

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00444

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, dated 30 Nov 22, be corrected to reflect her Post-Traumatic Stress Disorder (PTSD) with Major Depressive Disorder is combat-related.

APPLICANT'S CONTENTIONS

She experienced many combat-related events during deployments in 2007, 2009, 2010, and 2013. These events included, but are not limited to: 1) encountering live fire; 2) moving patients on an unsecured runway while base area was under attack; 3) being on aircraft when an Improvised Explosive Device (IED)/mortar was thrown onto the runway directly in front of this aircraft; 4) encountering surface-to-air missile attacks while enroute to military bases, and receiving Hostile Fire Pay in 2010, as well as 2013 and 2014. Due to the amount of combat missions she flew, she received both the Air Medal and Aerial Achievement Medal.

As a result, she has been prescribed both antidepressants and Cognitive Behavioral Therapy for PTSD to assist her in dealing with symptoms such as anxiety, depression, hypervigilance, and social isolation. She also has a trained PTSD service dog who has been with her since 2018.

The Department of Veterans Affairs (DVA) service-connected her PTSD at 50 percent, as of 2018, based on her military medical records, duty history, and decorations. The Air Force Physical Evaluation Board (PEB) did not consider her case for a Medical Evaluation Board until 2022.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a disability retired Air Force Reserve lieutenant colonel (O-5).

On 22 Sep 13, according to AF IMT 1881, *Hostile Fire Pay Certification and MPO*, provided by the applicant, she flew an aeromedical evacuation mission over Afghanistan.

On 27-28 Oct 13, according to AF IMT 1881, with *Mission Manifest Report – Cover Sheet*, provided by the applicant, she flew an aeromedical evacuation mission, with one combat sortie, into and out of **Work-Product** Afghanistan. Remarks state uneventful mission.

On 30 Nov 22, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, provided by the applicant, her unfitting condition of Post-Traumatic Stress Disorder with Major Depressive Disorder was marked *Condition is Combat Related as Defined in 26 USC 104*: NO.

On 3 Feb 23, according to Special Order No. XXXXX, dated 18 Jan 23, the applicant was relieved from active duty, organization, and station of assignment. Effective 4 Feb 23, she was permanently disability retired in the grade of lieutenant colonel (O-5) with a compensable percentage for physical disability of 80 percent.

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

AIR FORCE EVALUATION

AFPC/DPFDF recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, the Informal Physical Evaluation Board (IPEB) correctly determined the applicant's PTSD to be service-connected; however, there is not enough evidence to designate her PTSD as combat-related.

A review of the applicant's AF Form 356 indicates her PTSD was service-connected, per Item 8B, "Is the condition compensable?", wherein the corresponding entry is "Yes." Additionally, the DVA rating decision memo, dated 8 May 18, service-connected her PTSD with an evaluation (rating) of 50 percent.

Regarding her request for combat relation for her PTSD, under Title 10, United States Code, the PEB determines if a service member's condition(s) render them unfit for continued military service relative to their office, grade, rank, or rating. Additionally, in accordance with Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, Section 10, *Administrative Determinations*, the PEB renders a final decision on whether an injury or disease that makes the service member unfit or if the injury or disease was incurred in combat with an enemy of the United States, was the result of armed conflict, engaging in hazardous service, conditions simulating war, or was caused by an instrumentality of 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.

On 5 Jan 23, applicant's counsel requested her PTSD be designated combat-related by the Formal PEB (FPEB). After reviewing the case file and in an effort to avert the possibility of the applicant losing benefits as a result of a FPEB, prior to the hearing, the FPEB signaled it may have questions related to the unfitting nature of her PTSD, as well as the cause of her cervical and lumbar pain. Following consultation with counsel, the applicant waived her formal hearing. As such, the FPEB did not officially deliberate the merits of her combat-related contentions regarding her PTSD, and the results of the IPEB remain the final outcome of her case in the Disability Evaluation Process. Nevertheless, there is sufficient evidence to render an advisory on combat-related designation of the applicant's PTSD.

In making a combat-related designations, the IPEB and FPEB have consistently relied on the four aforementioned criteria and two key factors: did the service member sustain a physical injury or was there a reasonable chance of serious injury or death as a result of hostile action (e.g., was the service member in harm's way). These two boards do not rely on conjecture or philosophical discussions by lawmakers or legal advisors in making a combat-related designation. Rather, they seek corroborating evidence. In the applicant's original FPEB contention, and at the time of the hearing, this was absent. Thus, the IPEB made the correct decision.

In reviewing the applicant's appeal to the Air Force Board for Correction to Military Records, there is no evidence that she was in imminent danger or placed in harm's way. A service member's mere presence in a combat zone or entitlement to imminent danger or hostile fire pay does not entitle them to combat-related designation. The applicant's PTSD was designated as having occurred in a combat zone by the IPEB. While she participated in aerial flight, neither the Air Medal nor the Aerial Achievement Medal reference close proximity to harm's way. There is a vague reference to a "hot" landing in her DVA mental health records, but no specific details were provided. The Air Medal that corresponds with the "hot" landing states the applicant logged over 127 incident-free hours. The submitted AF Forms 1881 and *Manifest Report* refer to two missions in Afghanistan; however, one form makes no mention of hostile fire or being placed in harm's way, and the other specifically cites the mission as being uneventful. Finally, the mental health records provided as evidence focus on the symptoms and treatment of the applicant's PTSD. There was no mention of a specific event which placed her in harm's way other than the uncorroborated "hot" landing.

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 31 Mar 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/DPFDF and finds

a preponderance of the evidence does not substantiate the applicant's contentions. There is no corroborating evidence that the applicant's PTSD with Major Depressive Disorder was incurred under circumstances meeting the requirements detailed in DoDI 1332.18 for combat-related designation. 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-2023-00444 in Executive Session on 30 Nov 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated undated.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDF, dated 28 Mar 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Mar 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.

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Board Operations Manager, AFBCMR