

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00406

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel records be amended to reflect his disability was combat-related.

APPLICANT'S CONTENTIONS

His retirement orders mistakenly state his disability was not combat-related. On the first page of his retirement orders, the answer "No" is given to the statement, "Disability received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war." On the second page of his retirement orders, the answer "No" is given to the statement, "Disability was the direct result of a combat-related injury as defined in 26 USC 104 [Title 26, United States Code § 104]." Both of these statements should be corrected to display the answer "Yes."

As shown in his decision letter, the Department of the Air Force determined his disability is 100 percent combat-related and caused by an instrumentality of war. On the first page of the decision letter, the Origin Code "IN" is displayed in the table to show his disability was caused by an instrumentality of war. Also, it states, "Total Combat-Related Disability: 100%."

Finally, nearly his entire service occurred during a period of war, including both Operation ENDURING FREEDOM and Operation FREEDOM SENTINEL. Since the Air Force already determined his disability is 100 percent combat-related, caused by an instrumentality of war, and was incurred during a period of war, both statements on his retirement orders should be changed from "No" to "Yes."

This error was only recently discovered when he tried to file a tax exemption based on his combat-related disability with the Defense Finance and Accounting Service (DFAS). They stated in order to receive the tax exemption, his retirement orders would have to be corrected. The applicant requests his retirement orders be corrected so he can provide them to DFAS and gain the tax exemption he is owed due to his combat-related disability.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 21 May 00, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the Air National Guard for a period of six years.

On 15 Nov 04, according to DD Form 2808, *Report of Medical Examination*, Block 76. *Significant or Disqualifying Defects*, hearing loss was identified during the applicant's examination.

On 8 Dec 04, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant held Primary Specialty 2W151, Aircraft Armament Systems Journeyman, and served in support of Operation NOBLE EAGLE from 20 Sep 04 to 8 Dec 04.

On 7 Jul 06, according to AF Form 1613, *Statement of Service*, the applicant was commissioned into the Regular Air Force.

On 19 Feb 20, according to the *Medical Evaluation Board (MEB) Narrative Summary*, “[the applicant] joined the Air Force in 2000, at which time his hearing was reported as normal.”

On 9 Jul 20, according to *Department of Veterans Affairs (DVA) Hearing Loss and Tinnitus Disability Benefits Questionnaire*, Section 2: *Tinnitus*, Block 1. *Medical History*, “Combat officer reports that his tinnitus began in 2008 from exposure to jet engine noise while working as an aircraft armament systems specialist.”

On 31 Jul 20, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Bilateral Sensorineural Hearing Loss (SNHL) and was referred to the Informal Physical Evaluation Board (IPEB).

On 18 Aug 20, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions:

- Bilateral SNHL; Incurred while entitled to basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 100 percent; Veterans Administration Schedule for Rating Disabilities Code: 6100; Combat-related determination as defined in 26 USC § 104: No.

The IPEB found the disability was incurred in the line of duty in time of war or national emergency or after 14 Sep 78 and was not incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646). The IPEB recommended permanent retirement with a combined compensable percentage of 100 percent.

On 21 Aug 20, according to AF Form 1180, *Action of 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. He did not request a one-time reconsideration of the DVA disability rating for the conditions found unfitting by the IPEB.

On 25 Aug 20, according to Special Order Number XXXXX, effective 5 Dec 20, the applicant was relieved from active duty, organization and station of assignment, and effective 6 Dec 20, was permanently disability retired with a compensable percentage for physical disability of 100 percent. Disability received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war: No; Disability was the direct result of a combat-related injury as defined in 26 USC § 104: No.

On 5 Dec 20, the applicant was furnished an honorable discharge with Narrative Reason for Separation: Disability, Permanent IDIS, and was credited with 15 years, 7 months, and 8 days active duty service.

On 3 Feb 21, according to an AFPC/DPFDC letter, Subject: Approval of CRSC, provided by the applicant, his claim for Combat-Related Special Compensation (CRSC) for Bilateral SNHL was approved.

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

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.

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 (DES)*, 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.

