ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF: **DOCKET NUMBER:** BC-2020-00590

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His Combat-Related Special Compensation (CRSC) claim be reconsidered and granted.

RESUME OF THE CASE

The applicant is a retired Air Force lieutenant colonel (O-5).

On 16 Dec 20, the Board considered and denied his request to reconsider and grant his CRSC claim; finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

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

On 16 Dec 22, the United States Court of Federal Claims remanded the applicant's case, instructing the AFBCMR to:

1. Reconsider whether the AFPC's misapplication of the definite, documented, causal relationship standard constitutes material error;

2. Specifically address whether the evidence satisfies the definite, documented, causal relationship standard between his Post-Traumatic Stress Disorder (PTSD) and hazardous service, simulations of war, and instrumentalities of war;

3. Explain its analytical path and support its conclusions with facts from the administrative record; and,

4. Consider conducting a line of duty (LOD) investigation for the applicant's PTSD and explain its reasoning if it declines to do so.

The United States Court of Federal Claims remand order is at Exhibit G.

On 6 Jan 23 and 3 Mar 23, the AFBCMR staff sent correspondence to the applicant requesting any additional evidence he may wish to submit for the Board's reconsideration (Exhibit H).

On 6 Mar 23, the applicant responded and indicated he was awaiting two Freedom of Information Act (FOIA) requests, referenced in the Court Remand order, and upon receipt, he may submit the information for consideration. The applicant stated he had no other evidence to submit at this time.

On 10 Aug 23, the National Guard Bureau (NGB) notified the applicant his FOIA request was completed and a search for the requested documents could not be located. NGB indicated, "The records you are seeking are beyond their retention age and are no longer kept per Records

Disposition Schedule; Table and Rule 51 - 04 R 12.00 "Investigation Reports of Aircraft or Missile Incidents." The table and rule states to keep such records for up to 30 years; therefore, the records no longer exist. The FOIA applies only to existing records and there is no requirement to create records in order to respond to a FOIA request."

On 13 Aug 23, correspondence was received by the applicant. He requested the NGB FOIA letter be entered as evidence for his case and the Board request advisory opinions from AFRC/SG, AFPC/JA and ODUSD/MPP-Compensation. He expressed his disappointment the incident reports were discarded by NGB and perhaps the Board may consider his willingness to take the time to search for them will aid his credibility about the incidents. He noted the statements given at each level of the proceedings were given under threat of perjury charges if found to be false. The applicant also asserted, with respect to the LOD investigation, the causation of PTSD disability is presumed in favor of the member. He stated he had no other evidence to submit at this time.

On 25 Aug 23 and 9 Oct 23, the applicant provided additional personal statements in support of his request. The applicant reiterates his contentions his PTSD is clearly combat-related by the definition of 10 United States Code Section 1413a (10 U.S.C., § 1413a) and "while engaged in hazardous service; in the performance of duty under conditions simulating war, and through an instrumentality of war." He believes he meets the prerequisite for CRSC as his PTSD is service-connected by the Department of Veterans Affairs (DVA) with 10 percent disability rating, effective 14 Sep 16. He contends numerous events while serving as a fighter pilot for 11 years caused and/or contributed to his eventual diagnosis of PTSD. The applicant references multiple court cases in support of his request.

The applicant's complete submissions are at Exhibit J.

APPLICABLE AUTHORITY/GUIDANCE

The primary authority for the CRSC program is 10 U.S.C., § 1413a, which provides additional compensation, above and beyond that for normal service-related injuries, to veterans with a "combat-related disability." The term "combat-related disability" is defined, in relevant parts, to include injuries that were "incurred (A) as a direct result of armed conflict, [or]…(D) through an instrumentality of war." DoDI 1332.18, *Disability Evaluation System*, enclosures 3, appendix 5, paragraphs 1.b.(2) and 2.b., further elaborates that "direct result of an armed conflict" requires a definite causal relationship between armed conflict and the disability. Moreover, "that the injury was incurred during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding." For an instrumentality of war, again, there must exist a direct causal relationship between the instrumentality and the injury – just because an instrumentality of war was involved in the events leading to the injury is not enough, that instrumentality must have caused the injury. DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, chapter 63, paragraph 630502 elaborates that "[a]n uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein." DoD 7000.14-R, Volume 7B, chapter 63, paragraphs 630601, 630604, and a 2004 Directive Type Memorandum (DTM) on CRSC both mirror the above definition language. In addition, the 2004 DTM also charges the Military Departments with independently determining the relationship between a member's injury and the qualifying CRSC criteria. A preponderance of evidence standard is used in making these determinations. Further, the burden of proof rests with the CRSC applicant.

