

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20230011904

APPLICANT REQUESTS: in effect, re-referral to the Disability Evaluation System for a duty related disability vice non-duty related disability.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief in Support of Application
- Page one of DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States)
- Medical Documents
- U.S. Army Physical Disability Agency (USAPDA) Memorandum, subject: Request for Reconsideration of Formal Board Results and Request for USAPDA Review Formal Physical Evaluation Board Decision to Army Physical Disability Agency for [Applicant], 18 March 2021
- USAPDA Memorandum, subject: Rebuttal to PEB Findings [Applicant], 26 March 2021
- USAPDA Memorandum, subject: Non-Duty Related Case [Applicant], 26 March 2021
- DA Form 199-1 (Formal PEB Proceedings), 5 March 2021
- U.S. Army Reserve Command Orders 21-169-00002 (Transfer to Retired Reserve)
- Letter from Department of Veterans Affairs (VA) with VA Rating Decisions

FACTS:

1. The applicant defers to her counsel.
2. The applicant's counsel states, on behalf of the applicant:
  - a. The applicant enlisted in the U.S. Army Reserve (USAR) on 26 October 1990. She first sought treatment for mid and lower back pain in 2011. Subsequent imaging studies showed "degeneration of L4/L5" and she was given steroid shots, which

ameliorated her symptoms. In December 2014, she received physical therapy for her mid and lower back pain.

b. In early 2016, she was diagnosed with depression. She was seen by a psychologist at the VA and saw a private psychologist on a weekly basis. She was also prescribed meloxicam to manage the pain of her ongoing back problems.

c. On 11 July 2015, she was deployed to Honduras. While deployed to Honduras, she sought treatment for her ongoing back pain.

d. On 14 December 2016, following her deployment to Honduras, she completed a Post Deployment Health Reassessment (PDHRA) and indicated that she was experiencing pain in her back and arms, legs, or joints. She also indicated she was experiencing a myriad of mental health symptoms including feeling distant from people, experiencing disturbing memories or thoughts from a stressful experience, having bad dreams about a distressing past experience, and feeling as though she were reliving a stressful experience. At this point, she had been diagnosed with depression for seven months and was being treated with 20 mg of Prozac daily. On the PDHRA, she also indicated that she was still experiencing difficulties related to a "wound, injury, or assault" that occurred, during her deployment. The PDHRA states she was concerned about a change in her health post-deployment. The provider indicated symptoms of post traumatic stress disorder (PTSD) were present and recommended an appropriate referral for treatment.

e. In her June 2018 Annual Periodic Health Assessment, she indicated ongoing back pain and reported she had developed neuropathy in her lower extremities and had received spinal injections and a sciatic nerve block to manage her pain. She also described her work as involving lifting heavy equipment for training exercises. The Annual Periodic Health Assessment also noted her healthcare provider recommended surgery for her lower extremity neuropathy. She also reported mental health symptoms such as unpleasant physical reactions when reminded of an unpleasant past event, avoiding situations that might trigger memories of the past event, feeling distant and cut off from people, alert and on guard, irritability, and difficulty concentrating. She also reported that these symptoms made it "very difficult" to perform her daily activities of living. She rated her health as "poor" and requested referrals to the appropriate health care providers. She also rated her pain as a seven, which made it difficult to concentrate and to perform daily activities.

f. In her June 2018 Function Capacity Certificate Form 507, she reported ongoing treatment for her mental health condition and for her back. The Functional Capacity Certificate Form 507 also indicates that her back condition prevented her from performing multiple duties such as wearing load bearing equipment, fully performing the Army Physical Fitness Test (APFT), wearing body armor for 12 hours a day, and riding

in a military vehicle for 12 hours a day. The examining provider listed the following as current physical limitations: "lumbar disc pathology, depression, PTSD, irritable bowel syndrome, hypothyroidism, allergic reaction to yeast, milk, and eggs." The examining provider also concurred with her self-assessment on the Function Capacity Certificate Form 507.

g. On 3 July 2018, her medical records note she was being treated by the VA behavioral health for "post deployment" depression. The notes also stated she had to "quit her job as a teacher due to inability to handle the stress since she returned from deployment." She was profiled, during this time, for her behavioral health condition, and it was determined she was nondeployable because of those conditions.

