USAR effective 10 June 2009, under the authority of Army Regulation 135-178 (Army National Guard and Reserve Enlisted Administrative Separations), with the pertinent paragraph not cited.

17. A review of the AHRC, Soldier Management System (SMS) shows:

- a. The applicant's PULHES was 111111 with no limitations in any factors and her last medical exam was 7 September 2008.
- b. A transaction was completed to involuntarily discharge the applicant from USAR TPU service on 10 June 2009, due to expiration of USAR service obligation and archive her record.

18. The applicant provided two letters of support/witness statements, which have been provided in full to the Board for review.

- a. The first statement is from Captain (CPT) F____ O____, under whom the applicant previously served while deployed to Mosul, Iraq. He details her outstanding character, selfless service in often volunteering for hazardous duty outside the confines of their protected installation downrange. He recounts the events leading to the injuries she sustained from hostile enemy fire and her display of personal courage when their installation came under attack from an insurgent mortar team, springing into action to direct Soldiers to the nearest bunkers, when a mortar round landed within feet of her location as she was entering a bunker seriously injuring her.

- b. The second statement is from Major (MAJ) G____ G____, who was the applicant's commanding officer from May 2004 through March 2005, at Fort Irwin, CA, and Forward Operating Base Freedom, Mosul, Iraq. He speaks to her moral character and work ethic, dedication to her work, and living the Army Values.

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 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, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting in essence a referral to the Disability Evaluation System (DES) for PTSD and injuries sustained in a 2005 mortar attack. She states:

“I was injured in a mortar attack in 2005 while deployed to Iraq. At the time, I was 22 and naive to the differences in discharges. All I know was that I wanted to have an honorable discharge. After surgery and physical therapy at Walter Reed. I returned to my duty station at Fort Irwin. CA. It was there that someone asked if I wanted to be medically discharged. This option was not explained to me and I was under the impression that the medical discharge would look bad on my DD 214, so I declined.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. Her DD 214 shows she entered the regular Army on 20 August 2002 and received an honorable discharge on 2 November 2005 under the provisions in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations, after having completed her required active service. The DD 214 shows service in Iraq from 13 January 2005 thru 16 April 2005. Her reentry code of “1” signifies she was fully eligible to reenlist.

d. The EMR is incomplete. It does show she underwent evaluation and multiple radiographic evaluations after being injured in a mortar attack on 19 April 2005. The first clinical encounter available for review is a 16 August 2005 ophthalmology consult for right ocular residuals after having shrapnel removed from her right eye and retaining normal visual acuities:

“Pt [patient] is an active duty 22-year-old female with Shrapnel recently removed OD [right eye] (April 2005). Pt complaining photophobia and pressure/pain occasionally OD. Pt had mortar round explode within approx. 5 meters of OD and is status post open globe OD with scleral laceration. Foreign body removed. Air/Fluid exchange, Cryo. Pt denies any flashes or floaters.”

e. The provider documented traumatic iritis and a new traumatic cataract, started treatment, and directed her to follow-up in 7 days. Her iritis was improved at her one-week follow-up appointment. There were no clinical encounters for additional injuries.

f. The applicant underwent a periodic health assessment (PHA) on 7 September 2008 while she was in the USAR. The applicant denied all limitations when she completed her Functional Capacity Certificate (FCC 507). On the PHA, The applicant noted the shrapnel injuries sustained in 2005 with the provider commenting “No TBI, No limitations, No chronic pain, No meds, Mental health treatment 3 years ago ... Normal vision.” The provider documented the applicant had no profile limitations and was “Deployable to an austere environment within the next 6 months.”

g. There is no probative evidence her OD injury or any other duty incurred medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her voluntary separation; or that her PTSD or any other duty incurred medical condition prevented the applicant from reenlisting. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge.

h. JLV and submitted documentation shows he has been awarded multiple VA service-connected disability ratings, including one for PTSD (70%), several 10% ratings for scars, and a 0% rating for traumatic cataract. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is not warranted.

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 Board carefully considered counsel's statement, 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 referral of the applicant's case to the DES is not warranted. The opine noted, the applicant's record is absent any probative evidence her OD injury or any other duty incurred medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, prior to her voluntary separation; or that her PTSD or any other duty incurred medical condition prevented the applicant from reenlisting.

2. The Board determined there is insufficient evidence to support the applicant's contentions for a physical disability retirement from the Regular Army in lieu of honorable release from active duty due to completion of required service. The Board agreed, based on the advising official and the preponderance of evidence found in the applicant's record, her contentions are without merit. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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. 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 post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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 (DES) 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 (Physical 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 (MMRB); 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//