

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240007802

APPLICANT REQUESTS:

- physical disability retirement in lieu of physical disability separation with severance pay
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 2 March 2024

FACTS:

1. The applicant states:

a. She is requesting correction of her records to reflect medical retirement instead of medical discharge. The severity of her medical disability was not fully evaluated at the time of her medical board and she wasn't given the correct disability rating for her injury, that was caused by performing her duties in the Army.

b. Her current disability has gotten worse. She is attaching her diagnosis and VA Rating Decision to her application to support her request for corrections. She has been receiving treatment at the VA Medical Center in [REDACTED] and community care.

2. The applicant enlisted in the Regular Army on 18 March 2020, and was awarded the Military Occupational Specialty (MOS) 89B (Ammunition Specialist).

3. The applicant's DA Form 3349 (Physical Profile), 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), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes are not in his available records for review and have not been provided by the applicant.

4. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

5. A DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings) shows:

a. A formal PEB convened on 9 June 2023, where the applicant was found physically unfit with a recommended rating of 20 percent and that her disposition be separation with severance pay.

b. Her medical condition determined to be unfitting is lumbar degenerative arthritis (MEB diagnosis (Dx) 1); 20 percent. She first sought treatment for this condition on 2 February 2021, while stationed at Joint Base Lewis-McChord, WA, after experiencing insidious low back pain without a specific method of injury. She aggravated this condition lifting weights in July 2021. She is unfit because her DA Form 3349 functional activity limitations associated with this condition make her unable to reasonably perform required duties.

c. Her medical conditions determined not to be unfitting are MEB Dx 2-24.

d. During formal proceedings, the PEB reevaluated all available medial and performance records, to include sworn testimony and exhibits provided by the applicant. She appeared in person and was represented by appointed counsel, where she contended she remained unfit for lumbar degenerative arthritis (MEB Dx 1) and should be found unfit for her migraines (MEB Dx 5) and major depressive disorder (MEB Dx 11). Based on the preponderance of the evidence, the PEB determined her lumbar degenerative arthritis (MEB Dx 1) is unfitting and her migraines (MEB Dx 5) and major depressive disorder (MEB Dx 11) are not unfitting.

e. Regarding her migraines, she testified she is currently seeing a neurologist for the condition, who is trialing a new medication. She testified her migraines can last for days at a time and when she feels a migraine coming on, she goes to a dark area if possible, applies pressure or a cold compress, and has a hard time focusing. Although she testified to difficulty focusing on tasks and having to go to a dark space, she continues to carry out her duties as an Ammunition Specialist. She testified while she has gone to the emergency room for migraines, she has never been hospitalized for the

condition. The condition is currently being treated by a neurologist and has not yet failed conservative treatment, as medications are continuing to be trialed.

f. Regarding her major depressive disorder, the applicant testified this condition causes a strain on her marriage and relationship with her child. She testified she has difficulty sleeping and lacks motivation and focus due to this condition. She testified there is no stressor that triggers depressive episodes. Although she testified to difficulty with motivation and personal relationships, she does not have a current profile for the condition which limits her ability to handle ammunition and explosives. While she has not been to the range in 2 years, it was due to the profile for her back and not due to her behavioral health condition. This condition was issued a P3 in December 2022, but the profile was removed due to the condition being determined to meet retention standards. She has never required inpatient treatment or hospitalizations for this condition.

g. The applicant signed the form on 20 June 2023, indicating she had been advised of the findings and recommendations of the formal PEB and did not concur, submitting a written appeal. She further indicated she did not request reconsideration of her VA ratings.

6. A copy of the applicant's appeal is not in her available records for review.

7. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 24 September 2023, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with separation pay, non-combat related, with corresponding separation code JEB. She was credited with 3 years, 6 months, and 7 days of net active service.

8. The applicant's VA Rating Decision, 2 March 2024, shows her evaluation of spinal stenosis and lumbar degenerative arthritis/disc disease and intervertebral disc syndrome, which was currently 20 percent disabling, was increased to 40 percent effective 20 February 2024.