h. On 7 January 2019, she received a permanent profile for both her depressive disorder and her lower back injury. The Physical Profile Record indicated that because of her behavioral health condition she was permanently unable to "carry and fire individual assigned weapon" and "live and function, without restriction in any geographic or climatic area without worsening condition." The physical profile also noted she was first seen for her behavioral health condition, while deployed to Honduras in 2015, that she had consistently seen her provider for that condition, but that the condition was worsening.

i. Another Function Capacity Certificate Form 507 was prepared on 2 November 2019. On this Function Capacity Certificate Form 507, she indicated her mental health profile prohibited her from carrying and firing an individual assigned weapon, evading direct and indirect fire, and living in an "austere environment." She also indicated her lower back injury prevented her from riding in a military vehicle for at least 12 hours a day, wearing body armor for at least 12 hours a day, wearing load bearing equipment, moving items for any distance, and performing the APFT without accommodations. She also reported her depression was being treated with 10 mg of buspirone and 75 mg of bupropion. She additionally stated she required a spinal fusion. The examining provider listed depression and lower back pain as her limiting conditions and concurred with her self-assessment.

j. On 28 December 2020, she underwent an Annual Periodic Health Assessment. In this assessment, she stated she had undergone a spinal fusion of the L4/L5 and a disc replacement of the L3/L4 due to spondylolisthesis, disc herniation, degenerative arthritis, and rotation. She also states she was receiving mental health treatment for adjustment disorder, anxiety, and depression and that she was taking buspirone, tramadol, and cyclobenzaprine.

k. On 17 March 2020, she was found unfit for duty at an Informal PEB for depressive disorder. On 17 April 2020, she appealed the Informal PEB decision and asked that her case be terminated and rereferred as an Integrated Disability Evaluation

System (IDES) case. She also requested her case be submitted for a line of duty (LOD) determination arguing that her mental health condition was service connected to her 2015 Honduras deployment. On 18 May 2020, the Informal PEB responded that there were no military treatment records to support an LOD finding. The Informal PEB also noted that the Army Reserve Medical Management Center submitted an IDES Referral Memorandum in lieu of an LOD but that it was denied because "there was insufficient evidence that this condition occurred and was permanently service aggravated to an unfitting level, while in a compensable status." The Informal PEB therefore affirmed its initial findings.

l. On 5 March 2021, she underwent a Formal PEB to review her depressive disorder. At the Formal PEB she disagreed with the Informal PEB's findings that her behavioral health condition was not service connected and requested that her lumbar spine condition be added as an additional unfitting duty related condition.

m. The Formal PEB affirmed the Informal PEB's findings and concluded that the disability was not "based on a disease or injury incurred in the LOD 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 LOD, during a period of war..." nor was the injury the "result from a combat-related injury." In support of their decision, the Formal PEB stated:

Although the Soldier testified that her condition developed, while deployed to Honduras (2014-2015) due to sadness and excessive crying spells, the Soldier admitted that she was not seen by a military medical provider, during her career, while on military status. As a result, there is insufficient evidence in the Medical Evaluation Board (MEB) case file to support the assertion. The Soldier testified that through her lifetime, starting as a teenager, her anxiety and depression were predominately aggravated by family circumstances...the Soldier did not present any objective evidence, during the hearing, of evaluation and treatment for ongoing behavioral health issues soon after the 2014 deployment that support a direct deployment related cause. Instead, the medical records are salient for such behavior health conditions until approximately four years later, when she presented to behavioral health, during her annual training...Finally, a review of the case file shows that an IDES Referral Memorandum, in lieu of an LOD was submitted by the Army Reserve Medical Management Center for the condition but was denied. This evidence supports that the condition was not likely incurred or aggravated by military service. Therefore, the findings of the Informal PEB are upheld. Regarding the Soldier's contention that her lumbar spine condition is unfitting: Based upon a review of the objective

evidence of record, including the Soldier's testimony and exhibits provided, during the formal board proceedings; and considering the requirements for reasonable performance of duties...the PEB finds insufficient medical evidence to find this condition as unfitting. This condition does not impose unreasonable requirements on the military to maintain or protect the Soldier...During her military career, there has been no physical profile for this condition precluding her from deployment Since her surgery, low back symptoms have returned to their previous, well controlled level...Although the Soldier's testimony supports that she has low back pain, the preponderance of the evidence does not support these conditions as duty limiting. Therefore the PEB finds insufficient objective medical evidence to find these conditions unfitting.

