ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240000357

APPLICANT REQUESTS:

- amendment of her DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings) to show she was found fit for duty
- reinstatement in the U.S. Army Reserve (USAR) Active Guard/Reserve (AGR) Program
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored memorandum to the Board
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 25 May 2011
- Student Management Server, Army Physical Fitness Test (APFT) Scores, December 2016 – October 2019
- numerous award orders and certificates, December 2009 – September 2020
- DA Form 1059 (Service School Academic Report), dated 18 December 2020
- Disability Evaluation System (DES) Processes and Election Options Acknowledgement Statement, 15 June 2021
- DA Form 7652 (DES Commander's Performance and Functional Statement), 21 June 2021
- two DA Forms 3349-SG (Physical Profile Record), 25 June 2021, and 28 October 2021
- DA Form 5893 (Soldier's Medical Evaluation Board (MEB)/PEB Counseling Checklist), 29 October 2021
- 11 Noncommissioned Officer Evaluation Reports (NCOERs), from May 2012 – February 2022
- DA Form 199 (Informal PEB Proceedings), 10 January 2022
- applicant memorandum for record/request for reconsideration of PEB, 12 January 2022
- U.S. Army Physical Evaluation Board (USAPDA) memorandum/appeal response, 9 February 2022

- applicant rebuttal, undated
- numerous pages of text messages between applicant and physician assistant-certified (PA-C), 18 -22 February [2022]
- Physical Therapy Clinic records, 23 February 2022
- numerous pages of email correspondence between applicant, her immediate commander, and the Command Surgeon, 5 – 25 April 2022
- email from Advanced Practice Registered Nurse (APRN), 7 April 2022
- Consult/History of Primary Complaint and General Physical Exam forms, 11 April 2022
- Baptist Health Medical Group Neurology and Neurosurgery letter, 13 April 2022
- Advantacare Chiropractic Wellness Center letter, 27 April 2022
- email form physical therapist, 3 May 2022
- email correspondence with PEB Counsel, 5 April – 5 May 2022
- Consult/History of Primary Complaint and General Physical Exam forms, 9 May 2022
- Baptist Health Medical Group Neurology and Neurosurgery letter, 10 May 2022
- Medical Record, 10 May 2022
- Soldiers' PEB Counsel appeal memorandum, 11 May 2022
- USAPDA memorandum, 25 May 2022
- U.S. Army PEB memorandum/response to USAPDA memorandum, 6 July 2022
- U.S. Army Human Resources Command (AHRC) Command Surgeon email, 21 July 2022
- Army Combat Fitness Test (ACFT) scorecard, 4 August 2022
- email from U.S. Army Medical Command, Office of The Surgeon General, 7 August 2022
- 13 letters of recommendation, January 2022 – September 2022
- DA Form 4187 (Personnel Action), 1 September 2022
- AHRC memorandum/strength report, 7 September 2022
- applicant memorandum/request for Continuation on Active Duty (COAD), 12 September 2022
- DA Form 5016 (Chronological Statement of Retirement Points), 12 September 2022
- AHRC memorandum/disposition of Continuation on Active Reserve (COAR) request, 27 October 2022
- AHRC memorandum/COAD, undated
- DD Form 214, ending 15 December 2022
- numerous sets of reassignment and promotion orders, February 2011 – February 2023

FACTS:

1. The applicant states:

a. She is requesting the Board overturn her medical finding of unfitness, return her to the USAR AGR program with no break in service and returned to active duty with back pay and allowances, with entitlements at her current grade. She went through the MEB/PEB process and was found unfit for duty. Each time the MEB/PEB gave their reason to find her unfit, she fixed the problem. Her specialty doctors recommended that she continue to serve on the AGR program and that her condition did not hinder her from doing her job.

b. Upon receipt of her medical disposition from the PEB, she filed an appeal to address the reasons listed as the basis for the decision and provided medical evidence, which she believes was not reviewed or considered. During the appeal process, the PEB made a second determination of unfitness prior to receiving the additional evidence she provided. The doctors she was referred to for treatment indicated in their final clinical notes that she was released back to duty without limitations. She provided witness statements, videos, and doctors letters stating that her back condition did not stop her from doing her duty. She also never used her back condition to get her out of work. She went to work every day and went above and beyond in her duty. Her physical therapist also made her deadlift and plank and dismissed her from physical therapy. She also took an ACFT to prove she can still complete the test. Her chain of command at the time recommended her to stay on in the AGR program. In her job, she mailed out packages, lifted boxes to restock flag kits, and handled mail for their offices. The MEB/PEB also listed that she was on consecutive profile for her back, but she had a 1 year break between her temporary and permanent profile.

c. She thinks it is unjust because she is currently on Active Duty for Operational Support (ADOS) orders since 23 January 2023, which have since been extended, serving at the Department of the Army G-1, although the MEB/PEB says that she cannot continue in the AGR program due to her back condition. She came off the AGR program on 15 December 2023 [sic 2022] and was approved for continuation in the USAR. Being on ADOS orders shows that she is still able to perform her duties in her rank/grade of master sergeant (MSG)/E-8 and Military Occupational Specialty (MOS) 42A (Army Human Resources Specialist). She does not miss work and has not been to see a doctor for her back condition. She sill works out and maintains her fitness.

d. The DA Form 199 shows, as documented in the Department of Veterans Affairs (VA) memorandum, dated 4 January 2021, the VA determined the specific Veterans Affairs Schedule for Rating Disabilities (VASRD) codes used to describe her condition. The PEB determined the disposition recommendation based on the proposed VA disability ratings in accordance with applicable statutes and regulations. But this

