

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230004325

APPLICANT REQUESTS: a change to his separation program designator (SPD) to SEK instead of SEA; in effect showing he was placed on the Temporary Disability Retirement List (TDRL) instead of being placed on the Permanent Disability Retirement List (PDRL).

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

- ACTS online application in lieu of DD Form 149 (Application for Correction of Military Record), 4 April 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 September 2021
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 2 February 2023
- extract of Army Regulation 635-5-1 (Separation Program Designators), 2 March 2022

FACTS:

1. The applicant states, in effect:

a. He was medically retired and the separation code on his DD Form 214 should reflect SEK and that he was placed on the TDRL.

b. The separation code SEA on his DD Form 214 is nonexistent. His orders have the same separation code.

2. The applicant provided copies of:

a. Six pages of service records.

b. An extract of separation codes on pages 14-15, Army Regulation 635-5-1 (Separation Program Designators), issued on 2 March 2022.

3. A review of the applicant's service records shows:

a. On 20 January 1999, he enlisted in the Regular Army.

b. Following a series of reenlistments and promotions, he deployed to Afghanistan and served in this designated imminent danger pay area from 19 October 2011 to 2 October 2012.

c. Orders Number 179-0018, issued by Directorate of Human Resources, U.S. Army Garrison Hawaii, dated 28 June 2021, reassigned him for separation processing. The statute authorizing retirement was shown as 1202, the percentage of disability was shown as 70%, the authority was shown as Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), and the SPD was shown as SEA1.

e. Order number 180-0019, issued by Directorate of Human Resources, U.S. Army Garrison Hawaii, dated 29 June 2021, amended orders number 179-0018, dated 28 June 2021, changing his reporting date to 9 July 2021.

f. On 22 September 2021, he was retired. His DD Form 214 shows in:

(1) Block 26 (Separation Authority) – Army Regulation 635-40, Chapter 4.

(2) Block 26 (Separation Code) – SEA.

(3) Block 28 (Narrative Reason for Separation) – Disability, Combat Related.

g. On 30 January 2023, an Informal PEB convened and found he was physically unfit and recommended a rating of 50% and that his disposition be permanent disability retirement. The DA Form 199 shows further:

- the medical conditions determined to be unfitting were incurred or aggravated in the line of duty in a duty status authorized by Title 10, USC 1201(c) or Title 10, USC 1204
- he was diagnosed with post-traumatic stress disorder (PTSD) and major depressive disorder, recurrent, moderate
- the disability was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict

h. On 2 February 2023, the PEB Liaison Officer advised him of the findings and recommendations of the Informal PEB and he received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto. Having been advised of the findings and recommendations of the PEBLO, he concurred and waived a formal hearing of his case on the same date.

i. On 17 February 2023, a representative of the U.S. Army, Physical Disability Agency, Secretary of the Army approved the findings of the Informal PEB.

j. Orders D052-0030, issued by the U.S. Army Physical Disability Agency, dated 21 February 2023, removed him from the TDRL, and permanently retired him in his current grade of rank. These orders further show:

- dated placed on the TDRL was 23 September 2021
- date placed on the PDRL was 21 February 2023
- percentage of disability was 50%
- Statute authorizing retirement was Title 10 USC, Section 1201

4. On 6 September 2023, the Legal Advisory, Headquarters, U.S. Army Physical Disability Agency provided ARBA an advisory opinion in response to the applicant's issues. It reads, in part:

a. In response to your 2 August 2023 request for an advisory opinion regarding (Applicant's) request for a change to the separation code listed on his separation orders and DD Form 214. For the reasons below we find the request to be legally insufficient.

b. The Informal PEB held on 11 June 2021 found (Applicant) unfit for PTSD and major depressive disorder. He was placed on the TDRL. The PEB also found (Applicant's) conditions to be a direct result of armed conflict.

c. In accordance with Army Regulation 635-5-1, the SPD code for a disability retirement due to disability incurred in combat related operations is SEA. Therefore, a change to the SPD code would be inappropriate.

5. On 15 September 2023, ARBA provided the applicant a copy of the USAPDA advisory opinion to give him an opportunity to submit a response/rebuttal but he did not respond.

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 Headquarters, U.S. Army Physical Disability Agency (USPDA) advisory opinion, the Board concurred with the advising official finding insufficient evidence of an error or injustice. The Board determined the applicant was found unfit for PTSD and major

depressive disorder. Evidence show the Physical Evaluation Board placed the applicant on the Temporary Disability Retired List (TDRL) and his conditions were the direct result of armed conflict.

2. The Board noted based on regulatory guidance the applicant's current separation program designator (SPD) code (SEA) is for disability retirement due to disability incurred in combat related operations. The Board agreed the SPD currently reflected on the applicant's DD Form 214 is not in error. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

2/6/2024

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. Army Regulation 635-5-1, currently in effect (2 March 2022), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "SEA" as being associated with separations under the provisions of Army Regulation 635-40, chapter 4; the required narrative reason for separation was "Disability, Combat Related."
2. Army Regulation 635-40, currently in effect, established the Army Disability Evaluation System (DES) according to the provisions of Title 10, United States Code, Chapter 61 (Title 10 USC Chapter 61) and Department of Defense Directive 1332.18. It 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. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.
 - a. Chapter 4. Scope of the Disability Evaluation System. Public Law 110–181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.
 - b. Disposition authority and action. Unless reserved for higher authority, USAPDA approves disability cases for the SECARMY and issues the disposition instructions to the Transition Center for Soldiers separated or retired for physical disability from an active duty status. The USAPDA publishes the disability orders on Soldiers of the USAR and ARNG who are not on active duty.
 - c. Permanent disability retirement. This disposition is directed under Title 10, USC 1201 or Title 10, USC 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation.
 - d. Placement on the temporary disability retired list. This disposition is directed under Title 10 USC 1202 or Title 10 USC 1205, as applicable, when the years of service or percentage requirements for permanent disability retirement are met but the disabilities are not determined to be permanent and stable.

//NOTHING FOLLOWS//