

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00187

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His not in the line of duty (NILOD) – Not due to own misconduct determination for his condition of post-traumatic stress disorder (PTSD), with anxiety, be changed to in the line of duty with service aggravation (ILOD-SA).

APPLICANT'S CONTENTIONS

He provides a timeline for his LOD case #20190722-004 to support an ILOD-SA finding. He was on Title 10 orders from 24 Mar 14 to 22 Apr 14 when a post-traumatic stress episode led to his removal from aircraft training and placement on medical hold. He was placed on duty and mobility restrictions for his disqualifying condition from Apr 14 to present. An LOD was initiated for PTSD and the appointing authority (wing commander) recommended ILOD on 11 Oct 19 and on 19 Oct 21 the AFRC LOD Board concurred with the ILOD recommendation. However, the AFRC Approving Authority determined NILOD-Not Due to Member's Misconduct. He appealed the LOD finding to the AFRC/CV on 9 Nov 21. On 16 Nov 21, he was disqualified for continued military service and notified a fitness for duty determination would be required. On 3 Jan 22, the AFRC/CV denied his appeal.

His medical evaluation board (MEB) is on hold pending resolution of his LOD determination. He is appealing the finding of NILOD-not service aggravated (NSA). He was not provided any justification for the denial. He provides medical documentation to support his request to change the finding to ILOD-SA for PTSD in accordance with AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay, paragraph 1.8.2.*

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a master sergeant (E-7) in the Air Force Reserve.

The applicant served a period of active duty with the Marine Corps from 21 May 86 to 5 Mar 94 and was honorably discharged in the rank of sergeant (E-5) for completion of service. He was credited with 7 years, 9 months and 14 days of active duty service. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued 5 Mar 94, shows his primary specialty was Rifleman and his decorations include the Kuwait Liberation Medal, Southwest Asia Service Medal, with three stars, and the Combat Action Ribbon.

On 2 Dec 02, the applicant enlisted in the Air Force Reserve in the rank of staff sergeant (E-5). AF Form 938, *Request and Authorization for Active Duty Training/Active Duty Tour*, dated 3 Mar 14 shows the applicant was placed on active duty in accordance with 10 U.S.C. § 12301(d) from 24 Mar 14 to 22 Apr 14 for the C-17A Aircraft General Transition/Enroute training course.

AF Form 938, dated 23 Apr 14 shows the applicant was placed on medical hold from 23 Apr 14 to 6 May 14.

AF Form 469, *Duty Limiting Condition Report*, dated 30 May 19 placed the applicant on duty and mobility restrictions and noted he was undergoing a review in lieu of (IRILO) MEB.

AF Form 348, *Line of Duty Determination*, dated 22 Jul 19 shows the applicant reported PTSD symptoms since 1986. He received treatment from 2011 to present for mental health symptoms. He had prior service in the Marine Corps, Army (Sniper Scout) and Air Force Reserves. He served multiple deployments. While on temporary duty (TDY) in Apr 14 he had a mental health incident that required him to be removed from a commercial flight. The applicant followed up with his primary care manager (PCM) in Jun 14 for anxiety and was undergoing IRILO for PTSD/anxiety. His commander, appointing authority and the Air Reserve Component (ARC) LOD Determination Board Review recommended his PTSD be found ILOD. However, on 25 Oct 21, the ARC Approving Authority recommended NILOD-NSA. The remarks stated they nonconcurred with the medical review recommendation but no rationale for the non-concurrence was provided.

On 17 Nov 21, the applicant appealed the NILOD-NSA finding to the AFRC/CD (Appellate Authority). The applicant stated his condition was directly related to his military service and permanently aggravated while on Title 10 orders from 24 Mar 14 to 22 Apr 14. An incident took place on the flight line where he had to go into the tail of a C-17 aircraft and another student was rushing him. At that time he experienced a post-traumatic stress episode. He was unable to compose himself and could not complete the portion of instruction. A second incident occurred during the commercial flight returning from the TDY location. He experienced another PTSD episode requiring immediate removal from the commercial aircraft. He was placed on medical hold orders for four days to determine if he was safe to travel to home station via ground transportation. After the incident, he was immediately placed in a non-duty status for further mental health evaluation. He was not allowed to perform military duty, with the exception of unit training assemblies (UTA). He has not worked in his Air Force Specialty Code (AFSC) since 2014 and is undergoing a MEB. His condition has not improved but worsened and he is taking medication to control his PTSD and anxiety. He was also removed from his duties as an Air Reserve Technician (ART) and was isolated to prevent further aggravation. He was evaluated by the military treatment facility (MTF) four times since the incident and the mental health physician concluded he did not meet the requirements for continued service. He provides supporting documentation to support an ILOD finding. On 3 Jan 22, the AFRC/CV disapproved the applicant's appeal in accordance with AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay*, paragraphs 2.4.3 and 2.4.4. The decision remained NILOD-Not Due to Own Misconduct.

AF Form 469, *Duty Limiting Condition Report*, dated 16 Nov 2020 reflects the applicant placed on mobility restrictions and was undergoing assignment limitation code (ALC) renewal.

