

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20230014304

APPLICANT REQUESTS, in effect: an increased physical disability retirement rating.

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

- DD Form 149, Application for Correction of Military Record
- Department of Veterans Affairs (VA) benefits letter and Rating Decision

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 indicates her request is related to post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues. She states, in effect, the VA has assigned higher ratings to her service-connected disabilities.
3. A review of her official record shows the applicant completed service in the Tennessee Army National Guard and Individual Ready Reserve before being ordered to active duty in an Active Guard Reserve status on or about 2 June 2021.
4. On 10 January 2023, an Informal Physical Evaluation Board (IPEB) determined the applicant's following conditions were unfitting:
  - thoracolumbar degenerative arthritis, 20 percent
  - chronic pain syndrome (VA rated as right carpal tunnel syndrome), 10 percent
  - chronic pain syndrome (VA rated as left carpal tunnel syndrome), 10 percent
5. The IPEB found the applicant was physically unfit and recommended a combined rating of 40 percent and that she be retired due to permanent disability. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

6. On 11 January 2023, she concurred with the findings and recommendations of the PEB, waived a formal hearing of her case, and did not request reconsideration of her VA ratings.

7. Department of the Army Orders 0005082391.00, 16 June 2023, placed the applicant on the Permanent Disability Retired List effective 26 May 2023.

8. The applicant provides her VA benefits letter and rating decision, 15 June 2023, which show that effective 26 May 2023 the applicant's following conditions were determined to be service-connected:

- PTSD and major depressive disorder, recurrent, severe with psychotic features, 70 percent
- pesplanus and plantar fasciitis, bilateral, 50 percent
- cervical strain, 20 percent
- thoracolumbar spine degenerative arthritis, 20 percent
- right trapezius strain (dominant), 20 percent
- left trapezius strain (non-dominant), 20 percent
- right knee tendinitis, 10 percent
- left knee tendinitis, 10 percent
- shin splints, bilateral, 10 percent
- recurrent tinnitus, 10 percent

9. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, Medical Services- Standards of Medical Fitness, chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

10. Disabilities determined to be unfitting and compensable will be rated in accordance with the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD).

11. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

## 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, 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 requesting an increase in her military disability rating. On her DD 149, she has indicated that PTSD, TBI (traumatic brain injury, and other mental health conditions are issues related to her request. She asserts her military disability ratings should be reconsidered in light of her VA service-connected disability ratings.

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Her DD 214 shows the former USAR Soldier entered active duty on 2 June 2021 was permanently retired for physical disability on 25 March 2023 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

g. On 21 June 2022, the applicant was referred to the IDES for “Chronic Pain Syndrome” and “Thoracolumbar Spine Arthritis.” She claimed an additional 18 medical conditions, to include PTSD. The medical evaluation board determined her two referred conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined 28 additional medical conditions met medical retention standards, to include PTSD and major depressive disorder. The write up for these two conditions in her MEB Narrative Summary:

“SM [service member] was diagnosed with PTSD in August 2020. The HPI [history of present illness] from the August 10, 2020 note states “Pt. [patient] described that she has been experiencing anxiety and depression for approximately 7-9 years. She noted that she was receiving counseling in the civilian sector since approximately 2016 or 2017, until March 2020, when she had to end services due to financial and insurance difficulties with the COVID-19 pandemic. She stated that she was laid off from her job and unable to afford continuing services at that time.

She reported that she felt that she had been managing her symptoms “pretty well, ” but acknowledged “when I get low, I get low. ” She stated that she has not been prescribed medication for her symptoms, and declined a medication referral from her previous provider, noting that she prefers to manage them without medication.” She was diagnosed with MDD and PTSD. Since that time, PTSD has not been a predominant diagnosis in SM's EMR. Other BH conditions have been documented. Although these BH conditions play a role in SM's chronic pain syndrome, they do not individually prevent soldier from performing duties.”

h. On 26 September 2022, she concurred with the MEB decision, declined an independent medical review of her MEB, declined to submit a written rebuttal, and her case was forwarded to the physical evaluation board (PEB) for adjudication. On 10 January 2023, the applicant's informal PEB determined she had three unfitting conditions for continued military service: “Thoracolumbar degenerative arthritis,” “Chronic pain syndrome (VA rated as right carpal tunnel syndrome),” and “Chronic pain syndrome (VA rated as left carpal tunnel syndrome).” They found the remaining 28 conditions not unfitting for continued military service.

i. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 20%, 10%, and 10% respectively and recommended the applicant be permanently retired for physical disability. On 11 January 2023, after being counseled on the PEB's findings and recommendation by her PEB liaison officer, she concurred with the board's findings, waived her right to a formal hearing, and declined to request a VA reconsideration of her disability rating.

j. No medical documentation was submitted with the application. Review of the EMR and PEB case file did not identify any significant discrepancies or omissions.

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including one for PTSD. However, the DES only compensates an individual for 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.

l. It is the opinion of the ARBA Medical Advisor that neither an increase in the applicant's military disability rating nor a referral of her case back to the DES is warranted.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
- 2.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

- 1.
- 2.

X

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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. Title 10, U.S. Code, 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 (DES)

and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation (AR) 635-40, Personnel Separations-Disability Evaluation for Retention, Retirement or Separation.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, Medical Services- Standards of Medical Fitness, chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and 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/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. AR 635-40, prescribes Army Policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. The Integrated Disability Evaluation System (IDES) features –

a. A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit.

b. A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

c. With the exception of cases adjudicated under a Legacy DES process, if the initial decision by the PEB is that the Soldier is unfit, the PEB president will request preliminary VA ratings for each condition the PEB found to be unfitting. The request for preliminary VA ratings does not require the PEB to have determined that the unfitting condition is compensable. Once the PEB receives the VA disability rating percentages, it will apply them to the conditions determined compensable by the PEB, recommend a disposition, and generate the DA Form 199.

d. Disabilities determined to be unfitting and compensable will be rated in accordance with the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD).

4. Title 38, U.S. Code, section 1110, General – Basic Entitlement, states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation – Basic Entitlement, states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. 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.

7. AR 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//