

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2025

DOCKET NUMBER: AR20240005425

APPLICANT REQUESTS:

- correction of his DD Form 215 (Correction to DD Form 214 (Certificate of Release or Discharge from Active Duty)), 14 October 2016, to show:
 - in item 26 (Separation Code) SEJ in lieu of SFJ
 - in item 28 (Narrative Reason for Separation) Disability, Permanent (Enhanced) in lieu of Disability, Permanent
- correction of U.S. Army Garrison-Hawaii Orders 286-0030, 12 October 2016, to show:
 - Separation Program Designator (SPD) SEJ in lieu of SFJ1
 - Disability resulted from a combat related injury as defined in Title 26 U.S. Code, section 104 YES in lieu of NO
 - Sex M in lieu of F
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters, Combined/Joint Task Force-76 Permanent Orders 219-037, 6 August 2004
- Tripler Army Medical Center (TAMC) Form 691-R-E (Discharge Notes), 4 October 2005
- Bravo Company, 2nd Battalion, 27th Infantry Regiment memorandum, 23 February 2006
- Headquarters, TAMC memorandum, undated
- Bravo Company, 2nd Battalion, 27th Infantry Regiment memorandum, 8 March 2006
- Certificate, 8 March 2006
- Enlisted Record Brief (ERB), 27 April 2006

- Medical Evaluation Board (MEB) Narrative Summary (NARSUM), 31 March 2006
- two facsimile transmittal sheets, July 2006
- Office of Soldiers' Legal Counsel (Physical Evaluation Board (PEB)) memorandum, undated
- Client Information Packet, 10 July 2006
- U.S. Army Garrison-Hawaii Orders 250-0010, 7 September 2006
- DD Form 214, covering the period ending 3 November 2006
- Physical Disability Board of Review (PDBR) Record of Proceedings (ROP), 26 July 2016
- PDBR memorandum, 26 July 2016
- Army Review Boards Agency (ARBA) memorandum, 12 September 2016
- ARBA letter, 12 September 2016
- U.S. Army Garrison-Hawaii Orders 286-0020, 12 October 2016
- U.S. Army Garrison-Hawaii Orders 286-0030, 12 October 2016
- DD Form 215, 14 October 2016
- U.S. Army Physical Disability Agency (USAPDA) letter, 27 October 2016
- email correspondence, 11 September 2017
- Department of Veterans Affairs (VA) Rating Decision, 23 May 2023
- Hurricane Sally flooding photos
- Title 26, section 104 excerpt
- Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) excerpt

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 DD Form 214, as corrected by a DD Form 215 currently shows in item 26 (Separation Code) SFJ and in item 28 (Narrative Reason for Separation) Disability, Permanent. Those items should be corrected to show in item 26 SEJ and in item 28 Disability, Permanent (Enhanced) or a combat equivalent.

b. His retirement orders, 286-0030, 12 October 2016, also contain three errors that need correcting. In Section One they show SPD SFJ1, which should be corrected to show SEJ. In Section Two of the orders, it shows disability resulted from a combat related injury as defined in Title 26, U.S. Code, section 104: NO, which should be corrected to YES and his sex is shown as F, which needs correcting to M.

c. His unfitting injuries were incurred during a mission on a combat reconnaissance patrol mission in Afghanistan, the purpose of which was to disrupt Taliban movements outside of Forward Operating Base (FOB) Anaconda. During the patrol, he carried a typical combat load on his person and also carried an assault bag, emergency medical equipment, water, and any other equipment needed for the squad's mission success.

d. On the patrol, the applicant fell when he lost his foothold and tumbled down a ledge, injuring his neck, upper and lower spine, and subsequently causing nerve damage to his arms and legs. The location, purpose, and nature of the activity where the unfitting injuries were incurred satisfies the requisite conditions to be considered combat-related under Title 26, U.S. Code, section 104 and Army Regulation 635-40. Even if the location were Pohakuloa Training Area, Hawaii, this scenario would still satisfy eligibility for combat-related injury under the war simulations provision.

e. He did have a prior neck injury from a soccer match in April 2001; however, that injury healed, was not considered unfitting, and he was cleared as fit for duty. Army Regulation 635-40 states the standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict and a physical disability will be considered combat-related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under the following circumstances: (1) as a direct result of armed conflict, (2) while engaged in hazardous service, or (3) under conditions simulating war.

f. He does not presume to know why or how specific determinations are made with regard to types of separations; however, an administrative error was made on his DD Form 215, retirement orders number 286-0030, and his original separation with severance pay orders number 250-0010 and he humbly asks the Board to correct those documents to show his disabling injuries are combat related in accordance with regulatory and statutory guidance.

g. In 2017, he discovered the errors in his retirement orders and attempted to have the corrections made by initially contacting U.S. Army Human Resources Command (AHRC). After many phone calls, AHRC informed him he needed to go through the Transition Center where his orders were originally published. He called the Transition Center at Fort Rucker, AL, because it was the closest Army base to him, hoping they would be able to assist him, but they were unable to help him. He then made contact with the Transition Center at Schofield Barracks, HI, where his orders were originally cut, and he was advised he needed to apply to the ABCMR. As he was preparing to apply to the ABCMR and gathering his documents, he suffered catastrophic losses when his house was flooded during Hurricane Sally in 2020, losing almost all military and VA documents and it took him several years wherein he prioritized reconstruction of his home, VA appointments, litigation with insurance companies, before he could submit his request to the Board.

3. The applicant enlisted in the Regular Army on 21 July 1999.
4. He applicant deployed to Afghanistan on 24 March 2004.
5. Headquarters, Combined/Joint Task Force-76 Permanent Orders 219-037, 6 August 2004, awarded the applicant the Combat Infantryman Badge for engaging in active ground combat during the period of service from 21 June 2004 through 8 July 2004.
6. The applicant redeployed from Afghanistan on 23 March 2005.
7. A TAMC Discharge Summary, 4 October 2005, shows:
 - a. The applicant underwent C6 corpectomy and fusion with fibular allograft on the date of the form for persistent upper extremity radicular symptoms status post anterior cervical disectomy and fusion (ACDF), now status post revision.
 - b. The physician discharge note shows he had persistent upper extremity radicular symptoms after previous ACDF. He had initial relief after his prior surgery, which since recurred. He felt a “pop” in his neck in the course of work while in Afghanistan with immediate symptoms.
8. A Bravo Company, 2nd Battalion, 27th Infantry Regiment memorandum, 23 February 2006, provides the commander’s statement of the applicant’s performance. It shows in past history:
 - a. The applicant’s medical condition began in November 2004, when on a counter-reconnaissance patrol during Operation Enduring Freedom in Afghanistan, where he slipped and fell down a mountain slope.
 - b. Upon landing, he felt a “pop” and sharp pain in his neck along with electric shock down his arms and numbness in his fingers.
 - c. After returning to the FOB, he was seen by the medics and given a 5-day light duty profile for no upper body physical training, no running, no jumping, and no rucksack.
9. An undated Headquarters, TAMC memorandum requested a line of duty (LOD) determination for the applicant’s pending Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB). It shows the applicant indicated the circumstances of his injury involved him slipping and falling down a mountain slope while on patrol in Afghanistan, hurting his neck.
10. An MEB NARSUM, signed by the examining physician on 27 April 2006, shows:

a. The applicant's chief complaint was bilateral hand numbness/paresthesias left greater than right, which precluded him from his military duties.

b. Social history shows he originally had a C5-6 ACDF done in December 2000, for a herniated nucleus pulposus which he injured by flipping over someone's back playing soccer in 2000, falling on his head, and sustaining an axial load to his neck. He had only mild pain since that surgery until he reinjured his neck in Afghanistan when he fell with gear and felt a pop in his neck. Further work-up demonstrated the nonunion at C5-6 before his most recent surgery.

c. He was referred to the PEB based on a permanent profile rating of 3 in the upper and lower extremity factors.

11. The applicant's DA Form 3349 (Physical Profile), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), and/or DA Form 199-1 (Formal PEB Proceedings), are not in his available records for review and have not been provided by the applicant.

12. U.S. Army Garrison-Hawaii Orders 250-0010, 7 September 2006, discharged the applicant effective 3 November 2006, due to disability with severance pay, with a rating of 20 percent. The orders further show:

- the disability did not result from a combat-related injury as defined in Title 26 U.S. Code, section 102
- the SPD code is JFL1 (Physical disability with severance pay)

13. The applicant's DD Form 214 shows he was honorably discharged on 3 November 2006, under the provisions of Army Regulation 635-40, due to disability with severance pay, with corresponding Separation Code JFL. He was credited with 7 years, 3 months, and 13 days of net active service this period.

