

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240003052

APPLICANT REQUESTS:

- correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and retirement orders to show his disabilities were incurred in the line of duty during a period of war
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 2-page self-authored statement
- Medical Evaluation Board (MEB) Narrative Summary (NARSUM) and MEB Proceedings
- DA Form 199, dated 16 May 2013
- Headquarters, III Corps, Fort Cavazos (formerly Fort Hood), TX, Orders 151- 0109, dated 31 May 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- third-party witness statement
- 12 pages of medical records

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. During his deployment to Iraq in 2004, he sustained a head injury from a mortar attack, which he firmly believes directly caused the chronic migraines he now experiences. Additionally, the rigorous combat training he underwent in preparation for deployment resulted in a shoulder injury that continues to limit his mobility. Despite the clear connection between these events and his current medical conditions, the "NO"

marking regarding the service connection of his disability contradicts his experiences. The initial mortar attack and the demanding nature of the combatives training undoubtedly contributed to the onset and ongoing issues with his migraines and shoulder. Therefore, he respectfully request the ABCMR to thoroughly reevaluate his case and consider reclassifying his disability to acknowledge the direct link to the initial mortar attack in Iraq and the combatives training he received while actively serving his country.

b. While he acknowledges the error in his medical retirement orders was discovered just this year, exceeding the 3-year window, he respectfully requests the Board to consider his application in the interest of justice due to limited knowledge. Upon his medical retirement in 2013, the focus was on transitioning to civilian life and navigating the initial stages of his disability. At that time, he was not fully aware of the potential consequences of the "NO" marking regarding the service connection of his disability. His recent attempt to claim credit for his military service while working as a General Schedule (GS) civilian employee brought this discrepancy to his attention. Understanding the potential benefits associated with a service-connected disability classification motivated him to seek a correction. Furthermore, the nature of his conditions (migraines and shoulder injury) has demonstrably impacted his life since the initial injury and continues to do so. Therefore, he believes a reevaluation of his case is warranted to ensure his military service and the connected disabilities are accurately reflected in his records.

3. In a 2-page self-authored statement, the applicant further states:

a. He was forced to medically retire from the U.S. Army in 2013 after over 13 years of service. During his first deployment to Iraq in 2004-2005, while working on a truck, he was directly impacted by a mortar blast that detonated containers filled with oxygen and acetylene tanks. The immense force of the blast threw him from under a truck he was working on, causing immediate head pain and disorientation. This incident marked the clear onset of his chronic migraines, which have persisted and worsened ever since, as evidenced by the enclosed medical records from 2004-2005. Beyond the initial mortar blast, he was exposed to frequent mortar attacks throughout his three deployments in Iraq. This constant threat and the accompanying stress significantly contributed to the development and exacerbation of his migraines. Additionally, exposure to environmental factors like burn pits and harsh conditions likely played a role.

b. Rigorous combatives training undertaken in preparation for these deployments resulted in a chronic shoulder injury, first documented in training records from 14 June 2010. Throughout his final deployment to Iraq in 2011, after sustaining the shoulder injury, the condition was significantly worsened due to having to wear over 100 pounds of gear and perform strenuous duties as a wrecker operator, frequently lifting and using his injured shoulder to recover vehicles during missions over the year-long deployment.

His medical records spanning 2004-2011 chronicle the development, treatment, and progression of migraines and shoulder limitations stemming from these repeated in-service injuries.

c. His retirement orders contain a contradiction. The section stating "Disability resulted from a combat-related injury as defined in 26 USC 104 [Title 26, U.S. Code, section 104]" is correctly marked "YES." However, the section regarding the service connection of his disability is incorrectly marked "NO." This discrepancy fails to acknowledge the direct link between his service-related injuries and current medical conditions, despite clear evidence in his records. This error has severely impacted his ability to claim military service credits towards civilian employment and benefits as a current GS employee.

d. The chronic migraines and shoulder limitations have significantly diminished his quality of life and ability to maintain gainful employment commiserate with his experience. He asks the ABCMR to reconsider his case based on the enclosed evidence and applicable regulations, including but not limited to:

- buddy letters regarding the onset/progression of migraines
- extensive treatment records linking current conditions to in-service injuries
- Army Regulation (AR) 600-8-4 (Line of Duty Policy, Procedures, and Investigations) on line of duty determinations for hostile injuries
- AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) requiring service-connection if disability progressed from combat injury
- AR 635-200 (Active Duty Enlisted Administrative Separations) mandating separation authorities note duty-related disabilities
- Department of Defense Instruction (DoDI) 1332.18 (Disability Evaluation System) requiring accurate disability evaluation system determinations

e. A reevaluation applying these regulations to the evidence is essential to correct the inaccurate record regarding the service-connection of his disability. Conclusion: The evidence enclosed clearly demonstrates the combat-related injuries and physical demands of his deployments directly caused his current chronic migraines and worsened his pre-existing shoulder condition into a chronic, limiting disability. Rectifying this inconsistency would properly acknowledge the sacrifices he made for his military service in accordance with Army and DoD policies. He stands ready to provide any additional information and respectfully request a hearing if needed.

