

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240002048

APPLICANT REQUESTS: in effect, correction of her records to show she was retired due to service-incurred medical disabilities instead of discharged with severance pay.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states she is requesting reconsideration of her medical discharge because she was not properly evaluated. She was injured in-service, and her injury also caused mental issues. She was pushed out at that time, and she did not understand the outcome. Additionally, she was never told about her benefits. If she had someone assisting her throughout this process, she would have better understood the process.
2. The applicant enlisted in the U.S. Army Reserve on 11 June 2020. She entered initial active duty for training on 23 November 2020.
3. On 28 October 2021, a Physical Evaluation Board (PEB) found the applicant unfit for further military service due to the following conditions with the corresponding disability rating:
 - left hip stress fracture, status post open reduction/internal fixation-flexion-10%
 - left hip stress fracture, status post open reduction/internal fixation-extension-0%
 - left hip stress fracture. status post open reduction/internal fixation-impairment-0%
4. The PEB recommended a combined 10% disability rating and the applicant's separation with severance pay. The PEB found her fit for 11 additional conditions referred by the Medical Evaluation Board (MEB) for fitness determination.
5. On 29 October 2021, the applicant acknowledged she was advised of the findings and recommendations of the informal PEB and had received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto. She concurred with the PEB's findings and recommendations and waived a formal hearing of

her case. She did not request reconsideration of her Department of Veterans Affairs (VA) ratings.

6. The applicant's DA Form 199 (Informal PEB Proceedings) contains the following statements:

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

b. As documented in the VA memorandum dated 28 September 2021, the VA determined the specific VA Schedule for Rating Disabilities (VASRD) code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability rating(s) and in accord with applicable statutes and regulations.

7. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 8 November 2021 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat related.

8. 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 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 that a mental health condition be found unfitting for continued service and duty related; a corresponding increase in her military disability rating; and that her disability discharge disposition be subsequently changed from separated with severance pay to permanently retired for physical disability. She states:

"I was injured in service and this caused mental issues. I was pushed out at that time and I didn't realize the outcome. Also, I was never told my benefits at this time. If I had someone to assist me through this process, I would have understood this more."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows the former USAR Soldier entered active duty for initial entry training on 23 November 2020 and was separated with \$12,420.00 of disability severance pay on 8 November 2021 under provisions provided in paragraph 4-27c(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

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

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

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

g. On 2 August 2021, the applicant was referred to the IDES for "Left hip stress fracture, status post ORIF [open reduction with internal fixation] 30 April 2021." The applicant claimed one additional condition – Depression - on her separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

h. The MEB determined the referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined eleven other medical conditions met medical retention standards, including "Problems of adjustment to life-

cycle transition” diagnosed by the VA as “Adjustment disorder with depressed mood and mixed anxiety.” From the MEB behavioral health narrative summary addendum for this condition:

“...The AHLTA 26JUL2021 social work intake did not diagnose the Soldier with a psychiatric disorder, but reported, "The patient reports the following problems/difficulties: difficulty falling asleep and staying asleep, waking up multiple times throughout the night, depression over my situation, and anxiety over the situation ...

The Soldier returned to the social worker on 11AUG2021 and was assessed as having "V62.89 (260.0) Phase of Life Problem, SM meets criteria for V62.89 (260.0) Phase of Life Problem on 8/11/2021 as evidenced by the development of problems adjusting to life-cycle transition (starting a new/losing career, put on MEDHOLD, being away from children) is the focus of clinical attention and has an impact on the individuals prognosis .

..

SM [service member] reports depressive symptoms related to geographic separation from primary support - boyfriend and two children ... Mood- “meh.” SM reports multiple stressors- familial stress, financial stress - 'I don't make enough money here (FSH) to support myself, bills and kids' and occupational stress - 'my kids are having problem with his dad and his girlfriend, my dad and stepmom are having trouble, MEB.'

SM reports health stress- "after I had the surgery and found out I couldn't be in the Army anymore I already been gone for 10months and now it just feel away from home." ...

The VA reported an associated occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal.”

i. On 20 September 2021, the applicant agreed with the MEB’s decision and declined the opportunity to request an Impartial Medical Review and/or submit a written rebuttal. The case was then forwarded to a physical evaluation board (PEB) for adjudication.

j. On 28 October 2021, the applicant’s informal PEB found her “Left hip stress fracture status post open reduction/internal fixation” to be her sole unfitting condition for continued military service. They found the eleven remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration

(VBA) derived ratings of 10% and recommended the applicant be separated with disability severance pay. On 29 October 2021, after being counseled by her PEB Liaison Officer (PEBLO) on the PEB's findings and recommendations, she concurred with the PEB's findings, waived her right to a formal hearing, and declined a VA reconsideration of her disability rating.

k. Soldiers in the DES receive extensive counseling from trained PEB liaison officers (typically collocated at the military treatment facility) throughout the process. This counseling is documented on the 7-page Soldier's Medical Evaluation Board/Physical Evaluation Board Counseling Checklist (DA form 5893). The applicant's DA 5893 was completed and has been uploaded into ACTS as additional evidence. Soldiers are also made aware they have access to legal assistance throughout the process via both Soldiers' MEB Counsel and Soldiers' PEB counsel.

l. JLV shows she has been awarded multiple VA service-connected disability ratings, including ratings for chronic adjustment disorder, lumbosacral or cervical strain, and limited left thigh flexion. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the Agency Medical Advisor that neither an increase in her military disability rating nor a referral of her case back to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not show that the applicant had any additional duty-related conditions that did not meet retention standards and warranted a disability rating prior to her separation. Based on a preponderance of the evidence, the Board determined the applicant's discharge for disability with severance pay was not in error or unjust.

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.

3/31/2025

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 his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. 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.

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 VASRD. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

e. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

3. 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 his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of his or her military records through his or her respective Military Department BCMR.

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

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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//