

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 December 2024

DOCKET NUMBER: AR20240001880

APPLICANT REQUESTS:

- correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and retirement orders to show his disability resulted from a combat-related injury
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- active duty/deployment orders
- DD Form 1610 (Request and Authorization for Temporary Duty (TDY) Travel of Department of Defense Personnel)
- Memorandum for Record, dated 10 March 2018, subject: Sub-Area Petroleum Office-Iraq and 275th Combat Sustainment Support Battalion, Quality Assurance Visit (QAV) to Taji (with photos)
- DA Form 199
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 215)
- medical records (69 pages)

FACTS:

1. The applicant states:

a. On 24 August 2021, he received his DA Form 199 with the administrative correction completed without him being given an opportunity to appeal it. He made a previous selection of a "VAAR" (note: interpreted to mean Department of Veterans Affairs (VA) appeal review) and was waiting for his DA Form 199 to return with the results so he could proceed to the next step and appeal section III (Medical Conditions Determined to be Unfitting) to show his condition of left ankle lateral collateral ligament sprain status post peroneal as a combat-related injury (hazardous duty). His PEB

Liaison Officer advised him to appeal it with the Army Board for Correction of Military Records (ABCMR).

b. He knows the PEB only had access to his Kuwait medical records but not his Iraq records. When he was in Baghdad, he was told to get a print-out of his medicals records because Kuwait had a different system, and he would lose any documentation the minute he left Iraq. When he was deployed, they were part of the U.S. Central Command (CENTCOM). They traveled all over the Middle East (Afghanistan, Bahrain, Iraq, Jordan, Qatar, Syria, and Kuwait). Their task was to visit all bases through the area of responsibility and conduct QAVs to make sure they followed CENTCOM regulations. After completing their QAVs for that specific country, they returned to Kuwait to turn-in his reports and brief a major general and staff. A week later, they went on their way to the next country to conduct their QAVs.

c. On 9 March 2018, the day he fell and rolled his ankle, he was on duty. He was wearing his full battle gear and also had his duffle bag with his equipment. He has several pictures of the fueling points to kind of get the Board an idea of the type of work he was exposed. While he was at the Taji, Iraq fuel site, he was providing the personnel his expectations. They were also conducting a rehearsal because he wanted to put them at ease. When they started showing him their equipment, that is when the inevitable happened. From what he recalled, there was a fuel hose on the ground; he backed up, fell, and rolled his left ankle. He was in pain, so they took him to his room.

d. That same night, he was in severe pain, so he limped to the front office and asked for a ride to the emergency room. He was examined and released that same night. On 10 March 2018, he was at the Taji fuel site, completed the QAV, and report it. On 26 March 2018, they were in Baghdad, Iraq. He was still in pain, so he went to sick call; he got an X-ray and received medication. On 18 September 2018, they were in Camp Arifjan, Kuwait. He was still in pain, so he went to sick call and got referred to physical therapy. On 23 October 2018, they were at Fort Cavazos, Texas and got an MRI on his left ankle, impression: partial thickness insertional tear of the left peroneus brevis tendon. On 5 November 2018, his ankle injury was what got him into the Warrior Transition Unit in Fort Bliss, Texas. On 24 February 2020, he had surgery at [REDACTED]

2. The applicant enlisted in the U.S. Army Reserve on 27 April 1998. He entered active duty in support of Operation Enduring Freedom (Spartan Shield) on 4 January 2018.

3. On 18 August 2021, a PEB found/determined:

a. the applicant unfit for further military service due to the following conditions and the corresponding PEB remarks:

(1) Lumbar spine degenerative arthritis: Department of Veterans Affairs (VA) reconsideration/correction: As a result of the Soldier's Veterans Affairs Reconsideration Request, the rating for this condition was increased from 10% to 40%. The Soldier first sought treatment for this condition in 2016 while stationed at Riverside, California. The condition began after the Soldier fell on his buttocks, causing chronic back pain.

(2) Lumbar left lower extremity radiculopathy: The Soldier first sought treatment for this condition in 2016 while stationed at Riverside, California. The condition began after the Soldier fell on his buttocks, causing chronic back pain.

(3) Left ankle lateral collateral ligament sprain status post peroneal: The Soldier first sought treatment for this condition in 2018. Soldier injured his left ankle after falling and rolling on ankle.

(4) Right knee strain: The Soldier first sought treatment for this condition in 2019. Soldier experienced pain in right knee with no incident or trauma indicated, while stationed at Riverside, California.

