

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01086

XXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXX

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

His official military personnel records be amended to reflect:

- a. He was retroactively granted a 30 percent disability rating for Post-Traumatic Stress Disorder (PTSD).
- b. The Physical Evaluation Board (PEB) found his PTSD combat-related.
- c. He was placed on the Temporary Disability Retired List (TDRL) for PTSD.

### **APPLICANT'S CONTENTIONS**

Despite medical records and the Commander's Statement, the applicant's initial informal PEB (IPEB) failed to evaluate his PTSD. The IPEB proposed the applicant be permanently retired with a disability rating of 40 percent for unrelated physical disabilities.

The applicant's commander reported, "On 12 Aug 21, [the applicant] was initially placed in a "Do Not Fly" status due to a medical incapacitating condition...Based on his medical disqualification status, I cannot allow [applicant] to perform duties as a military aviator." The Commander's Impact Statement, dated 6 Apr 22, indicated, "[The applicant] is a quality Officer but based on the amount of time required for his continued care and the compounding effects that could be associated with mental health treatment plan I do not recommend retention."

The 29 Sep 22 PEB's Narrative Summary indicated the applicant was Duty Not Including Flying (DNIF) status, "note, flyer is RPA pilot but dnif since October 2021 for MH (mental health) issues," and "Member hasn't been able to assist with any of our flying training or combat operations."

Air Force Medical Standards Directory (MSD), approved by AF SG3C on 13 May 20, Q22 provides, "Trauma and Stressor Related Disorders (...Post-Traumatic Stress Disorder...) when symptoms result in DOWN greater than 60 days" are disqualifying for all flying classes. The applicant was DOWN 11 months when the PEB made their initial findings. The formal PEB (FPEB) considered a letter from his unit psychologist stating, "due to the chronic nature of his PTSD symptoms, incompletely addressed by treatments to date, he would not be considered suitable for flying operations in his current platform."

On 26 Oct 22<sup>1</sup>, the Department of Veterans Affairs (DVA) awarded the applicant a 30 percent rating for PTSD (also claimed as anxiety, depression, and insomnia) with stress-related bruxism (also claimed as grinding teeth) as directly related to military service. Despite the DVA rating and the previously cited evidence indicating the applicant's PTSD was unfitting at the time of the PEB, the FPEB found there was "not enough evidence to" make the determination whether the applicant's PTSD would be unfitting long term. Ignoring their own rationale, they found "PTSD

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<sup>1</sup> The DVA proposed service-connection for PTSD with Stress-Related Bruxism with a 30 percent evaluation on 26 Sep 22.

with Stress-Related Bruxism is not unfitting and not combat-related.” The FPEB then provided an illogical obstacle course for the applicant to return to duty, “Even if he remains on Lexapro, he could be allowed to return to flying duties, assuming he obtained a waiver for his underlying mental health condition.”

On 13 Aug 23<sup>2</sup>, the applicant was granted Combat-Related Special Compensation (CRSC) for “Post-Traumatic Stress Disorder with Related Bruxism” and Tinnitus. PTSD was rated at 30 percent and Tinnitus at 10 percent. Since the applicant is now granted CRSC for PTSD, the only issue before this Board is whether the PEB determination of PTSD as being “not unqualifying” was correct. It was not. Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, paragraph 8.2 provides, “when the PEB finds a disability may be permanent in character, but not stable in degree, and the member otherwise qualifies for disability retirement, the PEB places the member on the TDRL.”

As of the date of this filing, the DVA has awarded the applicant a 100 percent permanent and total disability rating with a PTSD rating of 30 percent. As such, the applicant’s Medical Evaluation Board (MEB) findings must be retroactively updated to reflect the applicant’s PTSD was both unqualifying and combat-related. His PTSD rating should be 30 percent, and the applicant should be placed on the TDRL, effective the date of his separation.

The applicant’s complete submission is at Exhibit A.

## STATEMENT OF FACTS

The applicant is a retired Air Force captain (O-3).

On 13 Jul 22, according to DAF Form 618, *Medical Board Report*, the applicant was diagnosed with Low Back Pain; Incurred While Entitled to Basic Pay: Yes; Existed Prior to Service: No; Permanently Aggravated by Service: Yes; and was referred to the IPEB.