Informal PEB finding of unfitting was based on the VA exams and at the time of the VA examinations, she had not started any treated with the doctors to whom she was eventually referred.

e. She provided multiple additional rebuttal statements to the PEB. She states Baptist Health Medical Group Neurology and Neurosurgery Physical Assistant note, dated 13 April 2022, stated she should not have any permanent functional activity limitation which precludes her military duty. The PEB stated that there was no accompanying medical examination documenting these findings, but this medical document shows this to be incorrect. The Neurologist released her back to duty because she was no longer in pain and therefore, no longer needed his care. She continues to do well with chiropractic treatment and exercise. The PEB stated the chiropractor note dated 27 April 2022, shows she does not have permanent loss of function, restriction, or limitation to activity level, but that there was no accompanying medical examination documenting these findings. This is incorrected as she was referred to and seen on a regular basis by the chiropractor and the medical exam from the chiropractor was provided as evidence during the PEB appeal.

f. The PDA only considered what the VA memorandum stated. She was participating in physical therapy at the Ireland Health Clinic at Fort Knox, KY. The statement of the worsening condition was not on her original profile and was added at the MEB. Her original profile is included with this request and it does not state her condition is worsening. The USAPDA also stated the note from the Baptist Health Medical Group Neurology and Neurosurgery, dated 10 May 2022, shows the lumbar range of motion (ROM) was forward flexion 60 degrees, extension 25 degrees, and right/left lateral flexion 18 degrees. The clinical note also stated her Magnetic Resonance Imaging (MRI) was personally reviewed to show multilevel degenerative disc disease (DDD) and facet arthritis in the lumbar spine, worse at L4-L5, where there is mild central canal stenosis and right recess narrowing. The applicant states the office of Neurology and Neurosurgery findings list that she has a normal ROM while also outlining the degrees of motion. The neurologist administered a physical exam and MRI to communicate and inform the board members that he released her to full duty after considering her medical conditions.

g. The PEB further stated, on 10 May 2022, the Military Treatment Facility (MTF) Physician verified the records and confirmed the conditions are unfitting by stating, "The SM [service member] has a right par median disc protrusion/ extrusion that has a mass effect on the right side thus the right radiculopathy. All of the exercises and chiropractor treatments will not improve this. It is my opinion that if the SM were deployed and has to wear body armor for any length of time, the condition will be exacerbated. In short, I recommend no changes in her physical profile." She responded, asking how is it possible that the MTF Physician verified her records on 10 May 2022 to confirm her conditions were unfitting when she submitted her ROM from the three providers that

were dated 11 May 2022 and the UPAPDA sent her record to the PEB at the end of May? Additionally, the letters all contradict this assessment of unfitness.

h. The PEB further stated she was diagnosed with facet arthritis of the lumbar region and degeneration of the intervertebral disc at L5-S1 level. The Soldier continues to have a permanent profile for tailbone pain and lumbar radiculopathy and lacks quantitative medical documentation to deem otherwise; in accordance with DODI 1332.18, Enc. 3, App. 2, para. 2.a., this Soldier is unfit because the physical profile DA Form 3349 section 4, limitations associated with this condition make this Soldier unable to deploy without worsening the condition. the applicant responds that there are many Soldiers currently serving with the same diagnosis and are still allowed to continue their full-time military service. Her chain of command, Command Surgeon, and Primary Care Manager all inquired about getting her profile downgraded; however, the medical coordinator for the IDES stated that her profile could not be downgraded because she was already in the IDES and pending a MEB. She deployed twice and never had a problem wearing her gear and performing the physical requirements of her MOS.

i. She submitted new medical documentation to the USAPDA and they returned it to the PEB. It should have been returned to the MEB for the medical doctors for reconsideration, but it was not. This process has shown her that providing new and updated medical evidence from medical providers who treated her was not considered and this is an unfair process. She also wants to point out that the presiding officer of her appeal is the same person who signed the response memorandum denying her appeal. This is a conflict of interest. Her appeal should have been addressed by a different presiding officer. Her decision was biased, as she made the previous determination and therefore did not want to overturn her own decision. She has never been in trouble and has outstanding evaluation w with more to give to the Army. She requests the Board overturn her medical finding of unfitness, return her to the USAR AGR program with no break in service, revoking her transfer order, and additionally be returned to duty with back pay and allowances at her current grade.

2. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows she enlisted in the USAR on 23 August 2007, and was awarded the MOS 42F (Information Systems Management Specialist).

3. A DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom/New Dawn on 6 May 2010, with service in Kuwait from 19 June 2010 through 30 April 2011. She was honorably released from active duty on 25 May 2011, due to completion of required active service, and transferred back to her USAR unit.

4. AHRC Orders R-01-380084, dated 7 January 2013, ordered the applicant to active duty in an AGR status at Fort Meade, MD, for a period of 3 years effective 11 February 2013.

5. A Student Management Server, APFT Scores printout shows the applicant passed her APFT on 3 December 2016, 10 January 2018, 22 May 2018, 5 December 2018, 14 April 2019, and 24 October 2019.

6. The applicant's DD Form 214 shows she deployed to Qatar from 14 March 2018 through 13 December 2018.

7. The applicant provided numerous awards certificates and orders, reflective of awards received between December 2016 through September 2020, all of which have been provided in full to the Board for review.

8. A DA Form 1059 shows the applicant successfully completed the Master Leader course from 5 December 2020 through 18 December 2020. Due to COVID-19 restrictions, no APFT or height/weight screening was done.

9. The applicant's NCOER, covering the period from 6 June 2020 through 28 February 2021, shows she was rated in her capacity as a Senior Human Resources Sergeant in an AGR status and received a rating of "Exceeded Standard" or "Far Exceeded Standard" in all portions of Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies).

