

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20230010608

APPLICANT REQUESTS: the applicant defers to counsel for submission of her request, statement, and evidence.

- A higher service-connected disability rating
- In effect, correction to her disabilities to include additional unfitting conditions of cervical strain, post-traumatic stress disorder (PTSD), and secondary conditions due to PTSD and lumbosacral strain (now degenerative disc disease)
- Lumbar strain and cervical strain be found in the line of duty (LOD)

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in support of application
- Vehicle accident report, 3 September 2003
- Orders 037-0904, 6 February 2004
- DD Form 214 (Certificate of Release or Discharge from Action Duty), for the period ending 27 July 2004
- DA Form 3349 (Physical Profile), 30 March 2013
- Order Number 041584, 19 May 2016
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 23 August 2019
- Memorandum subject: Appeal, PEB, 12 September 2019
- DA Form 199-1 (Formal PEB Proceedings), 5 December 2019
- Memorandum subject: Complications Regarding Medical Evaluation Board Proceedings (MEB)/PEB Process, Appeal of the PEB findings, 13 January 2020
- Memorandum subject: Commander's Recommendation, PEB, 15 January 2020
- Memorandum subject: Rebuttal to PEB Findings, 23 April 2020
- DA Form 199-2 (Revised PEB Proceedings), 24 April 2020
- Memorandum subject: Disposition of Continuation of Active Reserve (COAR) Request, 11 May 2020
- Medical Records

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. Counsel states that the applicant submitted her application within three years of her retirement date of 26 June 2020. However, according to the evidence she provided, and a review of her service record, revealed no separation and/or retirement documents that are dated within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b).
3. Counsel further states in his legal brief, which is available in its entirety for the Board's review:
 - a. The applicant requests a higher service-connected disability rating, and correction to the unjust and erroneous evaluation of her disabilities to include additional unfitting conditions. Furthermore, she requests her lumbar strain and cervical strain be found in the line of duty.
 - b. She was notified of her referral to the Integrated Disability Evaluation System (IDES) on 4 April 2013, for injuries that stemmed from a 2003 motor vehicle accident, while she was on active duty, and were exacerbated by a second motor vehicle accident that occurred in 2011, and a 2016 that occurred while she was on annual training orders in the U. S. Army Reserve (USAR).
 - c. She was referred to MEB and PEB without an approved formal line of duty (LOD), as required before the forwarding of the Soldier's case to PEB. The MEB did not adequately evaluate all her conditions, and during the PEB, one of her conditions was erroneously found to be fitting for duty.
 - d. Her conditions worsened and her medical records were not updated, therefore a reevaluation of her disabilities to add conditions not previously included, and a higher disability rating are warranted.
4. Counsel provides the following documents:
 - a. A vehicle accident report, 3 September 2003, which shows specific details of the accident, and that the applicant was not at fault.
 - b. Orders 037-0904, 6 February 2004, show she was reassigned to the U. S. Army transition point for transition processing. After processing, she was to be released from active duty not by reason of physical disability, with an effective date of 27 July 2004.

c. DA Form 3349, reflects the following information:

- she was issued a permanent profile on 30 March 2013 due to neck and back pain and adjustment disorder
- PULHES score of “3” in “U” upper and “L” lower extremities reflects significant limitations [
- PULHES score of “2” in “S” psychiatric indicates some activity limitations are warranted
- she could not wear body armor for at least 12 hours per day
- she could not wear load bearing equipment (LBE) for at least 12 hours per day
- she could not move 40lbs (for example, duffle bag) while wearing usual protective gear (helmet, weapon, body armor and LBE) at least 100 yards
- she could not preform the two-mile run and the push-up events of the Army physical fitness test (APFT)
- MEB was not recommended
- “Neck pain s/p MVA 2011 (U3) 3-41”
- “Back pain s/p MVA (L3) 3-41”
- “PTSD (S2) 3-36”

d. Order Number 041584, 19 May 2016, shows she was ordered to active duty for annual training (AT) for a period of 20 days, with a report date of no later than 19 May 2016.

e. DA Form 199, show a PEB convened on 23 August 2019, wherein the applicant was found physically unfit with a recommended combined disability rating of 40%, and that the disposition be permanent disability retirement for chronic lumbar strain since 23 March 2004. Incurred or aggravated in the line of duty in a duty status and was permanent and stable. The applicant did not concur with the findings and requested a formal hearing of her case with a personal appearance; however, she did not request reconsideration of her VA ratings. This document further shows 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 (5 United States Code (USC) 8332, 3502, and 6303).