On 15 Sep 22, 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

- Chronic Low Back Pain and Bilateral Lower Extremity Radiculopathy with Lumbar Spondylolisthesis Status Post L5-S1 Decompression and Spinal Fusion; Condition is Compensable: Yes; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

The IPEB remarked this was an Integrated Disability Evaluation System (IDES) case and was awaiting DVA ratings.

On 26 Sep 22, according to a DVA DES Proposed Rating, the following evaluations were provided for DES purposes:

- Service-connection proposed for lumbosacral spine strain and thoracic spine strain with degenerative disc disease, intervertebral disc syndrome (IVDS), and lumbar spine fusion (PEB

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<sup>2</sup> The applicant was granted partial approval of CRSC to include PTSD on 13 Apr 23, with an effective date of Jan 23.

referred condition: low back pain) as directly related to military service with a 20 percent evaluation.

- Service-connection proposed for left leg sciatic nerve radiculopathy (also claimed as left leg pain, radiculopathy, and numbness) as directly related to military service with a 10 percent evaluation.

- Service-connection proposed for right leg sciatic nerve radiculopathy (also claimed as right leg pain, radiculopathy, and numbness) as directly related to military service with a 10 percent evaluation.

On 29 Sep 22, 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

- Chronic Low Back Pain and Bilateral Lower Extremity Radiculopathy with Lumbar Spondylolisthesis Status Post L5-S1 Decompression and Spinal Fusion (DVA rated as lumbosacral spine strain and thoracic spine strain with degenerative disc disease, intervertebral disc syndrome (IVDS), and lumbar spine fusion (PEB referred condition: low back pain); Condition is Compensable: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5243; Disability Rating: 20 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

- Right Leg Sciatic Nerve Radiculopathy; Condition is Compensable: Yes; VASRD Code: 8520; Disability Rating: 10 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

- Left Leg Sciatic Nerve Radiculopathy; Condition is Compensable: Yes; VASRD Code: 8520; Disability Rating: 10 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

The IPEB recommended permanent retirement with a combined compensable percentage of 40 percent.

On 11 Oct 22, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing of his case.

On 27 Oct 22, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions

- Chronic Low Back Pain and Bilateral Lower Extremity Radiculopathy with Lumbar Spondylolisthesis Status Post L5-S1 Decompression and Spinal Fusion (DVA rated as lumbosacral spine strain and thoracic spine strain with degenerative disc disease, intervertebral disc syndrome (IVDS), and lumbar spine fusion (PEB referred condition: low back pain); Condition is Compensable: Yes; VASRD Code: 5243; Disability Rating: 20 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

- Right Leg Sciatic Nerve Radiculopathy; Condition is Compensable: Yes; VASRD Code: 8520; Disability Rating: 10 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

- Left Leg Sciatic Nerve Radiculopathy; Condition is Compensable: Yes; VASRD Code: 8520; Disability Rating: 10 percent; Condition is Combat-Related 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 2008, Section 1646): No; Condition is Permanent and Stable: Yes.

- Category II – Conditions That Can Be Unfitting But Are Not Currently Unfitting:

- Post-Traumatic Stress Disorder (PTSD) DVA rated as PTSD with Stress-Related Bruxism; VASRD Code: 9411

The FPEB recommended permanent retirement with a combined compensable percentage of 40 percent.

On 3 Nov 22, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the FPEB and did not request a one-time DVA reconsideration.

On 8 Nov 22, according to an AFPC/DPFD memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be permanently retired under the provisions of 10 USC § 1201, with a compensable percentage for physical disability of 40 percent.

On 30 Nov 22, according to Special Order Number XXXXX, effective 19 Dec 22, the applicant was relieved from active duty, organization and station of assignment, and effective 20 Dec 22, permanently disability retired with a compensable percentage for physical disability of 40 percent.

On 19 Dec 22, the applicant was furnished an honorable discharge with narrative reason for separation of Disability, Permanent IDIS, and was credited with 14 years, 9 months, and 18 days active service.

On 27 Jan 23, according to a DVA benefits entitlement letter, provided by the applicant, he was granted service-connection for PTSD with Stress-Related Bruxism, with a 30 percent evaluation, effective 20 Dec 22.

