

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240003670

APPLICANT REQUESTS: correction of his records to show his physical disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104.

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored letter to the Army Review Boards Agency (ARBA)
- DD Form 689 (Individual Sick Slip), 4 March 2013
- DA Form 638 (Recommendation for Award), 18 March 2013
- DA Form 4980-18 (Army Achievement Medal Certificate), 29 March 2013
- Soldier Deployment History Outprocessing Report, 16 March 2016
- partial DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 31 January 2024
- Headquarters, U.S. Army Physical Disability Agency (USAPDA) Order D 039-34, 8 February 2024
- self-authored letter to the USAPDA, 4 March 2024

FACTS:

1. The applicant states:

a. His records pertaining to his medical retirement from the Army should be corrected to reflect his physical disability resulted from a combat related injury as defined in Title 26, U.S. Code, section 104. He submitted a request for revision with the USAPDA on 4 March 2024, and unfortunately received a response on 19 March 2024, stating his case had been closed and he was referred to the Army Board for Correction of Military Records (ABCMR) to make the necessary amendment to reflect "combat retirement."

b. Enclosed, please find his Soldier Deployment Outprocessing Report, DD Form 689, Army Achievement Medal Certificate, and the DA Form 638, recommending the Army Achievement Medal. These documents corroborate he incurred a medical condition while participating in battalion control point duties with a dedicated 50 caliber machine gun equipped with a radio for effective communication, SWEEP team, and

maintenance operations at the National Training Center (NTC) rotation at Fort Irwin, CA. This took place in preparation for war simulation ahead of [presumably intended to read the unit's deployment to] Afghanistan in 2013, and therefore meets the requirements for combat incurred/instrumentality of war. Unfortunately, he was placed on quarters for a few days at the NTC, due to severe headaches, severe fibromyalgia, body aches, shoulder pains, and severe back aches.

c. He would greatly appreciate it if the Board could make the necessary corrections to his retirement code to reflect a "combat retirement". As his medical conditions of migraine headache, sever fibromyalgia, body pains, shoulder pains, and severe backaches began as a result of his activities at the NTC rotation in California, it is only fitting that his retirement code reflects "combat retirement."

2. The applicant enlisted in the Regular Army on 12 June 2012, and was awarded the Military Occupational Specialty (MOS) 92A (Automated Logistical Specialist).
3. A DD Form 689 shows, on 4 March 2013, the applicant was given an individual sick slip listing his disposition as 48 hours quarters for migraine and tension headaches, pain sensation, shoulder strain, and back pain.
4. An Army Achievement Certificate shows the applicant was awarded the Army Achievement Medal on 29 March 2013, for exceptionally meritorious achievement as an automation specialist during the NTC Rotation 13-4, from 29 January 2013 through 10 March 2013. The corresponding DA Form 638 details the applicant's achievements for which he was awarded the Army Achievement Medal, including but not limited to assisting in maintenance operations for Task Force Gunfighter, conducting entrance point duties, participation in the NTC rotation, and unmatched equipment readiness.
5. A Soldier Deployment History Outprocessing Report shows the applicant was credited with 26 days of unit training in a designated training area in the U.S. from 9 February 2013 through 7 March 2013.
6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 11 June 2016, due to completion of required active service. He was credited with 4 years of net active service and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement).
7. A DA Form 5016 (Retirement Accounting Statement) shows the applicant entered a USAR Troop Program Unit (TPU) on 11 June 2016.
8. A USAPDA memorandum, 8 June 2023, shows the USAPDA administratively terminated the applicant's non-duty related PEB. On 8 June 2023, the U.S. Army Human Resources Command (AHRC) provided a determination that the applicant's

chronic migraine headaches and fibromyalgia are considered in the line of duty (LOD) by the preponderance of evidence in lieu of an LOD Investigation.

9. 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, VA Proposed Rating Decision for DES purposes, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

10. A DA Form 199 shows:

a. An informal PEB convened for a duty-related PEB on 31 January 2024, while the applicant was in a USAR drilling status, where he was found physically unfit with a recommended rating of 70 percent and that his disposition be permanent disability retirement.

b. The applicant's unfitting conditions are:

(1) Migraine, including migraine variants (MEB diagnosis (Dx) 1); 50 percent; he first sought treatment in February 2016, at Fort Riley, KS, and reported worsening symptoms for 1 week without an associated injury or trauma. This condition has been evaluated by a neurologist and treated with multiple medications. Despite attempted treatments, duty limiting symptoms have persisted. Although the applicant indicated to the VA C&P examiner that the condition presented while training "in the box" at Fort Irwin, CA, there is no indication that his condition was caused by an injury sustained while simulating combat (V1/V3 – No: Not a direct result of armed conflict, caused by an instrumentality of war, or incurred during hazardous service or conditions simulating war). He is unfit because the functional activity limitations associated with this condition make him unable to reasonably perform his required duties.

