

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 June 2025

DOCKET NUMBER: AR20240002036

APPLICANT REQUESTS: in effect, correction of his retirement orders and the separation code shown on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his retirement was based on a disability from an injury that was received in the line of duty as the direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 1 September 2023
- VA Form 21-0819 (VA/DoD Joint Disability Evaluation Board Form), 24 March 2015
- Integrated Disability Evaluation System (IDES) Narrative Summary (NARSUM), 27 April 2015
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 7 May 2015
- Orders 042-0006, Installation Management Command – Europe, 11 February 2016
- DD Form 214
- Retiree Account Statement, 3 December 2022
- Letter, U.S. Army Human Resources Command (AHRC), 10 August 2023
- Letter, Defense Finance and Accounting Service (DFAS), 23 August 2023

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 since the passing of the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act) asthma is now a presumptive condition of his service while deployed to Qatar in 2011 –

2012. His asthma is the reason he was medically retired and approved for Combat-Related Special Compensation (CRSC). Asthma would fall under 28 U.S Code 104(a)(3) as it was incurred as a direct result of armed conflict. He is making this request to change his Federal work-related leave accrual computation date.

3. The applicant enlisted in the Army National Guard on 19 November 2009. He served in military occupational specialty 25Q (Multichannel Transmission Systems Operator-Maintainer).

4. Evidence shows he entered active duty on 13 January 2010. He served in the imminent danger pay area of Qatar from 10 May 2011 to 7 May 2012.

5. The complete facts, circumstances, and supporting documentation surrounding the applicant's discharge are not available in his Official Military Personnel File for review; however, evidence shows his case was adjudicated as part of the Integrated Disability Evaluation System (IDES) under the 19 December 2010 Policy and Procedure Directive-type Memorandum 11-015.

6. The applicant retired honorably on 26 April 2016, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 4. The DD Form 214 he was issued shows he completed 6 years, 3 months, and 14 days of net active service and shows in:

- block 23 "Retirement"
- block 26 (Separation Code), "SEJ"
- block 27 (Reentry Code), "4"
- block 28 "Disability, Permanent (Enhanced)"

7. The applicant provides documents pertaining to his medical retirement which includes, in part:

a. IDES NARSUM approval date 27 April 2015, which shows he was referred to the IDES for chronic exercise-induced asthma.

(1) Item 5 (Medical Retention Determination Point (MRDP) Statement notes Army Regulation 40-501 (Standards of Medical Fitness), chapter 7, 4(b)2, and claims the applicant has met MRDP for asthma based on inability to return to duty after optimal medical management and restricted duty limitations. The condition has existed since 2013. Further treatment is not likely to allow the applicant to return to full duty.

(2) Item 7b (Diagnosis not Meeting Medical Retention Standards – Onset/or Defining Injury History) notes/records show the applicant reported a history of breathing problems (wheezing, labored breathing) since entering on active duty that has been

associated with running. While deployed to Qatar in 2011, he experienced shortness of breath with physical activity that included exercise and physically demanding tasks. Beginning December 2013, he was evaluated and treated for exercise-induced asthma with medication that included Advair, Singulair, along with a bronchodilator as a rescue inhaler. He received a profile that limited his physical activities including running and wearing a protective mask. Pulmonary Disease specialty evaluation in January 2014 documented mild persistent asthma based on Pulmonary function tests (PFTs) showing mild obstructive defect with positive methacholine challenge. The soldier did not have any improvement in his condition because of being medically treated. Medical records show that pulmonary specialists, in addition to his primary care provider, have indicated that he has received maximal medical treatment for this condition.

b. DA Form 3947, 7 May 2015, which shows an MEB convened to evaluate the applicant for 38 separate medical conditions/defects, 37 which either had no diagnosis rendered or was found to be not disqualifying. However, the applicant was diagnosed with exercise induced asthma, which was found disqualifying in accordance with Army Regulation 40-501, paragraph 3-27a. He was referred to a Physical Evaluation Board.

c. Impartial Provider Review Request, 21 May 2015, which notes the applicant reviewed the contents of the MEB and NARSUM and did not request an impartial medical review of his MEB.

d. Orders 042-0006, Installation Management Command – Europe, 11 February 2016, which reassigned the applicant for separation processing. The orders state:

(1) Disability is based on injury or disease received in the 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 period of war as defined by law: No.

(2) Disability resulted from a combat related injury as defined in 26 US Code 104: No.

e. Letter, AHRC, 10 August 2023, Army CRSC Decision Letter, which approved his claim for CRSC at 60%. The form notes asthma and obstructive sleep apnea are verified as combat-related due to an instrumentality of war.

8. Directive-Type Memorandum (DTM) 11-015 (IDES), 19 December 2011, Attachment 8 (IDES Separation Program Designator (SPD) Codes) identifies reasons for and types of separation from active duty. The separation code "SEJ" is the code for Soldiers separating under Army Regulation 635-40, chapter 4, for mandatory retirement resulting from permanent physical disability (IDES).

