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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02402

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be granted a medical disability retirement with Combat Related Special Compensation (CRSC) for his post-traumatic stress disorder (PTSD).

APPLICANT'S CONTENTIONS

In a nine-page legal brief, through counsel, the applicant contends he was placed on the permanent disability retired list for injuries sustained while in the Air Force that should have been designated as combat related to follow the law and intent of the law. He was deployed multiple times in support of combat and in combat zones. He was improperly and unjustly denied CRSC despite numerous demonstrations his PTSD was a direct result of combat related injury as defined in United States Code (U.S.C.) 104.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

On 9 Mar 21, AF IMT 618, Medical Board Report, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for PTSD, chronic.

Dated 27 Apr 21, AF Form 356, Findings and Recommended Disposition of USAF Physical Evaluation Board, indicates the applicant was found unfit due to his medical condition of PTSD (combat-related no, combat zone yes).

On 7 Jul 21, AF Form 1180, Action on Physical Evaluation Board Findings and Recommended Disposition, indicates applicant did not agree with the findings and recommended disposition of the PEB and requested a formal hearing.

Dated 30 Jul 21, AF Form 356, indicates the applicant was found unfit due to his medical condition of PTSD (combat-related no, combat zone yes) and recommended permanent retirement with a 50 percent compensable disability rating.

On 4 Aug 21, AF Form 1180, indicates applicant did not request a one-time reconsideration of the DVA ratings for his unfitting condition of PTSD.

On 31 Aug 21, according to Special Order Work-Product dated 16 Aug 21, the applicant was relieved from active duty. Effective 1 Sep 21, the applicant was permanently disability retired in

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the grade of master sergeant with compensable percentage for physical disability of 50 percent. "Disability was the direct result of 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 and F.

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the applicant's request. A review of CRSC records shows the applicant has not applied for CRSC consideration. Applicants requesting CRSC, must complete the DD Form 2860, *Claim for Combat-Related Special Compensation* and submit evidence that directly correlates the applicants claimed event(s) to the incurred disability. The term combat-related is defined and treated differently under the CRSC Program and the Disability Evaluation System (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 determination, so long as the applicant's evidence directly connects the claimed disability to the claimed combat event.

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 counsel on 16 Nov 22 for comment (Exhibit D), and the applicant replied on 14 Dec 22. Through counsel, the applicant contends the advisory opinion is false and misleading and deserves no consideration. The Air Force states in sum and substance the definition and controlling authority for CRSC is different under 10 USC 1413a(e) than under 26 USC 104(b)(3), that the applicant needs to fill out a DD Form 2860 instead of requesting the Board to grant relief. As is clear, the definitions under both statues are the same; however, 26 USC 104(b)(3) deals with the calculation of revenue by the IRS, which is completely irrelevant. The applicant should have been granted CRSC while undergoing DES under 10 USC 1413a(e); however, he was not which is an error and injustice.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DPFDF recommends granting the application. In reviewing the evidence provided by the applicant, the statement provided by his lieutenant general, dated 4 Oct 21, clearly corroborates the appellant's testimony regarding his aircraft coming under attack by small arms fire in close proximity to harm's way. These facts should satisfy the preponderance of evidence standard for combat related designation. Additionally, the applicant's mental health records clearly establish a causal relationship between the aircraft small arms fire incident and his PTSD. Based on the documentation provided by the applicant and analysis of the facts, while there is no evidence of an error or injustice during the DES processing or in the decision rendered by the Informal Physical Evaluation Board (IPEB) or Formal PEB, the corroborating statement subsequently provided in the AFBCMR appeal affirm the applicant's testimony and is sufficient to designate his PTSD as combat related.

The complete advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the additional advisory opinion to counsel on 30 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/DPFDF and finds a preponderance of the evidence substantiates the applicant’s contentions. Based on the documentation provided by the applicant and analysis of the facts, while there is no evidence of an error or injustice during the DES processing or in the decision rendered by the IPEB or Formal PEB, the corroborating statement subsequently provided in the AFBCMR appeal affirm the applicant’s testimony and is sufficient to designate his PTSD as combat-related. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. On 30 Jul 21, 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), that his condition was under the Veterans Affairs Schedule for Raing Disabilities (VASRD) code 9411; 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 or caused by an instrumentality of war and was combat-related.
- b. On 31 Aug 21, he was discharged from active duty and on 1 Sep 21, he was permanently retired with a compensable percentage for physical disability of 50 percent.
- c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

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-2022-02402 in Executive Session on 24 May 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDC, dated 15 Nov 22.
- Exhibit D: Notification of advisory, SAF/MRBC to Counsel, dated 16 Nov 22.
- Exhibit E: Applicant's response, dated 14 Dec 22.
- Exhibit F: Advisory opinion, AFPC/DPFDF, dated 27 Jan 23.
- Exhibit G: Notification of advisory, SAF/MRBC to Counsel, dated 30 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.

3/26/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*