

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01612

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her official military personnel record be amended to reflect:

- a. Disability was 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.
- b. Award of Combat-Related Special Compensation (CRSC).

APPLICANT'S CONTENTIONS

Her medical retirement reflects her Post-Traumatic Stress Disorder (PTSD) was caused due to combat in Afghanistan as a result of armed conflict. Her discharge document, Special Order Number XXXX states her disability was not in the line of duty as a direct result of armed conflict or caused by an instrumentality of war. She should be granted CRSC and her line of duty changed from "No" to "Yes" disability was received in line of duty as a direct result of armed conflict or caused by an instrumentality of war.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Oct 15, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with PTSD and Major Depressive Disorder (MDD), Recurrent, Severe, without Psychosis; Incurred while entitled to basic pay: Yes; Existed prior to service: No; Line of Duty: Yes; and was referred to the informal Physical Evaluation Board (IPEB).

On 1 Dec 15, 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 the following:

- Category I – Unfitting Conditions:
 - PTSD with MDD (Combat Zone, Not Combat-Related); Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 50 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 9411; 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 [National Defense Authorization Act 2008 (NDAA 2008), Section 1646]: Yes.

The IPEB recommended temporary retirement – reevaluate in six months with a combined compensable percentage of 50 percent.

On 2 Dec 15, 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 the right to a formal PEB (FPEB) hearing. She did not request a one-time reconsideration of the disability ratings for the conditions found unfitting by the IPEB.

On 10 Dec 15, according to Special Order Number XXXX, effective 26 Feb 16, the applicant was relieved from active duty, organization and station of assignment. Effective 27 Feb 16, she was placed on the Temporary Disability Retired List (TDRL) with compensable percentage for physical disability of 50 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; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations designated by the Secretary of Defense (NDAA 2008, Section 1646): No.

On 26 Feb 16, the applicant was furnished an honorable discharge with narrative reason for separation of Disability, Temporary, Enhanced, and was credited with 11 years, 8 months, and 19 days active service.

On 17 Jan 18, according to AF Form 356, the applicant was reevaluated and found unfit because of physical disability and diagnosed with the following:

- Category I – Unfitting Conditions:
 - PTSD with MDD, Recurrent, Full Remission (Combat-Related: No; Combat Zone: Yes); Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 30 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 designated by the Secretary of Defense (NDAA 2008, Section 1646): Yes.

The IPEB recommended TDRL to permanent retirement with a combined compensable percentage of 30 percent.

On 29 Jan 18, according to *Action on the Findings and Recommended Disposition of the USAF Physical Evaluation Board*, the applicant concurred with the recommended findings.

On 8 Feb 18, according to Special Order Number XXXX, effective 28 Feb 18, the applicant was removed from the TDRL and retired with a compensable percentage of 30 percent for physical disability. 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 13 Feb 18, according to Special Order Number XXXX, Special Order Number XXXX, dated 10 Dec 15, was amended to reflect:

- Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations designated by the Secretary of Defense (NDAA 2008, Section 1646): Yes.

On 10 Dec 18, according to DD Form 2860, *Claim for Combat-Related Special Compensation (CRSC)*, the applicant submitted an application for CRSC.

On 6 May 19, according to an AFPC/DPFDC [Section Chief, CRSC] letter, the applicant's claim for CRSC for PTSD was disapproved.

On 29 Apr 24, according to Department of Veterans Affairs summary of benefits letter, provided by the applicant, her combined service-connected evaluation is 100 percent.

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

APPLICABLE AUTHORITY/GUIDANCE

10 USC § 1413a. *Combat-related special compensation.*

(a) *Authority.* The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(e) *Combat-Related Disability.* In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that:

- (1) is attributable to an injury for which the member was awarded the Purple Heart; or,
- (2) was incurred (as determined under criteria prescribed by the Secretary of Defense)
 - (A) as a direct result of armed conflict;
 - (B) while engaged in hazardous service;
 - (C) in the performance of duty under conditions simulating war; or
 - (D) through an instrumentality of war.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the applicant's request that her PTSD be designated 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 PEB processed the applicant's disability case. There is no corroborating medical evidence or witness accounts that the applicant was directly involved in a combat-related event which contributed to her unfitting PTSD.