10. A DES Process and Election Options Acknowledgement Statement shows the applicant signed the form on 15 June 2021, indicating she was advised of the two DES processes, the Integrated DES (IDES) and the Legacy (LDES), she understood once she enrolled in IDES of LDES she was not allowed to switch, and she elected to be enrolled in IDES.

11. A DA Form 7652, dated 21 June 2021, provides her commander's performance and functional statement, showing her assessment as:

- the applicant's condition will not prevent her from serving in her primary MOS
- she accomplishes all tasks and duties the same as other Soldiers without any complaints; she has not missed any additional work outside of medical appointments for this condition
- the applicant can be assigned against a deployable billet and can perform her duties in an overseas deployed environment without restrictions, limitations, or work-arounds

- she did not have any MOS specific tasks limitations due to her medical conditions and has been performing and completing all assigned duties and tasks
- her commander did not foresee the applicant not being able to successfully continue her military career

12. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

13. A DA Form 3349-SG shows:

a. On 15 June 2021, the applicant was given a permanent physical profile rating of 3 in factor L for lower back/tailbone injury/pain.

b. She had been on a temporary physical profile for 30 days in the last 12 months and 254 days in the last 24 months.

c. The form shows a Soldier must be referred to the DES if there is at least one permanent 3 in the PULHES and limitations noted in the functional activities. She was limited in three functional activities: she could not ride in a military vehicle wearing usual protective gear without worsening her condition; she could not wear helmet, body armor, and load bearing equipment (LBE) without worsening her condition; she could not move greater than 40 pounds (lbs.) while wearing usual protective gear up to 100 yards.

d. She could not participate in the sit-up event of the APFT.

e. Numerous additional restrictions are listed din Section 7 (Physical Readiness Training Capabilities) including no running, no walking as an endurance training event, no climbing, combatives or jumping, no foot march or body-armor/ruck, no standing greater than 15 minutes.

14. A second DA Form 3349-SG shows:

a. On 27 October 2021, the applicant was given a permanent physical profile rating of 3 in factor L for tailbone pain and lumbar radiculopathy (right).

b. She had been on a temporary physical profile for 0 days in the last 12 months and 157 days in the last 24 months.

c. The form shows a Soldier must be referred to the DES if there is at least one permanent 3 in the PULHES and limitations noted in the functional activities. She was limited in four functional activities: she could not ride in a military vehicle wearing usual protective gear without worsening her condition; she could not wear helmet, body armor, and LBE without worsening her condition; she could not move greater than 40 lbs. while wearing usual protective gear up to 100 yards; she could not live and function without restrictions in any geographic or climactic area without worsening her condition.

d. She could not participate in the 2-mile run or the sit-ups events of the APFT.

e. Section 7 reflects multiple additional restrictions.

15. A DA Form 5893 shows the applicant was counseled on numerous facets of the MEB/PEB on 15 June 2021, to include attending the standard IDES briefing and receiving an initial counseling session with her Physical Evaluation Board Liaison Officer (PEBLO).

16. The applicant's Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, VA Proposed Rating Decision for DES purposes, and VA Rating Decision are not in her available records for review and have not been provided by the applicant.

17. A DA Form 199 shows:

a. An Informal PEB convened on 10 January 2022, where the applicant was found physically unfit with a recommended rating of 50 percent and that her disposition be permanent disability retirement.

b. The applicant's unfitting conditions are:

(1) Right lumbar radiculopathy, femoral nerve (MEB diagnosis (Dx) 2); 20 percent; she first sought treatment for this condition on 2 October 2019, at Fort Knox, KY. She was experiencing lower back pain radiating down her right side due to no specific mechanism of injury. She was in an AGR status at the onset. The condition failed to improve despite conservative medical treatment. She is unfit because the DA Form 3349 functional activity limitations associated with this condition make her unable to reasonably perform required duties.

(2) Lumbar DDD (MEB Dx 1); 20 percent; she first sought treatment for this condition on 2 October 2019, at Fort Knox, KY. She was experiencing lower back pain radiating down her right side due to no specific mechanism of injury. She was in an AGR status at the onset. The condition failed to improve despite conservative medical treatment. She is unfit because the DA Form 3349 functional activity limitations associated with this condition make her unable to reasonably perform required duties.

(3) Right lumbar radiculopathy, sciatic nerve (MEB Dx 2); 20 percent; she first sought treatment for this condition on 2 October 2019, at Fort Knox, KY. She was experiencing lower back pain radiating down her right side due to no specific mechanism of injury. She was in an AGR status at the onset. The condition failed to improve despite conservative medical treatment. She is unfit because the DA Form 3349 functional activity limitations associated with this condition make her unable to reasonably perform required duties.

c. The conditions listed in the MEB Dxs 3-21 were determined not to be unfitting.

d. On 18 January 2022, the applicant signed the form indicating she had been advised of the findings and recommendations of the Informal PEB and did not concur, demanding a formal hearing and attaching her written appeal. She further indicated she did not request reconsideration of her VA ratings.

18. In a self-authored memorandum for record, dated 12 January 2022, the applicant requested reconsideration of her PEB, stating:

a. She requested to be found fit for duty as she would like to continue to serve in the AGR. She was currently receiving a new treatment plan for her back which would destroy the nerve fibers carrying pain signals to the brain and provide her lasting relief.

b. From August 2019 to July 2021, she was only on two temporary profiles that lasted less than 3 months total. She took an APFT in December 2019 and passed all three events. She works out and her pain is manageable. Her neurosurgeon told her that exercising will strengthen that area and her back was not so severe to need surgery. She will be able to wear any gear that she is required to wear in all the functions that go with it. She has deployed twice and does not let her profile stop her from performing beyond the standard in her MOS and completing the mission.