(2) Evidence of record reflects the Soldier was not a member or obligated to become a member of an Armed Force or Reserve thereof, or the National Oceanic and Atmospheric Administration (NOAA) or the U. S. Public Health Service (USPHS) on 24 September 1975.

(3) The disability did not result from a combat-related injury as defined in Title 26, U.S. Code, Section 104.

f. For the applicant's PEB appeal, she provided a support document from her military supervisor. Memorandum subject: Appeal, Informal PEB, 12 September 2019, which shows the applicant could perform her duties as an Army Paralegal Specialist (27D), as her back condition did not hinder her performance of her duties as a paralegal.

g. DA Form 199-1 (Formal PEB), shows on 5 December 2019, the applicant had her formal PEB, which states:

(1) Applicant stated her left lower extremity radiating symptoms are unfitting. She testified that she has experienced radiating pain and numbness to her left lower extremity for several years with no specific cause identified. The applicant presented medical evidence that she has been diagnosed with left lower extremity radiculopathy by a civilian orthopedic specialist, however there is no evidence indicating that she has received treatment specifically for lower extremity pain. Finally, the Department of Veterans Affairs (VA) examination indicates that she has no radiculopathy symptoms in either leg. Therefore, the PEB found that this condition was not unfitting.

(2) Applicant stated her cervical strain is unfitting. She testified that the onset of this condition occurred while on active duty for training in May 2016 due to a motor vehicle accident. She provided medical evidence indicating that she received treatment for this condition from May 2016 until January 2017. She also testified that her treating provider informed her that she had achieved maximum recovery at that point and treatment was discontinued. She was treated with medication, physical therapy, and chiropractic treatment. Although she has a documented injury and treatment, pain management therapy is not required for this condition and there is no evidence to indicate she returned to treatment for this condition since 2017. Therefore, the PEB found that this condition was not unfitting.

(3) Applicant stated her chronic adjustment disorder with anxiety and depressed mood is unfitting. She testified that the onset of this condition occurred during her deployments to Kuwait (2001 and 2002-2003) due to occupational stress and fear of being in a combat theater. She also testified that she received an S-2 behavioral health profile based on a records review and that she had never discussed the profile with a behavioral health provider. She has received treatment consisting of sporadic outpatient therapy and medication, however, there is no evidence to indicate that she has required hospitalization for this condition. Additionally, she has completed a Master's degree in business administration and a juris doctor degree since the onset of this condition. Therefore, the PEB found that this condition is not unfitting.

(4) Applicant stated her migraine headaches are unfitting. She testified that she currently experiences two to three migraine headaches per week and that these headaches are directly attributable to her behavioral health condition. She also testified that she currently treats her headaches with over-the-counter pain medication, but has been treated with maxall in the past with good result, however she does not currently have a profile for this condition. Therefore, the PEB found that this condition is not unfitting.

h. In a memorandum subject: Complications Regarding MEB/PEB Process, Appeal of the PEB findings pertaining to the applicant, 13 January 2020, shows she requested the suspension of the board proceedings. She needed additional time to complete several outstanding medical appointments with the VA or until she can obtain medical treatment that has been suspended due to her pregnancy.

i. In a memorandum subject: Commander's Recommendation, PEB, 15 January 2020, shows her commanding officer requested an exception to policy to the PEB decision to separate the applicant from the USAR. He further recommended she be allowed to continue her service as an unfit Soldier until she reaches her 20 year retirement eligibility date of 26 June 2020.

j. On 23 April 2020, the U. S. Army Physical Disability Agency (USAPDA), provided the applicant's counsel with a response regarding her PEB findings. They found her behavior health (combat-related), migraines (combat-related), neck, radiculopathies, sleep apnea (combat related), and plantar fasciitis conditions were not unfitting; thus, they do not warrant a combat code. They further note she does not have a profile for any of these conditions and has been able to successfully continue her career for years with these conditions present. Indeed, her commander also noted that she can perform all of her duties as a 27D. As a result, the findings, and responses of the PEB were reaffirmed. Therefore, the case was properly adjudicated by the PEB in accordance with the rules that govern the Physical Disability Evaluation System in making its determination. In addition, if the applicant feels that the findings are in error, she will need to make any future submission for correction to ABCMR.

k. In a memorandum subject: Disposition of Continuation of Active Reserve (COAR) Request, 11 May 2020, shows the applicant's request for COAR as an exception to policy was disapproved. The request did not meet the primary objective of the COAR program, which is to conserve manpower by effective use of needed skills or experience. The PEB found her physically unfit and recommended a combined disability rating of 40% and that she be placed on the permanent disability retired list (PDRL).

l. Medical records that will be reviewed and discussed by the Medical and Mental Health Staff at Army Review Boards Agency (ARBA).