Under 10 USC, the PEB must determine if a member's condition(s) renders them unfit for continued military service relating to their office, grade, rank, or rating. Additionally, in accordance with Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, Appendix 5 to Enclosure 3, the PEB renders a final decision on whether an injury or disease that makes the service member unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during war. A disability is considered combat-related if it makes the service member unfit or contributes to unfitness and the preponderance of evidence shows it was incurred under any of the following circumstances:

(1) *As a Direct Result of Armed Conflict.* Injury or disability was incurred in combat with an enemy of the United States. To qualify under this rule, a service member must be engaged with members of opposing armed forces and forces are in close enough proximity to potentially inflict physical harm on one another. Furthermore, to be "engaged with" indicates each party has the potential to cause physical harm to the other; it is reciprocal.

(2) *While Engaged in Hazardous Service.* Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) *Under Conditions Simulating War.* In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) *Caused by an Instrumentality of War.* Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

On 22 Oct 15, a Medical Evaluation Board found the applicant potentially unfitting for PTSD and MDD. The accompanying Narrative Summary indicates she was referred for mental health treatment in Apr 15 following an Apr 14 – Oct 14 deployment to Afghanistan. The applicant reported, that while deployed, she contemplated committing suicide on a nearly daily basis in fear of being killed by the enemy, if such a situation would arise. The applicant also reported, during this deployment, a general was killed and a captain was seriously wounded, and she worked with both individuals and knew them well. As part of the applicant's duties, she reviewed the After Actions Reports but refused to view the photographs of the scene. However, she could "picture it in her mind's eye" and was very familiar with the attack. There is no indication the applicant was directly involved in this traumatic event.

On 1 Dec 15, the IPEB found the applicant unfit for PTSD with MDD and determined his condition was incurred in a combat zone but was not combat-related. On 2 Dec 15, the applicant agreed with the IPEB's findings and did not appeal to the FPEB to potentially find this condition as combat-related during disability processing. She was subsequently placed on the TDRL, effective 27 Feb 16. On 10 Dec 15, Special Order XXXX was published announcing the applicant's placement on the TDRL. The order properly documented the IPEB's decision that her disability was not combat-related but incorrectly indicated this condition was not incurred in a combat zone.

On 17 Jan 18, the IPEB conducted a TDRL reevaluation and found the applicant's PTSD remained unfitting and was incurred in a combat zone but not combat-related. On 29 Jan 18, the applicant agreed with the IPEB's findings and, once again, did not appeal to the FPEB to potentially find this condition as unfitting [sic]. She was subsequently removed from the TDRL and permanently retired, effective 28 Feb 18. On 8 Feb 18, Special Order XXXX was properly prepared to indicate the applicant's disability was not designated as combat-related per the IPEB's determination. Additionally, on 13 Feb 18, Special Order XXXX was published which amended her original retirement order to reflect the PEB had initially determined this condition was incurred in a combat zone.

Furthermore, the applicant did not provide any additional documentation as part of this submission which would substantiate her claim that her PTSD was a direct result of a combat-related event as defined by DoDI 1332.18. Additionally, the CRSC Management section has confirmed they denied her claim for CRSC due to PTSD in Dec 19 although the rules for that program are different than a combat-related determination made by the PEB.

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

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, 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. The application of standard criteria for combat-relation, as explained in the advisory opinion, and executed by the IPEB, follows guidance outlined in DoDI 1332.18. There is no evidence the applicant's unfitting conditions meet the requirements for combat-relation in accordance with this guidance.

Additionally, while there is evidence the applicant was in a combat zone, and was later diagnosed with PTSD, this does not sufficiently meet any of the four CRSC criteria, as outlined in 10 USC § 1413a, without a specific nexus between the activity performed and the disability claimed. Incurring a disability during a period of war, while serving in an area of armed conflict, while participating in combat operations, or actions taken during a normal duty status, is not sufficient by itself to support a combat-related determination. When making combat-related determinations regarding armed conflict, hazardous service, simulation of war, or instrumentality of war, definite, documented, causal relationship with the resulting disability, such as direct combat exposure to gun fire or mortar attack, is required. Unfortunately, there is no documented evidence in the applicant's official military personnel record, or provided by the applicant, to support that nexus. Therefore, the board recommends against correcting the applicant's records.

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-2024-01612 in Executive Session on 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 1 May 24.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 21 Oct 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 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