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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01973

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His unfit medical conditions 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

His disability retirement order should reflect combat-related in a combat zone for his medical conditions of Traumatic Brain Injury (TBI) and Post-Traumatic Stress Disorder (PTSD) due to an attack in 2007 while he was deployed to Camp Victory in Iraq. Additionally, his back and neck injuries should reflect combat-related because they occurred during a Silver Flag exercise. His military documents are unclear as to whether this took place during the Silver Flag exercise on the obstacle course that was since shut down for safety concerns. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, has the Separation Program Designator (SPD) code of "SEA" which denotes "Disability Combat-Related as Determined by the Physical Evaluation Board (PEB)." The board determined his medical conditions were combat-related as noted on his Department of Veterans Affairs (DVA) Compensation and Pension (C&P) examination as well as his military documents to include his Medical Evaluation Board (MEB) Narrative Summary (NARSUM) and his separation notice.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a medically retired Air National Guard (ANG) master sergeant (E-7).

On 16 Jun 22, DAF Form 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for chronic back pain, migraine headaches, chronic PTSD, moderate Major Depressive Disorder (MDD), single episode, unstable right ankle, and right foot pain with amputation of two toes.

On 23 Sep 22, the DVA proposed a disability rating for his Category I unfitting medical conditions of PTSD with TBI at 70 percent; degenerative arthritis thoracolumbar spine at 40 percent;

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migraines at 30 percent; and amputation of second and third digits of the right foot at 20 percent; right ankle sprain status post right ankle arthroscopy at 10 percent; and lumbar radiculopathy, right and left lower extremity at 10 percent each. He was also rated for numerous other service-connected disabilities with an overall disability rating of 100 percent.

On 6 Oct 22, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates he was found unfit due to his medical conditions PTSD and MDD with TBI at 70 percent; low back pain with bilateral lower extremity radiculopathy (DVA rated as degenerative arthritis thoracolumbar spine) at 40 percent; migraines (DVA rated as migraines including migraine variants) at 30 percent; right ankle instability (DVA rated as right ankle sprain status post right ankle arthroscopy) at 10 percent; right foot pain (DVA rated as right amputation second and third digit right foot) at 20 percent, lumbar radiculopathy, right and left lower extremity at 10 percent each; and physical symptoms of TBI at 0 percent; with an overall disability compensation rating of 90 percent with a recommendation of "Permanent Retirement." It is noted is medical conditions were determined not to be combat-related as defined in 26 U.S.C. 104. It is also noted only his PTSD and MDD with TBI was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

On 7 Dec 18, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and disposition of the board and waived his rights for any further appeal. He also indicated he did not want to request a one-time reconsideration of the DVA disability ratings.

Dated 1 Nov 22, Special Order **Work-Product**, indicates the applicant was permanently disability retired in the grade of master sergeant with a compensable percentage for physical disability of 90 percent, effective 16 Nov 22. Disability received in the line of duty (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.

On 6 Nov 22, his DD Form 214, reflects the applicant was honorably discharged in the grade of master sergeant (E-7) after serving four years, eight months, and six days of active duty for this period. He was discharged, with a narrative reason for separation "Disability, Combat-Related, Integrated Disability Evaluation System (IDES)."

On 15 Nov 22, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the Air National Guard after serving 21 years, 8 months, and 3 days of total service for pay. He was discharged, with a narrative reason for separation "Physical Disability-Permanent Retirement."

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. Although his two deployments to Iraq may have contributed to his PTSD there is no clear evidence to show he was directly involved in any combat related events. His TBI was caused by a motorcycle accident which is not considered a combat-related event. Finally, there is no evidence to support his claim his back injury occurred during Silver Flag and is therefore also not combat-related.