AF Form 469 dated 18 Nov 21, shows the applicant was placed on duty and mobility restrictions (admin duties only) and medical did not recommend participation. It stated he was undergoing an MEB to determine medical fitness for continued worldwide duty and retention. His assignment limitation code "37" for pending MEB is through 18 Nov 22.

On 13 Dec 21, ARPC/DPTT informed the applicant of his notification of eligibility for Reserve retired pay at age 60 (20 year letter).

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2910, paragraph 1.8.2, EPTS-SA. A condition aggravated in a qualified duty status when there is a worsening of the condition over and above natural progression, caused by trauma or the nature of military service. Natural progression is the course an illness, injury or disease would take over time, regardless of military service.

Paragraph 1.10. ILOD. The standard of evidentiary proof used in making an ILOD determination is preponderance of the evidence. Preponderance of the evidence is defined as the greater weight of credible evidence.

Paragraph 1.11.1 NILOD. The standard of evidentiary proof is clear and unmistakable evidence, which means undebatable information the condition was EPTS or if increased in service was not aggravated by military service. In other words, reasonable minds could only conclude the condition EPTS from a review of all the evidence in the record. It is a standard of evidentiary proof that is higher than a preponderance of the evidence and is clear and convincing.

Paragraph 1.12. Prior Service Condition (PSC). For the purpose of disability evaluation system (DES) processing, a PSC is any medical condition incurred or aggravated during one period of active service or authorized training in any of the Military Services that recurs, is aggravated, or otherwise causes the member to be unfit, should be considered incurred ILOD, provided the origin of such condition or its current state is not due to the service member's misconduct or willful negligence or progressed to unfitness as the result of intervening events when the service member was not in a duty status.

AIR FORCE EVALUATION

AFRC/SGO states the NILOD finding is accurate and appropriate given no evidence for Reserve status aggravation; however, the applicant may potentially undergo DES processing after the PSC determination. AFRC/SGO will complete a PSC determination for the applicant as soon as possible. If the applicant's condition is found to be PSC applicable, he will be sent for a medical evaluation board (MEB) for determination of fitness for duty and potentially DES processing.

On 26 Oct 21, the applicant's diagnosis was found NILOD. The case was started in 2019 but is associated with an incident which occurred in 2014. The conditions existed prior to service (EPTS) and there is no evidence of SA due to Air Force Reserve duties. The applicant had a long standing history of mental health disorders to include PTSD with anxiety as far back as childhood. It was also noted he reported significant combat trauma while in the Marines. Based on the evidence there had been no Reserve status SA, the condition was found NILOD. The NILOD finding was appealed and denied 3 Jan 22 on the basis there was clear and unmistakable evidence the condition was EPTS-NSA.

On 16 Nov 21, the applicant was found disqualified following a retention waiver renewal. The case was directed as non-duty related worldwide duty case since the LOD was found NILOD. A medical condition incurred or aggravated during a period of another service should undergo a PSC determination in accordance with AFI 36-2910.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired change to his records as requested and finds his condition is NILOD-NSA. The Psychological Advisor concurs with the opinion rendered by the appellate authority the applicant's condition was NILOD and NSA. The applicant's incident on TDY, to include the commercial flight incident, reflected his EPTS PTSD,

anxiety and panic symptoms were exacerbated by being in crowds and a confined space; however, this incident did not permanently aggravate his condition beyond the natural progression of the disease/illness. The origin of his PTSD and anxiety symptoms began from his childhood trauma and it was his combat deployment experience with the Marines that aggravated his EPTS condition and not his Air Force Reserve duties. The applicant happened to be on orders returning from TDY when he was removed from the commercial flight for having a PTSD, anxiety and a panic episode. It was more likely than not he would have had a similar reaction to the same experience if he was not on orders because he had a history of anger outbursts and anxiety/panic attacks in multiple and different circumstances while in both military and civilian status. His anxious behaviors and reactions appeared to be his current and normal clinical presentation. There was no specific Reserve or military duty that caused the permanent aggravation of his condition.

It appeared through his records, he experienced PTSD symptoms for more than 10 years and his refusal to participate in evidence based treatment to treat his PTSD prevented any improvements of his condition. His mental health condition would be considered as stable, not worsened or improved as highlighted by the three fitness for duty assessments performed by the military. The applicant began receiving mental health treatment in 2011, which coincided with his time in the Air Force Reserve, but there was no evidence of service aggravation causing his condition to worsen. Therefore, his mental health condition was NILOD-NSA. Liberal consideration is not applied because the applicant has not been discharged from service.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 2 May 22 for comment (Exhibit E), 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 recommendations of AFRC/SGO and the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. In this respect, the Board finds the applicant has provided insufficient evidence to show his PTSD was permanently aggravated by his Air Force Reserve military duty beyond the normal progression of his condition. The Board also concurs with the AFRC/SGO action to complete a PSC determination for the applicant. 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-2022-00187 in Executive Session on 22 Jun 22:

, 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 11 Jan 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRC/SGO, dated 18 Apr 22.
Exhibit D: Advisory Opinion, Psychological Advisor, dated 2 May 22.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 May.

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.