(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 18 Aug 20, the IPEB found the applicant unfit for Bilateral SNHL with an overall disability rating of 100 percent and recommended permanent retirement. The IPEB determined this condition was neither combat-related nor incurred in a combat zone. The applicant had a longstanding history of hearing loss, identified at least as early as 2006 when he required a waiver to attend Officer Training School (OTS). Since then, he had progressive hearing loss which required aeromedical waivers to continue flying duties, and he began to require hearing aids in 2017. The applicant's hearing loss continued to progress, and he was unable to safely perform his duties due to SNHL, with poor speech discrimination and word recognition. Although his commander attributed this condition to multiple deployments to Afghanistan and Djibouti in which he was performing combat missions, medical records indicate his hearing loss started well before those deployments. This would be considered a natural progression of his hearing loss and therefore, not combat-related in accordance with DoDI 1332.18. On 21 Aug 20, the applicant agreed with the IPEB's findings and did not appeal to the formal PEB to possibly find this condition as combat-related during DES processing.

Although the PEB determined his unfitting condition was not combat-related, the CRSC board considers the occupation of the individual and the continual or direct (close proximity) exposure to combat-related noise hazards the individual was subjected to throughout his or her career when making CRSC determinations. Many Air Force Specialty Codes with direct flightline exposure such as pilots, air traffic controllers, and aircraft maintenance personnel qualify for CRSC under this provision. Additionally, CRSC approval has no bearing on the original DES combat-related determinations or vice versa as some members who are determined combat-related through the DES may not qualify for CRSC under that program's rules.

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 19 Aug 24 for comment (Exhibit D), and the applicant replied on 6 Sep 24. In his response, the applicant contended the advisory opinion omitted six years of his military service, there are numerous errors, and his disability should be considered combat-related under all four circumstances mentioned in the advisory opinion.

The most glaring omission is failure to mention the first six years of his military service. The advisory opinion noted the applicant's hearing loss was first identified in 2006, but his military service began on 21 May 00 when he enlisted in the Air Force¹ as an F-15 Aircraft Armament System Specialist. His duties included loading munitions on F-15s (an instrumentality of war) and arming/de-arming the aircraft while the jet engines were running. Not only is the F-15 an instrumentality of war, but he performed his duties during combat operations. Most notably, the applicant participated in Operation NOBLE EAGLE, where he loaded live missiles/ammunition and alert launched F-15s to perform combat air patrols after the attacks on 11 Sep 01. While enlisted, he also participated in several RED FLAG exercises which are under conditions simulating war. RED FLAG is a series of war games where service members practice alerts and perform tactical exercises to simulate war time conditions.

Although the applicant had several deployments to Afghanistan and Djibouti, the advisory opinion states these combat deployments should not be considered since his hearing loss started before these deployments. Under "Pertinent Facts", it states, "A disability is considered combat-related if it makes the service member unfit or contributes to the unfitness." The applicant's hearing loss did begin before those deployments, but the advisory opinion fails to mention his noise exposure during these combat deployments undeniably contributed to his increased hearing loss and his eventual unfitness. The advisory opinion claims the applicant's hearing loss would be considered a natural progression. When he enlisted in the Air Force² in 2000, he had normal hearing that did not require a waiver. After only six years of noise exposure to an instrumentality of war during combat operations and under conditions simulating war, his hearing was damaged enough to require a waiver to attend Officer Training School. This is not a natural progression of hearing loss. Furthermore, after multiple flying deployments and numerous combat flight hours, he began to require hearing aids in 2017. It is not natural progression of hearing loss for a healthy 37-year-old to require hearing aids.

The advisory opinion noted the applicant agreed with the IPEB findings to infer he agreed his disability was not combat-related. This is simply not true. On AF Form 1180, every section mentions requesting a reconsideration of the DVA disability ratings. At the time, his PEB Liaison Officer explained since he received a 100 percent permanent and total rating from the

¹ According to DD Form 4, the applicant enlisted in the [State] Air National Guard on 21 May 00.

² Ibid.

DVA, there would be no reason to disagree with the findings of the IPEB. It was not explained to him, and he did not realize, this form could be used to reconsider combat-relatedness.

