

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240000944

APPLICANT REQUESTS: reconsideration of her previous request for a medical retirement vice separation with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 24 February 1999
- DD Form 214, for the period ending 20 June 2017
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings Docket Number AR20190013019, dated 22 March 2022
- Periodic Health Assessment, dated 15 October 2016
- Department of Veterans Affairs (VA) Medical Record-Progress Notes, dated 24 April 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190013019 on 22 March 2022.

2. The applicant, through counsel, states:

a. The applicant respectfully submits this application to have a new Medical Evaluation Board (MEB) and a new Physical Evaluation Board (PEB) conducted to determine if she qualifies to be medically retired from the United States Army, retroactive to 20 June 2017. The instant brief is for the purpose of this honorable Board's reconsideration of evidence and arguments not previously submitted. While on active duty, the applicant deployed to Jordan in 2003. In addition to her time in Jordan, she also deployed to Iraq from 2003 to 2004. On 20 June 2017, she received an honorable discharge for the reason of disability, severance pay, non-combat (enhanced).

b. On 22 March 2022, this honorable Board held proceedings to review the applicant's request for a new MEB and PEB to determine if she qualifies to be medically retired from the United States Army. Her request was denied. The applicant respectfully states the Army erred when it did not send her for further assessment of her PTSD after a Periodic Health Assessment (PHA) conducted on 31 October 2016 revealed symptoms consistent with PTSD. On the PHA she stated she was having nightmares about traumatic events, she felt numb and detached from her life, and that these symptoms interfered with almost every aspect of her life. The reviewing health care provider indicated the applicant exhibited symptoms of PTSD and stated, "Service member's response in Mental Health Section on PHA/MHA may need further evaluation." The health care provider indicated the applicant should be seen by behavioral health within the next seven days. There is no indication she underwent further assessments for her PTSD.

c. On 24 April 2023, the applicant had a follow-up visit with her healthcare provider for management of her chronic health conditions. In the notes it states that she suffers from "Chronic post-traumatic syndrome." Her doctor, who supports her request for medical retirement based on his treatment of her, states it was his belief that the applicant was being treated for PTSD and anxiety prior to her separation.

d. Conclusion: Considering the facts and arguments presented herein, it is respectfully submitted that the applicant should be directed to undergo a new MEB and PEB to determine if she should be medically retired from the United States Army, retroactive to 20 June 2017. The applicant's military records demonstrate she was experiencing identifiable symptoms of PTSD, yet nothing was done to further investigate and treat those symptoms. Due to this injustice, this honorable Board should grant the applicant's request to go before another MEB and PEB to seek a medical discharge that sufficiently meets her conditions. *The complete counsel's statement was provided to the Board for their review and consideration.*

3. The applicant enlisted in the U.S. Army Reserve on 15 May 1998. She attended initial active duty for training from 2 September 1998 24 February 1999. She entered active duty in Active Guard Reserve status on 8 July 2001. Her record shows service in Jordan and Iraq during the period 3 February 2003 to 4 January 2004.

4. On 22 October 2016, an MEB referred the applicant to a PEB based on a diagnosis of diabetes mellitus, type 2, which did not meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The MEB Proceedings show she was diagnosed with 30 additional conditions which were deemed to meet retention standards in accordance with Army Regulation 40-501. The MEB Proceedings do not show PTSD as a diagnosis.

5. On 3 February 2017, a Formal PEB found the applicant unfit for further military service due to diabetes mellitus, type 2. The PEB recommended a 20% disability rating and her separation with severance pay. The DA Form 199-1 (Formal PEB Proceedings) shows the PEB stated:

- a. During the formal board: The Soldier requested that her left shoulder impingement syndrome, left shoulder strain and cervical strain be found unfitting. Exhibits included a note from the Soldier's physician (dated 9 January 2017) recommending no heavy lifting. The Soldier has no permanent profiles for her shoulder or her neck conditions. She testified that the onset of the neck and shoulder conditions was in 2009. The Soldier testified "I can do my job. It takes me longer but I get my job done". The Formal Board sustains the findings of the Informal Board: the Soldier is fit for left shoulder strain, left shoulder impingement syndrome, and cervical strain.
- b. In full consideration of Department of Defense Instruction (DODI) 1332.18, Enc. 3, App. 2, to include combined, overall effect, the evidence supports that these conditions do not prevent reasonable duty performance. Continuing in the military does not pose a risk to the Soldier or to others. These conditions do not impose unreasonable requirements on the military to maintain or protect the Soldier.