4. The applicant enlisted in the Regular Army on 5 June 2000. His record shows he served in Iraq from 21 September 2004 to 20 September 2005, 16 December 2008 to 29 November 2009, and from 11 February to 23 November 2011.

5. On 16 May 2013, a PEB found the applicant unfit for further military service due to the following conditions and the corresponding PEB remarks:

a. Classic migraine with aura: This condition began in 2005 in Iraq, when the Soldier began experiencing chronic headaches. Although the Soldier reports that he was exposed to a concussive blast, there is no objective evidence to support a link between his headaches and a mortar attack. The Soldier has not been evaluated for a traumatic brain injury due to his headaches.

b. Left shoulder pain with bicep tendonitis: This condition began in June 2010 at Fort Hood, Texas, when the Soldier injured his left shoulder during combatives (V3-Yes).

6. The PEB recommended a combined 40% 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 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.

7. Orders 151-0109, dated 31 May 2013, issued by Headquarters, III Corps, Fort Cavazos (Hood), TX, ordered the applicant's release from assignment and duty because of physical disability and his permanent disability retirement effective 20 August 2013. 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: Yes

8. On 20 May 2013, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case.

9. The applicant's DD Form 214 shows he was retired on 20 August 2013 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, permanent (enhanced).

10. The applicant provided a witness statement from a former member of his unit, dated 13 March 2024, stating the following:

I am providing this statement as [the applicant's] former fellow Soldier and eyewitness to the events that led to his combat-related injuries during our deployment to Iraq in 2004-05. This statement is intended to support the correction of [the applicant's] military records to accurately reflect the service-connected nature of his disabilities.

In October 2004, [the applicant and I were co-located at Camp Diamondback, Mosul Iraq, serving together in the 536th Maintenance Company. We were both conducting maintenance operations on a disabled vehicle when our area came under enemy mortar fire. One of the mortar rounds impacted and detonated a stack of containers housing oxygen and acetylene tanks very close to where we were working under the vehicle. The powerful explosion pushed us both violently from underneath the truck.

I vividly recall immediate ringing in the ears from the concussive blast and getting an extreme headache shortly thereafter the attack. Despite our apparent injuries, we were forced to seek quick cover and cover down until the all-clear was given. It was only after the attack that [the applicant] and I were able to get evaluated by medics for apparent physical injuries. In the following days and weeks, [the applicant] reported experiencing severe headaches, dizziness, and other concussion-related symptoms consistent with the blow he took during the mortar strike. I personally witnessed him seeking treatment multiple times for these issues stemming from that combat incident.

Based on my firsthand account of the initial event in October 2004, and [the applicant's] subsequent visible symptoms, there is no doubt in my mind that the chronic migraine condition he now suffers from was directly caused by the head injury sustained in the line of duty from that mortar attack. I can attest without reservation that his disability had a clear origin from hostile enemy action during our combat deployment. [The applicant] has my utmost respect for enduring the "invisible" trauma and pushing through his duties despite this injury.

In conclusion, based on my firsthand account and observations, it is clear that [the applicant's] chronic migraine condition and related disabilities are directly attributable to the head injury he sustained from the enemy mortar attack during our combat deployment. I firmly believe his military records should be corrected to reflect the

service-connected and combat-related nature of his injuries. I am willing to provide any additional information or testimony necessary to support this matter.

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

a. On 16 May 2013, a PEB found the applicant physically unfit for classic migraine with aura, and left shoulder pain with biceps tendonitis, and recommended ratings of 30% and 10%, respectively, with a total rating of 40%. Both conditions were annotated on DA Form 199, Section III, to have been incurred or aggravated in the line of duty. However, with respect to his migraine condition, the PEB determined “there was no objective evidence to support a link between his headaches and a mortar attack.” Therefore, no V3 code was awarded for that condition. In contrast, his left shoulder pain was determined to have been the result of an injury incurred during combatives and a V3 code was awarded accordingly.

