

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01089

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, be amended regarding all of his conditions of Neuralgia and Radiculopathy as follows:

- a. Change Block 8E from "No" to "I."
- b. Change Block 8F from "No" to "Yes." (**administratively corrected**)

APPLICANT'S CONTENTIONS

He is requesting changes to reflect the Neuralgia and Radiculopathy of his left and right sciatic on his AF Form 356 are the "Direct Result of Instrumentality of War" and the "Disability Was Incurred in a Combat Zone or Incurred During the Performance of Duty in Combat-Related Operations." Currently, line 1 reflects "Yes" but no others indicate this. The applicant believes the other Neuralgia and Radiculopathy items should also be marked "Yes" as they occurred during the same injury event. He provided justifying documentation to show the location where he was working on combat aircraft in support of Operation INHERENT RESOLVE – SPARTAN SHIELD. The conditions listed were the direct result of a military aircraft the applicant was performing his duties on in support of Operation INHERENT RESOLVE – SPARTAN SHIELD, which is an ongoing operation of the Global War on Terror.

Due to the injuries sustained while performing his duties on combat aircraft, the applicant received a cervical fusion, laminectomy/discectomy of his lumbar and five years of physical therapy in an attempt to relieve ongoing sciatic nerve pain with minimal relief.

When the applicant received his AF Form 356 from the Disability office, he was led to believe the one item identified in 8F was sufficient and he was unaware 8E would have any affect on his benefits until he was contacted by the Office of Personnel Management. The applicant would like his service record to reflect his disabilities were incurred while performing his military service.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard master sergeant (E-7).

On 23 Feb 23, according to a Department of Veterans Affairs (DVA) Rating Decision, provided by the applicant, he was granted service-connection for the following disabilities (associated with his unfitting conditions):

- Lumbosacral strain claimed as muscle pain as secondary to back injury, joint pains as secondary to upper back, musculoskeletal – mid/lower back (thoracolumbar spine and upper back) with evaluation of 40 percent, effective 14 Aug 22.

- Left lower extremity radiculopathy (sciatic nerve) also claimed as neuritis and nerve damage with evaluation of 10 percent, effective 14 Aug 22.
- Right lower extremity radiculopathy (sciatic nerve) also claimed as neuritis and nerve damage with evaluation of 10 percent, effective 14 Aug 22.
- Degenerative arthritis associated with spinal stenosis s/p neck surgery claimed as muscle pain as secondary to neck injury(ies), neck surgery, neck pain, neck and joint pain as secondary to musculoskeletal – neck/upper back cervical spine with evaluation of 30 percent, effective 14 Aug 22.

On 13 Jun 23, according to a *Medical Evaluation Board Narrative Summary*, the applicant's neck and low back pain began in 2019 while performing aircraft inspections during overseas deployment.

On 24 Aug 23, according to DAF Form 618, *Medical Board Report*, the applicant was diagnosed with:

- Cervical Disc Disorder w/Radiculopathy; Incurred While Entitled to Basic Pay: Yes; Existed Prior to Service: No; Permanently Aggravated by Service: Yes.
- Lumbosacral Disc Disorder w/Radiculopathy; Incurred While Entitled to Basic Pay: Yes; Existed Prior to Service: No; Permanently Aggravated by Service: Yes.
- Best Disease OU; Incurred While Entitled to Basic Pay: Yes; Existed Prior to Service: No; Permanently Aggravated by Service: Yes.

The applicant was referred to the Informal Physical Evaluation Board (IPEB).

On 29 Sep 23, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant's medical condition prevents him from reasonably performing the duties of his office, grade, rank, or rating. He was diagnosed with:

- Category I – Unfitting Conditions
 - Cervical Degenerative Disc Disease with Bilateral Radiculopathy; Is the Condition Compensable: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5242; Disability Rating: 30 percent; 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, Sec 1646): Yes; Condition is Permanent and Stable: Yes.
 - Right Middle Radicular Group Neuralgia; Is the Condition Compensable: Yes; VASRD Code: 8711; 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, Sec 1646): No; Condition is Permanent and Stable: Yes.
 - Left Middle Radicular Group Neuralgia; Is the Condition Compensable: Yes; VASRD Code: 8711; 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, Sec 1646): No; Condition is Permanent and Stable: Yes.
 - Thoracolumbar Degenerative Disc Disease with Bilateral Radiculopathy; Is the Condition Compensable: Yes; VASRD Code: 5242; Disability Rating: 40 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, Sec 1646): No; Condition is Permanent and Stable: Yes.
 - Right Sciatic Radiculopathy; Is the Condition 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, Sec 1646): No; Condition is Permanent and Stable: Yes.

- Left Sciatic Radiculopathy; Is the Condition 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, Sec 1646): No; Condition is Permanent and Stable: Yes.

- Bilateral Best Disease Retinal Dystrophy; Is the Condition Compensable: Yes; VASRD Code: 6042; Disability Rating: 30 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, Sec 1646): No; Condition is Permanent and Stable: Yes.

The IPEB recommended permanent retirement with a combined compensable percentage of 80 percent.

On 3 Oct 23, 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 11 Nov 23, according to Special Order Number XXXXX, dated 13 Oct 23, the applicant was relieved from active duty, organization and station of assignment. Effective 12 Nov 23, he was permanently disability retired with a compensable percentage for physical disability of 80 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.

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 applicant's request that his back conditions be deemed as combat-related. 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 IPEB processed his disability case. There is no corroborating medical evidence or witness accounts that the applicant's back conditions were directly caused by the operation of the aircraft or an aircraft mishap.

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. 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.

However, the PEB maintains none of the applicant’s unfitting conditions meet the criteria for a combat-related determination in accordance with DoDI 1332.18 as mentioned above. The PEB notes the member was an Aerospace Propulsion Craftsman who incurred his back condition while deployed to the United Arab Emirates in 2019. Although this back condition was incurred in a combat zone while performing his duties as an aircraft maintainer, there is no documented evidence or witness-provided testimony to substantiate a singular combat-related event such as the member being involved in an aircraft-related mishap while deployed. Injuries incurred while performing normal day-to-day aircraft maintenance duties do not qualify as a combat-related event caused by an instrumentality of war since the aircraft itself did not directly cause his injuries.

The PEB has thoroughly reviewed the applicant’s request and disability case file and agrees his unfitting conditions for 1) Right Middle Radicular Group Neuralgia 2) Left Middle Radicular Group Neuralgia 3) Thoracolumbar Degenerative Disc Disease with Bilateral Radiculopathy 4) Right Sciatic Radiculopathy and 5) Left Sciatic Radiculopathy should have been deemed as incurred in a combat zone during the time of disability processing. AFPC/DPFDD administratively corrected the applicant’s record to show his other back-related conditions were incurred in a combat zone and has placed a copy of this AF Form 356 in his Automated Records Management System personnel record.

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 29 May 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 regarding his back-related conditions being combat-related. The applicant's unfitting conditions do not meet the requirements for combat-related in accordance with DoDI 1332.18; however, his back-related disabilities did occur in a combat zone. Therefore, except for the aforementioned administrative correction, 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-2024-01089 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 1 Feb 24.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 2 May 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 May 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