6. The PEB found her fit for 30 additional conditions due to meeting medical retention standards in accordance with Army Regulation 40-501. The proceedings did not indicate that any of the conditions prevented the Soldier from performing any functional activities and did not indicate that performance issues, if any, were due to these conditions.

7. On 21 February 2017, the applicant indicated she did not concur with the PEB's findings and recommendations but did not submit a written appeal. She did not request reconsideration of her VA ratings.

8. The applicant's DA Form 199-1 contain the following entries:

- a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).
 - b. As documented in the VA memorandum dated 30 November 2016, the VA determined the specific VA Schedule for Rating Disabilities (VASRD) code to describe the Soldier's condition. The PEB determined the disposition recommendation based on the proposed VA disability rating and in accord with applicable statutes and regulations.
9. The applicant's DD Form 214 shows she was discharged on 20 June 2017 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat, enhanced.

10. The applicant provides:

- a. A PHA, dated 15 October 2016, showing the health care provided indicated the applicant's response in the mental health section of the PHA may need further evaluation.
- b. A VA Medical Record-Progress Notes, dated 24 April 2023, showing the health care provided expressed support for the applicant's application for a military retirement rather than medical separation based on her over 19 years of active Army and Reserve service.

11. During the processing of the applicant's previous case, the Army Review Boards Agency Medical Advisor provided a medical advisory opinion. The Medical Advisor indicated the applicant did not contend that her mental health conditions were unfitting before, during, or after her formal PEB. The Medical Advisor determined that the applicant's PEB case file did not reveal substantial inaccuracies or discrepancies and that given no evidence of error or injustice, a referral of her case back to the Army Disability Evaluation System is unwarranted. *The complete medical advisory opinion was provided to the Board for their review and consideration.*

12. In the applicant's previous case the Board, after reviewing the application and all supporting documents, determined relief was not warranted. Based upon the available documentation and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant referring the applicant's medical records to the IDES system for further evaluation.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the electronic Physical Evaluation Board (ePEB), the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). Through counsel, the applicant requests reconsideration of her previous request for a new MEB/PEB. She indicated that PTSD was related to her claim and specifically contends that she was experiencing PTSD symptoms that were not addressed and that an injustice ensued in that she was separated with severance pay rather than being medically retired. The prior Board proceedings to include the ARBA Medical Reviewer's assessment were reviewed.
2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the USAR 15May1998. She was in active service from 19980902 to 19990224 and from 20010708 to 20170620. Her

primary MOS was 37F Psychological Operations Specialist. She was deployed in Iraq from 20030203 to 20040104. It should be noted that she was in Jordan from 20030305 to 20030518 during that time. She was discharged 20Jun2017 under provision of AR 635-40 chapter 4 through the Integrated Disability Evaluation System (IDES) for medical disability with disposition separated with severance pay.

3. The applicant was medically discharged from service due to her Diabetes Mellitus (DM) Type II condition. The IDES process was thoroughly reviewed in the prior Board proceedings. In consideration of the applicant's desire for medical retirement, the VA rating and pertinent VA rating criteria were reviewed below.

a. The applicant had intermittent elevated glucose (hyperglycemia) since pregnancy in 2002. She was able to control her blood sugar with diet and exercise alone until 02Mar2016 when the condition required starting metformin, an antihyperglycemic agent (also referred to as a hypoglycemic agent in the record). Once the condition required the oral agent for control, the condition no longer met retention standards of AR 40-501 chapter 3-11d. Diabetes Mellitus fails retention standards unless hemoglobin A1c can be maintained at less than 7% using only lifestyle modifications (diet, exercise). Although the applicant's hemoglobin A1c was 6.6% on 16Aug2016, the condition required oral medication for control.

b. The 22Aug2016 Diabetes Mellitus DBQ documented important rating criteria: She was prescribed an oral agent; she received diabetic care less than 2 times per month; there were no episodes of ketoacidosis or hypoglycemic reactions requiring hospitalization in the past 12 months; and the condition did not require insulin, restricted diet, or regulation of activities. The DM Type II condition had resulted in diabetic peripheral neuropathy. The diabetic peripheral neuropathy had not required treatment.

c. The 12Dec2016 Informal PEB (DA Form 199) found DM Type II unfitting for continued service and applied a 20% rating under code 7913 per the 30Nov2016 Disability Evaluation System (DES) Proposed Rating using VARSD (Veterans Affairs Schedule for Rating Disabilities) principles. The VA rating authority evaluated the DM Type II condition at 20% rating based on the condition requiring use of an oral hypoglycemic agent.