19. A USAPDA memorandum to the applicant, dated 9 February 2022, provided her with a response to her Informal PEB appeal, stating:

a. The PEB received her DA Form 199 with her non-concurrence. The PEB found her unfit for continued military service, recommending permanent disability retirement at

a disability rating of 50 percent. The PEB acknowledges her demand for a formal hearing with personal appearance and regularly appointed counsel.

b. The PEB carefully reviewed her appeal with enclosures, MEB appeal, and impartial medical review. The MEB also reviewed her PEB appeal and provided a response, dated 31 January 2022.

c. In her appeal, the applicant contends she is fit for duty, despite her lumbar DDD, and degenerative arthritis (MEB Dx 1) and right lumbar radiculopathy (MEB Dx 2) conditions. The DA Form 3349 in her case file lists numerous permanent functional activity limitations, which preclude riding in a military vehicle wearing usual protective gear; wearing helmet, body armor, and LBE; moving greater than 40 lbs. while wearing usual protective gear up to 100 yards; and living and functioning without restrictions in any geographic or climactic area without worsening her conditions.

d. Changing a Soldier's physical profile is not currently within the PEBs purview. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) paragraph 5-4, the PEB will find Soldiers unfit who are medically disqualified for worldwide deployment in a field or austere environment.

e. The preponderance of evidence currently available for PEB review does not indicate she is fit for duty; therefore, in accordance with her request, a formal hearing has been scheduled for 4 May 2022.

20. An additional applicant rebuttal, undated and unclear who the audience or her rebuttal is, shows she indicated she attached a copy of her medical records from pain management and wanted to point out she had not yet received proper complete treatment for her back. She was seeing progress with the treatment she received; however, her treatment up to that point was minimal and as of yet incomplete.

21. The applicant provided numerous pages of text messages she had with her treating PA-C, dating from 18-22 February 2022, wherein she asks him to provide her with a verifying document which shows she can perform the functional activities listed on her DA Form 3349 as limiting. He indicated the recommendation for her condition is avoidance of activities which worsen the pain, but if her pain is well controlled through maintaining her physical fitness and her current treatment plan then she may not necessarily be precluded from those activities.

22. A Medial record from the Physical Therapy Clinic, dated 23 February 2022, shows the applicant was seen for initial evaluation of her lower back on the date of the form. The assessment shows she had no functional impairments demonstrated or verbalized. She was released without limitations.

23. The applicant's NCOER covering the period from 1 March 2021 through 28 February 2022, shows she was rated in her capacity as a Senior Human Resources Sergeant in an AGR status and received a rating of "Exceeded Standard" or "Far Exceeded Standard" in all portions of Part IV.

24. The applicant provided numerous pages of email correspondence between her, her immediate commander, and the AHRC Command Surgeon, dated between 5 -25 April 2022, wherein she is requesting assistance with getting her physical profile updated. The AHRC Command Surgeon states there is nothing in the applicant's chart from the neurosurgeon releasing her to be able to perform the limiting activities listed on her physical profile.

25. A 7 April 2022 email from a Nurse Practitioner at Fort Knox, KY, informed the applicant that she needed to reach out to her PEBLO and if they wanted to contact the Nurse Practitioner, they could. If the applicant was placed and approved to go through an MEB, her physical profile remains. The Nurse Practitioner informed the applicant she has never changed a P3 profile for a Soldier.

26. A Consult/History of Primary Complaint and General Physical Exam forms, dated 11 April 2022, shows was evaluated on the date of the form for her back pain and all portions of the evaluation have been provided in full to the Board for review.

27. A Baptist Health Medical Group Neurology and Neurosurgery letter, dated 13 April 2022, shows it was the professional opinion of the PA-C that the applicant should not have any permanent functional activity limitations in relation to her lumbar DDD and degenerative arthritis, which would limit her in any functional activities listed on her DA Form 3349, to include no restrictions in any geographical climactic area.

28. A Advantacare Chiropractic Wellness Center letter, dated 27 April 2022, shows it was the chiropractor's opinion that the applicant did not have any permanent loss of function, restriction, or limitation to any activity level.

29. An email from the applicant's Physical Therapist at Ireland Army Health Clinic, dated 3 May 2022, shows since the applicant was discharged from the program, the Physical Therapist cannot update her profile.

30. The applicant provided multiple pages of email correspondence between herself and her PEB Counsel, dated between 5 April 2022 – 5 May 2022. Her PEB Counsel advised the applicant that if she wanted to be found fit at her formal hearing, she would have to get her P3 physical profile changed or the PEB would not be able to find her fit.

31. A DA Form 199-1 shows:

a. A Formal PEB convened on 5 May 2002, in an AGR status, the applicant was found physically unfit with a recommended rating of 50 percent and that her disposition be permanent disability retirement.

b. Her unfitting and fitting conditions are unchanged as listed on the DA Form 199, dated 10 January 2022.

