ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240002680

APPLICANT REQUESTS:

- physical disability retirement
- award of Combat Related Special Compensation (CRSC)
- correction of her U.S. Army Reserve (USAR) retirement points
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- two personal statements and a third party statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 3 June 2004 to 26 April 2005
- DA Form 2173 (Statement of Medical Examination and Duty Status), dated 23 August 2004
- USAR separation orders, dated 23 May 2013
- Chronological Statement of Retirement Points
- DD Form 2860 (Claim for CRSC)
- Department of Veterans Affairs (VA) rating decisions
- 300 pages of medical records

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. She is requesting a medical retirement and CRSC (associated with combat military training). Specifically for the following VA service-connected disabilities:

- post-traumatic stress disorder (PTSD) (sexual assault & harassment)

- migraine headaches
- tinnitus
- fibromyalgia
- chronic fatigue syndrome
- endometriosis
- right hip strain
- bilateral shin splint with ankle strain
- bilateral pet planus to include plantar fasciitis
- bilateral knee anserine bursitis

b. She is also requesting correction of her retirement points for the period 1 May 2012 to 10 May 2013. As evidenced by Leave and Earning Statements (LES) and orders, she was in good standing for total points creditable for that year, giving her nine years of qualifying service for retirement instead of the eight years that are documented.

c. Throughout her time in the Army, her units failed to follow up on medical conditions that were documented while in the service and resulted in physical profiles that caused limitations in her capability to perform her military duties. Her disabilities should have been evaluated before her discharge. She believes that if her in-service disabilities would have been properly evaluated, they would have warranted a 30% percent disability rating and her medical retirement.

d. Her last unit failed to update through the U.S. Army Human Resource Command (AHRC) her Chronological Statement of Retirement. A full year was unaccounted. As evidenced by signed orders and LESs, the period 1 May 2012 to 10 May 2013 was in fact a creditable year.

3. In two separate personal statements, the applicant further states, in part:

a. During her time in the service, she was diagnosed and treated for the following medical conditions: multiple psychological conditions, migraine headaches, foot, ankle, knee, hip issues and complications resulting in diagnoses fibromyalgia, chronic fatigue syndrome, and endometriosis. Her treatment took place at various military hospitals/clinics and can be found in her service treatment medical records. Prior to her discharge process, she underwent a partial physical exam which documented some of the medical conditions that she was diagnosed with and treated for during her time in the service, which continued on after her discharge.

b. Comparing her medical exams to her service entry exam, it is clear that she entered service with no known medical problems and left the service with numerous medical conditions. Her command nor the medical personnel considered the medical conditions at her time of discharge, which she believes should have warranted a medical board to evaluate her medical conditions and consider a medical retirement.

She is providing evidence from the VA showing her VA disability evaluations post discharge. The VA has determined that her conditions are service connected and backdated some of her service disability determinations to April 2012. *The complete personal statements were provided to the Board for their review and consideration.*

4. The applicant is requesting award of CRSC and correction of her USAR retirement points. Army Regulation 15-185, the regulation under which this Board operates, provides that the Board will not consider any application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice. There is no evidence that indicates the applicant previously submitted her requests for CRSC and correction of retirement points to AHRC. This is an administrative remedy available to the applicant that must be exhausted prior to the Board adjudicating her request(s). These issues will not be discussed further in this Record of Proceedings.

5. The applicant enlisted in the USAR on 11 April 2004. Her DD Form 214 shows she entered initial active duty for training (IADT) on 3 June 2004.

6. The applicant provided a DA Form 2173 showing that on 23 July 2004; while attending basic combat training, she developed stress fractures in her right hip and both lower legs as a result of strenuous physical fitness training.

7. The applicant's DD Form 214 shows she was released from IADT on 26 April 2005.

8. The applicant reenlisted in the USAR on 6 December 2009 for a period of three years, establishing her expiration term of service (ETS) as 10 May 2013.

9. Orders published on 26 June 2012 promoted the applicant to the rank and grade of sergeant/E-5 effective 1 July 2012. Orders published on 26 June 2012 directed the applicant's reassignment from a Troop Program Unit (TPU) at Joint Base Lewis-McChord, WA toa TPU at Fort Belvoir, VA effective 1 August 2012. The reassignment was based on acceptance of promotion into the TPU unit.