(2) Fibromyalgia (MEB Dx 2); 40 percent; he was first diagnosed with this condition in June 2017, by a rheumatologist after reporting widespread pain that started around 2013, while on active duty and in training at Fort Irwin, CA. He reported symptoms were triggered by an increase in heavy lifting and physical activity. Despite attempted treatments with multiple medications, physical therapy, and injections, duty limiting symptoms have persisted. Although the applicant indicated to the VA C&P examiner that the condition presented while training "in the box" at Fort Irwin, CA, there is no indication that the condition was caused by an injury sustained while simulating combat (V1/V3 – No: Not a direct result of armed conflict, caused by an instrumentality of war, or incurred during hazardous service or conditions simulating war). He is unfit because the functional activity limitations associated with this condition make him unable to reasonably perform his required duties.

c. The applicant's medical condition determined not to be unfitting are MEB Dx 3-8.

d. The PEB made the following findings:

(1) The disability disposition is not based on disease or injury incurred in the 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 for Title 10, U.S. Code, section 10216.

(3) The Soldier's disability retirement is not due to a disability incurred in the LOD in a combat zone or as the result of performing combat-related operations.

e. The applicant signed the form on 6 February 2024, indicating he had been advised of the findings and recommendations of the informal PEB and concurred, waiving a formal hearing of his case. He also indicated he did not request reconsideration of his VA ratings.

11. USAPDA Order D 039-34, 8 February 2024, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit her retirement for permanent physical disability effective, 9 March 2024, with a disability rating of 70 percent. The orders further show:

a. Disability is not based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law.

b. Disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

c. Retirement is not due to a disability incurred in the LOD in a combat zone or as a result of performing combat-related operations.

12. In a self-authored letter to the USAPDA, 4 March 2024, the applicant states:

a. He enclosed the Soldier Deployment Our-Processing Report, DD Form 689, Army Achievement Certificate, and DA Form 638, which corroborate combat and/or instrumentality of war. He incurred his medical condition (hitting his head on the 50 caliber machine gun) while participating in battalion control point duties, SWEEP team, and maintenance operations while at the NTC rotation at Fort Irwin, CA, for war simulation "ahead of Afghanistan in 2013." He was placed on quarters for a few days at NTC due to severe headaches, body aches, and back pains.

b. He would appreciate it if the USAPDA would make the necessary correction to his retirement code to reflect "combat retirement." Due to the fact that his medical conditions were the result of his activities at the NTC rotation, a correction to show they were the result of an instrumentality of war is appropriate.

13. Department of the Army Order 0007492324.00, 8 March 2024, reassigned the applicant to the Permanent Disability Retired List (PDRL) effective 9 March 2024, due to mandatory retirement, with assignment loss reason CF (Placement on PDRL).

14. In the adjudication of this case, and advisory opinion was provided by the USAPDA legal advisor, 16 December 2024, which shows:

a. This memorandum was provided in response to the applicant's request for combat codes for his unfitting migraine and fibromyalgia conditions. For the following reasons, the request is found to be legally insufficient.

b. On 31 January 2024, the applicant was found unfit for his referred conditions by the IPEB. He was placed onto the PDRL with a combined 70 percent rating. As part of its findings and recommendations, the IPEB addressed his assertion that his conditions resulted from his rotation at the NTC and should warrant a V1/3 combat code. Specifically, the IPEB stated that, "Although the Soldier indicated to the VA Compensation and Pension examiner that the condition presented while training in "the box" at Fort Irwin, California, there is no indication that the condition was caused by an injury sustained while simulating combat (V1 N3 - No: Not a direct result of armed conflict, caused by an instrumentality of war, or incurred during hazardous service or conditions simulating war)." The applicant now appeals seeking to have the same combat codes that were rejected by the IPEB added to his case.

c. Despite the applicant's repeated assertion that his condition arose from an injury he sustained while "in the box" at NTC, he has still failed to provide sufficient independent evidence to demonstrate that the conditions are combat related. Service in a field or austere environment is not enough to establish causation. There must be a direct causal connection between the injury and the training. Here, the only evidence he has submitted to establish his claim is a quarters-slip for 48 hours, dated 4 March 2023; his personal statement from 4 March 2024; and his Army Achievement Medal award due to his service at NTC. The quarters-slip fails to describe how he injured his head and back. His statement from 4 March 2024 is not corroborated by witnesses. Indeed, AHRC, LOD Section stated that, "He first sought treatment for headaches 15 February 2016, at the emergency room due to no known injury or trauma with follow-up at the Irwin Army Community Hospital 18 February 2016." His Army Achievement Award does not mention any injury. What is left missing are possible buddy statements from those who witnessed the injury or even contemporaneous medical records indicating how the injuries were sustained. Moreover, the applicant reviewed and accepted the findings of

the IPEB. Thus, he waived his right to appeal to the formal PEB to argue that he should have been awarded a combat code for his conditions.

d. As such, the presented case file does not make it clear what, if any, error the PEB committed at the time of the applicant’s case in January 2024; therefore, his appeal is legally insufficient.

15. On 17 December 2024, the applicant was provided with a copy of the USAPDA advisory opinion and given an opportunity to submit comments in rebuttal but did not respond.

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 findings and recommendations outlined in the PDA advisory opinion and the lack of any submitted rebuttal of the applicant of those findings and recommendation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s military record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X //SIGNED//

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. 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

2. 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.

3. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, 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.

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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//