

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20240006956

APPLICANT REQUESTS: in effect, correction of his DA form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and physical disability retirement orders to show his disabilities are combat related.

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

- DD Form 149 (Application for Correction of Military Record)
- deployment orders, 10 February 2003
- DA Form 2173 (Statement of Medical Examination and Duty Status), 1 August 2013
- DA Form 199, 6 November 2011
- U.S. Army Physical Disability Agency (USAPDA) Order D 338-48, 4 December 2014

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 he would like his 2014 medical board proceedings reviewed and reevaluated for any errors there or could have been missed under the new changes to the Disability evaluation System in 2022; "combat related code V5." His injuries were incurred while on active duty in Iraq. During his medical board process, his injuries were characterized as non-combat. The changes in 2022 to Department of Defense Instruction 1332.18 (Disability Evaluation System), combat related code V5, should help the Board to reconsider the PEB's decision in 2014.
3. The applicant enlisted in the U.S. Army Reserve on 13 February 2001. He served in Kuwait/Iraq from 5 May 2003 to 28 April 2004.
4. On 6 November 2011, a PEB found the applicant unfit for further military service due to the following conditions with the corresponding PEB's comments:

a. Post-traumatic stress disorder (PTSD): Onset of condition was July 2004 while Soldier was deployed to Iraq. Soldier has been diagnosed by a behavioral health examiner with PTSD related to exposures to non-combat stressors.

b. Right shoulder arthroscopic surgery: Onset of condition was 2003 while Soldier was on active duty orders and deployed to Iraq.

c. Degenerative Arthritis of Lumbar Spine: Onset of condition was 2003 while Soldier was deployed to Iraq and fell off a truck.

d. Diabetes II, (Not compensable by the Department of Defense): Condition was diagnosed in 2009.

5. The PEB recommended a combined 80% 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.

6. USAPDA Order D 338-48, dated 4 December 2014, ordered the applicant's release from assignment and duty because of physical disability and his permanent disability retirement effective 8 January 2015. The order contains 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: No

7. During the processing of this case, an advisory opinion was obtained from the USAPDA.

a. This memorandum is in response to a request for an advisory opinion regarding the applicant's request to have his records reflect the awarding of a v5 combat code. For the reasons below, the USAPDA found the appeal to be legally sufficient.

b. Background: On 6 November 2014, the applicant was found unfit by a PEB. His three unfitting and compensable conditions each had their onset during his service in Iraq. Despite this, none of the conditions were awarded a combat code. His combined PEB rating was 80% and he was placed into permanent disability retirement.

c. Analysis: Combat codes are provided for v1 (a disability that is the direct result of armed conflict with an enemy of the U.S.); v2 (a member of an armed force on 24 September 1975); v3 (a disability caused by an instrumentality of war, ultrahazardous service, or from simulating combat conditions); or v4 (meaning that the in line of duty condition had its medical origin while the Soldier was in a combat zone or while performing duties in combat related operations. The result is an enhancement of severance pay benefits.). The v5 combat code is a code that the Defense Finance and Accounting Service (DFAS) created to help capture when a Soldier has been awarded a v1/3/4 code and who has an outstanding bonus obligation. If a Soldier with combat codes of either v1/3/4 has any unearned bonus, it is not recouped. To that extent, the applicant's three unfitting and compensable conditions, while not v1 or 3, could have been listed as v4 since their onset was in Iraq. Nonetheless, his conditions were not awarded a v4 combat code because he was not eligible for severance pay since he was permanently retired. At the time of his disability retirement (8 January 2015), DFAS had not established the v5 combat code (2019). Still, the intent of DFAS creating the v5 combat code was to prevent the recoupment of unearned bonus payments when a Soldier is awarded a v1/3/4 combat code. Thus, to the extent he had any unearned bonus payments that were recouped, he might be eligible for a v5 combat code.

d. Conclusion: The presented case file does support awarding a v4 combat code. DFAS would need to be consulted about adding a v5 combat code, if even warranted, depending on whether the applicant had any outstanding unearned bonus payments. Therefore, his appeal is legally sufficient.

8. The USAPDA advisory opinion was provided to the applicant and he was given the opportunity to provide additional evidence or comments. No response was received.

MEDICAL REVIEW:

1. This memorandum is in response to your 12 February 2025 request for an advisory opinion regarding SGT (Ret.) [REDACTED] request to have his records reflect the awarding of a v5 combat code. For the reasons below, I find the appeal to be legally sufficient.

2. Background: On 6 November 2014, SGT (Ret.) [REDACTED] was found unfit by the Informal Physical Evaluation Board (IPEB). His three unfitting and compensable conditions each had their onset during his service in Iraq. Despite this, none of the

conditions were awarded a combat code. SGT (Ret.) [REDACTED] combined IPEB rating was 80% and he was placed into Permanent Disability Retirement (PDR).

3. Analysis: Combat codes are provided for v1 (a disability that is the direct result of armed conflict with an enemy of the U.S.); v2 (a member of an armed force on 24 September 1975); v3 (a disability caused by an instrumentality of war, ultrahazardous service, or from simulating combat conditions); or v4 (meaning that the ILOD condition had its medical origin while the Soldier was in a combat zone or while performing duties in combat related operations. The result is an enhancement of severance pay benefits.). The v5 combat code is a code that DFAS created to help capture when a Soldier has been awarded a v1/3/4 code and who has an outstanding bonus obligation. If a Soldier with combat codes of either v1/3/4 has any unearned bonus it is not recouped. To that extent, SGT (Ret.) [REDACTED] three unfitting and compensable conditions, while not v1 or 3, could have been listed as v4 since their onset was in Iraq. Nonetheless, SGT (Ret.) [REDACTED] conditions were not awarded a v4 combat code because he was not eligible for severance pay since he was PDR. At the time of his placement into PDR (8 January 2015), DFAS had not established the v5 combat code (2019). Still, the intent of DFAS creating the v5 combat code was to prevent the recoupment of unearned bonus payments when a Soldier is awarded a v1/3/4 combat code. Thus, to the extent he had any unearned bonus payments that were recouped he might be eligible for a v5 combat code.

4. Conclusion: The presented case file does support awarding a v4 combat code. DFAS would need to be consulted about adding a v5 combat code, if even warranted depending on whether SGT (Ret.) [REDACTED] had any outstanding unearned bonus payments. Therefore, SGT (Ret.) [REDACTED] appeal is **legally sufficient**.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, and the evidence found within the military record, the Board found relief was warranted. Based upon the available documentation, the findings and recommendations outlined in the PDA advisory opinion, as well as the medical review, the Board concluded there was sufficient evidence to adding the v5 combat code to the applicant's military record. Additionally, based upon the v5 addition, any recoupment of the applicant's bonus payments should be reimbursed to the applicant.

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 amending the applicant's disability rating by adding the v5 combat code, reflecting his combat-related injuries. Additionally, based upon the amendment to the disability code, any previously collected bonus collection from the applicant should be reimbursed to the applicant.

//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 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. 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//