10. Orders published on 23 May 2013 ordered the applicant's honorable discharge from the USAR effective 23 May 2013.

11. During the processing of this application, the staff of the Army Review Boards Agency submitted a request for records pertaining to the applicant to the U.S. Army Crime Records Center, part of the U.S. Army Criminal Investigation Command. On 14 November 2024, the U.S. Army Crime Records Center responded by letter indicating a search of Army criminal file indexes revealed no records for the applicant pertaining to military sexual trauma. This request for records was submitted based on the applicant’s indication that her PTSD condition was as a result of sexual assault and/or harassment.

12. The applicant provided:

a. A third-party statement from her spouse describing the applicant's PTSD symptoms. *The complete third-party statement was provided to the Board for their review and consideration.*

b. VA rating decisions showing she was granted service-connected disability compensation for various conditions with a 100% disability rating.

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

14. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents including the letter from her husband, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant had several requests. This review will cover the applicant's request for physical disability retirement. The applicant specifically mentioned the following conditions in her 29 Jan 2024 statement: Migraines, foot, ankle, knee, and hip issues; and complications resulting in a diagnosis of fibromyalgia, chronic fatigue syndrome, and endometriosis. The applicant's mental health conditions and related will be addressed under separate cover by an ARBA Medical Advisor with mental health expertise.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the USAR 11May2004. She completed her first period of active service from 03Jun2004 through 26 Apr 2005. After basic training, she worked in logistics in a large warehouse setting. She described her duties as including inventory, filing, and completing tasks common to all military personnel. Her MOS was 92A Automated Logistical Specialist. She was honorably discharged from the USAR on 11 May 2013 due to expiration of term of service.

3. The applicant submitted multiple VA Rating decisions. They were reviewed for evidence concerning the status of conditions at the time of discharge. The VA rationales for establishing service connection, were also noted. The following physical medical conditions were reviewed per applicant's request. Sleep issues and muscle strain (abdominal/pelvic) were included due to treatment near the time of discharge. All of the conditions reviewed below have been service-connected by the VA.

a. Migraine Headaches. In 2011, the applicant was having a headache when she wore her helmet (24Sep2011 Emergency Department Madigan AMC). She was diagnosed with a Tension Headache and was treated with Fioricet as needed. She also had sores on both hands and inside mouth since the day prior and tonsil swelling. She was diagnosed with a virus at the time (Hand, Foot, & Mouth Disease). A headache is not uncommon with a viral infection. *This was the only visit with headache as a primary diagnosis while the applicant was in service*; *although it was also noted that in their 22Apr2021 Nexus Statement, the neuropsychologist endorsed that the applicant's Migraine Headache condition was more likely than not, due to her service-connected PTSD.*

b. Foot Bilateral Pes Planus, Plantar Fasciitis. In 2005, the applicant reported left foot pain on dorsal surface towards the toes for about 3 weeks (12 Apr 2005 and 22Apr2005 TMC Portsmouth NMC). The left foot film was negative (normal). She was diagnosed with Metatarsalgia and treated with a wooden shoe (13 Apr 2005 Cast Clinic). She was also placed on a temporary profile from 12 Apr 2005 to 18 Apr 2005 with instructions: No running, jumping or marching for one week. The diagnosis Soft Tissue Foot Pain was also noted while in service and self-treatment with ibuprofen. *The available military medical records did not show visits for treatment of Bilateral Pes Planus or Plantar Fasciitis*.

c. Left Ankle and Right Ankle Conditions. The applicant reported left ankle pain for 2 weeks during the 24 Mar 2005 TMC Portsmouth NMC note. She reported having sprained her ankle while running. The diagnosis was Achilles Tendonitis. She was placed on profile from 24Mar2005 to 01 Apr 2005 with instructions no running for one week. Five years later, she reported 3/10 right ankle and shin pain after a PT test (13 Jul 2010 Family Practice EAMC). She was again diagnosed with Achilles Tendonitis. She had been to the emergency room where she was told it was a mild injury (22 Jul 2010 Emergency Department Triage EAMC). There was no acute traumatic injury. She had been able to complete the run. The exam did not show any bony tenderness or edema. Currently, she was walking without problem. *There were no subsequent follow up visits with ankle issues as the primary focus*.