The applicant contends his PTSD and TBI should both be considered combat-related due to wartime exposure. On the AF Form 356, it is documented for PTSD and MDD, he reported longstanding symptoms attributable to traumatic experiences/exposures including his best friend's suicide in 2018 and stressors during an Iraq deployment in 2007, such as the threat of mortar attacks and witnessing a service member with severe injuries. While there is evidence to support the fact these conditions were incurred in a combat zone, guidance in AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, paragraph 3.16.2.1. specifically states the fact that a service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding (As a Direct Result of Armed Conflict). There must be a definite causal relationship between the armed conflict and the resulting unfitting disability. The applicant's records do not clearly show he was directly engaged in or in close proximity of direct combat. Simply witnessing the events or aftermath is not enough to award a combat-related designation. Furthermore, medical records do not indicate his TBI was incurred during any deployment period; rather records show he suffered the injury in Sep 15 when he was struck by a car while riding a motorcycle and experienced loss of consciousness. He reported he subsequently developed short-term memory and concentration difficulties following this injury, and his commander noted this impairment progressively worsened and limited his effective duty performance. Therefore, this condition on its own merit would also not be considered combat-related.

Records also indicate he had a history of chronic low back pain that had been present for several years; however, there is no documentation in his Air Force medical records to indicate he sustained this injury during a Silver Flag training exercise. As evidence, he submitted a Pain Medicine Consultation note dated 19 Dec 13 from an off-base provider in which he stated to the doctor the onset of his back pain symptoms began in 2009. He reported at the time he was doing a training maneuver and fell on a pole. However, there are conflicting accounts concerning the onset of this condition. A DVA Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire dated 20 Jul 21 lists the onset date as occurring in 2013 and he also reported he injured his neck and back during a fall while on an obstacle course. Additionally, the MEB NARSUM dated 16 Dec 21 lists the initial onset date for this condition as Jan 14 but notes it is not clear when this started and further notes the first annotation in the military medical records is of a lumbar epidural steroid injection on 15 May 14. Furthermore, in preparation for this advisory, the PEB medical reviewer could not find any documentation in his medical records to substantiate the claim he hurt his back while attending Silver Flag. Therefore, a combat-related determination for Under Conditions Simulating War cannot be established. He agreed with the IPEB findings and did not

appeal to the Formal PEB for a combat-related determination for any of these unfitting conditions and was subsequently retired.

Finally, to address his claim his DD Form 214 verifies his PEB unfitting conditions should have been combat-related, the DD Form 214 was prepared based on information AFPC/DPFDD updated in the Military Personnel Data System based on his PEB results. His SPD code "SEA" and the corresponding Narrative Reason "Disability, Combat-Related, IDES" are used interchangeably for both PEB combat zone only and combat-related determinations. SPD Code "SEA" has an associated Bonus Recoupment Code "F" which informs the Defense Accounting and Finance Service (DFAS) the repayment of the unearned portion of a bonus will not be sought and any unpaid installments will be made to the member in a lump sum. This rule is applicable for both combat zone and combat-related determinations. However, if the PEB determines a member's unfitting condition was combat-related, there are separate transactions that must be updated to show the member's retirement pay is non-taxable in accordance with 26 U.S.C. Section 104.

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 2 Nov 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. Specifically, the Board finds no error or injustice occurred during the applicant's PEB processing of his disability case. Additionally, the Board did not find any of his medical conditions as combat-related as a direct result of armed conflict; while engaged in hazardous service; under conditions simulating war; or caused by an instrumentality of war. No direct causal relationship was established between combat-related duties and his unfitting conditions that demonstrated how or when conditions simulating war, or an Instrumentality of War spurred the contended conditions. Although his two deployments to Iraq may have contributed to his PTSD, there is no clear evidence to show he was directly involved in any combat-related events. His TBI was caused by a motorcycle accident and there is no medical evidence to support his contention his back injury occurred during Silver Flag; therefore, neither injury is considered combat-related. Hence, 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-2023-01973 in Executive Session on 20 Mar 24:

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Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 Jan 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 26 Oct 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 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.

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Board Operations Manager, AFBCMR

Signed by: USAF

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