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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01928

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His unfit medical condition be found as combat-related, as a direct result of armed conflict as defined in 26 U.S.C. 104 combat-related determination.

### APPLICANT'S CONTENTIONS

In 2022, during his reevaluation of his Department of Veterans Affairs (DVA) disability ratings, it was noted there was an error with his disability retirement order which did not have his disabilities as combat-related. During his service, he was assigned as a Survival, Evasion, Resistance, and Escape (SERE) Specialist, a Flight Engineer, and an Inflight Fuel Specialist. All of his service was in the performance of duty under conditions simulating war (exercises and field training), while engaged in hazardous service (flight and parachute duty), due to an instrumentality of war (combat vehicles and weapons) and/or in direct combat. His original line of duty (LOD) determination and medical retirement were due to acute renal failure which was caused by hydrocarbon exposure while conducting combat flight duty operations during Operation NOBLE EAGLE.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a medically retired Air Force Reserve (AFR) chief master sergeant (E-9).

On 27 Oct 06, DD Form 261, *Report of Investigation Line of Duty and Misconduct Status*, provided by the applicant notes his acute renal failure for which he underwent a renal transplant, was sustained due to extreme exposure to hydrocarbons (jet fuel) during aircraft refueling operations and was found In Line of Duty (ILOD).

On 17 Nov 06, the AFRC Informal LOD Determination Memorandum, provided by the applicant, indicates the diagnosis of acute renal failure, status post renal transplant felt to be secondary to hydrocarbon (jet fuel) exposure was found ILOD.

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Controlled by: SAF/MRB  
CUI Categories: Work-Product  
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Dated 7 Jan 07, the Medical Evaluation Board (MEB) Narrative Summary (NARSUM), provided by the applicant, indicates his acute renal failure was initially thought to be idiopathic but was subsequently determined to be a possible service-related illness due to extensive exposure to hydrocarbons including JP4 and JP8 while working as a Crew Chief and engineer.

On 19 Jan 07, AF IMT 618, *Medical Board Report*, provided by the applicant indicates he was referred to the Informal Physical Evaluation Board (IPEB) for acute renal failure.

On 20 Feb 07, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, provided by the applicant indicates he was found unfit due to his medical condition of renal failure, status-post kidney transplant and hypercoagulable state, factor 5 Leiden mutation with a disability compensation rating of 30 percent with a recommendation of "Permanent Retirement." It is noted is medical conditions were determined not to be a disability as a direct result of armed conflict or caused by an instrumentality of war and incurred in LOD during a period of war nor was his disabilities found as a direct result of a combat-related injury.

Dated 1 May 07, Special Order **Work-Product** indicates the applicant was permanently disability retired in the grade of chief master sergeant with a compensable percentage for physical disability of 60 percent, effective 30 May 07. Disability received ILOD as a direct result of armed conflict or caused by an instrumentality of war and incurred ILOD during a period of war; and disability was the direct result of a combat-related injury as defined in 26 U.S.C. 104 are both marked 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 recommends denying the application finding no evidence an error or injustice occurred at the time the Physical Evaluation Board (PEB) processed his disability case. There is no conclusive medical evidence to support the applicant's claim his acute renal failure was caused by exposure to jet fuel and therefore a combat-related determination as defined by DoDI 1332.18, *Disability Evaluation System*, is not warranted.

The applicant's unfitting conditions cannot be considered as a direct result of armed conflict since they were not the result of hostile enemy actions. Additionally, the AFPC staff nephrologist, with 30 years of experience as a nephrologist and 24 years military experience has reviewed the documents provided and the available medical records and noted there does not appear to be enough clinical data to conclusively indicate his acute renal failure was directly caused by exposure to jet fuel and the nephrologist has not seen exposure to jet fuel as a reason for kidney failure. Therefore, due to the inconclusive nature of the applicant's narrative summary, the PEB opines there is also not enough evidence to support a combat-related determination of (2) While Engaged in Hazardous Service or (4) Caused by an Instrumentality of War.

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, 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 28 Nov 23 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. Specifically, the Board finds insufficient evidence of a direct causal link of the condition and potential hazardous exposure to grant his request. There is not enough clinical data to conclusively indicate

his acute renal failure was directly caused by exposure to jet fuel; therefore, the evidence does not support a combat related determination while engaged in hazardous service or caused by an Instrumentality of War as defined by DoDI 1332.18. Hence, the Board recommends against correcting the applicant's records. 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 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

## 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 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-2023-01928 in Executive Session on 20 Mar 24:

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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 3 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 27 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Nov 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.

3/25/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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