c. Section VII (Instructions and Advisory Statements shows FORMAL: The Soldier contends that she is fit for both lumbar degenerative disc disease, degenerative arthritis (MEB Ox 1) and right lumbar radiculopathy (MEB Dx 2). Based on the preponderance of evidence, and the records on file the PEB has determined that the Soldiers conditions are unfitting. Although the 27 April 2022 Chiropractor note stated that the Soldier does not have permanent loss of function, restriction, or limitation to activity level, there is no accompanying medical examination documenting the Soldier's physical findings. Although the Baptist Health Medical Group Neurology and Neurosurgery Physician Assistant note dated 13 April 2022 stated that the Soldier should not have any permanent functional activity limitation which preclude military duty, there is no accompanying medical examination documenting the Soldier's physical findings. The Soldier testified under oath that she Is not taking any medications for back pain currently. The Soldier was unable to recall any Physician visits or Healthcare Provider visits that could provide medical documentation of current physical examination finding's to the PEB. The Soldier currently has a permanent profile and documentation from the VA that diagnosis her as unfit for these conditions. The limitations of her profile dated 27 October 2021 state she may not live or function without restrictions any in geographic or climatic area without worsening the condition and she may not ride in a military vehicle or wear load bearing equipment. This case has been adjudicated based upon a review of the objective evidence of record, including the Officer's testimony and exhibits provided during Formal Board proceedings; and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of DoDI 1332.18, Enc. 3., App. 2 and AR 635-40, to include combined, overall effect.

d. The applicant signed the form on 19 May 2022, indicating she had been advised of the findings and recommendations of the Formal PEB and did not concur, attaching her written appeal. She did not request reconsideration of her VA ratings.

32. A second Baptist Health Medical Group Neurology and Neurosurgery letter, dated 10 May 2022, shows the applicant was seen on the date of the letter and it was the opinion of the PA-C that the applicant should not be under any restrictions or limitations. He would have her continue full work duty and deployment without restrictions or limitations at this point.

33. A Medical Record, dated 10 May 2022, further details the applicant's follow-up visit with the PA-C at Baptist Health Medical Group Neurology and Neurosurgery, on the date of the form. It shows the applicant had full ROM in the spine and based on her history and physical exam, he did not see that she should be under any restrictions or limitations.

34. A memorandum from the Soldiers' PEB Counsel, dated 11 May 2022, provided an appeal to the applicant's formal PEB decision and requested reconsideration. It shows:

a. The formal board concluded that the applicant's three unfitting conditions had not improved despite conservative treatment. The evidence provided at the board, however, shows otherwise. The applicant points to the Contention Memo (Enclosure 2 provided herewith) and the associated exhibits which were provided prior to the formal board; those exhibits are available for electronic review in the Electronic Physical Evaluation Board (ePEB) and are incorporated herein by reference. She submitted 10 video clips of her performing exercises under the supervision of a master fitness instructor. These video clips clearly indicate that her back condition and the associated bilateral lower extremity radiculopathy have improved tremendously. She testified that she works out regularly several times a week before work (waking around 0430 and at the gym by 0500) and then works until 1700 and sometimes 1800. This has been her routine for several months and indicates a high level of fitness as she is able to maintain this routine even while being a parent with no down-time caused by a back problem or the associated pain.

b. During the course of the formal board on 5 May 2022, she submitted several letters recommending that she be found fit for duty including from her commander, her fitness trainer, and from BG Babcock, Deputy Commanding General, AHRC. These, of course, are from a non-medical viewpoint, but she also submitted statements from her chiropractor and from neurology indicating that she was able to perform without physical limitation. She recently was seen again at Baptist Health Medical Group Neurology and Neurosurgery; a copy of that examination report and statement from the provider (again stating that she has no physical limitations in regard to her back and radiculopathy diagnoses) is provided as Enclosure 3. Enclosure 4 is a treatment note from physical therapy in February 2022 indicating that her back condition has improved dramatically. Finally, she is also, as Enclosure 5, providing her most recent treatment reports for April and May from her chiropractor, who also opines that she has no residual limitations regarding her currently unfitting conditions.

c. As noted at the outset of this memorandum, the formal board states in the DA Form 199-1 that the applicant's back condition and radiculopathy have failed to improve despite treatment. The documents provided at the formal hearing as well as those additional documents provided herewith as Enclosures 3-5 emphatically show otherwise. Her command clearly wants to retain her and the evidence indicates that

they should be allowed to do so. The board also noted during the formal board hearing that she had not seen a provider recently. Again, the physical therapy note from February 2022, the chiropractic notes, and the neurology and neurosurgery enclosures show otherwise. She does not require more frequent visits due to the fact that the back has clearly improved. She also testified that she is not currently on any type of medication whether it be for a nerve issue, an anti-inflammatory, or general pain medication. She works out consistently, works daily without absence due to back pain or radicular symptoms, and is, as she testified and has evidenced through documentation submitted to the PEB and herein to the PDA, able to return to full duty without limitation. Unfortunately, when she sought a downgrade of her profile, the very fact that she was in IDES made that request impossible.

e. The applicant is well-respected by her peers and leadership. She has shown, through video evidence and written documentation, as well as through her testimony at the formal board, that she is fully able to perform the duties of her MOS and rank and is able to deploy if necessary. Her exemplary performance is represented in Enclosure 6, her evaluation for the period ending 28 February 2022. The applicant, per her testimony at the formal board, was placed into IDES based solely upon her having been treated for a significant period for her back condition. The referring provider and the MEB did not fully and accurately consider the degree of her impairment, at the time the permanent profile of level 3 was issued, and its consequent impact on her ability to perform the duties of an E-7 administrator. The referral to the medical board was premature and even if it is accepted as it were not, she has clearly proven through her testimony at the formal board and the documentation provided herewith (including the exhibits incorporated herein which are available in ePEB) that she should be found fit for duty and allowed to continue her military career.