On 13 Apr 23, according to an AFPC/DPFDC memorandum, Subject: Partial Approval of CRSC in the Case of [applicant], provided by the applicant, he was granted partial approval of his CRSC claim, to include PTSD with a DVA rating of 30 percent, effective Jan 23.

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

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds there is insufficient evidence to demonstrate the applicant was unfit for duty during his time in service or at discharge from a psychological perspective. There is evidence to support the applicant's mental health condition of PTSD worsened after discharge.

The applicant raises several contentions. He contends the IPEB failed to evaluate his PTSD. While not explicitly mentioned, the IPEB noted they considered all other medical conditions rated by the DVA. The DVA had previously determined the applicant had PTSD and service-connected him at 30 percent. The IPEB found these other conditions are currently not unfitting for duty separately, collectively, or through combined effect. The FPEB specifically noted the applicant was evaluated for PTSD and found his PTSD was not unfitting.

It should be noted the applicant was seen by mental health providers and was evaluated routinely for fitness for duty. He was seen by mental health regularly from 22 Oct 21 to 23 Jun 22 and was determined not to have any duty-limiting conditions from a mental health perspective and was released without limitations. A Compensation and Pension (C&P) examination completed on 17 Jun 22 noted the applicant was diagnosed with a mental health condition, but it was not severe enough to interfere with occupational functioning. A Narrative Summary Addendum, dated 12 Jul 22, specifically noted a PTSD diagnosis but that the symptoms are not severe enough to interfere with occupational functioning. It additionally noted the applicant's PTSD diagnosis "does not interfere with the member's ability to perform their duties." His DVA rating on 26 Sep 22 also noted his PTSD diagnosis had been formally diagnosed, but his symptoms are not severe enough to interfere with his occupational functioning. Lastly, the FPEB, on 27 Oct 22, noted his PTSD as a condition that can be unfitting but is currently not unfitting and not combat-related. Additionally, while the applicant contends statements from his commander were not adequately considered, the FPEB identified they considered the commander's statements in reaching their conclusions.

The applicant contends the DVA awarded him a 30 percent service-connection rating for PTSD on 26 Oct 22 (This rating was actually completed on 26 Sep 22, not 26 Oct 22). While this is accurate, the DVA specifically noted at this time:

"A mental condition has been formally diagnosed (PTSD), but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication."

It was not until after the applicant's discharge and after his second C&P examination that the applicant was determined to have any occupational impairment. His second C&P examination, completed on 3 Apr 23, approximately four months after military discharge, noted:

"Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by medication."

It should be noted the military's DES, established to maintain a fit and vital fighting force, can by law, under 10 USC, only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards, as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

In the applicant's case, his PTSD was determined not to be unfitting throughout his military career. After his discharge, however, the DVA determined his PTSD was mildly impairing his

occupational performance, whereas previously, while in the military, it was not impacting his occupational performance.

The applicant further contends since he was granted CRSC for PTSD, this determined he was unqualified for duty. In accordance with the Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System (DES)*, Appendix 5 to Enclosure 3, it is the PEB that renders a final decision as to 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; and the disability is considered combat-related if it makes the service member unfit or contributes to unfitness. In the applicant's case, the FPEB not only found his PTSD was not unfitting but concluded:

“...after careful review of the existing evidence and new information provided in the contentions/hearing, the FPEB determined [the applicant's] Post-Traumatic Stress Disorder (PTSD) DVA Rated as Post-Traumatic Stress Disorder (PTSD) with Stress-Related Bruxism is not unfitting and not combat-related.”

As mentioned previously, the applicant's mental health symptoms did not cause an occupational impairment while he was in service, but later, after service, his mental health symptoms appeared to have worsened, resulting in a mild impairment in occupational functioning. His CRSC decision dated 13 Apr 23 has an effective date of Jan 23. Both dates are after his military discharge and after his second C&P examination determined a worsening of mental health symptoms. It should be noted the DES and CRSC operate under separate laws, and the term combat-related is defined and treated differently under these laws. Therefore, the DES decision is not a determining factor for CRSC consideration. Award of CRSC is not a contributing factor in a combat-related determination by the PEB, and there is insufficient mental health evidence to support the applicant's claim that his PTSD was unfitting during his time in service or at discharge. Additionally, an updated DVA disability rating (from no occupational impairment to mild occupational impairment) after separation does not warrant a change to the original PEB-assigned DoD ratings after the fact. Therefore, it does not appear the FPEB made an error in their determination.