4. In her request for reconsideration for a new MEB/PEB, the applicant contends that the Army erred when it did not send her for further assessment of the PTSD after the 31Oct2016 PHA (periodic health assessment) revealed symptoms consistent with PTSD. Per JLV search the applicant was engaged with BH treatment/evaluation at the time. A review of the applicant's BH condition is below.

a. 25Nov2008 42nd Medical Group. The applicant reported a 4-year history of experiencing insomnia most nights. She was treated with zolpidem.

- b. 14May2014 Report of Medical History (DD Form 2807-1) completed for chapter separation. The applicant endorsed one BH screening symptom: 'Frequent trouble sleeping'. She did not endorse 'nervous trouble of any sort', 'loss of memory', 'attempted suicide', and 'depression or excessive worrying'.
- c. 15May2014 Deployment BH Screening/Assessment Initial OTSG/MEDCOM Policy Memo 10-040 Required Screening was negative for PTSD symptoms.
- d. 15May2014 Behavioral Health (BH) Ireland ACH. She underwent a command directed exam for administrative discharge. She had been at the current duty station for 4 years. A new commander had been present for 2 years and they had never gotten along. She was in service for 13 years total and endorsed no problems with any other command. She had one deployment and when she returned, she had sleep issues. She denied any disturbance in mood such as feeling depressed or anxious. This was consistent with objective testing which indicated Depressive Syndrome, Anxiety Syndrome and PTSD were not likely. Sleep issues persisted and she did share that she was using alcohol a few nights a week as a sleep aid. Her parents divorced when she was 11, her father was an alcoholic; she denied childhood abuse. She was currently enrolled in college at Liberty University for her bachelor's degree and a goal to work in office administration. The mental status exam showed a euthymic mood, slightly bitter. She denied suicidal or homicidal ideation or intent. Diagnosis: Occupational Problem.
- e. 15May2014 Report of Mental Status Examination (DA Form 3822). Her mental status exam was normal. Screenings for PTSD and Mild TBI were both negative. The BH examiner endorsed that either these conditions were not present, or if present they did not meet AR 40-501 criteria for a MEB. A mental health condition was not diagnosed during this assessment. She met retention standards. She could understand administrative proceedings. She was determined to be fit for duty and to be psychiatrically cleared for any administrative action as deemed necessary by her command.
- f. NCO Evaluation Report with thru date 20150106 indicated for overall performance and potential, she was deemed 'fully capable'.
- g. 04Apr2016 Mental Health Consult. She endorsed poor appetite ("entire life"), insomnia and decreased libido. She denied depressed mood, anxiety, fatigue, decreased memory/concentration, anhedonia, and guilt. She also denied hospitalization, assaultive behavior, suicide attempt. She denied problems with substance abuse. She took Ambien for sleep after returning from deployment. She was also prescribed Lexapro but never took it because she did not endorse an Anxiety diagnosis at the time. She endorsed having significant life/work stressors at the time: A child custody battle and an investigation at work. Combat stressors: She found a friend

in a tent blown up; and learned of a friend's suicide minutes after she had spoken with him. Childhood trauma: There was mental and physical abuse by her biological father, an alcoholic; and sexual abuse by her stepfather. Adult abuse: The relationship with her ex-fiancé (father of her son) ended in 2002 due to physical abuse by him. She enjoyed crocheting, reading, watching movies, playing robotics, and spending time with her niece and son. She also had a close relationship with her mother and stepfather. Treatment options were reviewed (including psychosocial support, therapy, and medications).

h. 19Jul2016 Physical Disability Evaluation System (PDES) (DA Form 7652). Command indicated the applicant had effective work relationships with both supervisors and co-workers.

