

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240000355

APPLICANT REQUESTS: correction of her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show:

- her post-traumatic stress disorder (PTSD) with major depressive disorder conditions are combat-related
- a higher disability rating for PTSD
- migraines as an unfitting condition

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

- DD Form 149 (Application for Correction of Military Record) (three forms)
- 40 pages of medical records

FACTS:

1. The applicant states her PTSD condition is combat-related. She would not be fearing being attacked if it was not due to the mortar rounds on a weekly basis in Iraq. According to the PEB's notes, hers is disability is due to a disability incurred in the line of duty in a combat zone or as the result of performing combat-related operations. This proves she was not stateside, but in a known war zone. She also contends that she was initially informed she could not get a higher than 50% disability rating for PTSD. She recently found out that was false information. She further states the Department of Veterans Affairs (VA) granted her a 30% disability rating for migraines, the condition which is also service-connected and combat-related.

2. The applicant enlisted in the U.S. Army Reserve on 24 September 2010. Her record shows her service/deployments as follows:

- Kuwait from 1-6 July 2016
- Iraq 6 July-15 September 2016
- Kuwait 15 September 2016 to 20 March 2017

3. The applicant was appointed a Reserve warrant officer on 21 March 2018.

4. A DA Form 199 shows that on 14 September 2022, a PEB found the applicant unfit for further military service due to PTSD. The PEB indicated the following:

The Army Reserve Soldier was diagnosed with this condition on 28 September 2018 after experiencing periods of irritability and trouble sleeping while being evaluated at Veterans Affairs Office in Tuscaloosa, AL. Although the available evidence does not indicate that the Soldier received any personal combat awards or encountered any direct combat activity during her deployment to Kuwait/Iraq (2016-2017), the Soldier's stressors are attributed to being fearful of enemy attack while deployed.

5. The PEB recommended a 50% disability rating and the applicant's permanent disability retirement. The PEB found her fit for two additional undisclosed conditions.

6. The DA Form 199 contains the following entries in:

a. Section V:

(1) The disability disposition is not based on disease or injury incurred in the line of duty 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 line of duty during a period of war. (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

(2) The disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

b. Section VI:

(1) VA Schedule for Rating Disabilities (VASRD) 4.129 (Mental disorder due to traumatic stress) does not apply. The Soldier does not have a mental disorder that developed as a result of a highly stressful event that resulted in the Soldier's release from active military service.

(2) This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

(3) As documented in the VA memorandum dated 9 September 2022, the VA determined the specific VASRD code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability ratings(s) and in accord with applicable statutes and regulations.

(4) To satisfy the determination required by Section 3 of Appendix 5 to Enclosure 3 incurred of Department of Defense Instruction (DoDI) 1332.18 (as

implemented Section 020303 result B of DoD 7000, 14-5, VOL 7a) the Soldier's disability retirement is due to a disability incurred in the line of duty in a combat zone or as a result of performing combat related operations.

7. On 21 September 2022, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case. She did not request reconsideration of her VA ratings.

8. Orders published by the U.S. Army Physical Disability Agency on 6 October 2022, directed the applicant's release from assignment and duty because of physical disability and his permanent physical disability retirement effective 5 November 2022. The orders contain the following entries:

a. Disability is based on injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No

b. Disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104: No

9. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

10. 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 reversal of the United States Army Physical Disability Agency's (USAPDA) determination that her mental health condition was not combat related; an increase in the rating for her PTSD; a determination that her unclaimed migraine headaches were unfitting for continued

military service with a corresponding an increase in her current military disability; and that her migraine headaches be determined combat related.”

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. The Orders published by the United States Army Physical Disability Agency (USAPDA) on 6 October 2022 show the former USAR drilling Soldier was permanently retired for physical disability with a 50% military disability rating effective 5 November 2022 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). They show the applicant was determined to have no combat related disabilities.).

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 16 June 2022, the applicant was referred to the IDES for post-traumatic stress disorder. The applicant declined to claim any additional conditions on a separate Statement in Support of Claim (VA Form 21-4138. Typed in the remarks section of this form:

“I, [Applicant], do not wish to increase the current percentage VA rating. I am not seeking a claim increase. I only using this for MED BOARD purposes only.”