n. On 18 March 2021, the applicant filed a Request for Reconsideration of Formal Board Results and Request for Mandatory U.S. Army Physical Disability Agency (USAPDA) Review Formal PEB Decision. In her request, she disagreed with the PEB's finding that her depressive disorder was non-duty related and sought to have her lumbar spine disorder added as an additional unfitting and duty-related condition. In her request she asserted that her deployment to Honduras "at the very least aggravated the condition."

o. In her request she also stated that while in Honduras, she served as the investigating officer for AR 15-6 investigations and that the strict fraternization policies, created a "sense of near-total isolation," while deployed. She also wrote that she was "completely alone, during a stressful time" and that the "sense of isolation and separation, which could only arise from a military deployment, were extremely difficult for her to cope with." She also wrote that the stress of the isolation manifested itself "in the form of severe crying episodes, which she never experienced before and [which] she continued to experience today."

p. The request for reconsideration also noted that although she did not receive formal counseling, while deployed, she did, in fact, participate in informal counseling at her installation's behavioral health treatment center. She also explained that she was not comfortable pursuing further treatment, while deployed. The request for reconsideration also pointed out that the PEB findings were incorrect about the timeline of her mental health treatment:

Upon her return in 2015, [the applicant] attempted to self manage her behavioral health situation. However, within three months of getting back, she realized she needed more from a medical provider. This contradicts the DA Form 199-1's erroneous findings that the record was 'silent' until 2018 concerning behavioral health treatment.

q. Her request for reconsideration also noted that she, in fact, went to her primary care provider on 6 October 2015 and received a prescription for Zoloft. During this visit, she told her provider she:

...was not crying or feeling depressed until the past few weeks, she would find herself crying for no reason, thinks of her deployment as the executive officer of the unit that was deployed to Soto Cano, Honduras and felt isolated, she could not socialize with her troops obviously because of fraternization concerns...

r. The request for reconsideration also noted that she followed up with her primary care provider because the Zoloft was ineffective, and she was switched to Lexapro. The treatment notes for that visit stated:

The onset of depression has been gradual and has been occurring in a persistent pattern for three months. The course has been recurrent. The depression is described as feeling tired. The symptoms have been associated with depression in the past, episodes of spontaneous crying and feeling tired.

s. The request for reconsideration also noted that on 10 February 2016, she suffered a panic attack, which required a trip to the emergency room. In March 2016, she began behavioral health treatment at the VA, which she continues to receive.

t. Her request for reconsideration also recounts her treatment for her lumbar spine. Her back pain began in 2009 following drill and physical training injuries, and her back was injured again, while deployed. She has undergone multiple medical procedures and has received continuous treatment of her lumbar spine injury. In her request for reconsideration, she stated she had been profiled at least four times for her lumbar spine injury and asked that the PEB "consider both direct service incurrence as well as aggravation of this condition."

u. On 25 March 2021, her request for reconsideration of the Formal PEB's decision was reviewed and denied. On 18 June 2021, she was medically disqualified for service and assigned to the Retired Reserve.

v. On 15 July 2021, the VA denied her application for VA benefits for depressive disorder due to chronic pain syndrome with major depressive like episodes. She filed a supplemental claim based on service-connected major depressive disorder and was assigned a 70 percent disability rating with an effective date of 10 June 2021 for depressive disorder due to chronic pain syndrome with major depressive like episodes secondary to service connected disabilities and PTSD.

w. The Secretary of the Army may correct any military record when it is "necessary to correct an error or remove an injustice." For relief to be granted, an applicant must demonstrate the existence of an error or injustice that can be remedied effectively through correction of an applicant's military record, according to Army Regulation 15-185 (Army Board for Correction of Military Records). An applicant has the burden of proving sufficient evidence of the averred error or injustice.

x. Army Regulation 635-40 ((Disability Evaluation for Retention, Retirement, or Separation) Chapter 3, paragraph 3-1c states that "findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made...This is particularly true if medical evidence establishes the fact that continued service would be harmful to the Soldier's health or would prejudice the best interests of the Army."

y. Further paragraph 3-2a of the regulation presumes that a "Soldier was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded, at the time of entry" and that " any disease or injury discovered after a Soldier entered active service, with the exception of congenital and hereditary conditions, was not due to the Soldier's intentional misconduct or willful neglect, and was incurred in the LOD." Additionally, it is presumed that "any additional disability or death resulting from the preexisting injury or disease was caused by military service aggravation."