i. 02Aug2016 Initial PTSD DBQ. The BH examiner diagnosed Unspecified Anxiety Disorder and Insomnia Disorder with Other Sleep Disorder (in this case, Obstructive Sleep Apnea). Symptoms for the Unspecified Anxiety Disorder included having difficulty relaxing, irritability, and low-level chronic anxiety. Symptoms for the Insomnia Disorder were difficulty initiating and maintaining sleep almost every night for over 10 years. She reported a good relationship with her mother, sister. In her entire career she only had problems in Ohio. She got along well with members of her current duty station. She reported having received BH treatment early in her military career; however, the treatment notes predated the current system: Treatment with Ambien for insomnia since 2006; and brief treatment with Lexapro for Anxiety while she was stationed in West Virginia after she returned from deployment. She was currently engaging in regular therapy since her intake in April 2016. She was not taking medication. She denied suicidal and homicidal ideation. She denied all drug use, including cannabis. She denied problems related to her alcohol use. Military Stressors: She reported seeing a friend dead after he had been killed on a mission; and while in Ohio, she passed a friend in the hall who appeared distressed. She did not engage him, and the next day found out he had committed suicide. The VA examiner assessed that DSM-5 criteria was not met for PTSD diagnosis based on the exam. The BH examiner opined that the level of occupational and social impairment due to her BH condition was 'due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by medication' (the 10% level).

j. 08Sep2016 Mental Health Note. The applicant was seen for an individual therapy session. She was working fulltime. The note reads "She remains uninterested in medication management or group therapy services offered by the MHC".

k. 21Sep2016 the applicant BH condition to include Unspecified Anxiety Disorder

and Insomnia with Other Sleep Disorder was evaluated by doctorate level MEB psychologist who concurred with the diagnoses and that both met retention standards of AR 40-501 chapter 3.

I. 31Oct2016 PHA. BH referral in Primary Care within 7 days was recommended. The applicant endorsed having been bothered 'a little bit' all mental health screening symptoms in the Mental Health section 5f- v and endorsed that the symptoms made it 'somewhat difficult' for her to work or do things at home. She also endorsed 2 of the 4 PTSD screening questions. The examiner commented that the applicant was seeing a counselor weekly which helped to control symptoms.

m. 30Nov2016 DES Proposed Rating showed 10% rating for Unspecified Anxiety Disorder with Insomnia Disorder and Other Sleep Disorder (claimed as PTSD) under code 9413. The rating was based on reported symptoms of anxiety, chronic sleep impairment, and suspiciousness. The VA assessed that the overall evidentiary record showed that the severity of the condition most closely approximated the criteria for a 10% disability rating.

n. Four months after discharge from service (in June 2017), during the 03Oct2017 Primary Care Initial Evaluation Note intake to establish care at Durham VAMC, the applicant endorsed that her mood was good, and she was sleeping well. She was not engaged in mental health services at the time. PTSD and Depression screenings were scored as negative; however, she did have some positive responses acknowledging some current BH symptoms. She declined a referral for mental health services.

o. Four years after discharge from service, the August 2021 note indicated that she desired to re-engage in BH service because she had started having nightmares associated with her trauma history with increased intensity in the past 2 months. She denied any recent life transition or trigger that could account for the recent recurrence.

5. Summary/Opinion

a. The applicant was discharged for her unfitting DM Type II condition. The condition was rated at 20%. No error was found in the rating per review of relevant VASRD principles.

b. Concerning her BH condition, the applicant reportedly briefly engaged in BH services shortly after returning from deployment in 2003. These 2003 records were not available. She began individual therapy at the Palo Alto VAMC from April 2016 for diagnosis Unspecified Anxiety Disorder and attended regularly until she was discharged from service in 2017. She was ultimately assessed to meet DSM-5 criteria for PTSD in 2022. Although the applicant's PTSD condition had onset while on active orders and she engaged in BH treatment, the condition did not fail medical retention standards at

the time of discharge from service. The condition had not required accommodations in work hours or environment; the condition did not represent a danger to self or others: There was no suicide ideation/attempts, no psychosis, mania, or violent behavior. The condition did not require hospitalization or medication. The condition had not required a profile. Command did not indicate that her BH condition had impacted performance.

- c. Based on records available for review, the evidence was insufficient to support referring the case for a new MEB and PEB.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence to support referral of her case to DES for a new MEB and/or PEB. Based on this, the Board determined an increase in the applicant's rating decision at the time of separation was not appropriate and referral of her case to the Disability Evaluation System (DES) is not 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 amendment of the ABCMR decisions rendered in Docket Number AR20190013019 on 22 March 2022.

3/28/2025


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 Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).
2. Army Regulation 635-40 establishes the Army DES 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 MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their 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. 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 their 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 their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their 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. 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. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

4. 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 their 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 their 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 their military records through their 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.

5. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//