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based by the HRC letter, dated 10 August 2024, finding the applicant's asthma and obstructive sleep apnea are combat-related due to instrumentality of war, the Board recommended changing the applicant's separation/retirement order (Order #042-0006), dated 11 February 2016 to reflect the above disabilities are from a combat related event as defined by 26 USC 104.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amended the applicant's separation/retirement order (Order #042-006), dated 11 February 2016, by:

DELETING THE WORDS: Disability is based on injury or disease received in the 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 period of war as defined by law: No. Disability resulted from a combat related injury as defined by 26 USC 104: No.

INSERTING THE WORDS: Disability is based on injury or disease received in the 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 period of war as defined by law: YES. Disability resulted from a combat related injury as defined by 26 USC 104: YES.

//SIGNED//

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. 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. Army Regulation 40-501 governs medical fitness standards for enlistment, induction, appointment, retention, and separation, including retirement. Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military – this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

3. Army Regulation 635-40 establishes the Army Disability Evaluation System (DES) in accordance with Title 10, U.S. Code, Chapter 61 and the Department of Defense Instruction 1332.18 (DES). 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 to reasonably perform their duties it provides for the disposition of the Soldier according to applicable laws and regulations. Public law defines physical DES as a system or process of the Department of Defense for evaluating the nature and extent of disabilities affecting members of the armed forces. It is comprised of MEBs, PEBs, counseling of Soldiers, and mechanism for final disposition.

a. The Soldier is issued a permanent profile in accordance with Army Regulation 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial factors for a condition that appears to not meet medical retention standards. A Soldier must be assigned a P3/P4 profile to refer a Soldier to the DES.

b. An MEB is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. An MEB may determine that a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. The MEB must not provide conclusions or recommendations regarding fitness determinations.

c. The PEB determines fitness for purposes of a Soldier's retention, separation or retirement.

(1) All cases will be initially adjudicated by the Informal PEB. The Informal PEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service. The decision will be document on a DA Form 199.

(2) The Soldier can accept the Informal PEB decision thereby waiving his or her right to a formal hearing. The Soldier can non-concur with the Informal PEB decision and demand or request a formal hearing.

d. The USAPDA will review the PEB before the PEB recommendations and finding are approved for or by the Secretary of the Army (SECARMY) or higher authority, as applicable. The USAPDA has the authority to approve disability cases for the SECARMY and issues disposition instructions.

e. Subparagraph j (Armed conflict – instrumentality of war) shows certain advantages accrue to Soldiers who are retired for physical disability. The specific circumstances are:

(1) The disability resulted from injury or disease received in the line of duty (LOD) as a direct result of armed conflict and which itself renders the Soldier unfit. A disability may be considered a direct result of armed conflict if –

(a) The disability was incurred while the Soldier was engaged in armed conflict, or in an operation or incident involving armed conflict or the likelihood of armed conflict; while the Soldier was interned as a prisoner of war or detained against his will in the custody of a hostile or belligerent force; or while the Soldier was escaping or attempting to escape from such prisoner of war or detained status.

(b) A direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

(2) The disability is unfitting, was caused by an instrumentality of war, and was incurred in LOD during a period of war as defined by law. (The periods of war are defined in Title 38, U.S. Code, chapters 101 and 301.)

c. The Glossary, Section II (Terms) defines relevant terms, as follows:

(1) Armed conflict: Any activity in which American military personnel are engaged with a hostile or belligerent nation, faction, or force. The activity may include a war, expedition, occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, or similar situation.

(2) Combat-related injury: A personal injury or sickness that a Soldier incurs under one of the following conditions: as a direct result of armed conflict; while

engaged in extra hazardous service; under conditions simulating war; or which is caused by an instrumentality of war.

(3) Instrumentality of war: A device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It may also be a device not designed primarily for military service if use of or occurrence involving such a device subjects the individual to a hazard peculiar to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits. There must be a direct causal relationship between the use of the instrumentality of war and the disability and the disability must be incurred incident to a hazard or risk of the service.

3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

4. Title 26 (Internal Revenue Code), U.S. Code, section 104 (Compensation for injuries or sickness), provides, in general, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include, in pertinent part, (a)(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980.

a. It also provides special rules for combat-related injuries. For purposes 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
- under conditions simulating war, or
- which is caused by an instrumentality of war

b. It further shows the only amounts taken into account under subsection (a)(4) shall be the amounts received by reason of a combat-related injury.

5. The Special Compensation Branch (SCB), Combat Related Special Compensation Division, U.S. Army Human Resources Command, is responsible for verifying that claimants' injuries are directly connected to combat or combat-related operations. The SBC determines a combat-related injury through an instrumentality of war:

a. Incurrence during actual period of war is not required. However, there must be a direct causal relationship between instrumentality of war and disability. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designated primarily for Military Service and intended for use in such Service at the time of the occurrence or injury. It may include such instrumentalities not designated primarily for Military Service if use of, or occurrence involving, such instrumentality subjects the individual to a hazard peculiar to Military Service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving military combat vehicle, injury or sickness caused by fumes, gases, or explosion or military ordinance, vehicles, or material.

6. DTM 11-015 IDES, 19 December 2011, Attachment 8 identifies reasons for and types of separation from active duty. The separation code "SEJ" is the code for Soldiers separating under Army Regulation 635-40, chapter 4, for mandatory retirement resulting from permanent physical disability (IDES).

7. 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 considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//