9. 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.

10. 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 an increase in her military disability rating and that her disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. She states:

“The severity of my medical disability was not fully evaluated at the time of my med board and I wasn't given the correct disability rating for my injury that was caused by performing my duties in the army. My current disability has gotten worse. I will attach my diagnosis and VA rating to this document to support my request for corrections. I have been getting treated by the VA Medical Center in Washington DC and community care.

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Her DD 214 for the period of service under consideration shows she entered the regular Army on 18 March 2020 and was discharged with \$22,192.80 disability severance pay on 24 September 2023 under provisions provided in 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 liming 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 17 May 2022, the applicant was referred to the IDES for "Low back pain." The applicant claimed sixteen additional conditions on a separate Application for Disability Compensation and Related VA Compensation Benefits (VA Form 21-526EZ), including migraines and depression. A medical evaluation board (MEB) determined the applicant's "Lumbar Degenerative Arthritis" failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined the sixteen remaining medical conditions met medical retention standards, including migraine headaches and major depressive disorder, moderate.

h. From her MEB narrative summary for her migraine headaches"

"Migraine including migraine variants - Had been seeing her PCM [primary care manager for migraines/headaches - trial of medication. In May 2021 hit head on weightlifting bar went to ER diagnosed with concussion without Loss of Consciousness. This incident seemed to exacerbate her headaches. Last seen by Neurology in December 2021. Meets Medical Retention Standards IAW AR 40-510, Chapter 3."

i. Form her behavioral health narrative summary for her depression:

"SM [service member] seen at behavioral health clinic Feb.-Jun.'22 for counseling. Most recent BH encounter 24Jun.'22 indicated SM was psychologically fit for duty. SM had a prescription for venlafaxine by her neurologist Dec.'21 but was not taking it per PCM note Feb.'22.

Per EMR, SM does not currently have active prescriptions for psychotropic medications. Psychiatric symptoms were not sufficient to require extended or recurrent hospitalization; interfere with duty performance; or necessitate limitations of duty/duty in a protected environment.

Commander's Performance and Functional Statement DA Form 7652 dated 5/31/22 did not indicate any function/performance impairment due to psychiatric symptoms.

DA Form 3349-SG Physical Profile 5/17/22 appropriately reflects S1 [No limitations due to a mental health condition].

SM meets retention standards for: Major Depressive Disorder, recurrent, moderate, with anxious distress per AR 40-501 Ch 3-33 (b)."

j. The applicant requested an independent medical review (IMR) with a focus on her migraine headaches. The reviewing physician opined that her migraine headaches met meet medical retention standards, concluding:

"The Narrative Summary adequately addresses all of your medical conditions and will be upheld. Your concerns and clarifications are duly noted and will be forwarded to the Physical Evaluation Board for their determination of fitness."

k. On 20 September 2022, the applicant concurred with the board's decision, and the case, including the IMR request and IMR results, was forwarded to a physical evaluation board (PEB) for adjudication.

l. On 9 November 2022, the applicant's informal PEB found her "Lumbar degenerative arthritis" to be the sole unfitting condition for continued military service. They found the remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 20% and recommended the applicant be separated with disability severance pay. After being counseled by her PEB Liaison Officer (PEBLO) on the PEB's findings and recommendations, she noncured the PEB's findings, requested a formal PEB with the assistance of regularly appointed counsel, and requested a VA reconsideration of his ratings.

m. The applicant was present for and represented by regularly appointed counsel as her formal PEB reconvened on 9 July 2023. Following the hearing, the formal PEB affirmed the findings of the informal PEB to include that neither her migraine headaches nor depression were unfitting for continued service: In part:

"Based on the preponderance of evidence, the PEB has determined that the Soldier's lumbar degenerative arthritis (MEB Dx [diagnosis] 1) is unfitting and the Soldier's migraines (MEB Dx 5) and major depressive disorder (MEB Dx 11) are not unfitting.