z. Army Regulation 635-40, Chapter 3, paragraph 3-2b(1) mandates that "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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service. " To be eligible to receive medical retirement and severance pay, two conditions must be met. "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" and "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."

aa. In the instant case, the applicant should have been medically retired. First, the Formal PEB statement with regards to her depressive disorder that her "medical records are silent" until four years post-deployment is patently inaccurate. Her PDHA states that she is having trouble sleeping, struggling with decision making and memory, experiencing troubling memories and dreams, feeling distant and cut off from people, and a loss of enjoyment in things she previously enjoyed. She also reported feeling worried that her future would be cut short, that she was irritable, and that she was watchful and on guard. Further, the healthcare provider indicated "yes" for the question

"did the deployer mark that he/she is still having a problem or concern related to a wound, injury, or assault that occurred, during their deployment." Additionally, her PTSD Intervention Matrix score was 59, which indicated severe symptoms of PTSD. In fact, the provider specifically indicated a concern for both the applicant's physical health as it related to her back and for the presence of PTSD symptoms and recommended a referral for PTSD and depression symptoms and for her back pain. Additional a 9 July 2016 note in her medical records states:

45 y/o female with h/o depression around 3/16 at VA. Got out of active duty 7/15. Followed by psychologist at VA and private psychologist once a week. Started on Prozac (does not know the dosage) takes it once every morning...

bb. Further, there is nothing to indicate that her condition is a result of any misconduct, and in fact, the Army conceded this point when it medically disqualified her. And finally, in a 26 March 2021 response to her request for reconsideration of the Formal PEB's findings, the U.S. Army dismisses her service-related depressive disorder claim because she "has a long history starting as a teenager in which her anxiety and depression were predominately aggravated by family circumstances." This argument is a red herring. As stated, Army Regulation 635-40, chapter 3, paragraph 3-2(a) presumes that she was in sound mental and physical health, when she joined, and in fact, prior to her deployment to Honduras, there is nothing that indicates she struggled with significant behavioral health concerns.

cc. Considering the facts and argument presented, the applicant requests that a new PEB is convened to determine if she should have been medically retired from the Army. She faithfully served her country for almost thirty years, and because of her deployment on behalf of her country, she developed disabling mental and physical conditions for which justice demands she be compensated.

3. The applicant provides the following documents:

a. Page 1 of DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the USAR on 26 October 1990.

b. Medical documents, which are available for the Board's review and will be reviewed by the Army Review Boards Agency (ARBA) medical section who will provide an advisory.

c. Memorandum from the applicant's counsel to USAPDA, 18 March 2021, states:

(1) The applicant requests reconsideration of the Formal PEB decision,



5 March 2021. Should this rebuttal not result in any changes to the Formal PEB decision, this memorandum shall serve as her request to the USAPDA for a mandatory review of the Formal PEB decision in accordance with Army Regulation 635-40 and Army guidance. She hereby incorporates any and all prior testimony, exhibits, and documents to this instrument.

(2) The applicant is a USAR 70B (Health Services Administration Officer) of the Medical Services Branch. She agrees with the unfitness finding concerning her depressive disorder but disagrees with the PEB's non-duty-related finding. She also seeks to have her lumbar spine (post fusion surgery and disc replacement) added as an additional unfitting and duty-related condition. She respectfully asks that the PEB/USAPDA return her through the duty-related process for these conditions in accordance with Army Regulation 635-40. If the PEB/USAPDA cannot take this course of action, she requests that it return her case to U.S. Army Human Resources Command (AHRC) for a duty-related referral memorandum or LOD determination.

(3) Concerning her depressive disorder (behavioral health), she asserts that her deployment to Honduras, at the very least, permanently aggravated the condition. She was deployed to Soto Cano, Honduras from 18 September 2015 to 27 July 2014. While deployed, she served as the investigating officer for several AR 15-6 investigations, at her installation in addition to her 70B duties.

(4) Being the only officer performing these duties, under the installation's very strict non-fraternization policy, caused her to develop a sense of near-total isolation, while in Honduras. Bluntly put, she was completely alone, during a stressful time. The sense of isolation and separation, which could only arise from a military deployment, were extremely difficult for her to cope with. These stresses began to manifest themselves in the form of severe crying episodes, which she never experienced before and she continues to experience today.

(5) While she did not receive formal psychiatric counseling in Honduras, she did participate in an informal counseling session with her installation's behavioral health treatment provider, while they were both on weekend liberty. While she welcomed the opportunity to discuss her concerns with the provider, she was not comfortable pursuing more formal treatment, while deployed.

