



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02962

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, Section 9, column F, be changed to "A" or "I" to indicate her disability was combat-related as defined in 26 USC as a direct result of armed conflict or as a direct result of instrumentality of war.
2. Her retirement order be amended to reflect that her disability was received in the line of duty as a direct result of armed conflict and was a direct result of a combat-related injury as defined in 26 USC 104.

APPLICANT'S CONTENTIONS

She is a federal employee with the Department of Veterans Affairs (DVA). After an audit was completed, her military service was not accepted towards federal service which created a leave debt. The Office of Personnel Management (OPM) will only accept updated military orders to negate the leave debt. After receiving her Combat-Related Special Compensation (CRSC) approval, she assumed her records were updated.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air Force major (O-4).

On 12 May 17, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for chronic joint pain.

On 15 Jul 17, the DVA proposed a disability rating for her unfitting medical conditions of Sjorgren's Syndrome with Keratosis Pilaris and Atrophic at 60 percent and Fibromyalgia with Cervical Strain and Left Ankle Strain at 40 percent.

AFBCMR Docket Number BC-2021-02962
CUI//SP-MIL/SP-PRVCY

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

CUI//SP-MIL/SP-PRVCY

On 18 Jul 17, AF Form 356, indicates the applicant was found unfit due to her medical condition of Chronic Joint Pain (Undifferentiated Connective Tissue Disease and Fibromyalgia); DVA rated as Sjorgren's Syndrome with Keratosis Pilaris and Atrophic Vaginitis, and Fibromyalgia with Cervical Strain and Left Ankle Strain with a combined disability compensation rating of 80 percent with a recommendation of "Permanent Retirement." The Board considered all other medical conditions (Category II and III) rated by the DVA and found these conditions were not currently unfitting for duty either separately or collectively. It is noted her disability was not 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).

On 19 Jul 17, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings of the board and requested a formal hearing.

On 13 Sep 17, the applicant submitted a request to waiver her rights to a formal hearing finding it in her best interest to agree with the findings and disposition of the IPEB.

Dated 4 Oct 17, Special Order Work-Product, indicates the applicant was permanently disability retired in the grade of major with a compensable percentage for physical disability of 80 percent, effective 29 Jan 18. Her disability was not the direct result of a combat-related injury as defined in 26 U.S.C 104.

On 21 Mar 19, a memorandum provided by the applicant from AFPC/DPFDC approved her request for CRSC for Post-Traumatic Stress Disorder (PTSD), Fibromyalgia, and Irritable Bowel Syndrome with Gastroesophageal Reflux Disease (GERD) and Gastritis with a total combat-related disability of 90 percent.

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 application finding no indication that an error or injustice occurred at the time the PEB processed her disability case. Additionally, the CRSC approval has no bearing on the original Disability Evaluation System (DES) combat-related determinations or vice versa as some members who are determined combat-related through the DES may not qualify for CRSC under that program's rules. Under Title 10, U.S.C., 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, DoDI 1332.18, *Disability Evaluation System*, Appendix 5 to Enclosure 3, states 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:

CUI//SP-MIL/SP-PRVCY

- (1) As a direct result of armed conflict, the injury or disability was incurred in combat with an enemy of the United States.
- (2) While engaged in hazardous service to include but not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.
- (3) Under conditions simulating war covering 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 but not including 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 18 Jul 17 the IPEB found the applicant unfitting for Chronic Joint Pain (Undifferentiated Connective Tissue Disease and Fibromyalgia); DVA rated as Sjorgren's Syndrome with Keratosis Pilaris and Atrophic Vaginitis and Fibromyalgia with Cervical Strain and Left Ankle Strain with an overall disability rating of 80 percent and recommended permanent retirement. The Medical Evaluation Board (MEB) Narrative Summary contained the following statement "Sjogren's symptomology was not reported during a deployment and did not exist prior to military service. There have been no hospitalizations, UC/ER visits, in the last 24 months related to this condition. The patient is a High Utilizer and has had 58 encounters from 1 Jan 16 to 20 Dec 16." Additionally, the Deployment Related Illnesses/Injuries section of the Commander's Impact Statement also indicates that the applicant's medical conditions were not deployment related. The commander made the following comment "I am unaware of any specific connection of her injuries being connected to a deployment, although she has previously deployed." Therefore the PEB determined these conditions were not considered combat-related per DoDI 1332.18 or incurred in a combat zone. On 19 Jul 17, the applicant disagreed with the IPEB findings and appealed to the Formal PEB however, on 13 Sep 17 she waived her hearing. Her DES case was finalized on 5 Oct 17 and she was permanently disability retired effective 29 Jan 18. Although the PEB determined her unfitting conditions were not combat-related, the CRSC program operates under different rules. In the applicant's case she was approved for CRSC for the following conditions: PTSD, Fibromyalgia, and Irritable Bowel Syndrome with GERD and Gastritis. All of these conditions fall under the DVA's presumptive condition laws for disabilities associated with the Gulf War.

CUI//SP-MIL/SP-PRVCY

Therefore CRSC was approved with respect to DVA awards of service-connection based on presumptive conditions under the provisions of sections 1112(b)-(c), 1116, 1117, and 1118 of Title 38 U.S.C., and of 38 CFR 3.316, CRSC determinations will presume such disability to also be combat-related if the DVA Initial Rating Form (or other substantiating documentary information) indicates that the DVA rating for the disability is based on such presumption.

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 4 Apr 22 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. The Board finds no causal relationship between the event and the resulting disability of Chronic Joint Pain/Fibromyalgia; despite AFPC/DPFDC approving the applicant’s request for CRSC for Fibromyalgia to be considered as combat-related. 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-02962 in Executive Session on 22 Jun 22:

- Work-Product, Panel Chair
- Work-Product, Panel Member
- Work-Product, Panel Member

CUI//SP-MIL/SP-PRVCY

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

Exhibit A: Application, DD Form 149, w/atchs, dated 9 Aug 21.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 8 Mar 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Apr 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

3/20/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF