ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20230014260

APPLICANT REQUESTS: medical retirement and if approved, backdated to when she retired on 15 May 2019 for at least to the date she applied for this review.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Two Applicant Letters
- Individual Sick Slip
- Department Veterans Affairs (VA) Letter
- Medical Documents

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 in effect, she was categorized as medically disqualified due to the injuries sustained on 10 November 2015. The applicant argues that the medically disqualifying condition form 2015 is the same condition form 2007, only the 2015 injury made the service-connected 2007 injury was worse. She was activated and deployed to Kuwait under Operation Iraqi Freedom. In 2015, she was t-boned in her civilian capacity as a military technician for the U.S. Army Reserve (USAR). The applicant injured her cervical spine in 2007 and again 10 November 2015 when she was involved in a motor vehicle accident. After she was denied a medical evaluation board (MEB), it was explained dot her that she would get the same result for a physical evaluation board (PEB). She was in a toxic work environment in the unit as well.

3. The applicant provides:

a. An Individual Sick Sip, 1 March 2015 shows migraine/neck pain.

b. Physical profile, 10 January 2016, shows a temporary profile for neck, midback and low back sprain and right hip tendonitis affecting the applicant's ability to perform full duty.

c. Physical profile, undated, however, it shows an expiration date of 6 November 2017 and the reason for profile was listed asL hip pain/injury (bilateral) and neck injury/pain and post-traumatic stress disorder (PTSD).

d. A VA letter, 12 March 2021 shows subject to compensation (service connected) for:

- social anxiety disorder (claimed as depression) 50%
- post traumatic headaches associated with mild traumatic brain injury (claimed as head injury) 50%
- PTSD with alcohol use disorder and traumatic brain injury (TBI) 50%
- right hip strain 10%
- right knee strain 10%
- right upper torso costochondritis (claimed as rib cage pain, right side) 10%
- degenerative arthritis of the cervical spine (previously rated as cervical strain (claimed as neck injury)) 10%

4. A review of the applicant's service records show:

a. He enlisted in the USAR on 24 September 2003.

b. The applicant entered active duty on 22 August 2007. Her DD Form 214 shows she was honorably released from active duty and transferred to the USAR on 26 March 2009. She completed 1 year, 7 months, and 5 days net active service.

c. During the applicant's military service, she had foreign service in Kuwait from 25 October 2007 through 18 February 2009.

d. The applicant entered active duty on 2 April 2009. Her DD Form 214 shows she was honorably released from active duty and transferred to the USAR on 20 March 2010. She completed 11 months, and 19 days net active service.

e. Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (15-year Letter), 25 March 2019 shows the applicant was informed that as a member of the Selected Reserve who has been medical disqualified from further service and has attained at least 15 years but less than 20 years of qualifying service, you are eligible to apply for retired pay and benefits upon attaining age 60.

f. Orders 19-106-00028, 16 April 2019 assigned the applicant to the Retired Reserve for medically disqualified-not result of own misconduct. Effective date: 15 May 2019.

g. The applicant's available record is void of documentation to show she received a MEB, a PEB, or IDES processing.

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). She states in part:

> "I am requesting an administrative review board to audit my discharge category of medical disqualification because I believe I qualify for medical retirement. I was categorized as medically disqualified due to the injuries sustained on November 10, 2015. Ms. G.J., RN, stated " Your medically disqualifying condition occurred in 2015 while you were not on orders. This condition is not an isolated incident from duty in 2007, per the 416th HRC ... Therefore, your condition is not duty related." (see #14, page 7).
>
> I would like to argue that my medically disqualifying condition from 2015 is the same condition from 2007, only that the 2015 injury made the service-connected 2007 injury worse. And that is why I believe I qualify for medical retirement. In 2015. I was T-boned in mv civilian capacity as a military technician for the Army Reserve."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Discharge orders published by the 88th Readiness Division on 16 April 2019 show the former drilling USAR Soldier was transferred to the Retired Reserve on 15 May 2019 under authority provided in AR 135-178, enlisted Administrative Separations: Medically Disqualified – Not Result of Own Misconduct.

Military technicians are federal civilian employees who are required to maintain a military membership with a Guard or USAR unit as part of their employment (dual status). The treatment of and possible compensation for work related injuries incurred by these civilian employees are addressed by the Workers Compensation Program and not the Army National Guard. As such, injuries incurred while in a technician status are not eligible for the DES: They were incurred while the individual was a federal civilian employee and not in a military duty status.

d. There are two AHLTA encounters from her 2007 deployment submitted with the documentation. From the 2 December 2007 encounter:

> "Complaining of head, neck, lower back pain since she was riding in a car yesterday and hit a speed bump. Occurred last PM. Reports that she was asleep at the time but struck the top of her head on the roof of the car.
>
> No upper extremity radicular symptoms, weakness or paresthesia but does describe some headache. No reported LOC [loss of consciousness] or discomfort at the time of the accident"

e. She was found to have some neck pain with muscle tightness and was treated conservatively for neck strain.

f. The second encounter was on 28 May 2008 for migraine headaches after which she was started on a trial of Imitrex:

> "22 yo female presents ... for headache since this morning. pt [patient] states that she is having dizziness, nausea with no vomiting. pt has a history of migraines and gets them about once a month. pt is having photophobia and phonophobia [increased sensitivity to light and sound. pt came in about 1000 this morning to get some extra strength Tylenol which isn't helping."

g. The remaining encounters were for minor issues i.e., contusion and pharyngitis.

h. No documentation addressing her civilian motor vehicle accident was identified.

i. On 17 August 2017, the applicant was placed on a duty limiting permanent profile for the neck pain/injury.

j. A 25 March 2019 Memorandum from the U.S. Army Human Resources Command shows the applicant had been notified of her disqualifying condition and opted to be transferred to the Retired Reserve with a 15-year letter of notice of eligibility:

"SUBJECT: Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter)

1. This is to inform you that as a member of the Selected Reserve who has been medially disqualified from further service and has attained at least 15 years but less than 20 years of qualifying service, you are eligible to apply for retired pay and benefits upon attaining age 60 (Title 10, U.S. Code, Section 12731b). Your eligibility was determined based on the following qualifications:

a. You are not eligible for retention in the Selected Reserve due to medical disqualification.

b. You have completed at least 15 but less than 20 years of qualifying service.

c. You have completed the last required years of qualifying Service while a member of a Reserve component as specified by 10 USC 1223.

d. You have requested transfer to the Retired Reserve."

k. Neither the applicant's separation packet nor additional documentation addressing her medical separation were submitted with the application or uploaded into iPERMS.

l. There is insufficient probative medical evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

m. JLV shows she was awarded multiple VA service-connected disability ratings in 2012, including ratings for migraine headaches, PTSD, and degenerative arthritis of the spine However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by

Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the ARBA medical advisor that a referral of her case to the Disability Evaluation System is not warranted.

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 recommendations outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation and/or her pay record.

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.

//SIGNED//

X _____

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, 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. Section 1556 of Title 10, USC, 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.

3. Title 38 USC, 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.

4. Title 38 USC, 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.

5. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

6. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier

unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

7. 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any 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 PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

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.

8. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the

basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

9. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

10. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was

outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

11. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

12. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

13. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

14. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD;

Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

15. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

//NOTHING FOLLOWS//