



**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-2022-02779

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

His separation order, Special Order *Work-Product* dated 22 Jun 11, be changed to reflect "YES" to "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."

**APPLICANT'S CONTENTIONS**

According to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, Column C indicates his disability occurred in the line of duty. However, his separation order indicates "NO" for injury occurring in the line of duty.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force senior airman (E-4).

On 5 Nov 10, according to AF IMT 618, *Medical Board Report*, the applicant was referred to the Informal Physical Evaluation Board (IPEB) for asthma.

On 24 Jan 11, AF Form 356, the IPEB found the applicant unfit due to his medical condition of asthma, mild persistent and recommended temporary retirement with a 30 percent compensable disability rating.

On 7 Mar 11, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing.

On 21 Apr 11, according to AF Form 356, the formal PEB (FPEB) found the applicant unfit due to his medical condition of asthma, mild persistent and recommended permanent retirement with a compensable disability rating.

On 22 Apr 11, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the FPEB.

On 28 Sep 11, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged in the grade of E-4 after serving 4 years, 11 months, and 27 days of active duty. His narrative reason for separation is "Retirement Disability, Permanent."

**AFBCMR Docket Number BC-2022-02779  
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
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On 29 Sep 11, according to Special Order Work-Product dated 22 Jun 11, the applicant was permanently disability retired in the rank of senior airman with compensable percentage for physical disability of 30 percent. “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” 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 (Special Actions) 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. On 22 Jun 11, Special Order Work-Product was correctly published announcing the applicant’s permanent retirement effective 29 Sep 11. The following statement is marked “NO” on the retirement order: “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.” This statement was correctly marked “NO” since AF Form 356 determined the applicant’s medical condition was not considered combat related in accordance with Title 26 United States Code, Section 104 (26 U.S.C. § 104). Although this statement also includes verbiage concerning line of duty it only applies to a combat related determination. Additionally, in order to qualify for a disability retirement, the medical condition must be determined to be in the line of duty but there is no specific statement that goes on the retirement order to that affect.

Under 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 with Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, Appendix 5, 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 15 Nov 22 for comment (Exhibit D), but has received no response.

**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 applicant’s medical condition of asthma was not considered combat related in accordance with 26 U.S.C. § 104. 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2022-02779 in Executive Session on 20 Jul 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, dated 14 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 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.

9/13/2023

*Work-Product*

Board Operations Manager, AFBCMR

Signed by:

*Work-Product*