



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02587

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, Section 9, Column F, be changed to "A" to indicate his disability was combat-related as defined in 26 USC 104.

APPLICANT'S CONTENTIONS

Nearly all the training he attended/conducted within the Security Forces Air Force Specialty Code had been a simulation of war (Ground Combat Skills, Security Forces Combative training, etc.) and with instrumentality of war (Personal Protective Equipment ranging from chemical masks up to and including full ground combat armor, weapons, and helmets; up-armored vehicles, machine guns/grenade launchers, and military aircraft).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Nov 20, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for cervical spondylosis.

Dated 13 Nov 20, AF Form 356, indicates the applicant was found unfit due to his medical condition of cervical spondylosis and recommended discharge with severance pay (DWSP) with a disability rating of 10 percent. Column F, combat-related determination as defined in 26 USC 104 is marked "no."

On 16 Nov 20, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the PEB and waived his rights for any further appeal.

On 24 Nov 20, according to AFPC/DPFDD Memorandum, dated 13 Nov 20, the applicant elected to be discharged with severance pay with the understanding he is not entitled to retirement pay nor retirement benefits.

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On 17 Dec 20, NGB Form 22, *Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG in the grade of senior master sergeant (E-8) after serving 19 years 9 months and 17 days of active duty. He was discharged, with a narrative reason for separation of “Discharge Disability, Severance Pay, Non-Combat Related (Enhanced).”

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 application. Based on a review of 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 his disability case. There is no supporting documentation to show the applicant’s condition meets the criteria to be deemed combat-related in accordance with 26 USC, 104.

Under Title 10, USC, 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 with (IAW) Department of Defense Instruction (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. To qualify under this rule a service member must be engaged with members of opposing armed forces and forces are in close enough 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, 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. 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.

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 13 Apr 23 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/DPFDD and finds a preponderance of the evidence does not substantiate the applicant’s contentions. 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 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-2022-02587 in Executive Session on 21 Jun 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD w/atchs, dated 14 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Apr 23.

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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.

1/30/2024

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Board Operations Manager, AFBCMR

Signed by:

Work-Product

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