Drilling Reserve Component Soldiers entering the IDES often have VA service-connected disability ratings from prior periods of active service. They are given the option of not claiming these non-referred medical conditions to avoid the possibility that an IDES DBQ shows an improvement in the rated condition(s) which could result in a reduction in their rating(s)..”

h. The medical evaluation board determined that her PTSD failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined two additional conditions – “History of uterine fibroid tumor with surgical removal” and “Lower vertical abdominal scar” – met medical retention standards. On 18 August 2022, she concurred with the MEB decision and declined the opportunities to request an Impartial Medical Review of her MEB and/or to submit a written rebuttal. Her case was forwarded to the physical evaluation board (PEB) for adjudication.

i. On 19 September 2022, the applicant’s informal PEB determined her PTSD was the sole unfitting condition for continued military service. They found the two remaining medical conditions not unfitting for continued military service.

j. The PEB made the administrative determination her disability was not combat related: They found no evidence that one of these disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war; or that he was a member of the military on or before 24 September 1975.

From their rationale on her Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199):

“The Army Reserve Soldier was diagnosed with this condition on 28 September 2018 after experiencing periods of irritability and trouble sleeping while being evaluated at Veterans Affairs Office in Tuscaloosa Alabama. Although the available evidence does not indicate that the Solider received any personal combat awards or encountered any direct combat activity during her deployment to Kuwait/Iraq (2016-2017), the Soldier's stressors are attributed to being fearful of enemy attack while deployed (V1/V3 - Not applicable).”

V1 and V3 are combat related determinations. Section b(3) of 26 U.S. Code § 104 requires there be a cause-and-effect relationship to establish the finding that a medical condition is combat related:

(3) Special rules for combat-related injuries: For purposes of this subsection, the term “combat-related injury” means personal injury or sickness—

(A) which is incurred—

- (i) as a direct result of armed conflict,
- (ii) while engaged in extra-hazardous service, or
- (iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

Fear of enemy attack(s) does not meet the criteria for combat related.

k. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 50% and recommended the applicant be permanently retired for physical disability. On 21 September 2022, 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.

Review of her PEB case file in ePEB along with his encounters in AHLTA revealed no substantial inaccuracies or discrepancies.

l. There is no evidence the applicant’s migraine headaches or any other duty incurred medical condition failed the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that this medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

m. JLV shows she has several VA service-connected disability ratings, including the earlier rating for PTSD as well as a rating for migraine headaches originally effective 17 July 2023. The DES compensates an individual only for service incurred 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; 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 combat related determination for her PTSD, an increase in her military disability rating, and a referral of her case back to the DES are all unwarranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding an increase in her military disability rating, and a referral of her case back to the DES are all unwarranted. The opine found no evidence the applicant's migraine headaches or any other duty incurred medical condition failed the medical retention standards prior to her discharge.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of her DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show: her post-traumatic stress disorder (PTSD) with major depressive disorder conditions are combat-related, a higher disability rating for PTSD and that her migraines be rated as an unfitting condition. Furthermore, the Board agreed the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case. She did not request reconsideration of her VA ratings. Based on the medical opine and the preponderance of evidence provided in her submission, the Board denied relief.

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

2. Army Regulation 635-40 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.

a. The disability evaluation assessment process involves two distinct stages: the Medical Evaluation Board (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 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.

b. Service members whose medical condition did not exist prior to service 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.

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.

d. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the VA Schedule for Rating Disabilities (VASRD). 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 his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

e. 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.

3. Army Regulation 645-40 provides in:

a. Paragraph 5-24 (Determination for Purposes of Federal Civil Service Employment) the physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war. These determinations impact the eligibility of certain military retirees for certain benefits when employed under the Federal Civil Service System.

(1) The determinations will be recorded on the record of proceedings of the Soldier's adjudication.

(2) Armed Conflict: The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations, is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

b. Paragraph 5-25 (Determination for Federal Tax Benefits) physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

c. Combat related: This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat-related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result of armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

4. Title 26, U.S. Code, section 104, states that for the purpose of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

5. Directive Type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDES. It states:

a. The IDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of his or her military records through his or her respective Military Department BCMR.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

6. Title 38, U.S. Code, 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.

7. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. 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.

8. 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//