



**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:**

*Work-Product*

**DOCKET NUMBER:** BC-2022-02122

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

Her AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, Section 9, Column F, *Combat-Related Determination As Determined in 26 USC 104*, be changed to "Yes" to indicate her disability of Post-Traumatic Stress Disorder (PTSD) as combat-related, as a direct result of armed conflict as defined in 26 U.S.C. 104 combat-related determination.

**APPLICANT'S CONTENTIONS**

There is a definite relationship between her deployment to a combat zone in *Work-Product* combat missions she completed over hazardous terrain, and her combat-related PTSD. She endured months of cognitive therapy for a combat-related mission involving three terrorists killed in action during her deployment in *Work-Product*. She was told a combat-related determination was for individuals who lost a limb and would only drag out her appeal and would be denied. She was never shown the regulation and was never asked about her condition or the nature of her combat missions.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air Force technical sergeant (E-6).

On 29 Feb 16, the Department of Veterans Affairs (DVA) proposed a 30 percent disability rating for her medical condition of PTSD. The DVA also provided disability ratings for several other service-connected disabilities with a combined rating of 80 percent.

Dated 25 Apr 16, AF Form 356, indicates the applicant was found unfit due to her medical condition of PTSD (combat zone, not combat-related) and recommends temporary retirement with a combined disability rating of 80 percent. Column F, combat-related determination as defined in 26 U.S.C. Section 104 is marked "no."

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On 2 May 16, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates applicant agreed with the findings and recommended disposition of the PEB and requested a one-time reconsideration of disability ratings.

On 22 Jul 16, the DVA increased the applicant's proposed percent disability rating for her medical condition of PTSD from 30 percent to 50 percent.

Issued 27 Sep 16, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects she was honorably discharged in the grade of technical sergeant (E-6) after serving 17 years and 2 months of active duty. Her narrative reason for separation is "Disability, Temporary (Enhanced)."

On 28 Sep 16, according to Special Order **Work-Product** dated 5 Aug 16, the applicant was placed on the temporary disability retired list (TDRL), in the grade of technical sergeant (E-6) with a compensable percentage for physical disability of 80 percent. "Disability was the direct result of combat-related injury as defined in 26 U.S.C. 104" is marked as "no."

On 28 Sep 16, according to Special Order **Work-Product** dated 16 Aug 16, indicates Special Order **Work-Product** was amended to reflect disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

On 17 May 17, the DVA increased the applicant's PTSD from 50 percent disability rating to 70 percent disability rating.

Dated 21 Dec 17, AF Form 356, indicates the applicant remains unfit due to her medical condition of PTSD (Combat-Related: No; Combat Zone: Yes) and recommends permanent retirement with a disability rating of 90 percent.

On 28 Feb 18, according to Special Order **Work-Product** dated 8 Feb 18, the applicant was removed from the TDRL and retired in the grade of technical sergeant with a compensable percentage of 90 percent for physical disability. "Disability was the direct result of a combat-related injury as defined in 26 U.S.C. § 104" 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 by the applicant and analysis of the facts. There is no indication an error or injustice occurred at the time the PEB processed her disability case. There is no supporting documentation to show the applicant's conditions met the criteria to be deemed combat-related in accordance with 26 U.S.C. Section 104.

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Under Title 10, U.S.C., the 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 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 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 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 12 Sep 22 and again on 15 Nov 23 for comment Exhibit D), and the applicant responded on 19 Nov 23. In her response, the applicant contends the Formal PEB acknowledged she witnessed several traumatic events in the performance of her duties which contributed to her PTSD but noted she was not in direct physical contact with opposing forces. She received several Air Medals with citations annotating the details of the missions she was engaged in stating these missions were executed over hazardous terrain under threat of hostile fire. She was in therapy shortly after she returned home in 2013 and continued well after 2016. She did more than remotely witness several traumatic events, she participated in guiding fighters on target via laser tracking and flew in a small prop aircraft well within surface to air missiles. She would have panic attacks which only grew worse after aircrew members died in a plane crash. She did not understand the appeal process at the time and did not know of the effect it would have on her pay.

The applicant's complete submission is at Exhibit E.

**FINDINGS AND CONCLUSION**

1. The application was not 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. The Board did not find any of her mental health conditions as combat-related as a direct result of armed conflict; while engaged in hazardous service; under conditions simulating war; or caused by an instrumentality of war. No direct causal relationship was established between combat-related duties and her unfitting PTSD condition that demonstrated how or when armed conflict, hazardous service, or instrumentality of war spurred the contended condition. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2022-02122 in Executive Session on 26 Apr 23 and 26 Dec 23:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	, Panel Member
	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 Jun 22 and 9 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 9 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 23.
- Exhibit E: Applicant's Response, dated 18 Nov 23.

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.

1/3/2024

*Work-Product*

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*