The advisory opinion gives the appearance the PEB and CRSC board have different criteria for determining whether an injury is combat related. This is not true since the criteria for determining combat-relatedness originates in United States Code and must be followed by all service branches and subsequent boards. The CRSC board found his disability was 100 percent combat-related since it was “caused by instrumentality of war” due to the noise exposure he was subjected to around F-15s, MC-130Ps, and MC-130Js. The PEB should have used the same criteria to produce the same determination.

The CRSC board determined the applicant’s disability is combat-related based on an “instrumentality of war”, but he could have qualified based on any of the four circumstances:

a. *As a Direct Result of Armed Conflict* - This circumstance requires that the disability was incurred in combat with an enemy of the United States. During the applicant’s flying career with Air Force Special Operations Command, he was sent on multiple deployments to Afghanistan, Djibouti, and numerous classified alert combat missions. Throughout his combat sorties, he was subjected to Anti-Aircraft-Artillery and Man-Portable Air-Defense System missiles launched by terrorist organizations and enemies of the United States. During these combat sorties, his hearing loss worsened due to noise exposure from the explosion of munitions and from the aircraft he flew. Additionally, he was in close proximity to explosions during his Afghanistan deployments when Bagram Air Base was attacked by rockets launched by terrorist organizations.

b. *While Engaged in Hazardous Service* - This circumstance specifically mentions aerial flight duty as a qualifier. The applicant has over 3,000 total flight hours, which includes 431.8 combat hours and 75 combat support hours. The noise exposure from these flight hours were a direct contributor to his hearing loss. His combat hours and combat support hours were directly involved with armed conflict and the majority of the other hours were supporting tactical exercises, war games, and other “conditions simulating war.” Also, while it is not specifically mentioned, being required to work in close proximity to roaring F-15 jet engines, was also a hazardous activity.

c. *Under Conditions Simulating War* - This circumstance covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, and airborne operations. The applicant was involved in RED FLAG exercises during his time with F-15s that contributed to his initial hearing loss. He also participated in RED FLAG exercises and numerous other war games during his flying career on the MC-130P and MC-130J. All these events included practice alerts, tactical exercises, and airborne operations during which the applicant was subjected to damaging noise exposure.

d. *Caused by an Instrumentality of War* - This circumstance states that occurrence during a period of war is not a requirement but must be incurred during any period of service and be a direct causal relationship between the instrumentality of war and the disability. It has already been established that noise exposure led to the applicant’s hearing loss. He was subjected to extreme noise exposure during his entire military career, starting when he worked on F-15s and continued when he flew MC-130Ps and MC-130Js. The F-15, MC-130P, and MC-130J are all instrumentalities of war. The CRSC board chose this circumstance as justification to call his disability combat-related due to the obvious correlation between loud aircraft engines and hearing loss.

The applicant’s entire 20-year Air Force career has been during a time of war, where he was subjected to extreme noise exposure from aircraft engines, while engaged in varying forms of

combat operations. The criteria for a disability to be considered combat-related is if it makes the service member unfit and if it is incurred by any of the four circumstances previously mentioned. The applicant was medically retired because his disability made him unfit for duty and he has shown how his disability is a result of each of the four circumstances. The applicant requests correction to his retirement orders to reflect the combat disability rating he deserves.

The applicant's complete response is at Exhibit E.

AIR FORCE EVALUATION

The BCMR Medical Advisor recommends denying the application. After an extensive review of the available records, this Medical Advisor opines there is insufficient evidence to support the applicant's contentions and his request. The burden of proof is placed on the applicant to submit evidence to support his contentions/request. The evidence he did submit was assessed to not support his request for a change in the DES combat-related determination at the PEB.

This Medical Advisor will only address non-mental health medical conditions in offering a recommendation to the board. All available medical records within the case file as well as found electronically were reviewed in forwarding the following findings, conclusions and recommendations.

Although this Medical Advisor acknowledges the applicant has a significant deficit in his hearing as established by audiometric testing, the question remains when did the onset of his hearing loss condition first occur. The applicant himself noted he first became aware of his hearing loss at his commissioning physical examination after having been audiometric tested. Despite becoming aware of his hearing loss at this time (mid-2006), his claim now is his prior duty as an enlisted ammunitions loader for a period of six years caused his hearing loss and, since the CRSC board granted combat-service, the PEB should do the same; hence his request to DoD, via the DES, for the same combat designation. In this case, the applicant must reveal evidence his time as an ammunition loader and his exposure to flightline noise caused the initiation of his hearing loss and, in the performance of that duty, he met the criteria for combat-relation.

