

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012949

APPLICANT REQUESTS: correction of her records to show she was discharged due to a service-incurred medical disability instead of for a condition that existed prior to service (EPTS).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) summary of benefits letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states the disability she suffers from is due to an injury she sustained during training. She is currently receiving medical care from the VA for the service-related disability and for other disabilities that stem from the injury she sustained during training.
3. The applicant enlisted in the Army National Guard (ARNG) on 9 April 2004.
4. Orders issued on 9 April 2004, ordered the applicant to initial active duty for training (IADT) with a reporting date of 18 August 2004.
5. On 19 January 2005, a Medical Evaluation Board (MEB) diagnosed the applicant with left hip osteonecrosis post core decompression, which did not meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The MEB Narrative Summary shows she was in the 2nd week of basic combat training when she noticed left hip pain. Upon subsequent workup at the Troop Medical Clinic, it was found that she had bone scan and magnetic resonance imaging (MRI) evidence of left hip osteonecrosis. She was subsequently sent home on convalescent leave from 19 October to 17 November 2004 for 30 days, and upon returning, she was continuing

to have pain in the left hip. This was exacerbated by any ambulatory activities. She had noted worsening of her condition in the intervening months. She was subsequently evaluated with a repeat MRI, which showed further demarcation of the anterior superior area of her left femoral head.

6. The MEB recommended her referral to a Physical Evaluation Board (PEB).

7. On 14 February 2005, a PEB found the applicant unfit further military service due to left hip pain which began in the 2nd week of basic training (September 2004). The DA Form 199 (PEB Proceedings) contains the following statements:

Imaging showed an advanced stage of avascular necrosis. Status post core decompression, December 2004, with good results initially but pain with exertion returned after convalescence and has prevented re-entry into training. Exam shows slight decreased range of motion, some tenderness to compression. Profile prevents training for soldiering in the field. The Board determined that the patient's symptoms were a result of natural progression of her pre-existing condition when challenged by the rigors of military training and do not represent permanent service aggravation.

Your unfitting condition is found to be neither service incurred nor permanently aggravated by military service. Your impairment originated while not entitled to basic pay, and has increased only to the extent of its accepted normal and natural progress, therefore there is no permanent service aggravation. Because your condition was not service incurred or permanently aggravated, you are ineligible for disability compensation and are therefore separated without disability benefits.

8. The PEB recommended the applicant's separation from the service without disability benefits.

9. Orders issued on 17 March 2005 ordered the applicant's discharge from the ARNG effective 8 March 2005.

10. The applicant's Transition Processing Physical Disability Information Record shows she was assigned a separation program designator (SPD) code of JFM (Disability, EPTS, PEB).

11. The applicant provided a VA summary of benefits letter showing she is receiving service-connected disability compensation for undisclosed disabilities.

12. 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, his previous ABCMR denial, 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/or 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 in essence requesting referral to the Disability Evaluation System (DES). She states:

“The disability I suffered from and continue to suffer from is due to an injury received during training. Currently, I am under the care of the Veteran's Health Care due to said disability and other disabilities that have stemmed from the disability.”

c. The Record of Proceedings outlines the circumstances of the case. Her Physical Disability Information Record shows she was to be separated for physical disability without disability severance pay under provisions provided in paragraph 4-24b(4) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990): Separation for physical disability without severance pay.

d. Her 15 January 2005 Medical Evaluation Board (MEB) Proceedings show the MEB determined her left hip osteonecrosis status post surgical core decompression failed the medical retention standards of paragraph 3-14d of AR 40-501, Standards of Medical Fitness. From the MEB narrative summary:

“This is a 19-year-old active-duty female who was in the 2nd week of basic training when she noticed left hip pain. Upon subsequent workup at the CTMC [Combined Troop Medical Clinic] , it was found that she had bone scan and MRI evidence of left hip osteonecrosis. She was subsequently sent home on convalescent leave from 19 Oct 04 to 17 Nov 04 for 30 days, and upon returning, she was continuing to have pain in the left hip.

This was exacerbated by any ambulatory activities. She had noted worsening of her condition in the intervening months. She was subsequently evaluated with a repeat MRI, which showed further demarcation of the anterior superior area of her left femoral head. It was subsequently decided to do a core decompression of her left hip. This was performed in late Dec 04. She tolerated this well and subsequently spent approximately a week in the hospital until her sutures came out. She was sent home on convalescent leave from 16 Dec 04 to 03 Jan 05.

Upon returning, she noted that her hip pain had decreased in the left hip markedly. It was, however, still painful ... Subsequent MRI ... showed a drastic decrease in the edema of the left femoral head in the anterior superior region.

She states that her hip seems to be feeling better every day. She is able to walk further distances without her crutches.

She states that her condition is made better by resting, taking pain medications and not doing any physical activity. It is made worse with lots of movement, putting a lot of weight on her left leg and sitting on the floor. She has not attempted to run or march on this leg. She can walk several steps without significant pain, but further than that it does cause her some mild discomfort.”

e. On 8 February 2005, the applicant concurred with the MEB’s findings and recommendation and her case was forwarded to a physical evaluation board (PEB) for adjudication)

f. On 14 February 2005, the PEB found her single condition unfitting for continued service and opined it had existed prior to service (EPTS):

“Your unfitting condition is found to be neither service incurred nor permanently aggravated by military service. Your impairment originated while not entitled to basic pay and has increased only to the extent of its accepted normal and natural progress, therefore there is no permanent service aggravation. Because your condition was not service incurred or permanently aggravated, you are ineligible for disability compensation and are therefore separated without disability benefits.”

g. On 17 February 2005, after being counseled on the PEB’s findings and recommendation by her PEB liaison officer, she concurred with the Board and waived her right to a formal hearing.

h. Service members may be separated from their Service without compensation, i.e., severance pay or retirement, for a physical disability which was neither incurred nor permanently aggravated (made worse) during a period of qualifying Service.

i. Paragraph 4-8e(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 April 2004) states:

“(1) The term "EPTS" {existed prior to service} is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly precludes a determination that it started during short tours of authorized training or duty.”

j. The AR 600-8-4 glossary definition of existed prior to service:

“Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training, or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)”

k. JLV shows the applicant has been awarded several VA service-connected disability ratings, including 10% for “Impairment of Femur.” However, the DES only compensates an individual for service incurred or permanently service aggravated medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA Medical Advisor that a referral of the applicant’s case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. The evidence shows a PEB found the applicant unfit for further military service due to left hip pain which began in the 2nd week of basic training (September 2004). The PEB determined her symptoms were a result of natural progression of her pre-existing condition when challenged by the rigors of military training and do not represent permanent service aggravation. Her unfitting condition was found to be neither service incurred nor permanently aggravated by military service. As a result, she was separated from the ARNG with an uncharacterized discharge. The Board reviewed and agreed with the medical reviewers finding that there is substantial evidence that the applicant’s medical condition existed before military service. Although she has been awarded several VA service-connected disability ratings, the military’s disability system only compensates an individual for service incurred or permanently service aggravated medical condition(s) which have been determined to disqualify him or her from further

military service. Based on the evidence, the Board determined that a referral of the applicant's case to the Disability Evaluation System is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

[Redacted]

[Redacted]

[Redacted]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 135-178 (ARNG and Army Reserve Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of enlisted Soldiers of the ARNG and the U.S. Army Reserve. Paragraph 6-6 states discharge will be accomplished on determination that a Soldier was not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on IADT. A Soldier found to be not medically qualified under procurement medical fitness standards will be discharged on the earliest practicable date following such determination and prior to entry on IADT. A basis for discharge exists when a medical finding of the staff surgeon that the Soldier has a medical condition that would have permanently disqualified them from entry in the Army had it been detected or had it existed at the time of enlistment.
3. Army Regulation 635-5-1 (SPD Codes), prescribe the specific authorities and the reasons for the separation of members from active military service and the SPD codes to be used for these stated reasons. The regulation in effect at the time of the applicant's discharge provides that the SPD code JFM is assigned to Soldiers separated for an EPTS disability as determined by a PEB and the regulatory authority is Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(4) (Separation for physical disability without severance pay).
4. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//