

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01189

XXXXXXXXXX

COUNSEL: XXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His National Guard Bureau (NGB), Medical Standards Branch Form 4 be changed from Prior Service Condition (PSC) "Not Applicable" to "Applicable" and that his case for Post-Traumatic Stress Disorder with Traumatic Brain Injury (PTSD with TBI) be submitted through the full Medical Evaluation Board (MEB) process.

APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) has determined he is 100 percent service connected for PTSD with TBI from his prior service in the Marine Corp. His Form 4 came back from NGB as not service connected and his condition is a service connected disability and NGB should have recognized it as such and sent it to a full MEB using code 37.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Reserve Technician (ART) serving in the grade of technical sergeant (E-6) in the Air National Guard (ANG).

According to the documentation provided by the applicant:

On 15 Dec 20, according to NGB/SGPS FL 4, the applicant was found fit and was returned to duty with an Assignment Limitation Code (ALC) – C and an assigned ALC-C stratification of ALC-C3. It states that all restrictions and holds (including Medical Hold) imposed by NGB/SG and NGB/A1 processing are removed this date, that the member's AF 469, *Duty Limiting Condition Report*, should be revised, and to Remove Assignment Availability Code (AAC) 37 if present. Additionally, it reflects the following statement: "Case reviewed for PSC – found not applicable at this time."

On 29 Dec 21, according to AF Form 469, *Duty Limiting Condition Report*, lists the applicant's ALC Code as C-3 and reflects that the applicant is on both duty and mobility restrictions with a release date of 29 Dec 22.

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction 41-210, *TRICARE Operations and Patient Administration Functions*, 6 Jun 12 (AFI41-210 AFGM2018-01, 27 Sep 18), paragraph 4.76, Assignment Limitation Code-C. When an active duty member has been returned to duty by the Air Force Disability Evaluation System (DES) as fit, DPAMM will review the case to determine if an Assignment Limitation Code (ALC)-C needs to be placed in the Personnel Data System (PDS). This action is taken by the appropriate ARC/SGP when the member is an RCSM. This code restricts assignment and deployment availability to only CONUS, Alaska (Elmendorf), and Hawaii assignments, and will prevent reassignment anywhere else without prior approval by designated approval authorities described in detail further in this section. The intent of the ALC-C is to protect members from being placed in an environment where they may not receive adequate medical care for a possible life-threatening medical condition and to prevent the assignment of non-qualified personnel to overseas locations. This will further ensure the safe and effective accomplishment of the Air Force mission.

AFI 41-210, paragraph 4.76.2.1.3. ALC-C3. This ALC-C stratification designates members who should not be deployed or assigned away from specialty medical capability required to manage their unique medical conditions.

AFI 36-2110, *Total Force Assignments*, 5 Oct 18, Table 2.1, *Assignment Availability Codes*, Code 37, *Medical Evaluation Board or Physical Evaluation Board*, Airman is deferred from PCS reassignment pending results of Medical Evaluation Board or Physical Evaluation Board and no assignment action should be taken until the Airman is returned to duty through NGB/SGP and code 37 is removed as Airman may be unfit for retention.

AIR FORCE EVALUATION

NGB/SGP recommends denying the applicant's requests to change the PSC to "Applicable" and submit his case through the full MEB process. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The PTSD with TBI was not an unfitting condition at the time the PSC package was submitted and the applicant would need to provide medical documentation to demonstrate the PTSD with TBI has now become potentially unfitting. He was returned to duty with an ALC-C3 and could perform the duties of both his office and rank. The ALC-C3 waiver renewal for his PTSD with TBI is currently in progress.

The applicant's PSC package was submitted to NGB/SG on 28 Aug 20 for the two conditions; PTSD with TBI and Degenerative Disc Disease (DDD). NGB/SG reviewed the package; made the recommendation of PSC-not applicable for PTSD with TBI and requested case be submitted for Fit for Duty processing for DDD as the condition PTSD with TBI was not an unfitting condition in accordance with Department of the Air Force Manual (DAFMAN) 48-123, *Medical Examinations and Standards*; and the DDD did not originate while the applicant was in a qualified active duty status. His PTSD with TBI condition did not warrant a full MEB through the DES process. His case was reviewed for Fit for Duty, and he was returned to duty with an ALC-C3 which renders him medically fit to perform the duties of his office, rank, rating and grade, but would require acceptance by the gaining medical authority prior to him being allowed to deploy.

In accordance with DAFMAN 48-123, paragraph 1.3.6, *Conditions that interfere with military service* (henceforth known as unsuiting disorders) are managed administratively through the applicant's chain of command. Conditions that interfere with military service (unsuiting) are not entered into the Disability Evaluation System (DES), whereas unfitting conditions are eligible for DES processing. The terms "unsuiting" and "unfitting" describe medical conditions that affect military service. Once identified, they are handled differently; unsuiting conditions are handled administratively and unfitting conditions are handled through DES processing. Often

unsuited and unfitting conditions coexist in a single person. Paragraph 4.5.3, states both unsuited and unfitting conditions can coexist in one member and when they do, the unsuited conditions are not eligible for disability compensation.

The Disability Evaluation System operates under Title 10, United States Code (USC), and can only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and were the cause for career termination; and then only for the degree of impairment present at the “snapshot” time of separations and not based on possible future progression of injury or illness. The Department of Veterans Affairs (VA) on the other hand, operates under Title 38, USC, that has a different purpose and is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member’s retainability, fitness to serve, or the length of time since the date of discharge. The VA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards over the lifetime of the veteran. On 30 Mar 22, the VA deemed the applicant 100 percent totally and permanently disabled with a 100 percent rating for PTSD with TBI.

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 24 Jun 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 NGB/SGP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board determines that his Degenerative Disk Disease did not originate while the applicant was in a qualified duty status and that the finding of Fit for Duty, for PTSD with TBI, with the corresponding ALC-C3 was properly reviewed in accordance with all applicable Air Force instructions. The Board reminds the applicant that the Disability Evaluation System and the Department of Veterans Affairs operated under two different titles of the United States Code and that each serve a different purpose. While the DES is a “snapshot” in time, the DVA can conduct periodic reviews over the lifetime of a veteran. As such, while the DVA has deemed the applicant 100 percent disabled, this does not change the fact that at the time his PTSD with TBI was reviewed by NGB/SG his condition was not an unfitting condition and he was returned to duty. Therefore, the Board recommends against correcting the applicant’s records.

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-2022-01189 in Executive Session on 24 Aug 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 19 Apr 22.

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

Exhibit C: Advisory Opinion, NGB/SGP, dated 14 Jun 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 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.

X

Board Operations Manager, AFBCMR