



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02339

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His disability retirement order be corrected to show the following:
 - a. His Active Service for Retirement to reflect 9 years and 29 days.
 - b. 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 to reflect "yes."
 - c. Disability was the direct result of a combat-related injury as defined in 26 U.S.C 104 to reflect "yes."
2. He be provided a DD Form 214, *Certificate of Release or Discharge from Active Duty* (per his rebuttal request).

APPLICANT'S CONTENTIONS

His points summary shows a total of 3,268 points which equates to 9 years and 29 days of service. He was approved for Combat-Related Special Compensation (CRSC) and needs his retirement order corrected to reflect combat as evident in the CRSC memorandum.

To support his claim, the applicant submitted his disability retirement order, his CRSC Approval Memorandum, and his Points Credit Summary. Additionally, the applicant submitted an excerpt from the DFAS website showing the final pay plan includes years of creditable service for an active duty retirement calculation is based on the sum of active service and any additional years computed by adding all reserve points and dividing by 360.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air National Guard (ANG) technical sergeant (E-6).

AFBCMR Docket Number BC-2022-02339

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 18 Nov 18, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for Major Depressive Disorder (MDD) and Post-Traumatic Stress Disorder (PTSD).

On 3 Dec 21, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of MDD and PTSD with a disability compensation rating of 50 percent with a recommendation of "Permanent Retirement." Column E, *Condition is Combat-Related as Defined in 26 U.S.C. 104*, reflects "no" and Column F, *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*, reflects "yes."

On 9 Dec 21, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings of the board and waived his rights to any further appeal.

Dated 21 Dec 21, Special Order **Work-Product** indicates the applicant was permanently disability retired in the grade of technical sergeant with a compensable percentage for physical disability of 50 percent, effective 7 Jan 22. His Service for Basic Pay shows 18 years, 2 months, and 14 days; his Active Service for Retirement shows 7 years, 1 month, and 14 days; his Service per 10 U.S.C. 1405 shows "NA" and his Service per 10 U.S.C. 12733 shows 9.12 (3,286 Points). "No" is indicated for "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" and for "disability was the direct result of a combat-related injury as defined in 26 U.S.C 104."

On 6 Jan 22, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 18 years, 2 months, and 15 days of total service for pay. He was discharged, with a narrative reason for separation of "Mandatory Retirement Disability, Permanent (Enhanced)."

Dated 19 Apr 22, the applicant provided a memorandum from AFPC/DPFDC approving his request for CRSC for PTSD, Chronic Fatigue Syndrome, Gastroesophageal Reflux Disease with Irritable Bowel Syndrome, and Tinnitus with a total combat-related disability of 90 percent.

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

APPLICABLE AUTHORITY/GUIDANCE

Title 10, U.S.C., Section 1405: *Years of Service*, states (a) for the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding (1) his years of active service; (2) the years of service, not included in clause (1), with which he was entitled to be credited on 31 May 58, in computing his basic pay; and (3) the years

of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

Title 10, U.S.C., Section 12731: *Age and Service Requirements*, states (a) except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person (1) has attained the eligibility age applicable under subsection (f) to that person; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) in the case of a person who completed the service requirements of paragraph (2) before 25 Apr 05, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before 5 Oct 94, the number of years of such qualifying service under this paragraph shall be eight; and (4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

AIR FORCE EVALUATION

ARPC/DPTS recommends denying the applicant's request for a DD Form 214 to be created for a permanently disability retirement, effective 6 Jan 22. Per the DD Form 214 Personnel Services Delivery Guide (PSDG), members are required to provide active duty military orders that end on the effective end date of retirement. Should the applicant have official documentation supporting the contrary, we encourage him to provide this evidence.

