

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006395

APPLICANT REQUESTS: a physical disability retirement in lieu of a physical disability separation with severance pay.

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

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DA Form 3349-SG (Physical Profile Record), 24 October 2017
- William Beaumont Army Medical Center memorandum, 24 October 2017
- Enlisted Record Brief (ERB), 25 October 2017
- applicant's affidavit, 9 January 2018
- U.S. Army Physical Evaluation Board (PEB) memorandum, 18 January 2018
- Bravo Company, 2nd Brigade Engineer Battalion memorandum for record, 23 January 2018
- DA Form 199 (Informal PEB Proceedings), 6 February 2018
- Troop Command, William Beaumont Army Medical Center memorandum, 13 February 2018
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 26 May 2018
- Department of Veterans Affairs (VA) letter, 28 September 2021
- 57 pages of VA 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 would like the Board to review her military discharge and consider a change from disability discharge to disability retirement because at the time of her discharge, her mental health was not considered.

b. Her VA rating for her mental health was at 30 percent within 1 year of her discharge and shortly thereafter she received a final rating of 70 percent. She has now been discharged from the Army for 6 years and has a total combined VA rating of 100 percent. Meanwhile, her mental health and physical conditions continue to worsen.

3. The applicant enlisted in the Regular Army on 1 September 2005, and was awarded the Military Occupational Specialty (MOS) 12N (Horizontal Construction Engineer).

4. The applicant deployed to Afghanistan from 7 November 2011 through 22 October 2012.

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

6. A DA Form 3349-SG shows the applicant was given a PULHES of 113111 on 24 October 2017, with a permanent rating of 3 in factor L due to knee pain/injury (left). The physical profile restricted her from performing all functional activities, all Army Physical Fitness Test (APFT) events, and prescribed multiple additional restrictions and modified activities.

7. A William Beaumont Army Medical Center memorandum, 24 October 2017, notified the applicant's immediate commander that the applicant was undergoing physical disability processing to determine whether or not she met the retention standards of Army Regulation 40-501 (Standards of Medical fitness).

8. The applicant's ERB, 25 October 2017, confirms her PULHES of 113111, based on her last physical exam on 31 August 2017.

9. On 9 January 2018, the applicant signed an affidavit acknowledging she had been advised by her immediate commander of the rights and advantages of remaining in an active duty status in the Army beyond the scheduled date of her separation for the purpose of completion of hospital care and/or DES processing and indicated she did desire retention on active duty in the Army beyond the scheduled date of her expiration term of service (ETS).

10. The applicant's DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in her available records for review and have not been provided by the applicant.

11. A U.S. Army PEB memorandum, 18 January 2018, shows the PEB requested a VA rating percentage for the applicant's unfitting condition of left knee mild patellofemoral osteoarthritis with medical patellar facet and medial trochlear predominate chondromalacia status post diagnostic arthroscopy with not unfitting scars (MEB diagnosis (Dx) 1).

12. A DA Form 199 shows:

a. An informal PEB convened on 6 February 2018, where the applicant was found physically unfit with a recommended rating of 10 percent and that her disposition be separation with severance pay.

b. Her medical condition determined to be unfitting was left knee mild patellofemoral osteoarthritis with medical patellar facet and medial trochlear predominate chondromalacia status post diagnostic arthroscopy with not unfitting scars; MEB Dx 1; 10 percent.

c. The medical conditions determined not to be unfitting because they are not listed on the DA form 3349 as preventing her from performing any functional activities and there is no indication that any performance issues are due to these conditions:

- insomnia disorder, persistent (MEB Dx 2)
- hypertension (MEB Dx 3)
- lumbosacral strain (MEB Dx 4)
- bilateral shin splints (MEB Dx 5)
- right knee small medical compartment osteophytes and right knee patellofemoral compartment very mild chondromalacia (MEB Dx 6)
- migraine headaches including migraine variants (MEB Dx 7)

d. The applicant signed the form on 20 February 2018, indicating she had been advised of the findings and recommendations of the informal PEB and concurred, waiving a formal hearing of her case. She also indicated she did not request reconsideration of her VA ratings.