(6) Upon her return home in 2015, she attempted to self manage her behavioral health situation. However, within three months after getting back, she realized she needed help from a medical provider. This contradicts the DA Form 199-1's erroneous finding that the record was "silent" until 2018, concerning behavioral health treatment.

(7) She first turned to her primary care provider on 6 October 2015, who started her on a trial of Zoloft. At that time, she told her doctor she:

...was not crying or feeling depressed, until the past few weeks, finds herself crying for no reason, thinks of her deployment as the executive officer of a unit that was deployed to Soto Cano, Honduras and felt isolated, could not socialize with her troops obviously because of fraternization concerns.

(8) She had another primary care provider treatment two weeks later, where she related that "...Zoloft is not doing so good for her." Her medication was switched to Lexapro. On 23 November 2015, her treatment provider found:

The onset of the depression has been gradual and has been occurring in a persistent pattern for three months. The course has been recurrent. The depression is described as feeling tired. The symptoms have been associated with depression in the past, episodes of spontaneous crying, and feeling tired.

(9) On 19 February 2016, she suffered her first panic attack, which resulted in a trip to the emergency room. She began behavioral health treatment at the VA on 16 March 2016, which she continues receiving today. At the treatment, she stated she "talked to my doctor and he told me to just make sure I talk to someone for post deployment counseling." The provider assessed her "with a history consistent of major depressive disorder" and prescribed her Fluoxetine (Prozac).

(10) Over time her Reserve service became a major stressor, as it forced her to recall her deployment experiences. These feelings came to a head during her 2018 Annual Training at Fort McCoy. On 12 July 2018, she sought treatment at a local VA clinic citing a "...sudden onset of tearfulness, panic, anxiety, and depressed mood. 'I don't have anything to be sad about, everything is good'". On 13 July 2018, the attending VA treatment providers assessed her with "major depressive disorder, recurrent, moderate" and began an escalation of her Prozac treatment. Critically the provider found:

[The applicant] is in the Army Reserves, currently on active duty orders stationed at Fort McCoy for drill. She reports a fairly sudden onset of tearfulness, panic, anxiety, and depressed mood since arriving at Fort McCoy.

(11) She still believes herself to be an excellent Soldier and acknowledges that she had great Officer Evaluation Reports in the past. However, it is her empathetic belief that Honduras served as a turning point for her behavioral health. Indeed, she points to her points statement as evidence of this loss of zeal. Before her deployment, she regularly earned triple digital annual creditable points, while earning the bare

minimum after. In addition, she never attended her post-deployment "yellow-ribbon" ceremony, due to her disillusionment with the Reserves.

(12) The aftermath of her deployment has also profoundly affected her civilian occupation as a special education teacher. Before the deployment, she worked full time and uninterrupted for 20 years with glowing appraisals. After the deployment, unfortunately, she has been unable to hold onto a position for over a year.

(13) She acknowledges that she has had several emotional stressors throughout her life. However, her deployment robbed her of her previous resilience. Accordingly, she respectfully requests that the PEB and USAPDA return her through the duty-related process for these conditions in accordance with Army Regulation 635-40. If either the PEB or the USAPDA cannot take this course of action, she requests that it return her case to AHRC for a duty-related referral memorandum or LOD determination.

(14) Concerning her lumbar spine, she once again asserts that it is also unfitting and duty-related. On 7 July 2020, she underwent L4-L5 fusion and L3-L4 disc replacement surgery. She asserts that her lumbar spine severely affects her range of motion, and that she still experiences incredible pain, when lifting objects.

(15) She began experiencing severe pains in her back around 2009, after drill and physical training injuries. She also injured her back, during the deployment. It has progressively worsened over time, she has received continuous treatment, and she has undergone multiple medical procedures.

(16) She has been on profile at least four times for her lumbar spine. She respectfully asks that the PEB consider both direct service incurrence as well as aggravation of this condition.

d. Memorandum from USAPDA, 26 March 2021, Rebuttal to PEB Findings, states:

(1) The USAPDA notes the applicant's disagreement with the findings of the PEB and have reviewed the entire case. The applicant was found unfit at an Informal PEB on 17 March 2020 for depressive disorder. On 17 April 2020, she appealed the PEB decision, requesting that the PEB terminate her case and rerefer it as an IDES case. She further requested that the PEB otherwise return her case for an LOD determination, stating her mental health condition was service connected in that it was incurred or permanently service aggravated, while deployed to Honduras in 2015.