Logically, from a historical perspective, after years of performing a flightline job around high-performance engine-running aircraft, hearing loss would indeed be medically plausible and possibly expected (if certain preventive precautions are or were not utilized within the confines of a hearing conservation program). However, in this particular case, the records, both pre- and post- separation reveal other contributors towards hearing loss and other written documents were inconsistent in chronological reporting. The applicant's clinical medical records revealed a significant history of chronic sinus and ear infections associated with intermittent bouts of eustachian tube dysfunction (ETD), all of which can adversely affect hearing and potentially cause temporary hearing loss, particularly when ETD or ear infections lead to a blockage in the eustachian tube, causing pressure imbalances in the middle ear. In some cases, chronic bouts of ETD could lead to permanent hearing damage. Additionally, a post-separation encounter also noted the applicant stating other exposures, such as his example of lawn mowing, contributing to his hearing loss condition. Having access to very few medical records regarding any hearing loss during the applicant's enlisted time, this Medical Advisor will denote factors (pre- and post-separation) that may bring forth questions as to the claim his hearing loss began while performing ammunition loading duties.

A significant inconsistency is exemplified by the applicant reporting "no" to a pre-deployment to Kenya question of "Do you have a hearing deficit" six years after being informed of the severity of his hearing loss and three years after being fitted for hearing aids. Such an answer, provided by the applicant himself, is false when chronologically considered. It was further discovered

there existed a family history of deafness and hearing loss as fully noted in an encounter in Jan 20.

Although these other types of possible contributing factors for hearing loss exist, there also exists organic causes for hearing loss, and before definitively establishing a diagnosis of SNHL due to noise, all other organic initiators must be ruled out. This case additionally involved a non-agreed upon diagnosis from the Academy's expert medical provider's note of "It is most unlikely that this hearing loss is related to noise injury." Their opinion remained as such for the prior recommended work-up with MRIs and other clinical tests/exams to rule out tumors or other mass-like lesions that could cause such a hearing loss were (apparently) never performed or if performed, the results were not available in the electronic medical record database. Citing other possible contributors towards hearing loss, either environmental or other organic conditions combined with inconsistent, and frankly untruthful reporting in the setting of a positive family history of deafness and hearing loss, this Medical Advisor finds it difficult to justify granting the applicant's requested relief. Bottomline, as per audiometric testing, the applicant's hearing loss was profound. However, a review of the entire case file did not reveal any sort of evidence to prove such an allegation that his hearing loss was caused by and/or initiated when performing his enlisted military flightline duties. No line of duty determination was ever processed during his enlisted time.

Speaking strictly from the medical aspect, the medical diagnostic decisions and overall separation process was fair and appropriate without evidence of an applied error or rendered injustice upon the applicant. Therefore, a Board decision to deny his request as stated is recommended.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Oct 24 for comment (Exhibit G), and the applicant replied on 11 Nov 24. In his response, the applicant contends there were several inconsistencies in the medical advisory. The advisory states the applicant's medical records show a family history of deafness and hearing loss. The applicant contended he does not have a family history of deafness and hearing loss, and this was never something he reported. The applicant believes it was simply an error made by the medical provider who placed this entry into his medical records. Unfortunately, the applicant was not in control of what was placed into his medical records, and he did not have an easy way to review them for accuracy during his military career.

The medical advisor stated ETD could have been a cause for the applicant's hearing loss, but this was actually the applicant's error in confusing ETD with hearing loss based on similar symptoms. When he sought medical care from an otolaryngologist for potential ETD, the applicant was still in denial of how bad his hearing loss really was, and he was looking for any other possible reason or solution that would help him remain qualified for his career. Regrettably, the applicant tried to self-diagnose on websites like WebMD and looked up symptoms, like muffled hearing, to find a way to improve his hearing. The applicant aggressively sought care, and even though his tympanograms were normal, and he could perform the Valsalva maneuver, the otolaryngologist was willing to put him through a course of decongestants and nasal sinus rinses to eliminate ETD from being a cause for his hearing loss. Shortly after this attempt, it was obvious ETD was not the cause, and the applicant was then fitted with hearing aids.