d. Knee Conditions. During the 22Jul2010 Family Practice Connelly Health Clinic EAMC visit, the applicant reported occasional knee pain with walking. Four years after discharge from service, an outside (28 Oct 2016 Anchor Physical Therapy) note showed treatment for bilateral medial knee pain of 2 years duration, thought to be related to the history of stress fractures of the hip and ankles. She was diagnosed with Pes Anserine Bursitis. *The available record did not show specific treatment for the knees while in service*.

e. Shin Splints. During the 22Jul2010 Family Practice Connelly Health Clinic EAMC

visit, the applicant reported difficulty with passing the 2-mile run event, due to right shin pain that radiated into the right ankle. Significant symptoms were noted after 1 mile. She denied problems with sit-ups or pushups. She denied history of injury/trauma. She had been seen previously in 2004 for shin splints and underwent physical therapy rehab (02Nov2004 Physical Therapy 20th Medical Group). The 06 Aug 2010 body scan showed uptake within the bilateral tibias, consistent with mild stress reactive changes. There was no evidence of stress fracture. Diagnosis: Chronic Shin Splints. Since it was present for more than 5 years, she was given a permanent P2 profile (30 Sep 2010). The profile prohibited the 2-mile run as well as swimming and biking. There were no functional activity limitations. The applicant's permanent P2 physical profile was updated 07 Jun 2012 and prohibited only the 2-mile APFT event. A 04 Mar 2013 Functional Capacity Certificate Form 507 affirmed her ability to perform all functional activities and all APFT events except for the 2-mile run. *There were no subsequent follow up visits with shin splints as the primary focus. The applicant was discharged 2 months later*.

f. Right Hip Strain Status Post Stress Fracture. During basic training at Ft Jackson, the applicant developed right hip pain in the groin area. The 30Jul2004 x-ray showed a right inferior pubic ramus stress fracture. She underwent rehab for several months successfully with no residual symptoms. In September 2007 symptoms returned shortly after attending Sergeant School. Currently, she did not have pain with running, but pain occurred shortly after stopping. She also felt the pain if she walked briskly. She was prescribed Naproxen and Flexeril in September but had not started taking the Flexeril yet. The diagnosis was Right Hip Joint Pain. The provider considered ordering another nuclear scan (to rule out stress fracture) or a trial of physical therapy which had helped before. However, due to the applicant PCS'ing in 2 weeks, there was not enough time to do either (01 Oct 2007 Family Practice EAMC). *There were no subsequent follow up visits with right hip issues as the primary focus*. *It was noted that there were no mechanical hip symptoms during the following pelvic exams: The postpartum pelvic exam completed 20Nov2008, the 09Dec2009 routine pelvic exam and the 14Aug2010 pelvic exam for IUD placement*.

g. Fibromyalgia. A 22 Apr 2021 medical opinion by a neuropsychologist endorsed that the applicant's Fibromyalgia condition more likely than not, was due to her service-connected PTSD condition. *The Fibromyalgia condition was diagnosed in 2021, 9 years after discharge from USAR and 16 years after discharge from a period of active service. Therefore, there is insufficient evidence that this condition impacted performance of duties while in the military*.

h. Chronic Fatigue Syndrome (CFS). A 28Sep2021 review by a private chiropractor endorsed association of the applicant's gastrointestinal, gynecological, hemorrhoids, foot/ankle/knee/shin splint pain, headaches and impaired sleep conditions/symptoms while in service, to the applicant's CFS condition. In addition, a 22 Apr 2021 medical

opinion by a neuropsychologist endorsed that the applicant's CFS condition more likely than not was due to her service-connected PTSD condition. And finally, there is a body of medical research endorsing a relationship between Epstein Bar Virus, the causative agent of Infectious mononucleosis and CFS. The applicant tested positive and was diagnosed with Infectious Mononucleosis while in service (22Apr2005 TMC Portsmouth NMC). *The CFS condition was diagnosed in 2021, 9 years after discharge from USAR and 16 years after discharge from a period of active service. Therefore, there is insufficient evidence that this condition impacted performance of duties while in the military*.