(2) On 18 May 2020, the PEB responded that a review of the case file showed no military treatment records for this condition to support this contention. The PEB further notes that the case file shows that an IDES Referral Memorandum in lieu of an LOD for her case was submitted by the Army Reserve Medical Management Center for

this condition, but was denied. In summary, it was determined that at the time, there was insufficient evidence that this condition occurred and was permanently service aggravated to an unfitting level, while in a compensable status. Therefore, the PEB affirms its earlier finding.

(3) In her contentions to the Formal PEB, she agrees with the unfitness finding concerning her depressive disorder, but disagrees with the PEB's non-duty-related finding. She also requests to have her lumbar spine (post fusion surgery and disc replacement) added as an additional unfitting and duty-related condition and that the PEB return her through the duty-related process for these conditions. She requests that if "the PEB could not take this course of action, she requested that it return her case to the Army Reserve Medical Management Center and/or AHRC for a duty-related referral memorandum or LOD determination."

(4) At the Formal PEB on 5 March 2021, the PEB affirmed its earlier finding that depressive disorder is unfitting but that it was not incurred or permanently service aggravated, while on active duty. The PEB further notes that the applicant has an L2 profile for her lumbar spine condition but that she is not limited from performing any functional activities. Therefore, the PEB determined there was insufficient objective medical evidence to find this condition unfitting.

(5) The applicant appealed these findings on 18 March 2021, and the PEB responded on 24 March 2021 that it still found insufficient evidence to reverse the findings of the formal board. It notes the long history starting as a teenager in which her anxiety and depression were predominantly aggravated by family circumstances. Following her deployment, she was able to manage her behavioral health concerns by seeking limited assistance. From 2015 to 2018, she received intermittent conservative treatment, and it was not until 2018 that the condition presented as duty-limiting. The PEB did not find sufficient evidence to submit another request to AHRC for another LOD opinion. Therefore, the PEB found insufficient objective medical evidence to support the applicant's contention of depressive disorder "incurring and/or being permanently aggravated in the LOD and being compensable." In addition, the PEB, citing the above parameters, on reconsideration found insufficient objective medical evidence to find the lumbar spine condition as "unfitting and incurring and/or being permanently aggravated in the LOD and being compensable."

(6) The USAPDA conclusion that this case was properly adjudicated by the PEB, which correctly applied the rules that govern the Physical Disability Evaluation System in making its determination. The findings and recommendations of the PEB are supported by a preponderance of evidence and therefore are affirmed. The issues raised in her 18 March 2021 were responded to by the PEB in its 24 March 2021 memorandum and USAPDA concurs with the response provided by the PEB.

e. Letter from the VA, 15 July 2021 and VA rating decisions, 13 July 2021 and 30 November 2021, show she received service-connected disability for major depressive disorder (previously also claimed as anxiety disorder, adjustment disorder and depression) is granted with an evaluation of 70 percent, effective 10 June 2021.

4. The applicant's service record contains the following documents:

a. DA Form 71 (Oath of Office - Military Personnel) shows she took the oath of office as a Reserve Commissioned Officer on 27 November 2001.

b. Memorandum Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter), 28 November 2013 informed her she completed the required years of qualifying Reserve service and is eligible for retired pay, on application, at age 60.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was ordered to active duty, as a member of the USAR on 18 September 2014 and was honorably released for completion of required active service on 27 July 2015. She completed 10 months and 10 days of active service with 4 months and 12 days of prior active service and 23 years, 6 months, and 10 days of prior inactive service. She had service in Honduras from 19 October 2014 to 10 July 2015. She was ordered to active duty in support of Operation Enduring Freedom.

d. DA Form 199-1 (Formal PEB Proceedings), 5 March 2021, shows she was boarded for depressive disorder that was not incurred or aggravated in the LOD in a duty status and was not due to her own intentional misconduct, willful neglect, or unauthorized absence. The board found she was physically unfit for duty and recommended she be referred for case disposition under Reserve Component regulations. She did not concur with the recommendation and attached her appeal.

e. Orders 21-169-0002, published by Headquarters, USAR Command, 18 June 2021 honorably transferred her to the Retired Reserve for being medically disqualified - not result of own misconduct, effective 16 July 2021.

