

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20230007059

APPLICANT REQUESTS: correction of the following documents to show his disability was incurred in the line of duty (LOD) and that his injury occurred in a combat zone:

- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), convened on 13 April 2022
- Order D-132-14, dated 12 May 2022

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

- DD Form 149 (Application for Correction of Military Record)
- Medical forms
- DA Form 2823 (Sworn Statement)
- LOD Approval, dated 29 September 2004
- DA Form 199, 13 April 2022
- Order D-132-14, dated 12 May 2022
- Memorandum subject: Permanent Physical Disability Retirement, dated 12 May 2022

FACTS:

1. The applicant states his DA Form 199 and Order D 132-14 reflect that his chronic ulcerative colitis, to include mild gastritis did occur in the line of duty while in a combat zone or as a result of performing combat related operations is no. Furthermore, these documents state the disability is based on injury or disease received in the line of duty as direct result of armed conflict or caused by an instrumentality of war an incurred in the line of duty during a war period as defined by law is listed as "No". Disability related from a combat related injury as defined by 26 USC 104 is also listed as "No". He is providing documentation and medical records to support this while he was in Afghanistan. When he first noticed the error, he asked the Physical Evaluation Board Liaison Officer (PEBLO) to make the change before the PEB was complete. The PEBLO advised him that it was too late, and he would have to apply with the Army Board for Correction of Military Records (ABCMR).

2. The applicant provides:

a. Medical records.

b. A memorandum subject: Permanent Physical Disability Retirement, 12 May 2022, which shows the applicant was advised in accordance with the findings and recommendation of the United States Army Physical Disability Agency, he was found to have a disability and would be permanently retired with a Department of Defense (DOD) disability rating of 30 percent (%).

3. The applicant's service record reflects the following:

a. He enlisted in the Army National Guard on 11 June 1996.

b. He served honorably on active duty from 21 August 1996 to 1 March 1997, for a period of 6 months, and 11 days.

c. The applicant was ordered to active duty in support of Operation Enduring Freedom (OEF), with a report day of 24 January 2003.

d. A memorandum subject: Statement of Wartime Service, dated 10 January 2004, shows the applicant was deployed for service to the Central Joint Coalition Area of Operations, Bagram, Afghanistan in support of OEF, from 30 July 2003 to 13 January 2004.

e. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was treated for chronic ileitis injury/disease, on 12 January 2004. The applicant developed irritable bowel syndrome (IBS) or Crohn's disease while on active duty. Aggravated old tibia fracture site of the lower left leg. He was medically evacuated from Afghanistan to Germany on the same day, with flu like symptoms, stomach cramps, joint pains, diarrhea, muscle soreness and weight loss. Crohn's was not found, and applicant was transported to Fort Bragg, NC for tests of IBS. The applicant was on active duty at the time of treatment. A Formal Line of Duty Investigation (LODI) was not required. The injury was considered to have been incurred in Line of Duty (LOD).

f. DA Form 2823, dated 7 May 2004, the applicant states in effect:

(1) While he was serving in Afghanistan, he noticed a rash and his back began to sting. He saw Captain/(CPT) [REDACTED] and he advised him it was a virus, and it would go away after six weeks, and it did. Shortly after he felt his throat and stomach burning, he sought out CPT [REDACTED] again and he advised him that it was acid reflux and prescribed him Prilosec for a month. The Prilosec helped for a while until he ran and started feeling stomach cramps.

(2) He had flu like symptoms, so he visited the medics. They treated him with several types of medicine to include anti biotics, and nothing seemed to help. During this time, he lost a lot of weight, he could not sleep but still went to work. He was constantly tired and was still experiencing diarrhea. He re-visited the medical staff and spoke with two different doctors that conducted blood tests and asked about his family's medical history. His sister has Crohn's and he was experiencing similar symptoms. He was then placed on a stronger antibiotic and was advised if this did not help improve his symptoms, he would be sent to Germany.

(3) The medication did not work, and he was transported to Germany to continue his medical care. While he was a patient there, he had additional blood tests conducted and a colonoscopy. The doctor he was working with at the time expressed that he thought there is a 65% to 70% chance he had Crohn's, as he was still experiencing the same symptoms as he did in Afghanistan. The applicant redeployed, to Fort Bragg, NC at which time he had to have more blood tests and another colonoscopy, that provided he did not have Crohn's. The doctor advised him he could still have the disease, even if it does not show up during examination. His medication was switched, the diarrhea slowed down and he felt a little better, so he was eventually released. The doctors stated he might have contracted a virus while serving in Afghanistan, and that the new medicine should help his body calm down, but to also monitor his symptoms for Crohn's since he sometimes still has cramps.

g. A DD Form 214 shows he was ordered to active duty on 21 January 2003, in support of OEF. He was honorably released from active duty on 21 June 2004. He completed 1 year, 5 months, and 1 day of active service and 5 months and 14 days of foreign service. He had service in Afghanistan from 30 July 2003 to 13 January 2004.

h. On 29 September 2004, the applicant's LOD investigation was approved.

i. A DA Form 199 shows a PEB was convened on 13 April 2022 wherein the applicant was found physically unfit with a recommended disability rating of 30%, and that the disposition be permanent disability retirement, for Ulcerative colitis which began in January 2004, while on active duty with [REDACTED] Army National Guard ([REDACTED] ARNG). The condition presented insidiously with body aches, fever, chills, and gastrointestinal distress. Functional activity limitations made him unable to reasonably perform required duties. The applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his Department of Veterans Affairs (VA) rating. This document further shows the PEB made the following administrative determinations:

(1) The disability disposition is not 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 or caused by an instrumentality of war and incurring in the line of duty during a period of war as defined by law (5 USC 8332, 3502 and 6303).