35. A USAPDA memorandum, dated 25 May 2022, returned the applicant's case to the PEB for their review and reconsideration. The memorandum shows:

a. The applicant's case was reviewed as part of their mandatory review process in which new evidence was provided in the form of a physician assistant (neurology) clinic visit note dated 10 May 2022. Therefore, the case is returned for PEB review and reconsideration.

b. They completed a thorough review of the case file, eProfile, and the Joint Legacy Viewer records. Of note, the Soldier has been on a profile for her back condition since 8 August 2019, and remains on a permanent profile for this condition.

c. On 25 January 2022, the Soldier appealed the findings of the Informal PEB. As a result, the PEB requested the MEB reassess the Soldier's case. On 31 January 2022, the MEB responded to the PEB's request for reevaluation of the condition concluding,

"Her profile limitations should remain in effect, the SM will continue to fail retention standards and no changes to the PEB decision."

d. They reviewed the evidence provided to and reviewed by the Formal PEB to include exhibits A-H provided with her formal contention memorandum dated 3 May 2022. They also reviewed and considered the request for reconsideration memorandum and accompanying exhibits (DA Form 199-1, Formal Contention Memorandum, Letter by J____E____, PA-C dated 10 May 2022, Physical Therapy clinic note where PT was discontinued due to the Soldier no longer having any issues or concerns, dated 23 February 2022).

e. Neurological Physician Assistant, Mr. E____, noted on 10 May 2022, after the FPEB convened, "She has no pain at this point. She has full ROM in the spine. I would have her continue full work duty and deployment without restrictions or limitations at this point."

f. Given the significant support for retention the Soldier has from her leadership, the lack of current back pain and the presence of normal range of motion in her back, the signing off of physical therapy due to symptom improvement, and the new evidence from the Physician Assistant (neurology), Mr. E____, dated 10 May 2022, they are returning the case to the PEB for consideration to return it to the MEB, and request that they review it again, in combination with the newly provided evidence for a possible modification of the current profile.

g. After PEB review and reconsideration of the case is complete, please address this issue as deemed appropriate. If the PEB re-affirms its conclusions, please upload a memorandum of explanation into the Soldier's ePEB case file and return it to them. In the event the review results in a change in the Soldier's disposition, ratings, and/or benefits, please notify the Soldier's PEBLO and send the revised DA 199 for a new election (if required). This election will be addressed in the routine manner.

36. A response 6memorandum from the PEB President to the USAPDA, dated 6 July 2022, shows upon receipt of the return the FPEB members reviewed the case file and records again. The formal board maintains the Soldiers back condition does not meet the retention standards based on the following:

a. The note from The Baptist Health Medical Group Neurology and Neurosurgery dated 10 May 2022 stated that the lumbar range of motion was forward flexion 60°, extension 25° and right /left lateral flexion 18°, also the clinical note stated that the Soldier's MRI was personally reviewed to show multilevel degenerative disc disease and facet arthritis in the lumbar spine, worse at L4-L5 where there is mild central canal stenosis and right recess narrowing.

b. On 10 May 2022, the Military Treatment Facility Physician verified the records and confirmed the conditions are unfitting by stating, "The SM has a right paramedian disc protrusion/ extrusion that has a mass effect on the right side thus the right radiculopathy. All of the exercises and chiropractor treatments will not improve this. It is my opinion that if the SM were deployed and has to wear body armor for any length of time, the condition will be exacerbated. In short, I recommend no changes in her physical profile".

c. Furthermore, the Soldier was diagnosed with facet arthritis of the lumbar region and degeneration of the intervertebral disc at L5-S1 level. The Soldier continues to have a permanent profile for tail bone pain and lumbar radiculopathy and lacks quantitative medical documentation to deem otherwise; in accordance with DODI 1332.18, Enc. 3, App. 2, para. 2.a., this Soldier is unfit because the Physical profile DA Form 3349 section 4, limitations associated with this condition make this Soldier unable to deploy without worsening the condition.

37. An ACFT Scorecard shows the applicant passed the ACFT on 4 August 2022.

38. The applicant provided 13 letters of recommendation from officers, senior NCOs, and civilians with whom she worked, to include the Deputy Commanding General AHRC, dated between January 2022 – 1 September 2022, all of which highly recommend the applicant's request for continued service and/or a finding of fitness, stating her physical limitations have no impact on her daily duties as a Senior Human Resources Sergeant and that her performance is exceptional.

39. A DA Form 4187 shows on 1 September 2022, the applicant requested, if she is found unfit due to physical disability, that she be approved for continuation in lieu of retirement or separation. She requested assignment compatible with the limitations of her profile and within her current branch and MOS. She qualified for COAD and COAR as she was an active member in the AGR program and had met the additional qualifications based on length of active Federal service, qualified for non-regular retirement, was in a shortage MOS, and her disability resulted from combat or an act of terrorism.

40. A self-authored memorandum from the applicant to AHRC, dated 12 September 2022, shows she requested COAD to allow her to remain on active duty until completion of 20 years of active Federal service. She requested to continue serving in the AGR program for the remainder of her enlisted obligation and scheduled retirement under COAD.

41. The applicant's DA Form 5016 shows she completed 15 years and 2 days of qualifying service for retirement.

42. An undated AHRC memorandum to the applicant shows her request for COAD was not approved and she would be placed on the permanent disability retired list.

43. An AHRC memorandum to the applicant, dated 27 October 2022, shows her request for COAR in accordance with Army Regulation 635-40, chapter 6, was favorably considered. She was authorized retention in the USAR until completion of 20 qualifying years toward non-regular retirement and no later than 1 August 2027.

44. A DD Form 214 shows the applicant was honorably released from active duty on 15 December 2022, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service with corresponding separation code MBK and reentry code 1. She was credited with 9 years, 10 months, and 5 days of net active service this period; 2 years 1 month, and 3 days of total prior active service; and 3 years, 4 months, and 15 days of total prior inactive service.

