

## SECOND ADDENDUM TO RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2018-01406

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

The Board reconsider her request to correct her AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, to indicate her unfitting conditions were combat related.

### RESUME OF THE CASE

The applicant is a retired Air National Guard technical sergeant (E-6).

On 24 Oct 18, the Board considered the applicant's request to amend her AF Form 356, Blocks 9F and 10E to reflect her disabilities were combat-related and incurred in a combat zone, respectively. The Board recommended partial grant, amending her AF Form 356 and retirement order to indicate her disability was incurred in a combat zone. However, the Board denied the applicant's request to designate her unfitting condition as combat-related, finding there was insufficient evidence of an error or injustice to justify relief.

On 27 Jan 19, the applicant submitted an application for reconsideration requesting her unfitting condition be designated as combat-related. She again contended her medical conditions occurred while she was deployed to Afghanistan in 2010. In support of her request, she provided as new evidence a copy of Afghanistan Significant Activities documents and other documents previously reviewed by the Board.

On 21 Aug 19, the Board recommended denying her request again finding there was insufficient evidence to support a definite causal relationship between the applicant's unfitting condition and armed conflict.

For an accounting of the applicant's original request and the rationale of the earlier decisions, see the AFBCMR Letter and Record of Proceedings at Exhibit J.

On 11 Jan 23, the applicant requested reconsideration of her request to amend her AF Form 356, dated 17 Apr 19, to reflect her unfitting conditions are combat-related as defined in Title 26, United States Code, Section 104 (26 USC 104) (b)(3) - *Special Rules for Combat-Related Injuries*; (A) which is incurred (i) as a direct result of armed conflict; (ii) while engaged in extra hazardous service, or (iii) under conditions simulating war; or (B) which is caused by an instrumentality of war. She again contends evidence obtained directly from the Department of Veterans Affairs (DVA) Official Military Action Report (OMAR) database tool, while she was deployed to Bagram Air Base, Afghanistan for the following dates: 1 Mar 10 – 9 May 10, confirms the mental disability was in the line of duty in a hazardous location in the direct result of war. Her DD Form 214, *Certificate of Release or Discharge from Active Duty, Remarks*, reflects "Member Mobilized under Title 10, U.S.C. 12302 in support of Operation ENDURING FREEDOM. Member deployed to Bagram, Afghanistan." Her Air Force Specialty Code was

Munitions Systems and she worked on the flightline replenishing aircraft and ensuring serviceability of munitions. On several occasions while working the 0000-1200 hours shift, her team had to brace for cover in a bunker. The record shows this was a huge impact on her ability to complete 20 years of service, at 18 years, 9 months, and 25 days. She was not afforded any rights to retirement as planned. In support of her reconsideration request, the applicant submitted the following new evidence: (1) Partial Mobilization Orders; (2) Point Credit Summary; (3) Updated DVA OMAR; (4) Detailed SF 600, *Chronological Record of Medical Care/MEB Narrative Summary*; and (5) DVA Rating Decision and Service-Connected Compensation documents.

The applicant's complete submission is at Exhibit K.

## **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. In reviewing the documentation provided by the applicant, there is no evidence she was in imminent danger or placed in harm's way. A service member's mere presence in a combat zone does not entitle them to combat-related designation.

Upon review, the applicant's latest submission presents no new evidence to support her claim that her disability condition should be combat-related as defined in 26 USC 104; therefore, the previous advisory opinion, dated 28 Jun 19, still stands. Although the DVA OMAR Afghanistan 2010 report included in the applicant's submission indicates there were 19 events at Bagram Air Base during the provided timeline, the applicant did not submit any new evidence or corroborating witness statements to show she was directly involved in those events. In making a combat-related designation, the Physical Evaluation Boards have consistently relied on two key factors: 1) did the service member sustain a physical injury; or 2) was there a reasonable chance of serious injury or death as a result of hostile action (e.g., was the service member in harm's way). The PEB does not rely on conjecture or philosophical discussion by lawmakers or legal advisors in making a combat-related designation. Rather, to designate an unfitting condition as combat-related, the PEB seeks corroborating evidence. The applicant provides no such evidence.

Of note, the Air Force Board for Correction of Military Records (AFBCMR) previously determined the applicant's Unspecified Depressive Disorder with Unspecified Anxiety Disorder was incurred in a combat zone, but not combat-related. Therefore, no additional changes to the AFBCMR's previous decision are recommended.

The complete advisory opinion is at Exhibit L.

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

The Board sent a copy of the advisory opinion to the applicant on 27 Apr 23 for comment (Exhibit M) 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 remains unconvinced the evidence presented demonstrates 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. As indicated by the Board's previous decision, the applicant's condition was incurred in a combat zone; however, while the new evidence provided by the applicant again confirms this finding, it does not offer corroboration that her unfitting condition is combat-related as defined by 26 USC 104. 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-2018-01406 in Executive Session on 30 Nov 23:

- , Panel Chair
- , Panel Member
- , Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 18 Sep 19.
- Exhibit K: Application, DD Form 149, w/atchs, dated 11 Jan 23.
- Exhibit L: Advisory Opinion, AFPC/DPFDD, dated 25 Apr 23.
- Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Apr 23.

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**

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Board Operations Manager, AFBCMR