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 27 Oct 22 for comment (Exhibit D), and the applicant replied on 9 Nov 22. In his response, the applicant contends he was originally asking for his retirement order to be amended and was told "Active Service for Retirement" is used for his pay; however, this does not reflect his Reserve time. He was trying to get DFAS to correct this and was told the correction must be made from the branch of service. He also wants combat status reflected on his retirement order. Additionally, he still believes he is entitled to a DD Form 214. His orders have 10 U.S.C. 01201 in remarks and this should deal with an active duty order. According to PSDG, page 9, a member placed on the Physical Disability Retired List (PDRL) with any length of time ending on retirement can get a DD Form 214.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DPFDD recommends granting the applicant's request for his 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 to reflect "yes." 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 of processing of his disability case; however, since his disability retirement was based on a prior service condition which was incurred during his wartime service with a sister service, AFPC/DPFDD acknowledges, if he would have appealed to the Formal Physical Evaluation Board (FPEB) during the Disability Evaluation System (DES) processing, his testimony and the documentation provided for CRSC approval, to include the Combat Action Badge, there is high probability a combat-related determination may have been granted at that time. Upon review of the applicant's DES case file, it is noted the IPEB determined his unfitting condition of MDD and PTSD was found to be incurred in a combat zone but not combat-related. Item 12 of the AF Form 356 contains the following rationale for this decision noting the applicant is also reported to have been diagnosed with PTSD due to a reported stressor of witnessing the death of a fellow military member in Feb 05, apparently during a deployment to Iraq. This was the same deployment in which he received the Combat Action Badge which allowed CRSC approval. This information was obtained from the Mental Health Narrative Summary dated 8 Sep 21 and fully supports the IPEB's combat zone only determination as it did not indicate his direct involvement in a combat-related event. Furthermore, there was no other documentation contained in his MEB or Air Force personnel records which would support a combat-related determination by the IPEB. On 9 Dec 21, he concurred with the IPEB's findings and did not request a FPEB hearing to find his unfitting condition be considered combat-related.

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, per DoDI 1332.18, *Disability Evaluation System*, 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 as a direct result to armed conflict, while engaged in hazardous service, under conditions simulating war, or caused by an instrumentality of war.

The term combat-related is defined and treated differently under the CRSC program and the DES. Specifically, the primary definition of combat-related for CRSC comes from 10 U.S.C. 1413a(e), whereas the controlling DES definition comes from 10 U.S.C. Ch. 61 and 26 U.S.C. 104(b)(3). Therefore, combat designation by the DES is not needed for CRSC approval, so long as the applicant's creditable supporting evidence directly connects the claimed disability to the claimed combat event. In this case, the applicant was approved for CRSC for his DES boarded condition of PTSD due to award of a combat stressor medal (Combat Action Badge) for the period of 29 Apr 05 for the reasons of "actively engaging or being engaged by the enemy" while serving as an E-3 in the U.S. Army. The Combat Action Badge is a combat decoration which allows the Air Force CRSC program managers to tie the disability to armed conflict per 10 U.S.C. 1413a(e) without a combat-related determination under the DES.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Jan 23 for comment (Exhibit G), 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 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 substantiates the applicant's contentions in part. Specifically, the applicant provided a copy of his testimony and the documentation provided for CRSC approval, to include the Combat Action Badge, which is sufficient to justify granting the applicant's request that 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 to reflect "yes." However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. With respect to the applicant's request to have his "Active Service for Retirement" on his disability retirement orders to reflect his Reserve time. The Board notes the block that would reflect this is "Service per 10 U.S.C. 1405" but only if the applicant had performed at least 20 years of service and was not entitled, under any other provision of law, to retired pay from an Armed Force per Title 10, U.S.C., Section 12731. Regarding his request for a DD Form 214, per the DD Form 214 PSDG, the applicant is required to provide active duty military orders that end on the effective end date of retirement. However, the applicant has not provided these active duty military orders nor did the Board find any evidence he was on an active duty military order at the time of his retirement. Per AFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4, applicants have the burden of proof for providing evidence in support of their claim. Therefore, the Board recommends the applicant's records be corrected as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show on 3 December 2021, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD), with a disability rating of 50 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was received in the line of duty as a direct result of armed conflict and was combat-related as defined in 26 U.S.C. 104. However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the

application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2022-02339 in Executive Session on 26 Apr 23:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 6 Oct 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Oct 22.
- Exhibit E: Applicant’s Response, w/atchs, dated 9 Nov 22.
- Exhibit F: Advisory Opinion, AFPC/DPFDD, dated 9 Jan 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jan 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.

1/17/2024

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 Board Operations Manager, AFBCMR
 Signed by: Work-Product