Per the applicant, the medical advisor claimed an MRI to rule out tumors or other mass-like lesions was never performed. The applicant provided a copy of an MRI report to show an MRI

was performed and all results were normal. The MRI looked at the applicant's brain, internal auditory canals, inner ears, middle ears, mastoids, and other areas. The results showed no evidence of organic causes for hearing loss, like tumors or other mass-like lesions.

The medical advisor presented comments from the Air Force Academy's audiologist, but this evaluation was incomplete. The audiologist did not take into account the first six years of the applicant's military career when he worked as an Aircraft Armament Systems Specialist on F-15s and did not include the results of his MRI that was performed on 10 Feb 20, which ruled out organic causes for hearing loss. Since the evaluation was incomplete, it does not hold as much weight as an opinion from a medical expert who had access to and evaluated all the data. During the applicant's DVA exams, the DVA audiologist evaluated his entire military history, reviewed all data, and opined that it is at least as likely as not the applicant's hearing loss is due to military noise exposure.

The medical advisor admits "after years performing a flightline job around high performance engine-running aircraft, hearing loss would indeed be medically plausible and possibly expected" but then completely disregards the six years of flightline work directly related to that statement in favor of potential causes that occurred years later. Potential ETD from 2008 could not be an explanation of hearing loss that occurred between 2000 and 2006. Errors made on forms in 2012 and beyond are not explanations of hearing loss that occurred between 2000 and 2006. These timeline inconsistencies and flawed logic bring into question the legitimacy of the medical advisor's opinion. Further, the medical advisor claimed the applicant reported "environmental noise at work (F-16)" but the applicant never worked on F-16s and that is not something he would have reported. The applicant only worked on F-15s, so this is just another example of a simple mistake made by a medical provider.

According to the applicant, the medical advisor made a gross misrepresentation of his integrity and claims there is "significant inconsistency" and "frankly untruthful reporting" based on a single error made on one document in the applicant's medical records. These claims are completely unjustified and brings into question whether this was an unbiased review of the applicant's records. The medical advisor is referring to a single circle made on one pre-deployment form dated 5 Nov 12. At that point in the applicant's career, he was already on an H-3 hearing waiver so there would have been no reason to hide his hearing loss and there would be nothing to gain by lying about his hearing loss. Instead of being "untruthful reporting," it is obvious it is more likely the result of a simple mistake made on a form while being rushed through medical processing for an alert deployment. The pre-deployment form the medical advisor is referring to was for a sensitive, short-notice alert deployment. During the entire flying portion of the applicant's career, extremely short notice deployments were common. When alerted for this mission, the applicant was immediately placed in crew rest. It is very possible and was not uncommon to have forms filled out by somebody else to help expedite the pre-deployment process. The applicant may have made the mistake on the form, but it is also potentially an error made by somebody else who filled out the form on the applicant's behalf. Per the applicant, the medical advisor scoured through all the applicant's medical records to find one error made by him and used that as justification to say his records are "inconsistent" and "untruthful." Instead, what this really means is the applicant remarkably filled out 99.9 percent of forms correctly. For the medical advisor to use one error to question the validity of 20+ years of medical records, is quite frankly absurd. Although there are several errors in the applicant's medical records made by medical professionals (noted above), the applicant will not call into question their integrity, like the medical advisor did of him, and instead the applicant will assume they were simple errors.

The applicant contended this medical record review should have been an unbiased evaluation. Instead, there is obvious bias presented by the medical advisor. First, the medical advisor only presents evidence that supports their opinion. If this was an unbiased evaluation, the medical

advisor would have pointed out when the applicant joined the Air Force on 21 May 00, he had normal hearing that did not require a waiver. After only six years, the applicant required a waiver to attend OTS in 2006. It is obvious hearing loss occurred during that six-year period, but the medical advisor wants to point towards possible ETD in 2008 and errors on medical records instead. Second, the medical advisor only used the medical opinions that supported their view. Although the medical advisor had access to the DVA audiologist's opinion, the advisor only used the opinion of the Air Force Academy audiologist who was far less experienced than the DVA audiologist (over 40 years of experience) and did not have access to all the data, like the DVA audiologist. Finally, the medical advisor used one error, made on one form, over the course of the applicant's 20+ years military career to justify bringing his integrity into question. If this review was unbiased, the medical advisor would have noted 99.9 percent of the applicant's reporting was correct/truthful, which is probably not the case for the majority of Air Force medical records.

