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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03451

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His retirement order be corrected to show his "Disability was received in line of duty (ILOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred ILOD during a period of war: Yes"

APPLICANT'S CONTENTIONS

He was directly assisting in combat operations involving the deaths of many individuals as part of combat operations directed by military leadership. His medical records show that his Post-Traumatic Stress Disorder (PTSD) with Major Depressive Disorder (MDD) directly resulted from the death and dismemberment that he helped inflict and his evaluations document some of the many missions. Further, his final appeal decision from the Secretary of the Air Force cited DoDI 1332.38, *Physical Disability Evaluation*, to support their decision; however, that instruction was replaced in 2013 by DoDI 1332.18, *Physical Disability Evaluation*. Finally, that decision inferred his disabilities were incurred only while performing Battle Damage Assessment, which is inherently looking at damage after-the-fact. This is a purposely misleading statement, designed to help support the decision of denial by not addressing the fact he assisted in-real-time with confirming human targets and watching the death and dismemberment as it happened.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 May 02, according to AF Form 3006, *Enlistment Agreement-Prior Service/Active USAFR/ANG-United States Air Force*, the applicant entered the Regular Air Force.

On 1 Dec 19, according to Special Order *Work-Product* dated 19 Sep 19, the applicant was placed on the Temporary Disability Retired List (TDRL) in the grade of master sergeant with a compensable percentage for physical disability of 70 percent.

On 9 Dec 20, according to AF Form 356, *Findings and Recommended Disposition of USAF Informal Physical Evaluation Board (IPEB)*, the IPEB determined the applicant remained unfit for military service and recommended permanent retirement with a disability rating of 100 percent. However, they determined the disability did not incur in a combat zone.

On 7 Jan 21, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant disagreed with the findings and recommended

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disposition of the IPEB and requested a formal hearing by the Formal Physical Evaluation Board (FPEB).

On 31 Mar 21, according to AF Form 356, the FPEB concurred with the IPEB ruling and determined the applicant's MDD with PTSD was not combat related and recommended permanent retirement with a disability rating of 100 percent.

On 07 Apr 21, according to AF Form 1180 the applicant disagreed with the recommended disposition of the FPEB and requested a review and final decision by the Secretary of the Air Force Personnel Council (SAFPC). He contended that his MDD with PTSD should be combat related because it was caused by an instrumentality of war and due to the mistake of law and policy utilized by the FPEB when reaching its conclusions.

On 14 Jun 21, according to a SAFPC Memorandum, SAFPC denied the applicant's appeal and determined the mental health conditions "were not incurred in an area of armed conflict, nor did they directly result from his physical engagement with an enemy force."

On 11 Jul 21, according to Special Order Work-Product, dated 21 Jun 21, the applicant was removed from the TDRL and permanently retired in the grade of master sergeant with compensable percentage for physical disability of 100 percent. In addition, "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"

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

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. Current DoD policies and Air Force Instructions requires members to physically be present where combat takes place in order to be awarded a combat related determination. Remote drone operations currently do not qualify for this. The Air Force is working new guidance to add approval for combat related determination for Remotely Piloted Aircraft members in the future. However, based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice occurred during the processing of his medical case.

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 17 Feb 22 for comment (Exhibit D), and the applicant replied on 25 Jun 22. In his response, the applicant appreciated the acknowledgement of his participation in combat drone operations. However, he still disagrees with the decision to follow the exact example in the regulation, specifically an example of an instrument contacting the military member; and exclude the semantics of the phrase "direct causal relationship." Making all combat related decisions based on one or two provided examples at the expense of the actual meaning of the words doesn't seem proper. Also, he submitted as evidence, an email from 2011 that the Air Force used to justify denial of RPA combat relation, which he believes constitutes an injustice during the initial decision-making process of his case.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

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/DPFDC and finds a preponderance of the evidence does not substantiate the applicant’s contentions. 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-2021-03451 in Executive Session on 22 Jun 22 and 26 Jul 22:


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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 23 Sep 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 11 Feb 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Feb 22.
- Exhibit E: Letter, Applicant Rebuttal Response, dated 25 Jun 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.

3/17/2023


Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF