

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240010821

APPLICANT REQUESTS: in effect, correction of his orders and DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect combat coding.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 059-0003, Headquarters, 3rd Infantry Division and Fort Stewart, 28 February 2011
- Page 1 of DA Form 638 (Recommendation for Award)
- Enlisted Record Brief (ERB), 1 March 2011
- DD Form 214
- Letter, Department of Veterans Affairs (VA), 20 August 2024

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, in effect:

a. The Separation Code listed on his DD Form 214 (SEJ) disability, permanent (enhanced) denotes a permanent disability retirement due to a combat-related injury. His ERB also notes a combat tour under the tour type; however, his retirement orders erroneously list "NO" when stating if he served in combat. This discrepancy directly impacts his benefits to received Combat-Related Special Compensation (CRSC) and recognition of his service.

b. He served in a combat role as a gunner and driver with a Quick Reaction Force team where he located improvised explosive devices, worked with the Secret Service guarding the President and other Heads of State, engaged in hostile fire, and was physically injured in an accident sustaining injuries when thrown from a turret during an engagement. This led to his medical retirement and permanent rating of 80% from the

Army and 90% from the VA (considered 100% permanent and total due to individual unemployability) as the direct result of his injuries and post-traumatic stress disorder.

3. The applicant enlisted in the Regular Army on 16 November 2006. He served in military occupational specialty (MOS) 91B (Wheeled Vehicle Mechanic). Evidence shows he served in Kuwait from 21 December 2007 to 21 March 2009.

4. His separation order released him from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability effective 27 April 2011. The order effectively states his disability was not based on injury or disease 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. It further states his disability did not result from a combat related injury as defined in 26 U.S. Code 104.

5. The applicant retired honorably from active duty on 27 April 2011. His DD Form 214 shows in:

- item 25 (Separation Authority), AR 635-40, chapter 4
- item 26 (Separation Code), SEJ
- item 28 (Narrative Reason for Separation), Disability, Permanent (Enhanced)

6. The applicant provides:

a. The page 1 of his recommendation for award of the Army Commendation Medal which lists three achievements while serving in Kuwait.

b. An ERB noting a combat tour.

c. Letter from the VA denoting service-connected disabilities effective 28 April 2011, with medical descriptions such as anxiety/PTSD, obstructive sleep apnea, shoulder, knee, and other assorted ailments.

7. On 25 April 2025, the U.S. Army Physical Disability Agency legal advisor rendered an advisory opinion in the processing of this case. He opined:

a. On 15 December 2010, the Physical Evaluation Board (PEB) found the applicant unfit for his anxiety disorder, bilateral knees and shoulder conditions with a combined rating of 80% and he was recommended for Permanent Disability Retirement (PDR). Specifically, the PEB found that the applicant's conditions were not the result of combat and, thus, no combat codes were awarded. On 23 December 2010, the applicant reviewed and accepted the findings of the PEB and waived his right to a formal board and/or a VA Rating Reconsideration.

b. While his conditions may have worsened while deployed to Kuwait, they were not caused or worsened by direct combat with an enemy (V-1 ), an instrumentality of war (V-3), under conditions simulating war (V-3), or by ultra hazardous service (V-3). Since the applicant was placed on PDR instead of separated with severance pay (SWSP) the fact his condition has a nexus to a combat zone (Kuwait, V-4) is immaterial as he was not eligible for recoupable severance pay. Based upon the above, the applicant's appropriate separation code should be SEJ, which equates to Disability, permanent Integrated Disability Evaluation System (IDES), versus SEA, which is Disability, combat related.

c. The case file did not support adding a combat code to any of the applicant's conditions or changing his retirement orders or DD Form 214. The applicant's appeal was found to be legally insufficient.

8. On 1 May 2025, the advisory opinion was forwarded to the applicant for acknowledgement and/or response. He did not respond.

9. Title 26, U.S. Code, Section 104 states, in pertinent part, that for purposes 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 or a direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, U.S. Army Physical Disability Agency legal advisory opinion, the Board concurred with the USPDA opine that his service record did not support adding a combat code to any of his conditions or changing his retirement orders or DD Form 214 to reflect combat coding. The Board determined there was no error or injustice and denied relief.

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.

8/15/2025

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 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, prescribed the policies, responsibilities and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or office, grade, rank, or rating.

a. Paragraph 4-19j (Armed Conflict – Instrumentality of War) states, in pertinent part, a disability may be considered a direct result of armed conflict if the disability was incurred while the Soldier was engaged in armed conflict, or in an operation or incident involving armed conflict or the likelihood of armed conflict; while the Soldier was interned as a prisoner of war or detained against his will in the custody of a hostile or belligerent force; or while the Soldier was escaping or attempting to escape from such prisoner of war or detained status.

b. Paragraph 4-19k (Disability Compensation Excluded from Gross Income) states, in pertinent part, disability pay is awarded by reason of a combat-related injury. Combat-related injuries cover those disabilities attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A Soldier may be performing extra hazardous service even if not directed engaged in combat. Extra hazardous service includes but is not limited to the following activities: aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty. Conditions simulating war include, but are not limited to, the following activities: performance of tactical exercises such as the squad or platoon in the assault; airborne operations; leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; repelling; and negotiation of combat confidence and obstacle courses.

c. Paragraph 4-19k also provides in block 10c of DA Form 199 (Informal Physical Evaluation Board Proceedings), the board will record its determination of whether the injury was combat-related as defined by 26 U.S. Code 104.

3. Section II (Terms) of Army Regulation 635-40 defines the following terms:

a. Combat-related injury as a personal injury or sickness that a Soldier incurs under one of the following conditions: as a direct result of armed conflict; while engaged in extra hazardous service; under conditions simulating war; or which is caused by an instrumentality of war.

b. Conditions simulating war as those circumstances of training so simulating conditions of war that a special personal risk attends the situation. The mere fact that training (calisthenics) was required, or that training (football) is sponsored by the military, does not equate with "conditions simulating war."

c. Instrumentality of war as a device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It may also be a device not designed primarily for military service if use of or occurrence involving such a device subjects the individual to a hazard peculiar to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits. There must be a direct causal relationship between the use of the instrumentality of war and the disability and the disability must be incurred incident to a hazard or risk of the service.

4. Title 26, U.S. Code, Section 104 states, in pertinent part, that for purposes 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 or a direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

5. The Fiscal Year 2008 National Defense Authorization Act (NDAA), which became Public Law 110-181 on 28 January 2008, authorized an enhancement of disability severance pay for members of the armed forces. The law mandated that the Secretaries of Military Departments identify and certify members with a disability incurred in a line of duty in a combat zone tax exclusion area or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense. The determination of "incurred during performance of duty in combat-related operations" shall be made consistent with the criteria of the law.

//NOTHING FOLLOWS//