The central question to the medical advisor's discussion is "when did the onset of his hearing loss condition first occur?" The applicant further contended this question should be easy to answer. The applicant joined the Air Force in 2000 with normal hearing that did not require a waiver. In 2006, the applicant needed a waiver to attend OTS because his hearing loss had progressed to the H2 hearing profile. In fact, at the time, the applicant was barely able to achieve the results necessary to be classified as H2 and had to retake the hearing test several times because he was on the border of the H2 and H3 hearing profiles. This answers the question of when the applicant's hearing loss first occurred. It is obvious the applicant's initial hearing loss occurred between 2000-2006 and was aggravated over the course of his flying career. This means the medical advisor's remarks about potential ETD, sinus and ear infections, and medical record errors that occurred from 2008 and beyond are irrelevant.

The applicant contended, in summary, the facts of this case are very simple and straightforward. He joined the Air Force in 2000 with normal hearing, but after only six years, his hearing was damaged to the point that he needed a waiver to attend OTS. Those six years included working around the loud jet engines (hazardous service) of F-15s (instrumentality of war) during numerous exercises (conditions simulating war) and supporting combat air patrols during Operation NOBLE EAGLE. The noise exposure the applicant was subjected to during this time alone should characterize his disability as combat-related. The applicant's hearing continued to be damaged during his flying career (hazardous service) while flying the MC-130P and MC-130J (instrumentalities of war) during numerous exercises (conditions simulating war) and in direct armed conflict during his multiple deployments to Afghanistan and Djibouti. The applicant's entire 20+ year Air Force career has been during a time of war, where he was subjected to extreme noise exposure from aircraft engines, while engaged in varying forms of combat operations. The applicant's entire medical record is full of evidence of his hearing loss being caused and aggravated by his military service. The applicant requested, instead of taking the few biased points made by the medical advisor at face value, please take an unbiased look at the applicant's entire medical history/military career and correct his retirement orders to reflect the combat disability rating that he deserves.

The applicant's complete response is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of

the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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

3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationales and recommendations of AFPC/DPFDD and the BCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the board recommends against correcting the applicant's records. The applicant's hearing loss was identified prior to his commissioning. The applicant had a longstanding history of hearing loss which continued to progress until he was unable to safely perform his duties due to SNHL with poor speech discrimination and word recognition. Although the applicant's commander attributed the applicant's hearing loss to combat missions while deployed to Afghanistan and Djibouti, medical records indicate the applicant's hearing loss started well before these deployments. The natural progression of the applicant's hearing loss was deemed not combat-related by the IPEB in accordance with DoDI 1332.18, with the applicant agreeing with the findings and declining to appeal.

In rebuttal, the applicant contended his performance as an F-15 Aircraft Armament System Specialist while enlisted contributed to his hearing loss but presented no evidence of service-connected hearing loss during his enlisted service. There is no record of a line of duty determination regarding his hearing loss; however, his medical records do reflect a family history of deafness and hearing loss.

Finally, the applicant's CRSC was approved under a program separate from the PEB. The CRSC board considers the occupation of the individual and the continual or direct exposure to combat-related noise hazards the individual was subjected to throughout their career. Individuals with direct flightline exposure may qualify for CRSC under this provision; however, CRSC approval has no bearing on the original PEB combat-related determination, just as some individuals who are determined to be combat-related through the PEB may not qualify for CRSC under that program's rules.

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-2024-00406 in Executive Session on 20 Nov 24 and 19 Feb 25:

, 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 2 Feb 24.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 18 Jun 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Aug 24.
Exhibit E: Applicant's Response, w/atch, dated 6 Sep 24.
Exhibit F: Advisory Opinion, BCMR Medical Advisor, dated 26 Oct 24.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Oct 24.
Exhibit H: Applicant's Response, atch, 11 Nov 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

Board Operations Manager, AFBCMR