5. The applicant's service record reflects the following:

a. DD Form 4 (Enlistment/Reenlistment Document) shows she enlisted in the Regular Army on 28 July 2000.

b. The applicant served in Kuwait from 17 August 2001 to 27 November 2001 and from 15 September 2002 to 17 May 2003.

c. DD Form 214, shows she entered was honorably released from active duty on 27 July 2004, due to completion of her required active duty service. She completed 4 years of active service, and 11 months, 4 days of foreign service in Kuwait. Her grade/rank at the time of discharge was sergeant (SGT)/E-5. She was awarded and/or entitled to the following awards:

- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon

d. On 25 June 2009 she joined the USAR, followed by one reenlistment on 25 June 2019.

e. DA Form 199-2, 24 April 2020, shows the USAPDA had administratively corrected the findings of her PEB, 5 December 2019. This administrative correction did not change her disposition; reduce the disability rating assigned to an unfitting condition; take away a favorable administrative determination; change or delete a diagnosis rendered by the MEB; or remove a diagnosis listed under another unfitting condition. To satisfy the determination required by Section 3 of Appendix 5 to Enclosure 3 of DoDI 1332.18, the Soldier's disability retirement is due to a disability incurred in the line of duty in a combat zone or as the result of performing combat related operations. This DA Form 199-2 supersedes any previously issued DA Form 199, DA Form 199-1.

6. In a memorandum, 30 June 2020, subject: Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) reflects the applicant had completed the required years of qualifying Reserve service and is eligible for retired pay upon reaching age 60 in accordance with Title 10, U.S. Code Chapter 1223.

7. The applicant's service was void of Orders placing her on the PDRL on the date of her retirement.

8. Due to the applicant's request for a higher service-connected disability rating, a LOD, and a correction of her disabilities to include additional unfitting conditions, the case is being forwarded to the Medical and Behavioral Health Staff at ARBA.

9. 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 desires a higher disability rating involving the addition of cervical strain, PTSD, as well as conditions that are secondary to PTSD and her unfitting lumbar condition (lumbosacral strain originally, now rated as degenerative disc disease). The applicant also requests line of duty determination for the cervical strain condition.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was in active service 20000728 to 20040727. She was deployed in Kuwait 20010817 to 20011127 and 20020915 to 20030517. She was released from active duty after completion of the term. Her MOS was 98H, Morse Interceptor and later 27D Paralegal Specialist. She was discharged from service under provisions of AR 635-40 for disability with retirement.

3. Summary of DES proceedings for the lumbar condition

a. The applicant was first seen for back pain on 23Mar2003. She reported chronic back pain of after a car accident (03Sep2003).

b. 27Jan2018 Back Conditions DBQ. The applicant reported 3 car accidents. The first accident was in 2003 (while on active duty); the second was in 2011 while not on active orders; and the third was in 2015 (during active duty training). ROM: There was forward flexion from 0 to 90 degrees (normal); and extension from 0 to 20 degrees (normal 30 degrees). After repetitions, forward flexion of the back was 0 to 50 degrees; and extension was 0 to 20 degrees. There was no evidence of pain with weight bearing. Strength was 5/5 (normal). The neurologic and sensory exams were normal. Straight leg raise testing was negative both sides. There were no signs of radicular involvement during this assessment. In addition, the x-ray did not show arthritis. The lumbar MRI revealed minimal posterior bulges at L3-L4, L4-L5 and L5-S1.

c. 01Jun2019 Back Conditions DBQ. The applicant did not report any further injury to her back. However, ROM was markedly reduced from prior exam. There was forward flexion from 0 to 25 degrees (normal is to 90 degrees); and extension was from

0 to 10 degrees (normal 30 degrees). In addition, guarding or muscle spasm of the thoracolumbar spine not resulting in abnormal gait or abnormal spinal contour.