Additional evidence for his fitness for duty from a psychological perspective can be found in his military record. The applicant earned exemplary performance evaluations (5 out of 5, met standards) on all his performance reports throughout his career. He was promoted regularly, reaching the rank of captain, and he earned several medals throughout his career. Being diagnosed with a mental health condition and receiving mental health treatment do not automatically render a condition as unfitting. More information is required to determine unfitness, such as being placed on a permanent Duty Limiting Condition profile for a mental health condition, being deemed not worldwide qualified due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating from a psychological perspective. These designations were absent from his records. This Psychological Advisor concludes the applicant was fit for duty from a psychological perspective.

The complete advisory opinion is at Exhibit C.

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 the applicant's case. Award of CRSC is not a contributing factor in a combat-related determination by the PEB and there is no conclusive medical evidence to support the applicant's claim his PTSD was unfitting at the time of DES processing. At least six

independent assessments of this condition determined it did not meet the criteria to be considered unfitting for DES purposes.

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 DoDI 1332.18, 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 13 Jul 22, an MEB was held which found the applicant potentially unfitting for Low Back Pain. Under the IDES, all DVA-claimed conditions must be reviewed during the MEB process to determine if these conditions should also be considered potentially unfitting. On 12 Jul 22, a staff psychiatrist reviewed the DVA C&P mental health examination conducted on 17 Jun 22 and provided the following remarks concerning the applicant's PTSD, "Primary mental health provider diagnosed with PTSD with CAP-5 exam. Per chart review patient being seen off base for Eye Movement Desensitization and Reprocessing (EMDR) therapy. Mental Health agrees with C&P exam which states, 'A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication.' Therefore, while patient has a PTSD diagnosis, it does not interfere with the member's ability to perform their duties. The original narrative remains current and accurate."

On 20 Jul 22, the applicant disagreed with the MEB results and requested an impartial medical review requesting his PTSD and several other conditions also be considered potentially unfitting. On 27 Jul 22, the impartial medical reviewer concurred with the MEB findings and did not find

the applicant's PTSD as potentially unfitting. On 1 Aug 22, the applicant further appealed this decision to the MEB Convening Medical Authority. On 18 Aug 22, the XX Special Operations Medical Group Chief of Medical Staff (XX SOMDG/SGH) reviewed the applicant's rebuttal and agreed his PTSD was not potentially unfitting. The SGH provided the following rationale for his decision, "Post-Traumatic Stress Disorder: [The applicant's] case was reviewed by [name], Psychiatrist, following his medical exams. 'While patient has PTSD diagnosis, it does not interfere with the member's ability to perform their duties. The original narrative remains current and accurate.' I personally reviewed [the applicant's] record; I agree with [Psychiatrist's] assessment. [The applicant] does not meet criteria for evaluation under Q1, Q3, Q4, Q6, Q20 nor other retention (MSD 10 May 22)."

On 29 Sep 22, the IPEB found the applicant unfitting for his back condition and sciatic nerve radiculopathy and recommended permanent retirement with a 40 percent compensable disability rating as assigned by the DVA. The AF Form 356, Block 12, contains the following, "NOTE: The IPEB has considered all other medical conditions rated by the Department of Veterans Affairs related to the SM's [service member's] military service as required under the Integrated Disability Evaluation System. The IPEB finds these conditions are currently not unfitting for duty separately, collectively, or through combined effect." Although the IPEB did not specifically address his PTSD, the IPEB reviewed the previously discussed MEB documents and the C&P examinations and also determined this condition was not unfitting. On 3 Oct 22, the applicant disagreed with the IPEB findings and appealed to the FPEB.