#### 5. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting re-referral to the Disability Evaluation System (DES) for a duty related disability vice non-duty related disability. 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 U.S. Army Reserve (USAR) on 26 October 1990. DA Form 71 (Oath of Office - Military Personnel) shows she took the oath of office as a Reserve Commissioned Officer on 27 November 2001, 2) DD Form 214 shows she was ordered to active duty as a member of the USAR on 18 September 2014 and was honorably released for

completion of required active service on 27 July 2015, 3) DA Form 199-1 (Formal PEB Proceedings) dated 5 March 2021 shows she was boarded for depressive disorder that was not incurred or aggravated in the LOD in a duty status and was not due to her own intentional misconduct, willful neglect, or unauthorized absence. The board found she was physically unfit for duty and recommended she be referred for case disposition under Reserve Component regulations. She did not concur with the recommendation and submitted an appeal, 4) A memorandum from USAPDA dated 26 March 2021, in response to the applicant's rebuttal to the PEB findings, noted that the applicant's disagreement with the PEB findings and reviewed her case in its entirety. The USAPDA concluded that the applicant's case was properly adjudicated by the PEB. It was further noted that the issues raised in her 18 March 2021 rebuttal were responded to by the PEB in its 24 March 2021 memorandum and USAPDA concurred with the response provided by the PEB, 5) Orders 21-169-0002, published by Headquarters, USAR Command, 18 June 2021 honorably transferred her to the Retired Reserve for being medically disqualified - not result of own misconduct, effective 16 July 2021.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, MEDCHART, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records through the Department of Defense (DoD) were available for review via JLV from 17 June 2010 through 13 July 2015. On 23 September 2014, the applicant completed a pre-deployment health assessment which noted there were no medical or behavioral health issues that would preclude deployment and she was not on any profiles at the time of the visit. An out-processing note dated 01 July 2015 at the completion of her mobilization shows the applicant was not on profile at the time of the visit. DD Form 796 (PDHA) shows she screened negative for alcohol misuse (AUDIT-C score= 0), PTSD, depression, and suicidal/homicidal ideation (SI/HI), with no indication that BH referrals were needed at the time of the visit. She was seen on 13 July 2015 for the purposes of a demobilization physical and it was documented that she denied having any BH concerns at the time of the visit, denied SI/HI, and reported having no alcohol-related issues. The applicant's DA 3349 (profiles) were available for review via MEDCHART. The applicant was first placed on a temporary BH profile on 29 June 2018 which was extended on 16 July 2018 with a note to re-establish treatment and medications. On 05 September 2018, her profile was extended for 90 days noting pending results of re-establishment of treatment and medications. A permanent profile (S3) was submitted for Depressive Disorder on 03 January 2019 and was approved on 07 January 2019.

4. Review of JLV shows the applicant sought BH treatment while in the USAR through the VA beginning on 16 March 2016 for treatment of depression. The provider

documented that the applicant received individual counseling while in Honduras in 2015 [*Advisor's Note*: there were no BH records available for review to this Advisor documenting any BH related treatment or concerns during her deployment to Honduras]. It was documented that she had been trialed on two antidepressants, Zoloft (November 2015) and Lexapro (December 2015), by her primary care provider (PCP) but stopped taking the medications due to undesired side effects. On 12 July 2016, she was diagnosed with Major Depressive Disorder (MDD) and noted she was taking Prozac. During a follow-up on 21 September 2016, it was documented that she was doing well on her medication, was ready for deployment and had no limitations for deployment. The diagnosis was documented as MDD, in Full Remission. On 05 June 2017, it was noted that she did well with the decrease in her Prozac and the diagnosis of MDD, in Full Remission was continued. On 08 September 2017, it was documented that the applicant had not refilled her Prozac since December 2016 and was doing well until she started a stressful job. She was restarted on Prozac and it was noted that she preferred to follow-up with her PCP rather than BH due to "mild depressive symptoms and simple medication regimen." While on active-duty orders for annual training on 12 July 2018, the applicant presented to BH and it was documented that she reported having discontinued her antidepressants several months ago due to improvement in her symptoms but was reporting a sudden onset of tearfulness, panic, anxiety, and depressed mood, to which there was no specific triggering event documented nor an associated LOD for this period of treatment. The provider diagnosed the applicant with MDD, Recurrent, Moderate and she was restarted on Prozac. On 13 November 2018, her VA treating provider added BuSpar for treatment of anxiety and Wellbutrin for mood. It was noted that she had self-discontinued Prozac due to side effects. On 06 February 2019, she was prescribed Trazodone due to lack of availability of BuSpar. During a follow-up on 10 June 2019, she reported she was not taking her medications due to confusion and medication shortage. At the time of the visit she noted that some mild depressive symptoms were returning. Her diagnosis was documented as Depressive Disorder, Unspecified. During a follow-up on 25 November 2019, the applicant reported she was doing well on her medication regimen. Her prescription of Wellbutrin was discontinued on 09 March 2020. The applicant reported she was not taking BuSpar during her follow-up on 09 June 2020. She was restarted on Fluoxetine and it was noted that she was experiencing increased anxiety and wanted a referral for psychotherapy. On 08 March 2021, it was documented that she refused psychotherapy treatment due to lack of time and did not want to take medication due to undesired side effects though noted was 'not doing good.' The provider documented she had passive suicidal ideation. She was started on Wellbutrin and continued on BuSpar. Her final VA BH appointment prior to separation from the USAR was on 03 May 2021 noting that she decided to retire and was filing for disability. She reported having discontinued her medication for the past three weeks noting that her emotions had not been bad for a while though wanted to try to take the medication again.