d. 10Jun2019 MEB Proceedings (DA Form 3947) showed that Chronic Lumbar Strain was the sole condition which failed medical retention standards of AR 40-501 chapter 3, para 3-39h. MEB NARSUM (narrative summary) indicated that treatment included pain medication (anti-inflammatories, Neurontin), muscle relaxants, topical pain medication, se of TENS unit, chiropractic manipulation and physical therapy.

e. 23Aug2019 Informal PEB (DA Form 199-2) found Chronic Lumbar Strain unfitting for continued service. The PEB listed prior conservative treatment measures. A 40% rating under code 5242 was applied. The recommended disposition was permanent disability retirement. The applicant did not concur and requested a formal hearing of her case. She did not request reconsideration of the VA ratings. On 12Sep2019, and again (through counsel) on 12Jul2019; the applicant appealed the MEB decision, contending that she should be found Fit for Duty because the lumbar condition did not impact her soldiering skills or ability to perform in her MOS.

f. 05Dec2019 Formal PEB (DA Form 199-1). The PEB found Chronic Lumbar Strain unfitting for continued service because it prevents performance of duties required for her MOS. For example, she was unable to wear a helmet. Body armor, and load bearing equipment without worsening the condition. The condition was not the result of

g. 24Apr2020 US Army Disability Agency Revised PEB Proceedings (DA Form 199-2). The added correction acknowledged that the lumbar condition was incurred in the line of duty in a combat zone or as a result of perming combat related operations.

4. Left Lumbar Radiculopathy, was secondary to Lumbar Spine Strain.

a. The condition was manifested as numbness and radiating pain to the left lower extremity. The applicant endorsed the gradual development of pain radiating to the right lower extremity knee.

b. 21Sep2017 Rehab Consult Note. The applicant reported dull aching back pain at baseline 6/10 as well as stinging [intermittent] pain that radiates down the right buttock and leg, terminating at the ankle rated 8/10. Straight leg raise testing was negative. Strength in lower extremities was normal. Gait was normal.

c. 27Jan2018 Back Conditions DBQ. This exam for the MEB showed normal straight leg raise testing. The neurologic and sensory examinations were normal. Radiculopathy was not shown during this examination.

d. 01Jun2019 Back Conditions DBQ. Again, there was no signs of radiculopathy

during this examination.

e. 13Aug2019 Primary Care H&P Note. The applicant came to the visit to reestablish care at the VA due to recent emergency room visit for a severe flare of back pain rated 9/10. She was given a muscle relaxant and pain pill both which helped but the prescription was only for a few days. She also reported that sometimes the pain radiated down legs with numbness. She denied loss of bowel/bladder control. She had not had any recent physical therapy or chiropractic care.

f. 27Feb2020 Peripheral Nerves DBQ. She reported intermittent moderate (right lower extremity) to severe (left lower extremity) pain. The lumbar MRI showed minimal posterior disc bulges at the L3-4, L4-5 and L5-S1 levels. Gait was normal. Bilateral motor, neurologic and sensory exams were normal. The VA examiner diagnosed Mild Incomplete Paralysis, Sciatic Nerve, Bilateral.

g. The applicant reported gradual onset of numbness and radiating pain in her lower extremities. The condition was not found unfitting during the FPEB due to the condition not requiring specific treatment (e.g. medication for nerve pain) and there being no evidence that the condition had impacted performance of duty (Command endorsed that the applicant was fully capable of performing her duties despite her medical conditions. Back Conditions DBQs in 2018 and 2019 and 27Feb2020 Peripheral Nerves DBQ exams showed normal motor, neurologic and sensory function. A nerve conduction study had not been performed.

5. Cervical Strain

a. 03Sep2003 cervical spine films after the car accident. The exam was described as incomplete, but no abnormalities were visualized.

b. 31May2005 Report of Medical Examination (DD Form 2808 for retention). Chronic Backache was disclosed. There was no mention of neck pain.

c. 16Nov2011 Primary Care H & P. The applicant was establishing care. She was evaluated for back pain. She also had neck pain at the time that radiated from the back.

d. 03Apr2012 Cervical MRI was unremarkable except for questionable straightening of the spine.

e. 30Mar2013 approved permanent U3 for Neck Pain after the car accident in 2011. She received chiropractic treatment at Total Health Clinic from 15Sep2011 through 26Jul2012. As a result of accident, she initially could not perform some physically demanding tasks and pushups. She was returned to work May2012.

