

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00188

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His disability retirement special order be amended to reflect "combat-related" vice "noncombat-related."

APPLICANT'S CONTENTIONS

The mental health injuries he incurred and still suffer from originated in Afghanistan in 2008, 2010-2011. Through the combat training and frequent mortar attacks while down range, he believes this is what caused his injury. These events are combat specific, and his special order should reflect this.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard staff sergeant (E-5).

On 9 Sep 15, according to AF IMT 348, *Line of Duty Determination*, the applicant received an administrative line of duty (LOD) determination for Anxiety Disorder.

On 20 Oct 16, according to an NGB/SGP memorandum, Subject: Administrative LOD Determination, the applicant's conditions of Post-Traumatic Stress Disorder (PTSD) and Panic Disorder with Agoraphobia were originally incurred during a period of active duty service between 2009 and 2010.

On 20 Apr 18, according to a Department of Veterans Affairs (DVA) Rating Decision, provided by the applicant, his evaluation of PTSD with Panic Disorder with Agoraphobia (claimed as sleep disturbances) was continued at 70 percent disabling.

On 24 Apr 18, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions:

- Anxiety and Panic Disorders with Persistent Depressive Disorder (PDD); DVA rated as PTSD with Panic Disorder with Agoraphobia. (Combat-Related: No; Combat Zone: Yes); Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 9411; Disability Compensation Rating: 70 percent; Combat-Related Determination as defined in Title 26, United States Code § 104 (26 USC § 104): No; 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 (NDAA, Sec 1646): No.

The informal Physical Evaluation Board (IPEB) recommended temporary retirement with a combined compensable percentage of 70 percent.

On 1 May 18, 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 right to a formal PEB (FPEB) hearing. He did not request a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB.

On 24 May 18, according to Special Order Number XXXXX, the applicant was relieved from active duty, organization and station of assignment, effective 27 Jun 18. Effective 28 Jun 18, he was placed on the temporary disability retired list (TDRL) with a compensable percentage for physical disability of 70 percent. Disability was the direct result of a combat-related injury as defined in 26 USC § 104: No; 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 (NDAA, Sec 1646): Yes.

On 18 Nov 19, according to AF Form 356, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions:

- PTSD and Agoraphobia with Panic Disorder; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 70 percent; VASRD Code: 9411; Combat-Related Determination as defined in 26 USC § 104: No; 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 (NDAA, Sec 1646): Yes.

The IPEB recommended TDRL to permanent retirement with a combined compensable percentage of 70 percent.

On 23 Jan 20, according to Special Order Number XXXXX, the applicant was removed from the TDRL, effective 12 Feb 20, and retired with a compensable percentage of 70 percent for physical disability. Disability was the direct result of a combat-related injury as defined in 26 USC § 104: No.

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 or during his TDRL reevaluation. 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 will not be sufficient to support award of combat-related, if there is no definite causal relationship between the armed conflict and the resulting unfitting disability.

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.* The disease or injury incurred in the line of duty as a direct result of armed conflict. 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 will not be sufficient to support this finding. For purposes of creditable service, there must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

- Armed conflict is defined as: A war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which service members are engaged with a hostile or belligerent nation, faction, force, or terrorist. Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in the custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner-of-war, or detained status.

(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 24 Apr 18, the IPEB found the applicant's Anxiety and Panic Disorders with PDD condition unfit with a 70 percent compensable disability rating and recommended placement on the TDRL. It was noted on the AF Form 356 that the unfitting condition is related to events which occurred in a combat zone, but is not combat-related in accordance with DoDI 1332.18, Appendix 5 to Enclosure 3, paragraphs 1 and 2. On 1 May 18, the applicant agreed with the IPEB findings and waived his right to an FPEB hearing to possibly find this condition to be combat-related. On 24 May 18, his retirement order was published placing him on the TDRL, effective 29 Mar 17¹. His order reflected his disability was incurred in the combat zone but was not combat-related as determined by the IPEB.

In order for the applicant's unfitting condition to be deemed "combat related", there needs to be objective evidence that his injuries were incurred as 1) a direct result of armed conflict, 2) a direct result of instrumentality of war, 3) for duty under conditions simulating war, or 4) while engaged in hazardous service. The IPEB did not find the preponderance of the evidence

¹ The applicant was placed on the TDRL effective 28 Jun 18.

presented revealed the applicant was involved in any direct combat relations/activity. Although it is noted in the Medical Evaluation Board (MEB) Narrative Summary the applicant reported a history of deployment-related trauma (experiencing mortar fire and roadside bombs); it is also noted he denied any specific traumatic events while on deployment but stated his deployments were stressful. Furthermore, the awards/decorations, and DD Form 214, *Certificate of Release or Discharge from Active Duty*, provided by the applicant only verifies he attended combat skills training and was in a combat zone but does not offer any evidence of a definite causal relationship between the armed conflict and the resulting unfitting disability as required.

On 18 Nov 19, a TDRL reevaluation was conducted. The IPEB concluded the applicant remained unfit for military service and recommended permanent retirement with a disability rating of 70 percent for PTSD and Agoraphobia with Panic Disorder. It was once again determined the unfitting condition met the criteria for combat zone, but the IPEB did not find a definite causal relationship between the armed conflict and the resulting unfitting disability as required to award combat-relation.

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 12 Jun 24 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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. According to the MEB Narrative Summary, the applicant denied any specific traumatic events while deployed but stated his deployments were stressful. While it is confirmed the applicant attended combat-skills training and was deployed to a combat zone, there is no evidence the applicant's unfitting conditions meet the requirements for combat-relation in accordance with DoDI 1332.18. Therefore, the board recommends against correcting the applicant's records.
4. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-00188 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/atchs, dated 9 Jan 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 7 Jun 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jun 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.

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Board Operations Manager, AFBCMR