

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230004527

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release for Discharge from Active Duty) to show in:

- item 26 (Separation Code): JFI
- item 28 (Narrative Reason for Separation): Disability, Severance Pay, Combat Related
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings)
- Orders 112-1004 Discharge Orders, 21 April 2004
- DD Form 214, for the period ending 6 May 2004
- Excerpt from Title 26 U.S. Code (USC) 104 (Compensation for Injuries or Sickness)
- Excerpt from Title 10 USC 1203 (Regulars and Members on Active Duty for More than 30 days: Separation)

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. In accordance with Title 26 USC 104 and Title 10 USC 1203 and coupled with his PEB, DD Form 214, and his separation orders, he believes Block 26 of his DD Form 214 should read "JFI" and block 28 should read "Disability, Severance Pay, Combat Related." The source documents as well as his Operation Enduring Freedom tenure that further aggravated his service-connected combat related injuries validates reason for medical related service connection and qualifications defining "combat-

related injured" as defined by the Secretary of Defense in Title 26 USC 104, therefore blocks 26 and 28 should have reflected accordingly.

b. Orders 112-004, 21 April 2004, additional instructions paragraph d state "Disability is based on injury or disease in line of duty (LOD) as a result of armed conflict or caused by an instrumentality of war and incurred in LOD during a war period as defined by law: Yes" paragraph e states "disability related from a combat related injury as defined in Title 26 USC 104: Yes." See the PEB proceedings validating the same, therefore blocks 26 and 28 should correctly reflect separation due to "combat-related" injuries.

3. The applicant provides the following documents:

a. Excerpt from Title 26 USC 104(3) for purposes of this subsection the term "combat-related injury" means personal injury or sickness which incurred as a direct result of armed conflict, while engaged in extra hazardous service, under the conditions simulating war, or which is caused by an instrumentality of war.

b. Excerpt from Title 10 USC 1203 (b) Required Determination of Disability - Determination by the Secretary that the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of determination, and the disability was the proximate result of performing active duty, incurred in LOD in time of war or national emergency, or incurred in line of duty after 14 September 1978.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 19 January 1995.

b. He was honorably transferred to U.S. Army Reserve Control Group (Reinforcement) on 27 January 1993 for expiration term of service.

c. His service records were void of his enlistment documents; however, his DA Form 2-1 (Personnel Qualification Record – Part II) shows he entered the Regular Army on 20 January 1995.

d. DA Form 3947 (Medical Evaluation Board Proceedings), 12 February 1999 shows he was being evaluated for chronic back pain, which was incurred in 1992 and migraine headaches, which was incurred in December 1995. Both injuries occurred while he was entitled to base pay, they did not exist prior to service, and they were permanently aggravated by service. The injuries were referred to a PEB.

e. DA Form 199, 19 March 1999, shows he was found fit for duty. The applicant concurred with the findings. Memorandum Approval of PEB Action, 30 March 1999, approved the findings of the 19 March 1999 PEB.

f. DA Form 199, 25 March 2004, shows the PEB gave him a 10 percent disability rating for chronic back pain. He was injured by an instrumentality of war, a military parachute at Fort Richardson, Alaska, 20 April 1992. The PEB found he should be separated with severance pay. He concurred with the findings and waived a formal hearing of his case.

5. The applicant also provides:

a. Orders 112-1004, published by Headquarters, 10th Mountain Division (Light Infantry) and Fort Drum, 21 April 2004, discharge him effective 6 May 2004. Paragraph b states "percentage of disability 10 percent", paragraph d states disability is based on injury or disease received in line of duty (LOD) as a direct result of Armed Conflict or caused by an instrumentality of war incurred in the LOD during a war period as defined by law: Yes, and paragraph e states disability resulted from a combat related injury as defined in Title 26 USC 104: Yes.

b. DD Form 214, for the period ending 6 May 2004 shows in item 18 (Remarks) disability severance pay \$66,319.60, service in Afghanistan from 21 September 2003 through 4 October 2003; Item 26 (Separation Code) JFL; and item 28 (Narrative Reason for Separation) disability severance pay.

6. 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 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 the separation code in block 26 of his DD 214 be changed from JFL to JFI to reflect his disability was combat related.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army 15 January 1995 and was discharged with \$66,339.60 of disability severance pay on 6 May 2004

under provisions in paragraph 4-24b(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990). The separation code in JFL.

d. On 25 March 2004, the applicant's informal PEB found his "Chronic low back pain after PLF" his sole unfitting for continued military service. As seen in Block 10 of his Physical Evaluation Board (PEB) Proceedings, they correctly made the administrative determination the condition was combat related because it was due to the use of an instrument of war – the military parachute – during a period of war (Persian Gulf Region 1990 to present); and it was incurred while performing extra hazardous duty – military parachute training.

e. His 21 April 2004 separation orders reflect the PEB's combat related determinations.

f. Using the VA Schedule for Rating Disabilities, the PEB derived and then applied a 10% military disability rating. Because his final rating was less than 30%, the PEB recommended he be separated with disability severance pay. On 29 March 2004, after being counseled on the PEB's findings and recommendation by his PEB liaison officer, the applicant concurred with the Board's findings and waived his right to a formal hearing.

g. The Defense Finance Accounting Service (DFAS) uses a Soldier's separation orders when processing disability separations.

h. Review of separation codes shows JFI indicates "Disability, Severance Pay, Combat Related." However, the coding is up to the individual Services and outside the expertise of this medical advisor.

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 noted the advising official assessment regarding his separation code. The Board agreed there is no error or injustice as it pertains to the applicant's separation code. The Board found at the time the applicant was separated, the correct separation code was identified on his DD Form 214. As regulations are updated, codes are changed. As such, the Board determined the applicant's contentions are without merit and denied relief.

BOARD VOTE:

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

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.

REFERENCES:

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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 (AR) 635-5 (Separation Documents), in effect at the time, prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active-duty service, or control of the Active Army. It states in:

a. Item 18 (Remarks) for a Soldier receiving separation/readjustment or non-disability severance pay enter type of pay and amount.

b. Item 26 (Separation Code) obtain correct entry from AR 635-5-1 (Separation Program Designator) which provides the corresponding special program designator (SPD) code for the regulatory authority and the reason for separation.

c. Item 26 (Narrative Reason for Separation) this is based on regulatory or other authority and be checked against the cross reference in AR 635-5-1.

3. AR 635-5-1, in effect at the time, prescribes the specific authorities (regulatory or directives) reason for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It shows SPD JFL has the narrative reason for separation Disability, Severance Pay. It did not have SPD JFI Disability, Severance Pay Combat Related.

4. AR 635-5-2, now in effect, shows SPD JFI has the narrative reason for separation Disability, severance pay, combat related legacy Disability Evaluation System (DES).

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//