45. A review of the AHRC Soldier Management System (SMS) shows effective 23 January 2023, a transaction was completed to transfer the applicant from the USAR Control Group (AGR) to the USAR Control Group (Reinforcement) due to voluntary activation for a temporary tour of active duty. Another transaction was completed on 28 September 2024 to transfer the applicant from the USAR Control Group (Reinforcement) to the USAR Control Group (Annual Training) for active duty for special work under Title 10, under Reserve Component control.

46. 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 determination that she was unfit for continued service. She states in part:

> "I went through the MEB/PEB [medical evaluation board/physical evaluation board] and was found unfit for duty. Each time the MED/PEB said gave their reason to find me unfit, I fixed it. My doctors specialty doctors recommend that I continue to serve

on the AGR [Active Guard Reserve] program and that my condition did not hinder me from during my job."

c. The Record of Proceedings details the applicant's service and the circumstances of the case.

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 liming 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 24 June 2021, the applicant was referred to the IDES for "Lumbar degenerative disc disease with spondylosis (chronic degenerative changes) and right lumbar radiculopathy." The applicant claimed thirteen additional conditions on a separate Applications for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ). A medical evaluation board (MEB) determined the applicant's two referred conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined nineteen additional medical conditions met medical retention standards.

h. The applicant requested an Independent Medical Review (IMR) "as an independent source of review of the MEB findings and recommendations to advise and counsel her regarding the findings and recommendations of the MEB and whether those findings adequately reflect the complete spectrum of her injuries and illnesses." The IMR provider maintained the MEB's findings stating in part:

> "The specific concern appears to be regarding NARSUM [narrative summary] diagnoses #1 and #2 related to Lumbar Degenerative Disc Disease, Degenerative Arthritis and Right Lumbar Radiculopathy (diagnosed by the VA as Intervertebral Disc Syndrome). Attached documentation reports MRI findings of SEP 2021 "not significantly changed" compared to OCT 2019. There is no indication either condition is improving or has potential for improvement to allow return to duty without limitation of functional activities.
>
> I concur with the Medical Board findings and recommendations as it adequately reflects"

i. The functional activities are the activities all Soldiers must be able to form, e.g.: Wear helmet, body armor, and load bearing equipment (LBE) without worsening condition ; Move greater than 40 lbs. (e.g. duffle bag) while wearing usual protective gear (helmet, weapon, body armor, LBE) up to 100 yards; or Live and function, without restrictions in any geographic or climatic area without worsening condition.

j. The applicant appealed the MEB's findings requesting that her two conditions be found to meet medical retention standards claiming that had yet to undergo adequate treatment. The appellant physician upheld the MEB findings stating in part:

> "3. According to the medical retention determination point (MRDP) statement, it has been over one year since you have been diagnosed and started treatment for the conditions.
>
> 4. It was noted that you had requested an IMR and that the opinion of the IMR was to concur with the medical board findings.
>
> 5. You have not contended that the conditions currently meet retention standards (no profile functional limitations) but that you have not yet undergone adequate treatment.

6. I encourage you to continue with your current treatment plan, however it has been the experience that your type of conditions will not improve enough to meet retention standards in the future."

k. Following her appeal and IMR, her case, including her MEB appeal and IMR, was forwarded to a physical evaluation board (PEB) for adjudication.

l. On 10 January 2022, the applicant's informal PEB determined she had three conditions unfitting for continued military service: "Right lumbar radiculopathy, femoral nerve," "Lumbar degenerative disc disease," and "Right lumbar radiculopathy, sciatic nerve." They found the nineteen remaining medical conditions not unfitting for continued military service.

m. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 20%, 20%, and 20% respectively and recommended the applicant be permanently retired for physical disability. After being counseled on the PEB's findings and recommendation, the applicant non-concurred with the PEB's findings and demanded a formal hearing with the assistance of regularly appointed counsel but did not request a VA reconsideration of the ratings (VARR).

n. The applicant maintained that her conditions were not unfitting. From the PEB's 31 January 2022 reply:

"... 4. The last available pain management medical record was on 09AUG2021 reporting: "Pain is getting worse. (Patient is having numbness and tingling in the side of her right leg, into toes).

5. Last available PCM note was on 01OCT2021 reporting the SM was referred to be seen by Dr. T.J.

6. There are no available medical records of the SM [service member] demonstrating medical improvement for either her lumbar degenerative disc disease, degenerative arthritis (diagnosis #1) or right lumbar radiculopathy (diagnosis #2).

7. Therefore, her profile limitations should remain in effect, the SM will continue to fail retention standards and no changes to the PEB decision.

o. The permanent physical profile stated she could not perform four of the six the functional activities: Ride in a military vehicle wearing usual protective gear without

worsening condition; Wear helmet, body armor, and load bearing equipment (LBE) without worsening condition; Move greater than 40 lbs. (e.g. duffle bag) while wearing usual protective gear (helmet, weapon, body armor, LBE) up to 100 yards; or Live and function, without restrictions in any geographic or climatic area without worsening condition.

p. The formal PEB was held telephonically on 5 May 2022. The applicant was present for and represented by regularly appointed counsel at her formal hearing. The applicant had obtained additional documentation she presented at the formal. After testimony and review of the new documentation, the formal PEB confirmed the informal PEB's findings:

"FORMAL: The Soldier contends that she is fit for both lumbar degenerative disc disease, degenerative arthritis (MEB Dx [diagnosis] 1) and right lumbar radiculopathy (MEB Dx 2). Based on the preponderance of evidence, and the records on file the PEB has determined that the Soldier's conditions are unfitting.

