

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXX

DOCKET NUMBER: BC-2022-01990

COUNSEL: XXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Informal Physical Evaluation Board (IPEB) unfitting condition - Post Traumatic Stress Disorder (PTSD) - determination of not Combat Related be changed to Combat Related.

APPLICANT'S CONTENTIONS

His PTSD is a direct result of repeated exposures to imminent danger and the death of those around him during a deployment. While traveling from his base in Iraq to a Syrian forward operating base (FOB) in 2017, the MH-60 helicopter he was on took small arms fire originating from the ground. Later, during that deployment, he drove a vehicle as part of an Army Ranger convoy to Raqqa during the final push. He was in constant danger from IEDs during the trip out and the return trip. While in Raqqa, he operated from a FOB set up in an abandoned school on the edge of town. The position took regular small arms fire, including bullets that passed close enough to his ears he could hear the crack as they went past. As a non-combatant, he was forced to rely on the ability of others to return fire and for protection. Later, his team was out doing battle damage assessment in a remote area controlled by ISIS which put them at great risk as they operated as a small team far from support.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force major (O-4).

On 28 Jun 22, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the IPEB recommended the applicant be placed on the Temporary Disability Retired List (TRDL) with a disability rating of 70 percent in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD) guidelines for the unfitting condition of PTSD. The IPEB determined that his unfitting condition was not Combat Related as defined in 26 USC 104.

On 10 Jul 22, according to AFPC/DPFD memoranda, *Physical Examination*, the Secretary of the Air Force directed the member be placed on the Temporary Disability Retired List (TRDL) under the provisions of 10 USC 1202, with a compensable percentage for physical disability of 70 percent.

Effective 13 Jan 23, according to Special Order ACD-XXXX, dated X Aug 22, the applicant will be placed on the TDRL in the grade of major with compensable percentage for physical disability of 70 percent. Additionally, it contains the following statements:

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.

Disability was the direct result of a combat related injury as defined in 26 USC 104: 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 to have his unfitting condition be considered Combat Related as defined by 26 USC 104. Under Title 10, USC 104, the Physical Evaluation Board (PEB) must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. Additionally, in accordance with Department of Defense Instruction (DoDI) 1332.18, Appendix 5 to Enclosure 3, the PEB renders a final decision of 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 conditions:

1 – As a Direct Result of Armed Conflict. Injury or disability was incurred in combat with an enemy of the United States. To qualify under this, rule a service member must be engaged with members of opposing armed forces and forces are in close proximity to potentially inflict physical harm on one another. Furthermore, to be "engaged with" indicates each party has the potential to cause physical harm to the other; it is reciprocal.

2 – While Engaged in Hazardous Service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolitions 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 reaction courses; grenade and live fire weapons practice; bayonet practice; 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 ordinance, vehicles, or material, the criteria is 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 28 Jun 22, the IPEB found the applicant unfitting for PTSD. The AF Form 356 indicates that his condition was incurred in the combat zone but was not combat related. Block 12 contains the rationale for the IPEB's decision which states "The SM (Service Member) has a history of exposure to multiple traumatic events over nine deployments. The most significant deployment occurred in 2017 when he was in Iraq and Syria and experienced numerous traumatic incidents within a short period of time. The SM self-referred for mental health care in 2021 with approximately a three-year history of symptoms of anxiety, hypervigilance, depressed mood, nightmares, and sleep disturbance related to personal exposure to combat trauma, and also endorsed symptoms related to counseling first responders with whom he had worked alongside during traumatic events."

Although the IPEB acknowledged the applicant's PTSD was incurred in a combat zone, records do not support award of a combat related determination. In his case, his PTSD would not be considered As a Direct Result of Armed Conflict because there is no evidence in his records that he was directly engaged in combat with an enemy force or was directly fired upon by an enemy force. It is noted that as part of this BCMR submission he provided examples of such engagements but there is nothing in his record that would corroborate this information. Additionally, his condition would not meet the requirements for Instrumentality of War for the reasons stated above in the definition. There is evidence, however, that as a non-combatant Chaplain he did provide "spiritual care" and "counseling after missions" contained in an Officer Performance Report and decoration during the deployment timeframe of 2017/18.

On 5 Jul 22, the applicant agreed with the IPEB's findings and did not appeal to the Formal PEB to find his PTSD combat related during DES processing. He is projected to be placed on the Temporary Disability Retired List effective 13 Jan 23.

Based on the documentation provided by the applicant and analysis of the facts, there is no indication that an error or injustice occurred at the time the PEB processed his case. There is no supporting documentation to show that the applicant's condition meets the criteria to be deemed combat related in accordance with 10 USC 104, as defined above.

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 15 Sep 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/DPDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes that the IPEB acknowledged that the applicant's PTSD was incurred in a combat zone; however, his records do not support award of a combat related determination. The Board determines that his PTSD is not a direct result of armed conflict, nor does it meet the requirements for instrumentality of war, because there is no evidence in his records that he was directly engaged in combat with an enemy force or was directly fired upon by an enemy force. 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 the 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-2022-01990 in Executive Session on 26 Oct 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 3 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPDD, w/atchs, dated 13 Sep 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Sep 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.

X

Board Operations Manager, AFBCMR