5. The applicant's Physical Evaluation Board (PEB) Proceeding(s) forms and rebuttals were reviewed and are outlined in great detail in the ROP. As such, only a brief summary will be provided here. The Formal PEB proceedings form dated 05 March 2021 shows the applicant's condition was determined to not be incurred aggravated in the line of duty in a duty authorized status by 10 USC 1201 (c) or 10 USC 1204. In the narrative section for the formal review it was noted that she testified that her condition developed while deployed to Honduras; however, admitted she had not been seen by a military medical provider during her career while on military status. The case was adjudicated as a non-duty related case. In response to the applicant's rebuttal to the PEB findings, a USAPDA memorandum dated 26 March 2021 determined that the applicant's case was properly adjudicated by the PEB and that the findings and recommendations of the PEB were supported by the preponderance of evidence and therefore affirmed.

6. A review of JLV shows the applicant is 90% service-connected through the VA overall, 70% for Major Depressive Disorder (MDD). A VA Rating Decision Letter dated 30 November 2021 shows the applicant's service connection for MDD was granted with an effective date of 10 June 2021. It was further noted that service connection for MDD was established "as related to the service-connected disability of degenerative arthritis of thoracolumbar spine, with spinal fusion." The applicant underwent a Compensation and Pension (C&P) examination dated 25 June 2021 showing she was diagnosed with MDD, Mild. She completed a subsequent C&P examination on 19 November 2021 with the diagnosis noted as Depressive Disorder Due to Another Medical Condition with Major Depressive Like Episode. The evaluating provider documented that the applicant did not meet with a therapist or counselor while in the military.

7. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant requires re-referral to the Disability DES for evaluation of a duty related disability as the preponderance of evidence does not support that her condition was caused or aggravated while in an active-duty status. Review of the applicant's medical records at the time she was demobilizing from her deployment to Honduras in July 2015 shows that she screened negative for BH-related concerns. Following her deployment, the applicant was diagnosed and treated for depression through the VA while in a non-duty status. Although she was re-started on her antidepressant medications during annual training in 2018, there is insufficient evidence (e.g., LOD) to indicate that her condition was caused or aggravated by her military service. The applicant was previously found unfit for duty due to Depressive Disorder by the PEB, determined to be non-duty related, which was later reaffirmed by the USAPDA upon her rebuttal of the PEB findings. The PEB and USAPDA documented review of the applicant's BH treatment history, to include her treatment through the VA while not in an active-duty status and during annual training and concluded that her condition was non-duty related. There was no new medical evidence



provided as part of her application that was not included as part of the PEB or USAPDA review process. Based on review of the available information, it appears the applicant's case was reviewed and adjudicated through the appropriate channels at the time of her separation and there is no new medical evidence available to indicate an additional referral to DES is warranted.

8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Request is for medical retirement.

(2) Did the condition exist or experience occur during military service? N/A. Request is for medical retirement.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A. Request is for medical retirement.

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 documentation and the findings and recommendation outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting referral of the applicant's record for further DES evaluation.

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, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
2. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.
  - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty 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 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 or 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 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 are either 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 onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 10, USC, 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, USC, 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.

4. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

5. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time

of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. 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.

//NOTHING FOLLOWS//