13. A Troop Command, William Beaumont Army Medical Center memorandum, 13 February 2018, shows the applicant's ETS extension was approved with a through date of 22 June 2018, or the completion date of the medical board, whichever date came first.

14. The applicant's DD Form 214 shows she was honorably discharged on 26 May 2018, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, non-combat (enhanced) with corresponding separation code JEB. She was credited with 12 years, 8 months, and 26 days of net active service.

15. A VA letter, 28 September 2021, shows:

a. The applicant's combined rating evaluations were:

- 70 percent, effective 27 May 2018
- 80 percent, effective 7 August 2018
- 90 percent, effective 7 February 2019
- 90 percent, effective 23 April 2021
- 100 percent, effective 6 August 2021

b. Effective 6 August 2021, she was granted the following service-connected ratings for the following conditions:

- PTSD, currently 50 percent was increased to 70 percent
- bilateral flat foot, currently 30 percent was increased to 50 percent
- migraines, currently 30 percent was increased to 50 percent

16. The applicant provided an additional 57 pages of VA medical records, which have been provided in full to the Board for review.

17. 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.

18. 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 (EMR – AHLTA and/or MHS Genesis), 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 a mental health condition be determined unfitting for continued service with a corresponding increase in her current military disability rating and subsequent change in her disability discharge disposition from separated with disability severance pay to permanently retired for physical disability. She states:

“My Mental Health was not considered upon discharge shortly after I received a percentage of 30 and not long after that was increased to 70 percent. I now have a total percentage of 100 after being discharged from the Military six years now.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. The DD 214 for the period of Service under consideration shows she entered the regular Army on 1 September 2005 and was separated with \$98,194.20 of disability severance pay on 26 May 2018 under provisions provided in chapter 4-24 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 24 October 2017, the applicant was referred to the IDES for left knee pain. The applicant claimed five additional conditions, none of which were mental health related per se but one was "sleep issues". A medical evaluation board (MEB) determined her "Left knee mild patellofemoral osteoarthritis" failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined the remaining six conditions, including persistent insomnia disorder, met medical retention standards. On 16 January 2018, the applicant agreed with the MEB findings and recommendation and her case was forwarded to a physical evaluation board (PEB) for adjudication.

h. On 6 February 2018, the applicant's informal PEB determined her left knee condition was the sole unfitting condition for continued military service. They found the six remaining medical conditions not unfitting for continued military service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and recommended the applicant be separated with disability severance pay. On 20 February 2018, after being counseled on the PEB's findings and recommendation by her PEB liaison officer, the applicant concurred with the PEB, waived her right to a formal hearing, and declined to request a VBA reconsideration of her disability rating (VARR).

i. There are no behavioral health encounters in the EMR. Review of the submitted documentation, ePEB case file, and AHLTA record found no material errors of deficiencies.

j. There is no evidence the applicant had a mental health or other condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

k. JLV shows the applicant has been awarded several VA service-connected disability ratings, including ratings for PTSD, sleep apnea, and flat foot syndromes. 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.

I. It is the opinion of the ARBA 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 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the ARBA medical advisor that neither an increase in her military disability rating nor a referral of her case back to the DES is warranted. The Board noted an informal PEB determined that the applicant was physically unfit due to left knee mild patellofemoral osteoarthritis with chondromalacia, and recommended separation with severance pay at a disability rating of 10 percent. The applicant concurred with the findings, waived her right to a formal hearing, and did not request reconsideration of her VA ratings.

2. The Board acknowledged the applicant's post-service VA ratings, including a 100 percent combined rating effective August 2021, these evaluations occurred years after her separation and are not determinative of her fitness for continued military service at the time of discharge. The Army's disability evaluation system is based on the severity of conditions at the time of separation and their impact on duty performance. The applicant's unfitting condition was rated at 10 percent, and she was appropriately separated with severance pay under Army Regulation 635-40. In addition to the advising opine, the Board found no error or injustice in the applicant's separation disposition that warranted referral to DES or support entitlement to physical disability retirement. Relief is denied.

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.

X //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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board

(DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted

and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. 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 percent.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states 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.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states 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.

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

//NOTHING FOLLOWS//