(2) The disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

j. Order D 132-14, dated 12 May 2022 shows the applicant was retired for permanent physical disability, with an effective date of 12 June 2022. This document furthers provides:

- Disability is based on injury or disease received in LOD as direct result of armed conflict or caused by an instrumentality of war an incurred in the LOD during a war period as defined by law: No
- Disability resulted from a combat related injury as defined in 26 USC 104: No
- Disability incurred in LOD in a combat zone or result of performing combat related operations: No

k. An NGB Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably retired from the ■■■ARNG, after 26 years of service due to a permanent disability, on 12 June 2022. This document also shows in item 18 (Remarks):

- Service in Afghanistan from 30 July 2003 to 13 January 2004
- Service in Iraq/Kuwait from 22 July 2009 to 22 April 2010
- Service in Kuwait from 8 June 2018 to 11 June 2018
- Service in Afghanistan from 11 June 2018 to 11 February 2019
- Service in Kuwait from 11 February 2019 to 16 February 2019

4. 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 (AHLTA), 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 administrative determination that his physical disability was incurred in a combat zone or combat zone tax exclusion area. He states:

“DA Form 2173 (LOD) dated 11 May 2004 and supporting documentation (medical records) states that my Chronic Ulcerative Colitis is a result of line of duty that occurred in a combat zone (Afghanistan) Operation Enduring Freedom.

I questioned this during my PEB. I requested thro~ my PEBLO that the change e made before my PED was finished and orders issued. I was told by my PEBLO that it was too late, that I had to go through this process.

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. Orders published by the United States Army Physical Disability Agency on 12 May 2022 show the applicant was to be permanently retired for physical disability with a 30 percent disability rating effective of effective 21 January 2023.

d. That the onset of the applicant’s unfitting condition was in a combat zone is unquestioned. However, his permanent retirement for physical disability makes him ineligible for the administrative determination he is requesting as it is only beneficial and therefore only applied to Service Members separated with disability severance pay.

e. The administrative determination a disability(s) was incurred in a combat zone or combat zone tax exclusion area is a benefit added to the U.S. Code on 28 January 2008, in section 1646 of public law 110-181: Enhancement of Disability Severance Pay for Members of the Armed Forces (10 USC 1212 NDAA 2008 Sec 1646). This administrative determination, made by the physical evaluation board and also known as “V4”, eliminates the VA recoupment of the Soldier’s disability severance pay from their VA compensation; and sets the minimum years of service for calculating their disability severance pay at 6 years, benefitting Soldiers with less than six years of time in service. It is the opinion of the ARBA Medical Advisor the applicant was granted the benefit he is seeking and no action is required.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings in the medical review, the Board concluded the applicant has already obtained the benefit he is seeking; therefore, the Board found no error or injustice warranting action by the Board.

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.

3/6/2025

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case

with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. Formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

3. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. PEBs determine fitness for purposes of Soldiers retention, separation or retirement for disability under 10 USC Chapter 61, or separation for disability without entitlement to disability benefits under other than 10 USC Chapter 61. The PEB also makes certain administrative determinations that may have benefit implications under other provisions of law. Chapter 5 addresses the standards for the PEB's adjudicative determinations.

a. The informal physical evaluation board process. The IPEB will make the determinations listed below according to the adjudication policy of chapter 5 of this regulation. These determinations are documented on DA Form 199 (Informal Physical

Evaluation Board (PEB) Proceedings (EGA)). All PEB findings, to include initial findings and any revised findings (to include those reflecting subsequent considerations due to a Soldier's statement of rebuttal to an IPEB finding), will be presented in an orderly and itemized fashion with specific attention to each issue:

(1) Whether any medical conditions individually or collectively cause the Soldier to be unfit for continued military Service.

(2) Whether the unfitting medical conditions were incurred or aggravated in the LOD.

(3) Conditions making the Soldier unfit or contributing to the Soldier's unfitness were incurred in combat with an enemy of the United States.

(4) Conditions were the result of armed conflict or were caused by an instrumentality of war during a period of war.

(5) For cases in which the disposition is separate with disability severance pay whether the unfitting disabilities were incurred in a combat zone or were incurred during performance of duty in combat-related operations.

b. Combat related injuries are those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) Armed conflict. A SM may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists. Armed conflict may also include such situations as incidents involving a Soldier while interned as a prisoner-of-war or while detained against their will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under conditions simulating war. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne

operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

4. Section 1556 of Title 10, USC, 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//