



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01646

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

1. His AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board (IPEB)*, be corrected to reflect all unfitting conditions were combat-related and incurred in a combat zone or during the performance of duty in combat-related operations.
2. His Special Order *Work-Product* be corrected to reflect 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 is marked and disability was the direct result of a combat-related injury.

**APPLICANT'S CONTENTIONS**

All his conditions found to be unfitting by the IPEB qualify for and should have been identified as combat-related as defined in 26 U.S.C. § 104. Additionally, his conditions should have been identified as occurring in a combat zone or combat-related operations as designated by the Secretary of Defense, National Defense Authorization Act (NDAA) 2008 section 1646. When he received the AF Form 356, he discussed this issue with the Office of Disability Council and was advised the PEB has a blatant disregard for Department of Defense Instruction (DoDI) 1332.18 and they only acknowledge acts that have direct engagement with the enemy and taking the issue to the Formal PEB would not change the result of the IPEB decision. Therefore, he did not pursue getting the AF Form 356 corrected. His duties as a military aircrew member and the stress placed on his body has resulted in injuries that qualify for and should be deemed as being combat-related as well as having occurred in a combat zone.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air National Guard (ANG) senior master sergeant (E-8).

On 23 Nov 21, according to AF Form 356, provided by the applicant, he was found unfit for Cervicogenic Headaches, Irritable Bowel Syndrome, Cervical Spondylosis with Cervicalgia and Left Upper Extremity Radiculopathy, and Upper Radicular Group Radiculopathy, Left Upper Extremity with a combined disability compensation rating of 80 percent with a recommendation of permanent retirement. Category I – Unfitting Conditions box E and F indicate the conditions

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were not combat-related nor incurred in a combat zone or during the performance of duty in combat related operations.

On 23 Nov 21, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights for any further appeal.

On 23 Mar 22, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from the ANG. His narrative reason for separation is "Disability, Permanent IDÉS." He was credited with 35 years, 7 months, and 3 days of total service.

On 24 Mar 22, according to Special Order Work-Product dated 14 Dec 21, the applicant was permanently disability retired in the grade of senior master sergeant with compensable percentage for physical disability of 80 percent. He was credited with 35 years, 7 months and 3 days of total service and 15 years, 11 months and 2 days service for retirement pay. 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 is marked as No.

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 applicant's request based on the documentation provided and analysis of the facts. There is no indication an error or injustice occurred at the time the PEB processed his disability case. There is no supporting documentation to show the applicant's conditions were either incurred in a combat zone or meet the criteria to be deemed combat-related in accordance with 26 U.S.C. § 104.

Under Title 10, USC, 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, in accordance DoDI 1332.18, Appendix 5 to Enclosure 3, the PEB renders a final decision on whether an injury or disease that makes the service member unfit or 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:

- (1) As a Direct Result of Armed Conflict. Injury or disability was incurred in combat with an enemy of the United States.
- (2) While Engaged in Hazardous Service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.
- (3) Under Conditions Simulating War. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership

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reaction courses; grenade and live fire weapons practice; bayonet training; hand to hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include 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.

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 22 Aug 22 for comment (Exhibit D), and the applicant replied on 12 Dec 22. In his response, the applicant contended his unfitting conditions meet the criteria listed in the DoDI 1332.18, Appendix 5 to Enclosure 3. He was in fact, seen immediately after his return from deployment in 2016 for his neck/headache issues which have deteriorated since then. The research he submitted with his initial application supports how the prolonged use of Night Vision Goggles (NVG) lead to debilitating neck injuries and highlighted that NVG's are only worn when either simulating or being in a combat environment. In reference to his irritable bowel syndrome, the Department of Veterans Affairs determined it is a presumptive condition and is a result of serving in a combat zone.

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.
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. In accordance with 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B, Chapter 6, the fact that a member incurred the disability during a period of war; while serving in an area of armed conflict; and/or while participating in combat operations is not sufficient by itself to support a combat-related determination. When making combat-related determinations, with regard to Armed Conflict, Hazardous Service, Simulation of War or an Instrumentality of War, the Board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. Therefore, the Board recommends against correcting the applicant's records.

**RECOMMENDATION**

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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-2022-01646 in Executive Session on 22 Mar 23:

*Work-Product* [redacted] Panel Chair  
*Work-Product* [redacted], Panel Member  
*Work-Product* [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 22 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Aug 22.
- Exhibit E: Applicant’s Response, dated 12 Dec 22.

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.

12/26/2023

*Work-Product* [redacted] \_\_\_\_\_  
Board Operations Manager, AFBCMR  
Signed by: *Work-Product* [redacted]