f. There was a resurgence of neck pain due to a motor vehicle accident while in Belle Chasse, Louisiana while on active duty training in May 2016. Her orders confirm a 20-day assignment to report NLT 19May2016. The State of Louisiana Uniform Motor Vehicle Traffic Report showed date of accident 24May2016. She engaged in treatment from May 2016 until January 2017.

g. 01Jun2019 Neck Conditions DBQ. The applicant reported being in a car accident in 2016. She was treated with pain medication and physical medicine. She was not currently in treatment. The exam showed neck forward flexion was from 0 to 10 degrees (normal is to 45 degrees); and extension was from 0 to 10 degrees (normal is to 45 degrees). There was no evidence of pain with weight bearing. There was no objective evidence of localized tenderness or pain on palpation of the joint or associated soft tissue. There were no signs or symptoms due to radiculopathy.

h. 11Oct2019 Physical Therapy Consult. The applicant reported a history of cervical muscle tightness which impacted her ability to turn her head. She noted the original onset of cervical pain was due to her first car accident in 2003.

i. There were minimal treatment visits for the condition after completing therapy in 2016/2017. The applicant was issued a permanent U2 physical profile for this condition without any functional activity restrictions. So far this appears appropriate for the minimal level of required directed management/treatment for this condition currently. It should be stated, in the 13Jan2020 Appeal of Formal PEB Decision, the applicant indicated that she participated in physical therapy for the neck from January 2018 until discharged from treatment in April 2018. She indicated that the notes erroneously discussed only the back.

6. Chronic Adjustment Disorder with Anxiety and Depressed Mood; PTSD due to MST

a. 2004the applicant self-referred for 'mood swings'. Depression symptoms, sleep issues and headaches were note. She was prescribed nortriptyline. It did not appear that the medication was refilled.

b. 08Nov2007 Review PTSD C&P Exam. In childhood, she was raised by her grandmother due to her mother's drug dependance/abuse. Otherwise, her childhood was healthy, although she had very few friends. While in the Army, she served in Kuwait for 11 months working in Military Intelligence. She denied directly experiencing or witnessing traumatic events during the service. She reported that ever since returning from overseas, she hadn't slept a whole night. She shared that she recently went to the hospital for migraines after hearing about the possibility of deploying again. Diagnosis: Adjustment Disorder with Anxiety.

c. 23Jan2018 Review PTSD DBQ. She was married with 3 children. She was

working as paralegal (civilian job) with the Army Corps of Engineering since 2009 without issue. And she was also in her second year of law school at Loyola (night program). Diagnosis: Adjustment Disorder with Anxiety and Depressed mood, Chronic. The level of Occupational and social impairment attributable to his BH was with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care, and conversation (30% disability level). She was not taking any psychotropic medications.

d. 20170801 thru 20180731 NCOER indicated she successfully completed her second year of law school with GPA 3.4 (while working).

e. 01Jun2019 Mental Disorders DBQ. Veteran states she has been more irritable since she has been in law school due to stress. This affects relationships with family and friends. She was in the third year of law school for Loyola, stating her grades had been going down. She was working full time for the Army Corps of Engineers as a paralegal. She shared that she had been reprimanded for not getting work done. To decrease stress, she was drinking 3 liqueurs per day. Diagnosis: Adjustment Disorder with Anxiety and Depressed Mood, chronic. The level of occupational and social impairment attributable to the BH condition was with reduced reliability and productivity (50% disabling level).

f. 14Jan2020 Mental Health Consult. She was 37 years old, married and 22 weeks pregnant (planned) for an intake to establish care again. Current stressors Medical Board and bar exam retake. Symptoms include ruminating of trauma, some intrusive thoughts, hypervigilance, nightmares, anxiety, irritability, and poor concentration. She had poor sleep at baseline and also anticipated starting CPAP (recent OSA diagnosis)]. She had passive thoughts of dying but adamantly denied suicide ideation. There was no mania, psychosis, violence, or history of psychiatric hospitalization. Wellbutrin and therapy were helpful in the past. DSM-5 Diagnoses: PTSD, chronic in part secondary MST; Major Depressive Disorder, moderate; and Unspecified Anxiety Disorder. The plan included restarting med and therapy. There were no duty limitations issued.

g. 27Feb2020 Psychiatry Note. She was nearing 29 weeks gestational age. She was tolerating Wellbutrin with some improvement in mood and notable improvement in concentration. She feels this made a difference in studying for bar exam. There was no suicide ideation/attempt.

h. The applicant had long intermittent history of adjustment issues in response to life stressors (childhood, military, law school, family etc.) and trauma. VA examiners did not assess that she met criteria for PTSD until MST was disclosed. Despite symptoms she managed full-time employment and complete 2 graduate schools (master's in business 2016 and law school 2019) in addition to raising a family. She did not require a

protective work environment and there were no duty limitations. She had an S2 physical profile since 2011.