Regarding the Soldier's migraines: The Soldier testified that she is currently seeing a neurologist for the condition who is trialing a new medication for the Soldier's migraines. The Soldier testified her migraines can last for days at a time and that when she feels a migraine coming on she goes to dark area if possible, applies pressure or a cold compress to her head and has a hard time focusing.

Although the Soldier testified to difficulty focusing on tasks and having to go to a dark space, the Soldier continues to carry out her duties as an Ammunition Specialist. The Soldier testified while she has gone to the emergency room for migraines, she has never been hospitalized for the condition. The condition is currently being treated by a neurologist and has not yet failed conservative treatment as medications are continuing to be trialed.

Regarding the Soldier's major depressive disorder: The Soldier testified this condition causes a strain on her marriage and relationship with her child. The Soldier testified she has difficulty sleeping and lacks motivation and focus due to this condition. The Soldier testified there is no stressor that triggers depressive episodes.

Although the Soldier testified to difficulty with motivation and personal relationships, the Soldier does not have a current profile for the condition which limits her ability to handle ammunition and explosives. While the Soldier has not been to a range in two years, she testified it was due to the profile for her back and not due to her behavioral health condition.

The Soldier's condition was issued a P3 in December 2022, but the profile was removed due to the condition being determined to meet retention standards. The Soldier testified she has never required inpatient treatment or hospitalizations for this condition.”

n. The applicant appealed the formal board's findings to the United States Army Physical Disability Agency. In their 26 June 2023 memorandum to the Applicant, they reaffirmed the formal board's findings:

“Regarding your migraine headaches, your current DA Form 3349 profile has no temporary or permanent functional activity restrictions for migraine headaches. A review of your neurology records in Joint Legacy Viewer reveals that on 12 June 2023 you were seen by neurology, (encounter uploaded to electronic Physical Evaluation Board), your medications were changed, and the plan was to follow up with you in 3 months. The condition is currently being treated by neurology and has

not yet failed conservative treatment. As such, the condition of Migraine including migraine variants (MEB Dx 5) is not unfitting.

Regarding your major depressive disorder, your current DA Form 3349 profile has no temporary or permanent functional activity restrictions for major depressive disorder. Your most recent therapy records dated 7 February 2023 list your prognosis as "good".

It is also noted that, "P3" for her chronic adjustment disorder placed on 16 December 2022 but was determined that she did meet medical retentions for the Army." The Behavioral Health addendum for the NARSUM dated 3 August 2022 noted, "Psychiatric symptoms were not sufficient to require extended or recurrent hospitalization; interfere with duty performance; or necessitate limitations of duty/duty in a protected environment.

Commander's Performance and Functional Statement DA Form 7652 dated 31 May 2022 did not indicate any function/performance impairment due to psychiatric symptoms." The evidence does not support that you are unfit for Major depressive disorder, moderate, recurrent with anxious distress (MEB Dx 11)."

- o. The VA reconsideration of her disability rating resulted in no change.
- p. Review of the PEB case file in ePEB along with his encounters in the EMR revealed no substantial inaccuracies in or discrepancies.
- q. JLV shows the rating for her lumbar spine condition was increased to 40% effective 20 February 2024. However, the later awarding of a higher VA rating does not establish prior error or injustice. A disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service. The rating derived from the VA Schedule for Rating Disabilities reflects the disability at the point in time the VA exams were completed.
- r. JLV show he has been awarded multiple service-connected disability ratings, including ratings for major depressive disorder and migraine headaches. However, the DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. 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 during or permanently

aggravated by their military service. These roles and authority are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. 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 IDES 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 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 that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of her case to the Disability Evaluation System (DES) is not warranted.
2. 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
█	█	█	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.

6/6/2025

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. 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.
2. 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.

3. 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.

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

5. 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.

6. 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.

7. 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.

8. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//