(5). Left knee meniscal tear status post-surgical repair with residuals: The Soldier first sought treatment for this condition in March 2016 while stationed at Riverside, California. The Soldier experienced pain after climbing without incident or trauma indicated.

b. The PEB recommended a combined 60% disability rating and the applicant's permanent disability retirement. The DA Form 199 contains the following entries in Section V (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 incurred in the line of duty during a period of war (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

(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.

4. Orders 257-0510, dated 14 September 2021, issued by Headquarters, U.S. Army Garrison Command, Fort Bliss, TX, ordered the applicant's release from assignment and duty because of physical disability and his permanent disability retirement effective 21 November 2021. The orders contain the following entries:

a. Disability is based on injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a war period as defined by law: No

b. Disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104: No

5. The applicant's DD Form 214 shows he was retired on 21 November 2021 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, permanent.

6. During the processing of this case, an advisory opinion was obtained from the U.S. Army Physical Disability Agency (USAPDA). It states:

a. On 18 August 2021, a PEB found the applicant unfit for, among others, his left ankle condition. His combined rating was 60% and he was placed into permanent disability retirement. He provided evidence that the condition arose when he tripped on a fuel hose while he was performing a fuel site inspection in Iraq in March 2018. The DA Form 199 states that the onset of his condition was in 2018 when he fell and rolled his ankle. He now appeals seeking to be awarded a combat code (i.e., combat-related) for his left ankle condition.

b. While it is unclear from the appeal what type of combat code the applicant is seeking, it would appear from the facts that he is requesting either a V3 or V4 code. On its face, a V4 code would appear to be applicable since his injury arose in a combat zone, except that his disposition was permanent disability retirement and V4 codes are only applicable to cases where the Soldier is being medically separated. Fortunately, he was not medically separated. As for a V3 code, that would be applicable if he could demonstrate that his condition was caused by an instrumentality of war, while he was engaged in extra hazardous service, or occurred under conditions, simulating war.

c. Here, he provided that he merely tripped over a fuel hose while conducting a site inspection that was part of his normal and routine duties. From the photographic evidence provided by the applicant, there is nothing particular about the fuel hoses that would make it an instrumentality of war. While he did not argue that his full combat gear caused his fall, he did allude to it having some impact. However, under the facts provided by him, it is unclear whether the fact he was wearing his combat gear played any part in his fall or the resulting injury as he was walking backward when he tripped. Upon examination, his condition was considered to be a mild grade 1 sprain. Later, he provided evidence of a subsequent fall down a stairway while doing laundry with corresponding swelling. Thus, based upon what is known, it would appear to be speculative that his combat gear played any part in him tripping or exacerbating the

otherwise minor sprain. It also appears clear that he was not engaged in simulating combat as he was performing a site inspection.

d. The presented case file does not establish that the applicant's left ankle condition warrants a V1/3 or 4 combat code. Therefore, the matter is legally insufficient.

7. The USAPDA advisory opinion was provided to the applicant and given the opportunity to provide additional evidence or comments. He responded and stated the following:

a. It seems, the ABCMR has made their decision, but nevertheless, he would like the Board to please reconsider his DA Form 199 appeal. He had an injury which was incurred while engaged in hazardous service. Working with petroleum, oil, and lubricants (POL) throughout CENTCOM area of responsibility is hazardous service.

b. He understands that rolling his ankle was not a major injury at the time but the agony and having a surgery afterwards was. He also understands he could have prevented his fall but unfortunately, uneven ground, wearing full battle rattle (Kevlar, safety glasses, gloves, Improved Outer Tactical Vest with plates, M9, M4), carrying a duffle bag with equipment, and the momentum how it propelled him to hit the ground with excessive force causing severe injury (partial thickness insertional tear of the left peroneus brevis tendon of my left ankle).

8. The applicant provided a Memorandum for Record, dated 10 March 2018, subject: Sub-Area Petroleum Office-Iraq and 275th Combat Sustainment Support Battalion, Quality Assurance Visit (QAV) to Taji, summarizing quality assurance inspection findings. The memorandum contains photos of fuel storage sites.

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 of the PDA advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

12/27/2024

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

a. Paragraph 5-24 (Determination for Purposes of Federal Civil Service Employment) states the physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war. These determinations impact the eligibility of certain military retirees for certain benefits when employed under the Federal Civil Service System.

(1) The determinations will be recorded on the record of proceedings of the Soldier's adjudication.

(2) Armed Conflict: The fact that a Soldier 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.

b. Paragraph 5-25 (Determination for Federal Tax Benefits) states physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

c. Combat related: This standard 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 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) As a direct result of armed conflict.

(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) 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 were 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).

2. Title 26, U.S. Code, section 104, states that for the purpose of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

4. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//