7. Migraines Including Migraine Variants/Tension Headaches. The applicant endorsed that the headache condition was related to her mental health condition.

a. 09Apr2009 Neurology Note. The neurologist noted the applicant had chronic daily headaches, with some component of migraine. They also noted depression symptoms and sleep problem which could contribute to/worsen the headache situation. She denied a history of head trauma. CT of Head was normal.

b. 25Jan2018 Headaches DBQ. During this assessment, the applicant endorsed that her headaches were worse however, she was not under care for them. The headaches were accompanied by nausea, sensitivity to light and sound, and changes in vision. She endorsed headache were occurring at least twice per week at 9/10 in severity. She managed the headaches with over-the-counter analgesics only.

c. 29May2019 Headache DBQ. The accompanying symptoms were unchanged. The headache frequency was increased to daily headaches. She also reported missing work and other responsibilities due to the headaches. Despite this, she still managed her own headaches on her own with over-the-counter Tylenol and ibuprofen.

d. 03Dec2019 Request for Neurology Consult. She had a history of migraines that responded well to Topamax and Triptan; however, she was currently pregnant.

e. 16Jan2020 Emergency Department. She was seen for a migraine lasting 2 weeks and she was currently pregnant. She had her typical migraine symptoms. Tylenol was not helping. Ibuprofen helped but she was advised against it during pregnancy. She was treated acutely with fluids, Reglan, and Benadryl which resolved the headache completely.

f. 31Jan2020 Neurology Consult. She was employed at a law firm but could not work due to her migraine frequency at the time. Her headaches had previously been controlled on Topiramate (preventive medication) and triptan (abortive medication). Propranolol was started as preventive medication. Tylenol, Fioricet, and Sumatriptan were the abortive medications. She was also advised on the importance of treating her OSA.

g. 27Feb2020 Neurology Note. The applicant endorsed that her migraine headaches were more manageable since her last clinic visit on 31Jan2020. She also stated that she wore the CPAP device nightly as prescribed.

h. The headache condition was originally stable on preventive and abortive medication combination. However, when she had to stopped the medications due to

pregnancy, the condition became out of control. She delayed returning to treatment, but once in treatment, the condition responded again to treatment. During the 30Mar2020 Neurology Note (phone call to patient due to COVID), it was noted "interestingly she has not been getting the headaches lately, not as frequent as before. She still has some of her medications available otherwise she is stable on current med".

8. Summary

a. Based on review of available records, there was insufficient evidence to support adding Cervical Strain; Lumbar Radiculopathy; Migraines Including Migraine Variants/Tension Headaches; or mental health condition (to include Chronic Adjustment Disorder with Anxiety and Depressed Mood; PTSD), as unfitting conditions. The ARBA Medical Reviewer concurs with the prior MEB/PEB proceedings that the conditions did not fail medical retention standards of AR 40-501 chapter 3, and they did not appear to be unfitting for continued service.

b. Concerning the line of duty question for the Cervical Strain condition, the following observations were made: The applicant was involved in a car accident September 2003 (while in the Regular Army). Cervical spine films were obtained; however, there was no record of neck pain at the time. The applicant was discharged from the Army and transferred to the Reserves in 2004. The 31May2005 Report of medical examination was silent for neck pain. The applicant first sought care for neck pain after a non duty related car accident in 2011. The condition required multimodal conservative care for months. The condition was diagnosed and managed by outside (non DOD, non VA facility) while the applicant was not on active orders. There was a temporary exacerbation of neck pain after the May 2015 car accident while on active training orders. The VA has not service connected the applicant neck condition.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence and the findings of the medical review that the requested medical conditions failed to show that the requested medical conditions failed to meet medical retention standards. Therefore, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

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.

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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 (Armed Forces), 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 Army Board for Correction of Military Records (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. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

3. Title 10, United States Code (USC) (Armed Forces), 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 Department of Defense (DOD) Directive 1332.18 and AR 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 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 the Informal Physical Evaluation Board (PEB) Proceedings. 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. Title 38, United States Code (USC) (Veterans' Benefits), 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.

