

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2015-04370-2

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board amend their decision that his anxiety disorder was not combat-related to reflect that the disability was combat-related.

RESUME OF THE CASE

The applicant is a permanently retired Air Force major (O-4).

On 14 Jan 19, the Board considered and partially granted the applicant's request for a medical retirement but found his request for a line of duty (LOD) determination for post-traumatic stress disorder (PTSD) was not warranted. The Board determined the applicant's anxiety disorder was unfitting with a disability rating of 30 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not received as a direct result of armed conflict or caused by an instrumentality of war.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit F.

On 14 Oct 21, the applicant requested the Board's previous decision that his anxiety disorder was found to be not combat-related, be amended to reflect his disability as combat-related due to his deployment to Iraq from Mar 06 thru Oct 06. The applicant indicates he failed to include evidence of his deployment with his first submission so the Board did not take into consideration he had been deployed which was the likely cause of his anxiety and brief psychotic episode. His mental health condition is now service-connected by the Department of Veterans Affairs (DVA) with a 70 percent disability rating. In support of his request, the applicant submitted the following new evidence: (1) Leave and Earning Statements between Apr and Oct 06; (2) DVA Disability Benefits Questionnaire.

The applicant's complete submission is at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

26 United States Code (U.S.C.) § 104(b)(3): *Special Rules for Combat-Related Injuries*: For purposes of this subsection, the term "combat-related injury" means personal injury or sickness

- (A) which is incurred-
 - (i) as a direct result of armed conflict,
 - (ii) while engaged in extra hazardous service, or
 - (iii) under conditions simulating war; or
- (B) which is caused by an instrumentality of war.

DoDI 1332.18, *Disability Evaluation System*, Enclosure 3, Appendix 5; paragraph 1b

(1) Incurring 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.

(2) Armed Conflict. The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with section 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.

(3) Instrumentality of War During a Period of War. The injury or disease was caused by an instrumentality of war, incurred in the LOD during a period of war as defined in sections 101 and 302 of Title 38, U.S.C. (Reference (ag)), and makes the Service member unfit in accordance with sections 3501 and 6303 of Reference (d).

DoDI 1332.18, Enclosure 3, Appendix 5; paragraph 2b

Combat Related. This standard covers injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A disability is considered combat-related if it makes the Service member unfit or contributes to unfitness and the preponderance of evidence shows it was incurred under any of the following circumstances.

(1) As a Direct Result of Armed Conflict. The criteria are the same as those in paragraph 1.b. of this appendix.

(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) 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.

(4) 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.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board is unconvinced the evidence presented demonstrates an error or injustice. In accordance with the guidance outlined in DoDI 1332.18, the Board finds insufficient evidence the applicant's mental health condition was sustained as a direct result of armed conflict or caused by an instrumentality of war. The Board notes the applicant's deployment to Qatar and his DVA DBQ, but based on the medical records available, we do not find these documents sufficient to grant the requested relief. Should the applicant provide additional mental health records connecting his anxiety disorder to his 2006 deployment to Qatar, the Board may be willing to reconsider his request. The Board applied liberal consideration to the new evidence submitted by the applicant; however, it is not sufficient to overturn the previous Board's decision. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2015-04370-2 in Executive Session on 8 Aug 22:

Panel Chair
Panel Member
Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 31 Jan 19.
Exhibit G: Application, DD Form 149, w/atchs, dated 14 Oct 21, 29 May 22, and
9 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.