

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240002836

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)
- Air Force (AF) Form 3899 (Aeromedical Evacuation Patient Record) (2 forms)
- Medical Evaluation Board (MEB) Narrative Summary (NARSUM)
- DA Form 3947 (MEB Proceedings)
- DA Form 199
- retirement orders

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. His DA Form 199 incorrectly states that three of his unfitting conditions did not take place in a combat theater when they actually did. Those conditions are supraventricular arrhythmias, right knee pain, and left knee pain. These conditions should be noted as occurring in a combat theater. Additionally, the supraventricular arrhythmias are designated as not resulting from an instrumentality of war and that is incorrect as well. The record should read "is the result of an instrumentality of war."

b. His MEB NARSUM detailing the medical conditions directly conflict with these designations. Condition #1 on page 2 of 8, leads off with the words "The Soldier had

onset of recurrent atrial fibrillation first noted in 2003 while in Iraq" and again on page 3 under bullet "b" The onset is described as "The Soldier was on active duty deployed for his first episode in 2003." Condition #2 for bilateral knee pain on page 4 bullet "a" reads "He was air evacuated in 2003 to Landstuhl." The arrhythmias should be designated as a result of instrumentality of war as they started the same day that he received the 3rd shot in the anthrax vaccination series. That same day he was air evacuated to the 28th Combat Support Hospital in Iraq. Finally, the AF Forms 3899 reflect both, the knee pain and atrial fibrillation, in October of 2003.

3. The applicant's record shows enlisted service in the Regular Army from 12 August 1993 to 30 September 1996 and from 2 October 2001 to 16 July 2009. His enlisted service includes service in Iraq from 1 April to 21 October 2003 and in Kuwait from 29 August 2007 to 23 November 2008.

4. The applicant was appointed a Reserve warrant officer on 17 July 2009 with concurrent active duty.

5. The applicant provided two AF Forms 3899 showing he was medically evacuated on 21 October 2003 from Kuwait to Landstuhl, Germany and from Landstuhl to Fort Liberty, NC on or around 27 October 2003. The forms show diagnoses of right knee meniscal tear, knee OCD effusion, and atrial fibrillation.

6. The applicant's MEB Proceedings show the MEB recommended his referral to a PEB based on the following condition which were medically unacceptable in accordance with Army Regulation 40- 501 (Standards of Medical Fitness):

- recurrent atrial fibrillation. despite ablation
- bilateral knee pain, secondary to osteoarthritis
- neck pain, secondary to mild spondylosis

7. The MEB Proceedings also shows he was diagnosed with seven additional conditions which met medical retention standards per Army Regulation 40-501.

8. On 26 July 2012, a PEB found the applicant unfit for further military service due to the following conditions and the corresponding PEB remarks:

a. Supraventricular arrhythmias: This condition is listed on the DA Form 3947 as recurrent paroxysmal atrial fibrillation; status post ablation in 2010. This condition did not arise in a combat theater, was not due to combat, and is not the result of an instrumentality of war.

b. Right knee pain: This condition is listed on the DA Form 3947 as bilateral knee pain. This condition did not arise due to combat, did not occur in a combat theater, and

was not caused by an instrumentality of war. Soldier complained of knee pain with no traumatic event and underwent arthroscopic surgery on right knee in 2003.

c. This condition is listed on the DA Form 3947 as bilateral knee pain. This condition did no arise due to combat, did not occur in a combat theater, and was not caused by an instrumentality of war. Soldier complained of knee pain with no traumatic event.

d. Degenerative arthritis of the cervical spine. This condition is listed on the DA Form 3947 as neck pain secondary to mild spondylosis. This condition did not arise as a result of combat, in a combat theater or due to an instrumentality of war. Pain began in 2011 in the Continental United States.

9. The PEB recommended a combined 50% disability rating and the applicant's permanent disability retirement. The DA Form 199 contains the following entries in Section V (Administrative Determinations):

a. 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.)

b. 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.

10. Orders 254-0159, dated 10 September 2012, issued by Headquarters, U.S. Army Garrison Command, Fort Knox, KY, ordered the applicant's release from assignment and duty because of physical disability and his permanent disability retirement effective 26 November 2012. The orders contain the following entries:

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

11. The applicant's DD Form 214 shows he was retired on 26 November 2012 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, permanent.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows in July 2012, a PEB found the applicant unfit for Supraventricular arrhythmias, Right and Left knee pain, and Degenerative arthritis of the cervical spine. He was rated at 50% and placed into permanent disability retirement. The PEB did not find his medical conditions combat related. To determine combat relation, the Board considered the onset of each condition. None of his conditions was either a direct result of an armed conflict or caused by an instrumentality of war. Like the PEB, this Board finds no evidence that the applicant's conditions were the direct result of armed combat; related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war. Therefore, the Board found insufficient probative evidence upon which to designate the disabilities that led to his medical retirement as combat related.

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. 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 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).

3. 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.

4. 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.

5. 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//