5. Title 38, United States Code (USC) (Veterans' Benefits), 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.

6. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, 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 as follows. Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 or discharged from the USAR per Army Regulation 135-175 (Separation of Officers) or Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations). They will be transferred to the Retired Reserve only if eligible and if they apply for it.

b. Reservists 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. Reservists with nonduty 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 this regulation.

c. Reserve Component Soldiers with nonduty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of

this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of Reserve Component Soldiers with nonduty related medical conditions, MEBs are not required, and cases are not sent through the Physical Evaluation Board Liaison Officers (PEBLOs) at the military treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB by the U.S. Army Reserve Command (USARC) Regional Support Command or the U.S. Army Human Resources Command (HRC) Surgeon's office and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

d. A permanent profile may only be awarded or changed by the authority designated by Commanders of Army Military Treatment Facilities. If the profile is permanent, the profiling officer must assess if the Soldier meets the medical retention standards of this regulation, those Soldiers on active duty who do not meet the medical retention standards must be referred to an MEB. Permanent profiles may be amended at any time if clinically indicated and will automatically be reviewed at the time of a soldier's periodic examination. The Soldier's commander may also request a review of a permanent profile.

e. A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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 or temporary.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) in effect at the time, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. As such, this regulation implements the requirements of Title 10 (Armed Forces), United States Code, Chapter 61; DODI 1332.18, DODM 1332.18 (Volumes 1 through 3), and DOD policy memorandums to these issuances; and Army Directive 2012-22 as modified by DODI 1332.18.

a. Chapter 4 provides, Public Law 110-181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel. (See the notes to 10 USC 1171 for the Title XVI provisions.)

b. A Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the Department of Veterans Affairs (VA) or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

c. The objectives of the Disability Evaluation System (DES) are to:

(1) Maintain an effective and fit military organization with maximum use of available manpower.

(2) Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the line of duty (LOD).

(3) Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

d. The DES begins for a Soldier when the Soldier is issued a permanent profile approved in accordance with the provisions of AR 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501 (see glossary). Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command's Medical Management Center before their referral into the DES.

e. The DES concludes for Soldiers as set forth below:

(1) For Soldiers determined by the MEB to meet medical retention standards and MAR2 did not refer the Soldier to the DES, the DES concludes the date the MEB returned the Soldier to duty. (If referral to MEB resulted from MAR2 evaluation, referral to the PEB may be mandatory.

(2) For Soldiers referred to the PEB and determined fit, the DES concludes as of the date of USAPDA's memorandum approving the finding of fit.

(3) For Soldiers referred to the DES under a Legacy Disability Evaluation System (LDES) process and determined unfit, the DES concludes on the date of the Soldier's separation or retirement for disability.

(4) For Soldiers referred to the DES under the Integrated Disability Evaluation System (IDES) process and determined unfit, the DES concludes on the date of the Soldier's notification of the VA's benefits decision. However, the Soldier's military status

as a member of the Regular Army (RA) or Reserve Component (RC), as applicable, ends on the date of the Soldier's disability separation or retirement.

g. Chapter 5 addresses the standards for unfitness due to disability. A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation.

h. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

8. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies, procedures, and mandated tasks governing line of duty determinations of soldiers who die or sustain certain injuries, diseases, or illnesses. It implements Titles 5, 10, and 32, United States Code. It takes precedence over all other publications relating to line of duty.

a. Paragraph 4-18 (Revision or correction of line of duty determinations) states the Adjutant General of the Army cation on behalf of the Commanding General, U.S. Army Human Resource Command (AHRC) and acting for the Secretary of the Army as delegated may change a determination made under this regulation. The correct conclusion based on the facts must be shown. However, if the change is from In the Line of Duty to Not in the Line of Duty (NLD) or, it other evidence is considered which supports NLD determination, the Soldier must be informed of the proposed change, its basis, and his or her rights under paragraph 3-3b, and be given a chance to respond in writing in accordance with paragraph 3-12b.

b. Paragraph 4-19. The agencies that process cases for physical disability separation are not bound by prior LD determinations. When the U.S. Army Physical Disability Agency believes that a prior LD determination may be incorrect for any reason, a request for review should be sent to HQDA, U.S. Army Human Resources Command, clearly detailing the reason for such action.

10. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//