14. A PDBR ROP shows:

a. On 26 July 2016, the PDBR considered the applicant's claim for an increase to his disability separation rating, wherein the PEB determined he was unfit for chronic neck pain and chronic low back pain, each rated at 10 percent with a combined rating of 20 percent.

b. The analysis summary shows:

(1) The applicant's chronic neck pain status post C5-C7 spinal fusion for herniated nucleus pulposus condition and chronic bilateral finger numbness and paresthesia condition.

(2) According to service treatment records and MEB NARSUM, he initially injured his neck in a soccer game in April 2001. He had a herniated nucleus pulposus and underwent cervical spine surgery (C5-6 anterior cervical discectomy and fusion (ACDF) in December 2001. He reinjured his neck in November 2004, when he fell on patrol in Afghanistan. His chronic low back pain condition began 5 years prior in 2002, but was exacerbated in November 2004, after his falling accident in Afghanistan.

c. The PDBR recommended the applicant's prior PEB findings be modified and that his discharge with severance pay be recharacterized to reflect permanent disability retirement effective the date of his prior medical separation, with a combined disability rating of 40 percent, including a 20 percent rating for each his two unfitting conditions, chronic neck pain and chronic low back pain.

d. The PDBR ROP does not reference a recommendation pertaining to changing the administrative determinations in the PEB Proceedings regarding the combat-related status of the applicant's conditions.

15. On 12 September 2016, the Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs) approved the PDBR recommendations and directed the recharacterization of the applicant's separation with severance pay as a permanent disability retirement with a combined rating of 40 percent effective the date of his original disability separation with severance pay.

16. U.S Army Garrison-Hawaii Orders 286-0020, 12 October 2016, rescinded U.S. Army Garrison Orders 286-0020, 7 September 2006, wherein he had previously been separated with severance pay.

17. U.S. Army Garrison-Hawaii Orders 286-0030, 12 October 2016, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent disability, effective 3 November 2006, with a disability rating of 40 percent. The orders additionally show:

- disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104
- Sex: F
- SPD: SFJ1

18. On 14 October 2016, the applicant was issued a DD Form 215, which corrected his DD Form 214 covering the period ending 3 November 2006, to include the following amendments:

- reference to disability severance pay was deleted throughout the form

- item 23 (Type of Separation) was amended to show retirement
- item 26 was amended to show Separation Code SFJ
- item 28 was amended to show Disability, Permanent

19. Email correspondence between the applicant and a Transition Counselor at Schofield Barracks, HI, 11 September 2007, shows the applicant was directed to apply to the ABCMR for his requested corrections.

20. A VA Rating Decision, 23 May 2023, shows the applicant's Legacy Combat Code was 2 (combat-related) and his service-connected conditions are characterized as either Gulf War Incurred or Gulf War, Secondary, with the exception of post-traumatic stress disorder (PTSD), which is characterized as Gulf War incurred – Combat.

21. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board was compelled by the statement provided by the applicant's then immediate commander (23 February 2006) which detailed the exacerbation of the applicant's neck injury while deployed to Afghanistan. Upon review of the applicant's petition and available military records, the Board determined the applicant's SPD Code, narrative reason, sex, and Orders 286-0030 should be corrected.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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

- a. amending his DD Form 215 dated 14 October 2016 to show:
 - in item 26 (Separation Code) SEJ
 - in item 28 (Narrative Reason for Separation) Disability, Permanent (Enhanced)
- b. correction of U.S. Army Garrison-Hawaii Orders 286-0030 to show:
 - SPD SEJ
 - Disability resulted from a combat related injury as defined in Title 26 U.S. Code, section 104 YES
 - Sex M

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. 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. 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

3. 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.

4. 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.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty).

- the SPD code SEJ is to be used for Soldiers retired under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to disability, permanent Integrated Disability Evaluation System (IDES)
- the SPD code SEA is to be used for Soldiers retired under the provisions of Army Regulation 635-40, due to disability, combat-related IDES
- the SPD code SFJ is to be used for Soldiers retired under the provisions of Army Regulation 635-40, due to disability, permanent (legacy DES)
- the SPD code SFJ1 is not listed in the regulation

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in

this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//