

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240001269

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) in item 26 (Separation Code) to reflect "JEA," (Disability, severance pay, combat-related, Integrated Disability Evaluation System (IDES)).

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

DD Form 149 (Application for Correction of Military Record)

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 his separation code of JEB indicates his disability is not combat-related. His separation code should read JEA because he was forced to leave the military for disabilities he incurred during his four tours in Iraq. His application also notes his request is related to post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). He further states:
  - a. the Board should make his requested correction as a matter of principle. He was declared non-deployable because of his injuries/illnesses and he was involuntarily separated from the military; he intended to make the military a career.
  - b. he was taxed on his severance pay and believes this to be an injustice to a veteran who served 4 years in Iraq doing the job he was called to do.
3. The applicant initially enlisted in the Regular Army on 13 February 1998. On 14 September 1998, he was discharged under the provisions Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 13, by reason of unsatisfactory performance, and he received an under honorable conditions (general) characterization of service, with a separation code of "JHJ" and a reentry code of "3." His DD Form 214 shows he completed 7 months and 2 days of net active service.

4. The applicant again enlisted in the Regular Army on 26 June 2002, and was awarded the Military Occupational Specialty (MOS) 91B (Wheeled Vehicle Mechanic).

5. The applicant completed four deployments to Iraq during the following periods of time:

- from 8 September 2003 through 16 September 2004
- from 19 November 2005 through 30 October 2006
- from 6 December 2007 through 8 February 2009
- from 21 March 2010 through 16 March 2011

6. 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), Department of Veterans Affairs (VA) Compensation and Pension (C&P) Exam, and VA Rating Decision are not in his available records for review nor have these documents been provided by the applicant.

7. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows:

a. An informal PEB convened on 26 February 2014, where the applicant was found physically unfit with a recommending rating of 10 percent and that his disposition be separation with severance pay.

b. The applicant's medical condition determined to be unfitting is internal derangement of the right ankle (MEB diagnosis (Dx) 1), 10 percent. Onset occurred in September 2011 when Solider injured his ankle during a platoon run at Fort Carson, CO. Soldier is unfit because the right ankle prevents him from evading direct and indirect fire.

c. The applicant's medical conditions determined not to be unfitting, because they met medical retention standards, were not listed on the Physical Profile as limiting any of his functional activities, and were not commented on by the commander as hindering the applicant's performance of assigned duties, are:

- PTSD (MEB Dx 2)
- history of mild TBI without residuals (MEB Dx 3)
- cervical strain (MEB Dx 4)
- lumbar degenerative disc disease (MEB Dx 5)
- left chest wall lipoma (MEB Dx 6)
- left knee meniscus tear (L2) (MEB Dx 7)
- right ankle scars (MEB Dx 8)

d. Section V (Administrative Determinations) shows the PEB made the following findings:

(1) The disability disposition is not based on disease or injury incurred in the line of duty (LOD) in combat with an enemy of the U.S. and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war.

(2) The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

(3) The disability severance pay was not awarded for disability incurred in a combat zone or incurred while performing combat-related operations as designated by the Secretary of Defense.

e. On 3 March 2014, the applicant signed the form indicating after having been advised of the findings and recommendations of the informal PEB and having received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto, he concurred and waived a formal hearing of his case. He also indicated he did not request reconsideration of his VA ratings.

8. U.S. Army Installation Management Command Orders 122-0271, dated 2 May 2014, discharged the applicant with disability severance pay and a disability rating of 10 percent effective 8 June 2014. The orders further show:

- disability is not based on injury or disease receive in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war as defined by law
- disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104
- disability was not incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense

9. The applicant's DD Form 214 shows he was honorably separated 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. He was credited with 11 years, 11 months, and 13 days of net active service this period and 7 months and 2 days of net prior active service.

10. In the adjudication of this case, an advisory opinion was provided by the U.S. Army Physical Disability Agency (USAPDA) legal advisor on 22 July 2024, which shows:

a. The applicant's request to be awarded a combat code for his IDDES case was found to be legally insufficient.

b. On 26 February 2014, he was found unfit for his right ankle condition with a rating of 10 percent and that his disposition be separation with severance pay. On 3 March 2014, the applicant reviewed and accepted the findings and recommendations of the PEB. Those findings included the fact that the onset of his ankle condition occurred during a platoon run at Fort Carson, CO, in September 2011. Thus, a combat code was not awarded.

c. Platoon runs are not conditions simulating combat nor do they involve any instrumentalities of war or extra hazardous service. As for the applicant's assertion that his ankle condition was due to his four tours in Iraq, he has provided no evidence that demonstrates this condition either arose from or was permanently service aggravated by his service in Iraq.

11. On 23 July 2024, the applicant was provided with a copy of the USAPDA advisory opinion and given an opportunity to submit comments, 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 counsel's statement, 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 (USAPDA) advisory opinion, the Board concurred with the advising official recommendation for denial. The Board determined the applicant's ankle condition did not occur in a combat zone or was due to combat itself.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his DD Form 214, in item 26 (Separation Code) to reflect "JEA," (Disability, severance pay, combat-related, Integrated Disability Evaluation System (IDES)). The Board noted the applicant was found to be unfit due to his right ankle condition and was separated with severance pay. Evidence shows the applicant reviewed and accepted the findings and recommendation from the physical evaluation board (PEB). The Board agreed, there is insufficient evidence to support that the applicant's condition was due to his four tours in Iraq and the applicant provided no evidence that his ankle condition was aggravated due to his time in Iraq. Based on the

advising official opine and evidence found in the applicant service record, the Board denied relief.

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.

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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 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

3. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

4. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, 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, 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.

5. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. 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.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat 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.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of 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, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

6. Army Regulation 635-5-1 (Separation Program Designator Codes) implements Department of Defense policy for standardization of certain entries on the DD Form 214 (Certificate of Release or Discharge from Active Duty), to include the separation code. Paragraph 2-7 provides for the separation program designators (SPD) or separation codes applicable to enlisted personnel. Table 2-3 (Enlisted Personnel) provides the separation codes pertaining to enlisted personnel in alphabetical order and shows:

a. Separation code JEA corresponds to the narrative reason for separation of Disability, severance pay, combat related Integrated Disability Evaluation System (IDES).

b. Separation code JEB corresponds to the narrative reason for separation of Disability, severance pay, non-combat related, IDES.

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.

//NOTHING FOLLOWS//