AIR FORCE EVALUATION

AFPC/JA recommends denying the application. AFPC/DPFDC erred in communicating the correct standard applied when it said the Board looked for a definite, documented, causal relationship between "armed conflict" and the resulting disability as this would be the accurate

standard only for an injury or disability incurred under the category "as a direct result of armed conflict." It is undisputed the applicant did not directly participate in armed conflict but rather asserts his disability is a result of either hazardous service, conditions simulating war or an instrumentality of war.

Despite erring in clearly communicating the correct standard in the denial notification, AFPC/DPFDC did review the claim using the correct standards and found in its initial review, and finds again now, the applicant failed to meet his burden of showing by a preponderance of documentation available there was a direct, documented, causal relationship between either the hazardous service, the simulated armed conflict or the instrumentality of war and his PTSD. Therefore, AFPC/DPFDC maintains the applicant has not established his entitlement to CRSC.

In accordance with (IAW) the Directive Type Memorandum (DTM), determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where the quality of information is more important than the quantity. The determination will be made on the basis of "credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture."

The applicant has provided his personal recollections of events that happened nearly 50 years ago but has provided virtually no official, objective documentary information from his records to corroborate the incidents detailed in his statement occurred in the same manner, or severity, in which he recalls. He provided flight logs annotating his flight hours in the F-100C; however, none of those logs provide any details of the flights. Additionally, the excerpt from the private publication, *Check Six*, is also a personal recollection of events that has not been verified or corroborated by official records.

The applicant did not provide any official documentation of the incidents he identifies. AFPC/DPFDC reviewed the applicant's performance reports which documents only two potential incidents. In his 27 Oct 58 – 26 Apr 59 performance report, the rater notes "He always maintains a calm professional attitude even during times of stress. An example is a recent Ground Controlled Approach and landing at an airfield where the weather was below prescribed safe minimums for jet aircraft." His performance report dated 27 Apr 60 - 3 Nov 60 noted "he encountered an inflight emergency due to failure of his normal electrical system. On this flight he used good judgement and professional flying skills and returned the aircraft without further incident." Neither incident appears to have occurred while flying the "unstable" F-100C the applicant identifies as the Instrumentality of War that caused his disability because of its inherent dangerousness. Additionally, in both performance reports, the rater specifically comments on the applicant's mental state under such circumstances, noting his good judgement and calm professional attitude. In fact, despite identifying the F-100C as the instrumentality of war responsible for his disability, only 3 of the 15 incidents he recalls involve him in the cockpit of an F-100C. Two were in T-28 or T-33 trainers. Five were while flying the F-86D, and one was during Survival Evasion Resistance and Escape (SERE) training, not in an aircraft at all. Of the seven examples he recites in his statement related to the F-100C, only three are incidents where he was actually in the plane, the remaining are instances where he observed (training video) or was aware of other pilots who were injured or killed in F-100C accidents. None of the three examples where he alleges experiencing an emergency event while flying the F-100C are corroborated in his official evaluation reports or other official, objective documentation. Since the burden is on the applicant to establish the direct, documented causal relationship, his inability to corroborate these incidents via official records alone is sufficient grounds to deny the claim.

In the absence of such records, the applicant argues in his statement to the AFBCMR dated 12 Nov 19, his statements made to the DVA, AFPC/DPFDC and to the AFBCMR were made "under the threat of felony jail sentences" and should therefore be considered "competent evidence, in much the same way as testimony under oath in the courts." This argument is not

persuasive. The standard set by the DoD (as authorized by 10 U.S.C. § 1413a) specifically states that the decision will be based on "credible, objective documentary information in the records." The applicant's statement is not objective documentary information. Additionally, even testimony under oath can be evaluated for its credibility. AFPC/DPFDC does not have to believe the applicant is fabricating the incidents to question his ability to accurately recollect events that occurred half a century earlier.

The applicant did submit a FOIA request seeking "a paper copy of an incident report of an airborne flameout of a single seat F-100C fighter plane which occurred the evening of 30 Dec 65 over eastern Oklahoma" as well as the subsequent U.S. Air Force Flameout Team report in 1966. According to the relevant records custodian, no responsive records for that FOIA exists as the records sought are beyond their retention age (30 years) and are no longer kept per the Records Disposition Schedule. The AFBCMR could determine, in light of the destroyed records, to find this incident occurred as a matter of equity. However, even if the Air Force accepted as fact every incident as recalled by the applicant, his claim for CRSC would still fail as the applicant has not established his disability was directly caused by any hazardous service, simulation of war or instrumentality of war.

The applicant has not provided a single medical record, incident report, or other official record indicating at the time of any particular flight he incurred his disability. It is reasonable to conclude if the applicant had developed PTSD at the time of any one of these incidents there would be some indication or warning signs; a medical record in his file, an evaluation noting his flying performance suffered, or at a minimum an indication he attempted to avoid the stress by limiting his flying requirements. However, there are no medical records to indicate the applicant experienced any emotional trauma following any specific flight. There is no indication his superiors were concerned about his mental well-being or ability to perform due to emotional stress caused by flying. Instead, there is an official record, including 13 years of performance reports, replete with examples of his enthusiasm for flying, his strong mental fortitude and his potential for greater responsibilities.

It is theoretically possible the applicant's PTSD symptoms at the time and his supervisors never knew, or knew but failed to document it, but given the complete lack of objective documentary evidence supporting that possibility, especially when weighed against a lengthy, objective record that strongly suggests otherwise, AFPC/DPFDC's determination the applicant failed to prove by a preponderance of the evidence he incurred PTSD as a direct result of the alleged events was reasonable and not arbitrary.

While the F-100C would be considered an instrument of war, in order to qualify for CRSC under the category of "instrumentality of war" (identified as the best descriptive category on his DD Form 2860, *Claim for CRSC*) the applicant must show by a preponderance of the available documentary information the disability was incurred incident to a hazard or risk of the service and the military instrument was the direct, documented, cause of the disability. The applicant has not established the F-100C, or any other airframe he flew, was the direct cause of his PTSD. There is nothing in the record to suggest he was experiencing PTSD contemporarily with the time he was flying. There is no official documentation to corroborate any particular hazard or risk of the service to the applicant while flying the F-100C. The examples of others being harmed or killed in the F-100C would not be a direct cause between the instrumentality and the disability. Furthermore, the passage of nearly 50 years from the end of his flying until his PTSD diagnosis makes a direct causal relationship extremely unlikely, especially when viewed against the competing information in his official military record.

The applicant argues in his AFBCMR statement the Air Force level of proof is "arbitrary and unreasonable" and it "seems to be as strict as the standard of "beyond a reasonable doubt." He is incorrect on both counts. The standard is clearly established in DoD guidance and does not require

proof beyond a reasonable doubt. It is neither arbitrary nor unreasonable. It is a standard established and approved by the Secretary of Defense as authorized by Congress in 10 U.S.C. § 1413a.

The applicant further argues the DoD "misinterpreted" the authority to establish criteria for CRSC and the statute does not authorize the DoD to require criteria "more stringent" than used by the DVA and therefore since the DVA diagnosed his PTSD as "service-connected" should be sufficient to establish combat-related status because of his role as a fighter pilot. He argues in mental disability cases "a broader analysis of the cause factors should be made" and requiring some form of "absolute proof" regarding the cause of his PTSD violates the intent of Congress in passing 10 U.S.C. § 1413a. These arguments are unpersuasive. The DVA awards service-connected disabilities based on DVA standards and resolves doubt in favor of the veteran. There is nothing in 10 U.S.C. § 1413a that would require the DoD to adopt DVA standards of service-connectedness when evaluating CRSC claims. In fact, the court has held "the entire purpose of CRSC is to provide service members who incur their disability as a result of combat with benefits above and beyond those which they would receive in any event for other service-connected disabilities." (*Adams v. United States*, 126 Fed. Cl 645, 659 (2016). AFPC/DPFDC does not require "absolute proof" of a causal connection for any physical or mental disability, merely a preponderance of the available documentary information there is a direct, documented causal relationship with the disability, which the applicant has failed to provide.

The applicant does not have to prove there are no other possible causes; however, he must establish by a preponderance of the evidence the instrumentality of war is more likely than not the direct cause. As already stated, the applicant has provided little other than his recollections and speculation to establish a direct causal connection between the F-100C, or other airframes, and his PTSD. Additionally, his own account indicates other possible causes for his PTSD. He reported being raised in a home with "an intimidating, physically abusive father" and having an older physically abusive brother. He also stated his SERE ground training was frightening and for several weeks after he had nightmares of being chased in the woods. Additionally, his examples of discovering classmates and friends killed in combat or due to accidents, including at least one for whom he was a flight commander, could be a cause of survivor guilt and PTSD. None of these would be directly caused by the instrument of war and would not qualify for CRSC but are at least as likely causes of his PTSD.

While the applicant only marked the category of Instrumentality of War on the DD Form 2860, the court correctly noted this is the code that "best describes" and is not the exclusive category raised. AFPC/DPFDC did initially, and does again in response to this remand, review the case under the remaining categories of "Hazardous Service" and "Conditions Simulating War."

While the applicant's flights in the F-100C, and other aircraft, would be considered hazardous service, that alone is insufficient to meet criteria for CRSC. To establish eligibility for CRSC under the category of Hazardous Service, the applicant bears the burden of establishing, by a preponderance of the evidence, the injury was incurred during performance of duties that present a higher degree of danger due to the level of exposure to actual or simulated armed conflict. It is not enough even that the disability was incurred during a period of hazardous service, the member must show there is a direct, documented, causal relationship between the hazardous service and the resulting disability.

For the same reasons analyzed under Instrumentality of War, the applicant's claim fails under this category. The applicant has not provided sufficient corroborated, credible evidence from his record there is more likely than not a direct causal relationship between any flight and his PTSD. Likewise, under the category of Conditions Simulating War, the applicant would have to establish his PTSD was incurred in the line of duty as a result of simulating armed conflict. The fact a member incurs a disability during a simulation or while participating in simulated combat

operations is not enough, he bears the burden of showing a definite, documented, causal relation between the simulated armed conflict and the resulting disability.

The absence of any official military records, to include medical records, that show he was engaged in any specific combat simulation and suffered PTSD as a direct result of that simulation was, and remains, reasonable grounds for AFPC/DPFDC to weigh the evidence, including his military performance records, and conclude the applicant failed to establish that it was more likely than not his PTSD was the direct result of a combat simulation.

Finally, while the focus of the advisory is the issue remanded regarding the standard applied for determining CRSC eligibility, the court also remanded an issue to determine whether an LOD investigation, if authorized, could produce definite, documented, causal evidence in support of the member's claim. It is unlikely an LOD investigation, if authorized, would produce any useful information relevant to the applicant's claim. Since there are no medical records indicating PTSD was diagnosed at the time, any LOD inquiry would start with an assumption the condition existed while the member was in a qualified status and remained latent for the past 37 years or was incurred long after retirement but was the result of service decades earlier. Making that assumption, and in the absence of any indication the condition was not in the line of duty, the presumption would be his condition was in the line of duty and would likely be found in the line of duty by an informal LOD process which does not include the appointing of an investigating officer or a formal investigation. Even if a formal LOD investigation was initiated, it is highly unlikely that additional relevant records that have not already been identified and reviewed would be found given the long passage of time as it has already been determined that any incident records from that time would already have been disposed of in accordance with established retention schedules.

The complete advisory opinion is at Exhibit K.

AFRC/SGO recommends denying the application. It is probable the applicant was exposed to significant stressful situations personally and suffered from emotional distress due to his fellow pilots being injured or killed. This is essential as if the applicant developed mental health concerns during a qualified duty status in the Air Force Reserve, and there was no evidence of misconduct, which does not appear to have been the case, the applicant would have been eligible for a LOD evaluation. It is probable the LOD Board would have determined that a diagnosis such as Stress Reaction, Generalized Anxiety Disorder, PTSD, or other associated conditions, be considered ILOD. Assuming the applicant had mental health concerns and there was an ILOD finding, the applicant would be eligible for continued medical care. This diagnosis would then have to be considered disqualifying by AFRC/SGP and sent to the Informal Physical Evaluation Board (IPEB) for determination of fitness and if the applicant was entitled to a military retirement. However, the applicant would not have been considered disqualified for further military service based on the diagnosis of PTSD even if found ILOD as the applicant continued to complete Law School and continued to serve in the Air National Guard and did not retire until he reached 20 years, over a decade later. The Court Remand requested evaluation for a LOD has been discussed. Although likely to have been considered ILOD, the diagnosis of PTSD was not disqualifying and therefore, would not have been evaluated by the IPEB for a medical military retirement.

The complete advisory opinion is at Exhibit L.

ODUSD MPP-Compensation recommends denying the application. The preponderance of the documentary evidence does not support the applicant's claim for CRSC. While the applicant provides a list of events he feels contributed to his PTSD, the mental health intake assessment provided in his records only specifically calls out the simulated dive bomb run where his plane refused to pull out of the dive, his engine flameout event, and the failed drag chute landing as traumatic events. These events are not corroborated by the applicant's service record or objective

documentary evidence and additional records were unable to be obtained during a FOIA search. The other events mentioned by the applicant do not appear to be listed as contributing factors to his PTSD outside his personal statements. Additionally, as noted in an earlier decision regarding the applicant's application, PTSD stressors attributed to the death of individuals where he was not directly involved in the event that caused the death(s) do not qualify for CRSC. While the applicant contends his personal statements should be sufficient to demonstrate his PTSD is combat-related for the purposes of CRSC, CRSC guidance specifically calls for documentary evidence, as distinguished from personal opinion, speculation, or conjecture. Here, there is no available documentary evidence, absent his personal opinions, that corroborate his claim. As a result, the applicant has not met the burden of proof. Based on the applicable provisions of law, regulation, and policy governing entitlement to, and administration of, CRSC, ODUSD MPP-Compensation opines the applicant's service-connected DVA compensable PTSD does not meet the qualifying criteria required to establish it is combat-related for purposes of entitlement to CRSC.

The complete advisory opinion is at Exhibit M.

APPLICANT'S REVIEW OF AIR FORC EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 12 Oct 23 for comment (Exhibit N), and the applicant replied on 25, 26 Oct 23 and 2 Nov 23. In his response, the applicant reiterates his contention his PTSD was caused by flying airplanes as that was his only duty he ever had while on active duty with the Air Force and therefore is ILOD. He points out the CRSC DoD Guidance, Version 2004, allows all kinds of relevant evidence and Congress could not have intended any such limitation on evidence, which could severely limit the claims Congress had so generously established in passing the CRSC Act. His DVA evidence must be used, by law, and there are three ways it proves his service-connected PTSD was caused by him flying fighter planes, and should be considered by the Board: 1) The DVA officials were aware his only duty he ever had in the Air Force was piloting fighter planes; 2) The DVA doctor and DVA counselor who diagnosed him with PTSD should be recognized as expert witnesses; and 3) the DVA mental health reports dated in 2016 and 2017. He also points out the guidance states, "---there must be a direct causal relationship between the instrumentality of war and the disability," and it does not use the word "definite." As referenced by AFPC/JA, in *Adams v. United States*, the court held the AFBCMR had acted with the required substantial evidence to support its decision. The AFBCMR weighed the opposing doctors' opinions and found the member's doctor's testimony less believable and therefore not preponderant. Relating this information to his case should make it clear to find favor with his request.

The applicant's complete responses are at Exhibit O.

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 Court remand order, the applicant's supplement argument with attachments, the advisory opinions, and the applicant's responses to the advisory opinions, the Board concludes the applicant is not the victim of an error or injustice. After a thorough review of the available evidence of record, it is the Board's opinion the applicant's PTSD disability, he believes to be combat-related, was not incurred as a direct result of armed conflict, through an instrumentality of war, or while engaged in hazardous service or under conditions simulating war, and therefore, does not qualify for compensation under the CRSC program. While the Board notes the applicant believes his personal testimony should be sufficient to demonstrate his PTSD is combat-related for the purposes of CRSC, CRSC guidance specifically calls for documentary

evidence, as distinguished from personal opinion, speculation, or conjecture. There is no available documentary evidence, absent his personal opinions, that corroborate his claim. Specifically, the Board does not find sufficient evidence of a definite, documented, causal relationship between his military flying experiences and his PTSD disability. Therefore, we agree with the opinions and recommendations of AFPC/JA, AFRC/SGO and ODUSD MPP-Compensation and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. The applicant references multiple separate court cases. However, each case before this Board is considered on its own merits. While the Board strives for consistency in the way evidence is evaluated and analyzed, they are not bound to recommend relief in one circumstance simply because the situation being reviewed appears similar to another case. Therefore, the Board recommends against correcting the applicant's records.

In our review, the Board explicitly followed the Court remand instructions to

a. The board must instruct the AFPC to apply the correct standard.

b. The board shall further explain its rationale and identify dispositive facts.

c. A remand is required to establish whether a LOD investigation can show causation.

d. Agency counsel will inquire into plaintiff's FOIA request.

Additionally, the Board requested advisory opinions from the Air Force offices of primary responsibility and ODUSD-MPP-Compensation to address the remand order's following four takeaways:

1. Reconsider whether the AFPC's misapplication of the definite, documented, causal relationship standard constitutes material error;

2. Specifically address whether the evidence satisfies the definite, documented, causal relationship standard between his PTSD and hazardous service, simulations of war, and instrumentalities of war;

3. Explain its analytical path and support its conclusions with facts from the administrative record; and,

4. Consider conducting a LOD investigation for the applicant's PTSD and explain its reasoning if it declines to do so.

As for the first takeaway, the Board concedes the communications from AFPC to the applicant included an error; however, it did not constitute a material error nor was it misapplied. Had the correct language been used throughout, the determination regarding CRSC would be the same.

As for the second takeaway, the Board finds the applicant has failed to meet his burden of showing by a preponderance of evidence there was a direct, documented, causal relationship between any incidents (hazardous service, instrumentality of war, simulated armed conflict) and the development of his PTSD, and as such, his entitlement to CRSC is not established. Specifically, the available mental health records dated 29 Dec 16, indicate another plausible cause of delayed PTSD or anxiety in the applicant's history – an "intimidating and physically abusive father," and having an older physically abusive brother. The applicant recounts frightening and anxious moments in aircraft training and operations at this visit. However, a later paragraph at the same visit indicated he stated "it was very fulfilling; of handling the aircraft; leadership opportunities as a flight commander. I was successful at it…" The evidence in the record does not support an inevitable causal link between the applicant's diagnosis of PTSD and performance of hazardous

duties, conditions simulating war, or instrumentalities of war. That is, other events in the applicant's life could have led to the same delayed subsyndromal PTSD symptoms. The mental health provider did not elucidate the basis for the diagnosis of PTSD, in fact the later diagnosis was anxiety, and the DVA documents indicating a 10 percent rating for PTSD do not provide anything other than rating details. Service connection of a condition by the DVA is not sufficient to determine whether a condition is appropriately designated as combat-related. There was no evidence in his military records that any aircraft incident affected his mental health and no evidence he was experiencing mental health impairment during his active duty, Reserve service or proximate to his military retirement. The applicant only provided his own recollection of events, and medical PTSD diagnosis more than 50 years after the end of his flying career. His mental health records indicated he worked as a lawyer until age 56 and flew a private plane for 10 years after he was retired. Many Service members are diagnosed with PTSD that is incurred during active duty or inactive duty, that is not combat-related. Thus, there is no definite, documented, causal relationship established in the record between his PTSD diagnosis and hazardous service, simulations of war, or instrumentalities of war.

As for the third takeaway, CRSC is awarded to retired veterans who are compensated by the DVA for combat-related condition(s), but not all veterans who are compensated by the DVA for a condition deemed related to military service are approved for CRSC. The DVA awards service-connected disabilities based on DVA standards and resolves doubt in favor of the veteran. There is nothing in 10 U.S.C. § 1413a that would require the DoD to adopt DVA standards of service-connectedness when evaluating CRSC claims. In accordance with the 27 Apr 04 Directive Type memorandum (DTM) issued by the Under Secretary of Defense, Personnel and Readiness, determinations of whether a disability is combat-related will be based on the preponderance of "credible, objective, documentary information in the records as distinguished from personal opinion, speculation, or conjecture." The board's analytical path when determining CRSC eligibility includes first establishing the documentary evidence supports the diagnosis claimed by the applicant and when the diagnosis occurred; before, during or after any related incidents or events. Once the diagnosis is established, the board looks for documentary evidence of a specific incident or incidents that may have caused the diagnosed disability. Once a specific causal incident or incidents are determined by documentary evidence, then the board would look to determine if the incident(s) fell under any possible elements of hazardous service, simulated armed conflict and/or instrumentality of war. In the applicant's case, the board established a PTSD diagnosis 50 years post-flying career and no documentary evidence of a mental health condition or diagnosis during the applicant's military service. Assuming the applicant's claim of PTSD did occur during service (without documentary evidence), the Board also looked at whether this assumption could be causally linked to a specific incident under any element of hazardous service, simulated armed conflict and/or instrumentality of war and concluded it could not be. There is no available documentary evidence, absent the applicant's personal opinions, that substantiate his claim and therefore his DVA compensable PTSD does not meet the qualifying criteria required to establish that it is combat-related for purposes of entitlement to CRSC.

As for the fourth takeaway, the Board considered whether an LOD investigation, if accomplished during the applicant's military service would have provided evidentiary support for the applicant's claim. The Board determined it was unlikely, if not improbable, that an LOD would have provided any useful evidence. There were no medical records indicating PTSD during the applicant's service. Assuming the condition existed and remained latent until well past the end of the applicant's career, it was still highly unlikely any additional relevant evidentiary records not previously identified would be found due to the 50-plus years since the end of his military career and the fact that any possible related incident records from that time would have been disposed of in accordance with established retention guidelines. Furthermore, if the applicant's PTSD/anxiety is presumed ILOD, it still does not provide the definite, documentary, causal evidence to meet the CRSC qualifying criteria due to the other possible causes of PTSD noted, even during the applicant's military service. Therefore, the Board recommending an LOD over 50 years after the

end of the applicant's military service would provide no benefit to the applicant or documentary evidence to support applicant's claims.

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-2020-00590-2 in Executive Session on 17 Nov 23:

Panel Chair
Panel Member
Panel Member

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

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 29 Mar 21.
Exhibit G: Court Order, dated 16 Dec 22.
Exhibit H: AFPC/DPFDC CRSC Case File, dated 19 Jun 18.
Exhibit I: Email correspondences, SAF/MRBC to Applicant, dated 6 Jan 23 & 3 Mar 23.
Exhibit J: Applicant's Additional Submission, w/atchs, dated 6 Mar 23, 13 Aug 23, 25 Aug 23, & 9 Oct 23.
Exhibit K: Letter, NGB FOIA, dated 10 Aug 23.
Exhibit L: Advisory Opinion, AFPC/JA, dated 14 Sep 23.
Exhibit M: Advisory Opinion, AFRC/SGO, dated 26 Sep 23.
Exhibit N: Advisory Opinion, ODUSD MPP-Compensation, dated 5 Oct 23.
Exhibit O: Notification of Advisories, SAF/MRBC to Applicant, dated 12 Oct 23
Exhibit P: Applicant's Response, w/atchs, dated 25 Oct 23, 26 Oct 23 & 2 Nov 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.

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Board Operations Manager, AFBCMR