i. Endometriosis. In May 2007, the applicant was seen for intermittent severe lower abdominal pains, which occurred in association with her menstrual cycle. She also had nausea (16 and 21 May 2007 Family Practice EAMC). Her menstrual cycles were irregular in frequency and duration. The applicant and her husband had been trying to conceive for more than 1 year, without success. She was diagnosed with Female Infertility, possible due to Endometriosis or PCOS (Polycystic Ovary Syndrome). She was prescribed an NSAID. Several months later, she was seen for dysmenorrhea (24 and 26Sep2007 Gynecology EAMC). *Dysmenorrhea is painful menstruation. Dysmenorrhea and infertility are commonly associated with endometriosis*. In October 2007, she had laparoscopic chromopertubation (to check for fallopian tube patency) and also underwent ablation of endometrial implants (09Oct2007 Gynecology EAMC). During the follow up visit, her pain was mild 3/10. In 2008, she successfully become pregnant (06Mar2008 Obstetrics EAMC). *There were no follow up visits with primary diagnosis Endometriosis*.

j. Sleep Issues. 05 May 2010 Sleep Lab and Sleep Disorder EAMC. The applicant complained of persistent insomnia since high school. There was a family history of chronic insomnia as well. Currently, she had a 21-month-old daughter. She was a stay-at-home-mom in the Reserves taking college courses online. Her husband was in WOBC. The insomnia was mostly characterized as difficulty staying asleep. A disturbance in circadian rhythm was noted per actigraphy during the Sleep Lab visit. Melatonin was prescribed. OSA (obstructive sleep apnea) was ruled out per 20Sep2010 Sleep Study. Sleep problems continued and she was prescribed Temazepam (22 Nov 2010 Family Practice Eisenhower AMC). Melatonin was discontinued. Of note, the 20 Sep 2010 Sleep Study revealed alpha intrusion (alpha brain waves during sleep), a non-specific, benign variant sometimes seen in patients with chronic fatigue, fibromyalgia, non-restorative sleep, chronic pain, rheumatoid arthritis, and also as a side effect of some medications etc. In March 2012, sleep problems persisted, and she was prescribed Ambien. During this visit, the insomnia was thought to be related to her mental health condition. *There were no follow up visits principally for insomnia/sleep issues afterward. The applicant was discharged 2 months later*.

k. Muscle Strain (abdominal and pelvic). The applicant was seen for 6-month history of RUQ (right upper quadrant) abdominal pain, usually after exercise (17Dec2008 Primary Care Bamberg AHC). Also noted, she had delivered a baby 6 months prior. She was pain free on the day of the visit. No gastrointestinal symptoms were reported. The pain was along the rib cage costal margin. She was diagnosed with Unspecified Muscle Strain. In November 2010 she presented with groin pain in the right lower quadrant of the pelvis of 3 days duration. There was a visible bulge. She was seen by general surgery. They determined that she did not have an inguinal hernia (04Nov2010 General Surgery Eisenhower AMC). She was diagnosed with a groin sprain however a right femoral hernia/lymphadenopathy could not be ruled out. She was treated with Motrin for 72 hours, rest, a (temporary) profile and quarters. An ultrasound (US) was ordered. She was to follow up after the US. *There were no follow up visits available for review*.

4. Opinion - The Army applies disability ratings to conditions that have been found unfitting for continued service. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. The record did not show a permanent level 3 physical profile for any of the applicant's conditions that were reviewed. Based on available records, there was insufficient evidence to support that the applicant had a physical condition which failed retention standards of AR 40-501 chapter 3 at the time of discharge. Referral for Medical Evaluation Board (MEB)/Physical Evaluation Board processing for physical disability retirement is not recommended.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a physical disability retirement, award of CRSC, and correction to her retirement points. She contends she experienced an undiagnosed mental health condition, including PTSD, and sexual assault/harassment (MST) that warrants these changes.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the U.S. Army Reserve on 11 April 2004 and entered initial active duty for training (IADT) on 3 June 2004. She was released from IADT on 26 April 2005.
- The applicant reenlisted in the USAR on 6 December 2009 with an expiration of term of service of 10 May 2013.
- Orders published on 23 May 2013 ordered the applicant's honorable discharge from the USAR effective 23 May 2013.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts her physical disabilities, including mental health, should have been evaluated before her discharge and would have warranted a 30% disability rating and medical retirement. She provides evidence of this by referencing her VA disability evaluations and service connection. Additionally, she is requesting consideration of a CRSC award, but this request will not be considered due to her having not exhausted all other administrative remedies. The application includes 50 pages of VA rating decision letters and documentation, which were reviewed, and the applicant's most recent rating effective 18 January 2023 showed the applicant is 70% service connected for PTSD, Persistent Depressive Disorder (PDD) with Anxious Distress, and Insomnia Disorder. Additional ratings for physical health conditions are also associated with her mental health diagnoses/rating. The application included several pages of DoD records, which will be summarized below. The application also included the following documents related to her mental health diagnoses:

- A prescription dated 27 March 2006 noted medications for depression, mood stabilization, and sleep.
- A Functional Capacity Certificate Form 507 dated 16 January 2012 showed the applicant had "mood disorder suspected- under therapy."
- Temporary profile for Mood Disorder dated 25 January 2012 and 26 April 2012.
- A letter from a mental health provider dated 6 June 2012 showed the applicant was seen for two visits, and she did not have the diagnosis of Bipolar Disorder and was not a danger to herself or others with no concerns about access to firearms.
- A psychological evaluation, including objective testing, from April and May 2014 concluded ADHD and PTSD secondary to childhood trauma and sexual harassment in the military.
- A Disability Benefits Questionnaire (DBQ) dated 19 December 2022 showed the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD although the associated traumatic event was unclear.
- A Review PTSD DBQ dated 19 December 2022 showed diagnoses of PDD, Insomnia Disorder, and PTSD. However, the specific traumatic event was not reported, and the evaluator attributed the diagnosis to MST.
- An Initial PTSD DBQ dated 5 October 2021 concluded diagnoses of PDD, Insomnia Disorder, and PTSD. The documentation describes three incidents while in basic training where the applicant felt intimidated by her drill sergeant and him "invading my personal space" and "felt sexually inappropriate." A second stressor was related to her best friend being sexually assaulted, and a third stressor was a sexual assault, which occurred while she was in the Reserves and not on active status.
- A DBQ dated 5 October 2021 was a review related to Depressive Disorder secondary to the applicant's shin splints and ankle strain.

- A letter from a mental health provider dated 12 January 2022 showed diagnoses of PTSD, Generalized Anxiety Disorder, and Major Depressive Disorder, but the criteria by which the provider concluded these diagnoses is not available.
- A clinical psychologist report dated 22 April 2021 provided an opinion that the applicant's Chronic Fatigue Syndrome was "due more likely than not to her PTSD."

There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and DoD records showed the applicant was initially seen by her primary care provider on 19 December 2008 and reported anxiety related to her husband being deployed. In May and September 2010, she was seen for sleep difficulty, but this was attributed to poor sleep hygiene and not maintaining an appropriate sleep-wake cycle. The applicant was seen by family medicine on 12 March 2012 and was on active orders at the time. She requested a refill of a mood stabilizer and a sleep medication. Documentation entered on 13 March 2012 but dated 23 January 2012 showed the applicant was diagnosed by a non-DoD physician with Bipolar Disorder and started on a mood stabilizer in addition to a hypnotic she was already taking. It was noted that she was engaged in therapy as well. VA records showed the applicant initiated mental health treatment on 10 April 2015 due to symptoms associated with ADHD, but she also endorsed anxiety, nightmares, irritability, and other symptoms attributable to PTSD. She discussed her experiences of perceived harassment while in basic training, and she was diagnosed with ADHD and PTSD. She was referred to the PTSD clinic for additional assessment and treatment, and it was noted that the experience in basic training did not meet criteria A for a traumatic event. However, she was diagnosed with PTSD secondary to the sexual assault that occurred while she was in service but not on orders. The applicant has utilized VA for individual and group therapy as well as medication management.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a medically disabling mental health condition while on active service. The applicant provided documentation of a temporary profile from January and April 2012, and DoD records showed she was treated for Bipolar Disorder. However, the applicant also provided a letter dated 6 June 2012 from her therapist stating she did not have Bipolar Disorder and did not require duty limitations. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as she did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or

necessitated duty limitations (AR 40-501). The applicant cites her VA disability rating of 70% for PTSD (and other physical and mental health conditions) as evidence of error in discharge justifying a referral to the Disability Evaluation System. However, VA examinations are based on different standards and parameters. They do not address whether a medical condition met or failed Army retention standards or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service.

