



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02421

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her 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

Her retirement orders and military records should be corrected to show accurate and current combat-related disability ratings.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air Force master sergeant (E-7).

On 2 Dec 16, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for a pancreatic mass and irritable bowel syndrome (IBS).

On 11 Jan 17, the Department of Veterans Affairs (DVA) proposed a disability rating for her Category I unfitting medical condition of IBS with gastroesophageal reflux disease and gastritis with duodenal ulcer and helicobacter pylori at 10 percent and her Category II condition of pancreatic neoplasm at 0 percent.

On 19 Jan 17, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of IBS with a disability compensation rating of 10 percent with a recommendation of "Permanent Retirement." It is noted her medical condition was determined not to be a disability as a direct result of armed conflict or caused by an instrumentality of war but was incurred in line of duty (ILOD) during a period of war.

AFBCMR Docket Number BC-2023-02421

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 26 Jan 17, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the board and waived her rights to a formal hearing. She also indicated she did not want a one-time reconsideration of her disability ratings.

Dated 6 Feb 17, 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 10 percent, effective 29 Mar 17. 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.

On 28 Mar 17, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of master sergeant (E-7) after serving 21 years, 3 months, and 15 days of active duty. She was discharged, with a narrative reason for separation of "Disability, Permanent (Enhanced)."

Dated 29 Jun 23, a letter provided by the applicant shows her partial approval for Combat-Related Special Compensation (CRSC) for unspecified depressive disorder, obstructive sleep apnea, IBS, and allergic rhinitis with a total combined rating of 90 percent, effective 1 Sep 22.

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 indication an error or injustice occurred at the time the Physical Evaluation Board (PEB) processed her disability case. Award of CRSC is not a contributing factor in a combat related determination by the PEB and there is no conclusive medical evidence to support the applicant's claim her IBS was caused by a combat related event or an instrumentality of war as defined by DoDI 1332.18, *Disability Evaluation System*. Additionally, an updated DVA disability rating after separation does not warrant a change to the original PEB assigned DoD ratings after the fact.

The applicant submits no subjective evidence any of the combat related criteria listed below contributed to her IBS. As part of her application, the applicant submitted a CRSC approval to support her claim her PEB rated disability should also be considered combat related; however, the Disability Evaluation System (DES) and CRSC operate under separate laws and the term combat-related is defined and treated differently under these laws. Specifically, the primary definition of combat related for CRSC comes from Title 10 U.S.C. 1413a, whereas the controlling DES definition comes from Title 10 U.S.C. Ch. 61 and 26 U.S.C. 104(b)(3). Therefore, the DES decision is not a determining factor for CRSC consideration, so long as the applicant meets CRSC preliminary criteria by having a qualifying disability rating for which he/she is receiving DVA compensation for service-connected disabilities under Title 38 U.S.C. Of note, the applicant was approved for CRSC for four DVA service-connected disabilities for which IBS was one of the

approved conditions. CRSC approval for this condition was based on the DVA considering IBS a Gulf War presumptive condition under Title 38.

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, (2) While Engaged in Hazardous Service, (3) Under Conditions Simulating War, or (4) Caused by an Instrumentality of War.

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 Jan 24 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. The Board finds no conclusive medical evidence her IBS was caused by a combat related event or an instrumentality of war; despite the applicant's approval for CRSC for IBS. Award of CRSC is not a contributing factor in a combat related determination by the PEB. CRSC approval for her condition of IBS was based on the DVA considering this condition a Gulf War presumptive condition under Title 38. Therefore, the Board recommends against correcting the applicant's records.

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-2023-02421 in Executive Session on 23 May 24 and 30 May 24:

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 1 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/ DPFDD, w/atchs, dated 26 Jan 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Jan 24.

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.

6/6/2024

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Board Operations Manager, AFBCMR
Signed by: USAF