ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20230011176

APPLICANT REQUESTS:

- Permanent disability retirement with at least a 60 percent (%) rating
- Service connection for Non-Hodgkin's Lymphoma
- Service connection for Major Depressive Disorder
- Service connection for Chronic Myeloid Leukemia
- Referral to the Disability Evaluation System (DES)
- In effect, a Medical Evaluation Board (MEB)
- In effect, Physical Evaluation Board (PEB)
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief in support of application
- Affidavit from the applicant
- DD Form 2648 (Pre-separation Counseling Checklist), dated 1 August 1997
- Orders 111-0105, dated 21 April 1998
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Decision, dated 2 January 2001
- VA Decision, dated 20 August 2001
- Medical Records (40 Pages)

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, through counsel states:

3. Counsel provides and the service record shows:

a. She enlisted in the Regular Army on 5 July 1979 with multiple reenlistments.

b. While still in the Army, she began to feel ill in 1997.

c. On August 1998 during her Expiration of Term of Service (ETS) physical, providers noticed her lower extremity swelling, and discussed possibly extending her for further evaluation and possible entry into DES.

d. Beginning March 1998, she was treated for depression.

e. Her record is void of any documents to show she received an MEB/PEB for any medical issues.

f. She was honorably discharged on 28 August 1998 due to the completion of her required active service. She completed 12 years, 3 month, 6 days of combined active-duty service, and 6 years, 2 months, 18 days of combined inactive service.

g. In 1999 she was diagnosed with metastatic cancer.

h. In March 2000, a biopsy revealed Non-Hodgkin's Lymphoma. She received three rounds of chemotherapy, and four weeks of radiation treatments. The radiation treatments resulted in Chronic Myeloid Leukemia. At this time, her two oncologists determined that the Non-Hodgkin's Lymphoma began while she was serving on active duty.

i. On 2 January 2001, the VA determined that her mental disorder, diagnosed as depressive disorder, is service connected. She was rated 50% disabled, with an effective date of 29 August 1998.

j. On 20 August 2001, the VA further determined that the Non-Hodgkin's Lymphoma is service connected. She was rated 100% disabled, with an effective date of 7 March 2000. Due to this disability, she was also granted special monthly compensation based on housebound criteria being met.

k. Medical records which will be reviewed and discussed by the medical staff at the Army Review Boards Agency.

4. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a referral to the Disability Evaluation System (DES). She contends she had non-Hodgkin's lymphoma (NHL) before she ETS'd and should have been retained on active duty for further evaluation. She states in part:

> "I was honorably discharged in 1998 after completing my required active service. During my last six months of service, I was very ill with an unknown medical condition. I complained to multiple service members and medical providers about experiencing night sweats, and a deep, persistent cough. My diagnoses were respiratory in nature, such as asthma, sinusitis, bronchitis and upper respiratory infections.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows she entered the regular Army on 1 September 1993 and received an honorable discharge at the completion of her required active service 28 August 1998 under paragraph 4 of AR 635-200, Enlisted Personnel (26 June 1996). The reentry code of 1 denotes she was fully qualified to reenlist.

d. The applicant states she was first diagnosed with cancer in March 2000. A 20 August 2001 VA rating decision shows she was service connected for NHL on 7 March 2000.

e. Two physicians state it is likely her NHL started in 1998 while she was on active duty. One states "She had symptoms of lymphoma while on active duty. It is as likely as not that she had the disease that could not be detected by laboratory or imaging yet."

f. Paragraph 3-42 of AR 40-501, Standards of Medical Fitness 1 July 1987 lists the criteria under which a malignant neoplasm would fail medical retention standards:

"3-42. Malignant neoplasms

a. Malignant neoplasms which are unresponsive to therapy, or when the residuals of treatment are in themselves unfitting under other provisions of this chapter.

b. Malignant neoplasms in individuals on active duty when they are of such a nature as to preclude satisfactory performance of duty, and treatment is refused by the individual.

c. Presence of malignant neoplasms or reasonable suspicion thereof when an individual not on active duty is unwilling to undergo treatment or appropriate diagnostic procedures.