On 26 Oct 22, the applicant contended the FPEB should find his PTSD and three other conditions as unfitting, and he should be placed on the TDRL with a 70 percent combined disability rating. The applicant also contended his PTSD should be designated combat-related. On 27 Oct 22, the FPEB denied this request but placed PTSD in Category II – Conditions That Can Be Unfitting But Are Not Currently Unfitting. The FPEB provided a thorough explanation of this decision in Block 12 of the AF Form 356. The FPEB noted the applicant had never been placed on the High Interest Log and he had never endorsed homicidal or suicidal ideations. The applicant also never required hospitalization or referral to an Intensive Outpatient Treatment Program or Partial Hospitalization Program for his mental health condition. The FPEB also noted less than three months before the board, medical authorities determined the impact of his PTSD on his ability to perform his duties over the long term had not reached the point where referral to an MEB was warranted, and since that assessment, the only documented clinical intervention had been the addition of Lexapro. Based on the available information and the applicant's testimony, the FPEB believed there was not enough evidence to conclude his PTSD would result in long term mobility restrictions that would prevent him from returning to duties in his Air Force Specialty Code within the next 12 months. Additionally, the Board noted even if the applicant remained on Lexapro, he could be allowed to return to flying duties, assuming he obtained a waiver for his underlying mental health condition. Therefore, the FPEB found his PTSD was not currently unfitting.

To address the contention the applicant's PTSD should also be designated as combat-related, the FPEB provided the following clarification, "In accordance with Title 26 U.S.C, Section 104 and DoDI 1332.18, IC1 A5, Enclosure 3, combat relation is an administrative determination applied to an unfitting disability for injuries and illnesses attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. After careful review of [the applicant's] case file and evidence provided in hearing, as stated above, board finds that [the applicant's] PTSD is currently not unfitting; therefore, [the applicant's] PTSD cannot be designated as combat-related." On 3 Nov 22, the applicant agreed with the FPEB's findings and did not seek further appeal to the Secretary of the Air Force Personnel Council.

As part of this Air Force Board for Correction of Military Records (AFBCMR) application, the applicant submitted a CRSC approval, dated 13 Apr 23, to seemingly support his claim his PTSD



should have been unfitting and designated as combat-related. However, the DES and CRSC operate under separate laws and the term combat-related is defined and treated differently under these laws. Specifically, the primary definition of combat-related for CRSC comes from 10 USC § 1413a, whereas the controlling DES definition comes from 10 USC, Ch. 61 and 26 USC § 104(b)(3). Therefore, the DES decision is not a determining factor for CRSC consideration, so long as the applicant meets CRSC preliminary criteria by having a qualifying disability rating for which he/she is receiving DVA compensation for service-connected disabilities under 38 USC. Of note, the applicant was approved for CRSC for two DVA service-connected disabilities which were not considered unfitting by the PEB under CRSC evidentiary rules.

The complete advisory opinion is at Exhibit D.

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

The Board sent copies of the advisory opinions to the applicant on 15 Oct 24 for comment (Exhibit E) 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 of the AFRBA Psychological Advisor and the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Under 10 USC, the PEB must determine if the service member's condition renders them unfit for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing and that rating determines the final disposition. The DVA, under 38 USC, may evaluate a service member over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA based on exams conducted after discharge from service does not warrant a change in the total compensable rating awarded at the time of the member's separation. Despite the applicant's contentions, there is evidence the MEB, IPEB, and FPEB considered the applicant's PTSD, as well as his commander's statements, during their adjudication of his case. While the DVA granted service-connection for the applicant's PTSD under 38 USC, multiple independent assessments, which include the Narrative Summary Addendum, IPEB, FPEB, and DVA C&P examination found the applicant's PTSD did not meet the criteria for unfitting under 10 USC.

Additionally, combat-relation is an administrative determination applied to unfitting disabilities in accordance with DoDI 1332.18. As the applicant's PTSD was not found to be unfitting, it cannot be designated as combat-related. Approval of CRSC for the applicant's PTSD is irrelevant to this determination as the DES and CRSC operate under separate laws and the term combat-related is treated differently under these laws. This same rationale relates to the applicant's request for placement on the TDRL for PTSD. The applicant's PTSD was not found unfitting; therefore, TDRL guidance under AFI 36-3212 does not apply. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## 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-2024-01086 in Executive Session on 15 Jan 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 26 Mar 24.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 8 Oct 24.  
Exhibit D: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 10 Oct 24.  
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 15 Oct 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