b. The DA Form 199, Section V, Item 1, states that the “disability disposition is not based on a 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.” However, Item 3 of the same section states that the “disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.” The applicant concurred with the results of his PEB, after having been counseled by his PEB Liaison Officer on 20 May 2013.

c. His discharge orders indicate that his disability was not 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. However, the disability was determined to have resulted from “a combat related injury as defined by 26 USC 104.”

d. Analysis: AR 15-185 (ABCMR), paragraph 2-9, states that, with respect to the allegations of errors related to military records, there is a presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Moreover, under AR 15-185, paragraph 2-4, applicants must file an application for the correction of military records within three years after an alleged error or injustice is discovered or reasonably should have been discovered. Based on the facts presented, the applicant has failed to overcome the presumption of administrative regularity or otherwise demonstrate error or injustice.

e. The applicant states in his ABCMR application that his retirement orders contain a contradiction in that it stated, “Disability resulted from a combat-related injury as defined by 26 USC 104” but “the section regarding service connection is incorrectly marked ‘No’.” He claims, without further explanation or supporting evidence, that the

error has severely impacted his ability to claim military service credits towards civilian employment and benefits as a current GS employee.

f. Based on the evidence of record, the PEB correctly determined that there was insufficient evidence to conclude that the applicant's migraine condition was combat related. Among other things, medical records from 29 September 2005, following the October 2004 mortar blast (witness statement dated 13 March 2024) that the applicant's claims to be the cause of his migraines, note that he had experienced 4 months of recurring headache with dizziness. Further, on 11 October 2005, treatment notes indicated that "[i]t is difficult to say at this point what the initial trigger [of the service member's chronic daily headaches] was, but patient has been taking daily analgesics since Jun 2 2005." The headaches were described as being "secondary to analgesic overuse."

g. Moreover, it was noted that the patient had "some symptoms of migraine, however it is difficult to evaluate appropriately at this time given the analgesic history." Moreover, a NARSUM excerpt provided by the applicant states that he was never seen for the exposure to the blast as causing his headaches. It also indicates that a CT of the head, dated 13 April 2007, was normal, and that he thereafter deployed to Iraq in 2008-2009 and 2011. A subsequent CT of the head dated 16 May 2012 was also normal. Thus, there was ample evidence of record in support of the PEB's determination regarding the non-combat-related nature of the migraine condition.

h. Notwithstanding the PEB's determination regarding the Soldier's migraine condition, a V3 code was applied to his left shoulder pain condition. Moreover, both conditions were determined to be in the line of duty, and his recommended rating of 40% justifies permanent disability retirement. Finally, his orders clearly indicated that his disability "resulted from a combat related injury..." In sum, based on the totality of the evidence, the applicant has failed to demonstrate the PEB's decision in his case was incorrect or resulted in injustice. Conclusion: For the reasons set forth above, the USAPDA find the request to be legally insufficient.

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

I acknowledge the conclusions drawn in the advisory opinion, particularly regarding the characterization of my disability related to migraines. However, I would like to offer the following points for reconsideration:

Consistency in Documentation:

The discharge orders state that my disability "resulted from a combat-related injury as defined by 26 USC 104," yet this is contradicted by the statement that the

disability was not received in time of duty as a direct result of armed conflict. This discrepancy directly affects my eligibility for certain benefits and employment credits, which I believe should be rectified. Medical Evidence and Causation: While it is noted that there was no objective evidence linking my migraines directly to a specific combat event (the mortar attack), the chronic nature of my headaches postcombat might suggest a different narrative. The medical records cited from 2005 indicate a complex history involving both combat exposure and subsequent medical treatment, which might not have been fully considered in relation to the onset or aggravation of my migraines.

Legal and Regulatory interpretation: The interpretation of "combat-related injury" under 26 USC 104 seems to have been narrowly applied in my case. The regulations under this section are intended to include injuries or conditions that are a result of or are aggravated by combat conditions, which could encompass my situation if viewed more broadly.

Impact on Civilian Benefits: The current characterization directly impacts my ability to claim certain military service credits for civilian employment. This not only affects my status as a GS employee but also future retirement benefits and health care provisions.

Given these points, I respectfully request that the ABCMR reconsider the advisory opinion's recommendation. I suggest:

A reevaluation of the medical evidence to potentially link the onset of migraines with combat exposure, even if not directly to one specific incident.

A clarification or correction in my discharge orders to ensure consistency with the legal definitions under 26 USC 104 and 10 USC 10216 for combat-related injuries.

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 and recommendations outlined in the PEB advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and retirement orders to show his disabilities were incurred in the line of duty during a period of war.

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.

5/4/2025

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. 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//