

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240000737

APPLICANT REQUESTS: in effect, correction of her DA Form 199, Informal Physical Evaluation Board (PEB) Proceedings to add a missing medical condition.

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

- DD Form 149, Application for Correction of Military Record
- U.S. Department of Veterans Affairs (VA) benefits decision

FACTS:

1. The applicant states, in effect, the military failed to annotate the anatomical loss of a creative organ on her PEB Proceedings.
2. Having prior enlisted service in the Regular Army, the applicant was commissioned on 23 August 2012.
3. On 22 February 2023, the applicant's medical conditions were evaluated by an informal PEB. Her chronic pain syndrome was found to be unfitting and was assigned a 20 percent combined disability rating. The PEB recommended she be permanently retired from the service based on her 20 years of Active Federal Service. The DA Form 199 further shows:
  - a. The PEB determined the Soldier was fit for "MEB Dx 2-36." These conditions are not listed on the DA Form 199. Therefore, it is unclear if the anatomical loss of a creative organ was considered by the Medical Evaluation Board.
  - b. Her case was adjudicated as part of the Integrated Disability Evaluation System (IDES).
  - c. On 28 February 2023, she concurred with the PEB findings, waived a formal hearing of her case, and elected not to request reconsideration of her VA ratings.
4. The applicant was retired due to permanent disability on 31 July 2023 and placed on the Permanent Disability Retired List effective 1 August 2023.

5. The applicant provides her VA benefits letter, 6 September 2023. This letter contains a list of the applicant's service-connected disabilities which include a hysterectomy.

6. 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 they determine the additional medical condition of anatomical loss of creative organs be found unfitting for continued military service prior to her permanent retirement for physical disability; a corresponding increase in his prior military disability rating of 20%; and revocation of her orders permanently retiring her for physical.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 shows for the period of Service under consideration shows she entered the regular Army on 23 August and was permanently retired for physical disability on 31 July 2023 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017)

d. The applicant's Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199) shows that when the PEB convened on 22 February 2022, they determined the applicant's "Chronic pain syndrome" was the only condition unfitting conditions for continued service. They applied the VA derived disability rating of 20% disability and recommended the applicant be permanently retired for physical disability.

e. Because the applicant had a 20% disability rating but apparently more than 20 years of active federal service, she was retired for length of service under paragraph (b)(3)(A) of 10 U.S. Code § 1201 - Regulars and members on active duty for more than 30 days: retirement.

f. This length of service retirement with its monthly retirement payments and other benefits is awarded to these Soldiers because they have earned it and it is clearly more beneficial to a single payment of disability severance pay which is often recouped by the VA.

g. On 24 February 2022, after being counseled on the board's findings and recommendation by her PEB liaison officer, she concurred with the PEB, waived her right to a formal hearing, and declined a VA reconsideration of her disability rating.

h. The VA routinely compensates Veteran's for loss of creative organs, in this case, the applicant has a 30% VA service-connected disability rating "Removal of Uterus."

i. The Military Departments do not compensate such conditions as they do not prevent a Service Member from being able to reasonably perform the duties of their office, grade, rank, or rating.

j. It is the opinion of the ARBA Medical Advisor that neither a referral of her case back to the DES nor revocation of her initial orders permanently retiring her for physical disability is warranted.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows an informal PEB found the applicant's medical condition of chronic pain syndrome unfitting, applied the VA derived disability rating of 20% disability and, although her rating was less than 30%, recommended the applicant be permanently retired for physical disability based on her 20 years of active Federal service. She concurred. She had other medical conditions but those were not found unfitting. She requests the additional medical condition of anatomical loss of creative organs be found unfitting for continued military service prior to her permanent retirement for physical disability; a corresponding increase in his prior military disability rating of 20%; and revocation of her disability orders. The Board reviewed and agreed with the medical reviewer's determination that when the PEB convened in February 2022, the PEB determined the applicant's "chronic pain syndrome" was the only condition unfitting conditions for continued service. Although the VA assigned a 30% service-connected disability rating for the removal of uterus, this condition was neither found unfitting for military service nor prevented the applicant from being able to reasonably perform the duties of their office, grade, rank, or rating. Therefore, the Board determined that neither a referral of her case back to the disability evaluation system nor revocation of her initial orders permanently retiring her for physical disability is warranted.

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, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 635-40, Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation, establishes the Army Disability Evaluation System

and sets forth policies and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability.

a. A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation.

b. The Integrated Disability Evaluation System. The IDES features (a) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit. (b) A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

3. Title 38, Code of Federal Regulations, contains the schedule for rating disabilities. The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military serve. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition. Over a period of many years, a veteran's disability claim may require reratings in accordance with changes in laws, medical knowledge and his or her physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent.

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

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

7. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//