In regard to the applicant's request for consideration of Combat Related Special Compensation (CRSC), it is this Advisor's opinion that her trauma experience does not meet the requirement as defined in 10 U.S.C. § 1413a(e). Combat-related disability for CRSC is a disability that is "attributable to an injury for which the member was awarded the Purple Heart" or was incurred "as a direct result of armed conflict," "through an instrumentality of war," "while engaged in hazardous service," or "in the performance of duty under conditions simulating war." The traumatic events that were disclosed while the applicant was on active duty were related to sexual harassment.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A; request is for physical disability retirement

(2) Did the condition exist or experience occur during military service? N/A; request is for physical disability retirement

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A; request is for physical disability retirement

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A; request is for physical disability retirement

(2) Did the condition exist or experience occur during military service? N/A; request is for physical disability retirement

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A; request is for physical disability retirement

3. Upon review of the applicant’s petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant’s VA rating determinations are based on the roles and authorities granted by Congress to the VA and are executed under a different set of laws. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service. Based on this, the Board determined there is insufficient evidence to support that the applicant had a medically disabling mental health condition while on active service. Therefore, the Board concluded that referral to the Disability Evaluation System is not warranted.

4. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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//

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, 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 40-501 (Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 lists the various disqualifying medical conditions and/or physical defects which may render a Soldier unfit for further military service and which fall below the standards required. These medical conditions and/or physical defects, individually or in combination, are those that have met the clinical or administrative medical retention determination point (MRDP) and:

a. Significantly limit or interfere with the Soldier’s performance of their duties (either basic Soldier skills or military occupational specialty specific) as substantiated by the Soldier’s commander or supervisor.

b. Require medication for control that requires frequent monitoring by a physician due to debilitating or serious side effects, medical care, or hospitalization with such frequency as to interfere with the satisfactory performance of duty.

c. Restrict performance of any of the profile functional activities listed in the DA Form 3349 (Physical Profile); prevent the performance of all aerobic events of the Army Physical Fitness Test (APFT); have met a clinical MRDP; or have been temporarily profiled for more than 365 days, meeting the administrative MRDP.

d. May compromise or aggravate the Soldier’s health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring.

e. May compromise the health or well-being of other Soldiers (for example, a carrier of communicable disease who poses a health threat to others).

f. May prejudice the best interests of the U.S. Government if the individual were to remain in the military Service.

3. Army Regulation 40-501 also provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board (MEB) is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. The regulation in effect at the time, dated 8 February 2006 (revised in March 2012), states in:

a. Paragraph 3-1:

(1) The mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

(2) To ensure all Soldiers are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in Army Regulation 40–501, chapter 3. These standards include guidelines for applying them to fitness decisions in individual cases. These guidelines are used to refer Soldiers to an MEB. The major objective of these standards is to achieve uniform disposition of cases arising under the law. These retention standards and guidelines should not be interpreted to mean that possessing one or more of the listed conditions or physical defects signifies automatic disability retirement or separation from the Army. The fact that the Soldier has one or more defects sufficient to require referral for evaluation, or that these defects may be unfitting for Soldiers in a different office, grade, rank, or rating, does not justify a decision of physical unfitness.

(3) The overall effect of all disabilities present in a Soldier whose physical fitness is under evaluation must be considered. The effect will be considered both from the standpoint of how the disabilities affect the Soldier’s performance and the requirements imposed on the Army to maintain and protect him or her during future duty assignments. A Soldier may be unfit because of physical disability caused by a single impairment or physical disabilities resulting from the overall effect of two or more impairments even though each of them, alone, would not cause unfitness.

b. Paragraph 3-2:

(1) 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

(2) When a Soldier is being processed for separation or retirement for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, ETS, etc.), continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

5. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

6. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant’s request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//