d. Malignant neoplasms, when on evaluation for administrative separation or retirement, the observation period subsequent to treatment is deemed inadequate in accordance with accepted medical principles.

g. There is insufficient probative evidence the applicant had a neoplasm which met any on these criteria prior to her voluntary separation from the Army.

h. Paragraph E3.P3.5.1 of Department of Defense Instruction 1332.38 Subject: Physical Disability Evaluation (14 November 1996) states: “The DES compensates disabilities when they cause or contribute to career termination.”

i. It is the opinion of the ARBA Medical that a referral of her case to the Disability Evaluation System is not warranted.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a medical retirement as a result of physical and mental health conditions. This opine will focus only on the mental health condition the applicant asserts is related to her request, which is Major Depressive Disorder. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 5 July 1979; 2) In August 1998, physical providers noticed her lower extremity swelling and discussed possibly extending her for further evaluation and possible entry into DES; 3) She was honorably discharged on 28 August 1998 due to the completion of her required active service. She completed 12 years, 3 month, 6 days of combined active-duty service, and 6 years, 2 months, 18 days of combined inactive service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant’s available military service records. The VA’s Joint Legacy

Viewer (JLV) and hardcopy VA and military medical documentation provided by the applicant were also examined.

c. The applicant is requesting a medical retirement in part due to Major Depressive Disorder. There is evidence the applicant was reporting depressive symptoms and treated with psychiatric medication starting in March through to October 1998. There was insufficient evidence the applicant attended individual or group behavioral health therapy, did not demonstrated improvement despite consistent treatment after six months of treatment, placed on a psychiatric profile, required inpatient psychiatric treatment, or found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant underwent a Compensation and Pension Evaluation in January 2001, and she was diagnosed with service-connected PTSD (50%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected Major Depression by the VA, and she was diagnosed and treated for depression while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence she was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition her active service. Thus, there is insufficient evidence his case warrants a referral to for a behavioral health condition DES at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected Major Depression by the VA, and she was diagnosed and treated for depression while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence she was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition her active service. Thus, there is insufficient evidence his case warrants a referral to for a behavioral health condition DES at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 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. The Board also considered the opinion of the advisory opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected Major Depression by the VA, and she was diagnosed and treated for depression while on active service.

2. The Board noted the physician's statement, "It is as likely as not that [the applicant] had the disease that could not be detected by laboratory or imaging yet." The Board concurred with the medical advisory opinion finding there was insufficient probative evidence the applicant had a neoplasm which met criteria under which a malignant neoplasm would fail medical retention standards prior to her voluntary separation from the Army. The applicant is advised the DD Form 214 shows circumstances as they were on the date prepared. Based upon a preponderance of the evidence, the Board determined there is insufficient evidence that shows referral of her case to the Disability Evaluation System is warranted for her conditions.

3. Evidence of record shows the applicant met retention standards during her period of active duty service and separated at his completion of required active service. Furthermore, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence she was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. The Board concurred with the behavioral health advisory official finding there is insufficient evidence the applicant was medically unfit as a result of a mental health condition during her active service. Thus, there is insufficient evidence her case warrants a referral to for any condition to DES at this time. Based upon a preponderance of the evidence, the Board determined there is insufficient evidence that shows a referral to the Physical Disability Evaluation System (PDES) was warranted during her period of active service.

4. Paragraph E3.P3.5.1 of Department of Defense Instruction 1332.38 Subject: Physical Disability Evaluation (14 November 1996) states: "The DES compensates disabilities when they cause or contribute to career termination." The Board found the applicant was honorably discharged on 28 August 1998 due to the completion of her required active service. For that reason, the Board recommended referral to the MEB and/or PEB was not warranted.

5. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected Major Depression by the VA, and she was diagnosed and treated for depression while on active service. However, there was insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence she was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition her active service. Thus, there is insufficient evidence his case warrants a referral to for a behavioral health condition DES at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

6. 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
XXX	XXX	XXX	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.

X //SIGNED//

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 (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 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 (Army Board for Correction of Military Records), 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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), 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.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), 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.

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.

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.

f. 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.

g. 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. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces),

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%.

9. 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//