

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00122

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to:

a. Reflect award of the Air Force Commendation Medal (AFCM) with five oak leaf clusters (**pending review for administrative correction**).

b. Change Block 28, *Narrative Reason for Separation*, from "Disability, Severance Pay, Non-Combat Related, IDES" to "Disability, Severance Pay, Combat Related, IDES."

### APPLICANT'S CONTENTIONS

He received his fifth AFCM, effective 15 Feb 22. His Disability, Severance Pay should be "combat-related." He was medically discharged due to his lower back, and this actually happened when he was in Iraq in Feb 20. He does not remember the exact dates when he was in Iraq. It was a mission at that time when he was a C17A loadmaster. It was already worse at that time, around Mar 20. He started physical therapy, then it got even worse when he was assaulted in May 20. For about six months, he was in severe pain. He endured it because he did not want to get medically discharged until his body told him he could not, and that is the time when his Flight Doctor talked to him about medical discharge.

The National Defense Authorization Act of Fiscal Year 2008, Section 1646 stated, "Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations, as designated by the Secretary of Defense" and he believes Iraq was deemed combat operations at that time. This injury was incurred during the performance of combat-related operations. He found discrepancies on 21 Dec 23 because he received his Department of Veterans Affairs (DVA) benefits stating they will withhold his benefits until they recoup the severance pay. He questioned why they needed to recoup it. This was the time he reviewed all the information on his DD Form 214. He does not have a copy of his medical records from 2020.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force technical sergeant (E-6).

On 23 Apr 21, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was determined to be not worldwide qualified, did not meet retention standards in the Medical Standards Directory, and was undergoing a Medical Evaluation Board (MEB).

On 10 May 21, according to AF Form 1185, *Commander's Impact Statement for Medical Evaluation Board*, the commander stated the applicant could not perform duties required of a loadmaster and did not recommend retention. On 13 May 21, the applicant concurred he could not continue to perform his primary duty.

On 26 Aug 21, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Chronic Low Back Pain with Radiculopathy and was referred to the informal Physical Evaluation Board (IPEB).

On 27 Aug 21, according to the *Impartial Medical Review (IMR) and Rebuttal Election Form*, the applicant agreed with the MEB results and would not submit a request for an IMR or rebuttal.

On 14 Sep 21, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was diagnosed with the following:

- Category I – Unfitting Conditions
  - Chronic Low Back Pain; DVA rated as Intervertebral Disc Syndrome; the condition is compensable, Veterans Administration Schedule for Rating Disabilities (VASRD) Code 5243; Disability Rating: 10 percent; Condition is combat-related: No; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations: No; Condition is permanent and stable: Yes.

- Lumbar Radiculopathy with Sciatic Nerve Involvement, Right Lower Extremity; the condition is compensable, VASRD Code 8520; Disability Rating: 10 percent; Condition is combat-related: No; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations: No; Condition is permanent and stable: Yes.

The IPEB recommended Discharge with Severance Pay and a combined compensable percentage of 20 percent.

On 17 Sep 21, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights for any further appeal. The applicant did not request a one-time reconsideration of the DVA disability ratings for the conditions found unfitting by the IPEB.

On 22 Sep 21, according to an AFPC/DPFD memorandum, Subject: Physical Evaluation, the Secretary of the Air Force directed the applicant be separated from active service for physical disability under the provisions of Title 10, United States Code § 1203 (10 USC § 1203), with severance pay computed under Section 1212 of this title, with a compensable percentage for physical disability of 20 percent.

On 30 Dec 21, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Disability, Severance Pay, Non-Combat Related, IDES, and was credited with 12 years, 5 months, and 17 days active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

## **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant, and analysis of the facts, there is no indication an error or injustice occurred at the time the PEB processed his disability case. There is no corroborating medical evidence or witness accounts that the applicant's back condition was combat-related, but rather this condition was a result of a physical assault while at home station in May 20.

Under 10 USC, the PEB must determine if a member's condition(s) renders them unfit for continued military service relating to their office, grade, rank, or rating. Additionally, in accordance with Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, Appendix 5 to Enclosure 3, the PEB renders a final decision on whether an injury or disease that makes the service member 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 war. 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.* Injury or disability was incurred in combat with an enemy of the United States. To qualify under this rule, a service member must be engaged with members of opposing armed forces and forces are in close enough proximity to potentially inflict physical harm on one another. Furthermore, to be "engaged with" indicates each party has the potential to cause physical harm to the other; it is reciprocal.

(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.

On 26 Aug 21, an MEB found the applicant potentially unfitting for Chronic Low Back Pain with Radiculopathy. The accompanying Narrative Summary indicates this injury was received following an assault at a gas station in May 20. Additionally, the Commander's Impact Statement, dated 10 May 21, indicates the applicant was assaulted by a homeless man who hit the applicant in the back with a 2x4 piece of lumber according to police reports. There is no indication the applicant had been treated for a back condition prior to this incident and the commander indicated the injury was not incurred while the applicant was deployed. The applicant was provided with copies of both documents during MEB processing and did not seek to clarify this condition may have begun earlier than documented.

On 14 Sep 21, the IPEB found the applicant unfit for (1) Chronic Low Back Pain; DVA rated as Intervertebral Disc Syndrome, and (2) Lumbar Radiculopathy with Sciatic Nerve Involvement, Right Lower Extremity. Due to the medical documentation and commander's input, the IPEB found these conditions were neither combat-related nor incurred in a combat zone. On 17 Sep 21, the applicant agreed with the IPEB's findings and did not appeal to the formal PEB to potentially find these conditions as combat-related during disability processing. Furthermore, the applicant did not provide any additional documentation as part of his Air Force Board for Correction of Military Records submission that would substantiate his claim that his back

condition was incurred during a previous deployment or would qualify as combat-related as a direct result of armed conflict, while engaged in hazardous service, or caused by an instrumentality of war as defined by DoDI 1332.18.

The complete advisory opinion is at Exhibit C.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 31 Jul 24 for comment (Exhibit D) but has received no response.

## **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 concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant's unfitting conditions meet the requirements for combat-relation in accordance with DoDI 1332.18. To the contrary, there is evidence the unfitting conditions are the result of a physical assault the applicant experienced while at home station in a non-deployed status. 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-00122 in Executive Session on 16 Oct 24:

, Panel Chair  
, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atch, dated 26 Dec 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 10 Jun 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Jul 24.

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.

**X**