Although the 27 April 2022 Chiropractor note stated that the Soldier does not have permanent loss of function, restriction, or limitation to activity level, there is no accompanying medical examination documenting the Soldier's physical findings.

Although the Baptist Health Medical Group Neurology and Neurosurgery Physician Assistant note dated 13 April 2022 stated that the Soldier should not have any permanent functional activity limitation which preclude military duty, there is no accompanying medical examination documenting the Soldier's physical findings.

The Soldier testified under oath that she is not taking any medications for back pain currently. The Soldier was unable to recall any Physician visits or Healthcare Provider visits that could provide medical documentation of current physical examination finding's to the PEB.

The Soldier currently has a permanent profile and documentation from the VA that diagnosis her as unfit for these conditions. The limitations of her profile dated 27 October 2021 state she may not live or function without restrictions any in geographic or climatic area without worsening the condition and she may not ride in a military vehicle or wear load bearing equipment. This case has been adjudicated based upon a review of the objective evidence of record, including the Officer's testimony and exhibits provided during Formal Board proceedings."

q. As part of their mandatory review process, the United States Army Physical Disability Agency the PEB them to return the case to the evidence.

...” we are returning the case to you for consideration to return it to the MEB, and request that they review it again, in combination with the newly provided evidence for a possible modification of the current profile.

After your review and reconsideration of the case is complete, please address this issue as you deem appropriate. If the PEB re-affirms its conclusions, please upload a memorandum of explanation into the Soldier's ePEB case file and return it to us. In the event the review results in a change in the Soldier's disposition, ratings, and/or benefits, please notify the Soldier's PEBLO and send the revised DA 199 for a new election (if required). This election will be addressed in the routine manner.

r. The Formal PEB replied on 6 July 2022 in part:

“2. Upon receipt of the return the FPEB members reviewed the case file and records again. The formal board maintains the Soldiers back condition does not meet the retention standards based on the following:

a. The note from The Baptist Health Medical Group Neurology and Neurosurgery dated 10 May 2022 stated that the lumbar range of motion was forward flexion 60°, extension 25° and right /left lateral flexion 18°, also the clinical note stated that the Soldier’s MRI was personally reviewed to show multilevel degenerative disc disease and facet arthritis in the lumbar spine, worse at L4-L5 where there is mild central canal stenosis and right recess narrowing.

b. On 10 May 2022 the Military Treatment Facility Physician verified the records and confirmed the conditions are unfitting by stating, “The SM has a right paramedian disc protrusion/ extrusion that has a mass effect on the right side thus the right radiculopathy. All of the exercises and chiropractor treatments will not improve this. It is my opinion that if the SM were deployed and has to wear body armor for any length of time, the condition will be exacerbated. In short I recommend no changes in her physical profile”.

Furthermore, the Soldier was diagnosed with facet arthritis of the lumbar region and degeneration of the intervertebral disc at L5-S1 level. The Soldier continues to have a permanent profile for tailbone pain and lumbar radiculopathy and lacks quantitative medical documentation to deem otherwise; IAW DODI 1332.18, Enc. 3, App. 2, para. 2.a., this Soldier is unfit because the Physical profile DA Form 3349 section 4,

limitations associated with this condition make this Soldier unable to deploy without worsening the condition.

s. The applicant's appeal to the USAPDA was also declined on 11 July 2022 in which they concluded:

"Our conclusion is that SFC [Applicant]'s case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed. The issues raised in your 11 May 2022 appeal were adequately addressed by the PEB in its Formal Board proceedings and we concur with the finding. If your client feels that our findings are in error, any future submission for correction may be directed to the Army Board for Correction of Military Records (ABCMR)."

t. The applicant applied for Continuation on Active Reserve Status (COAR) on 22 August 2022. Paragraph 6-1 and 6-1a or AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states:

"This chapter prescribes the criteria for Soldiers to be continuation on Active Duty (COAD) and continuation on Active Reserve (COAR), as applicable, subsequent to being found unfit after completion of the duty-related DES process."

a. "The purpose of this exception to policy is to conserve manpower by effective use of needed skills or experience in a limited duty status."

u. On 27 October 2022, her request for COAR was approved:

"Your request for COAR, IAW AR 635-40, Chapter 6, has been favorably considered. You are authorized retention in the Army Reserve until completion of 20 qualifying years toward non-regular retirement and no later than 01 August 2027, unless separated earlier under appropriate regulation or statute."

v. It is the opinion of the Agency Medical Advisor there is insufficient probative medical evidence to warrant a change in the PEBs' findings or her unfitting conditions to not unfitting.

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 previously issued disability ratings.

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, 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 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical 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 Army Regulation 40-501 (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 (MMRB); 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.

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. 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. 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. 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. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (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 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.

d. Chapter 6 provides guidance on Continuation on Active Duty (COAD) and Continuation on Active Reserve (COAR) Status of unfit Soldiers. Soldiers must meet the following criteria to be considered for COAR

(1) The Soldier is not on the TDRL. Soldiers pending placement on the TDRL remain eligible to request COAD or COAR if they otherwise meet the qualifications of this paragraph.

(2) The Soldier's request must be submitted within the timeline and with the documents required by DA Pam 635–40.

(3) The disability for which the Soldier was found unfit must not be due to the Soldier's misconduct, willful negligence, or incurred when the Soldier was absent without authority.

(4) The Soldier must meet at least one of the criteria listed below:

- for COAD, have at least 15 but less than 20 years of active Federal Service. For COAR, have at least 15, but less than 20 years of qualifying service for non-regular retirement
- be qualified in a critical skill or shortage MOS
- the disability resulted from combat or terrorism

3. 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.

4. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//