Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2023-03165

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records be amended to:

1. Restore "in the line of duty" (ILOD) determination for migraine, sleep apnea, and hypertension.
2. Adjudication of ILOD status for right knee meniscus tear, and right shoulder injury.
3. Recognize his Department of Veterans Affairs (DVA)-diagnosed Post-Traumatic Stress Disorder (PTSD).
4. Retroactively award Medical Continuation (MEDCON) pay in the sum of $342,247.11 for the periods 30 Oct 20 – 19 Jan 21, 1 Jan 22 – 7 Feb 22, and 9 Aug 22 – 11 Apr 25.
5. Reverse the Formal Physical Evaluation Board (FPEB) denial of the applicant's request for a 75 percent disability rating.
6. Award disability retirement.
7. Find his disabilities combat-related.
8. Award Combat-Related Special Compensation (CRSC). **(applicant failed to exhaust lower administrative remedy)**

APPLICANT'S CONTENTIONS

He was on active duty with the Army in the 2003 Iraq invasion and 2005 follow-on combat tour, facing mortar barrages and improvised explosive devices (IED). He then served in the Air National Guard (ANG) for the East Africa Response Force in South Sudan. This special warfare path exposed the applicant to relentless hazards, concussive blasts, hard parachute landings fueling migraines, trauma seeding PTSD, and training rigors tearing his shoulders and knee. The applicant contended in Aug 19, while on orders exceeding 30 days, he tore his left shoulder and right knee during training, yet the medical group denied LODs despite records. He further contended, by Jun 20, still on duty, his Primary Care Manager (PCM) diagnosed migraines, sleep apnea, and hypertension, yet LODs were refused until congressional intervention. The applicant's wing commander finalized all conditions as ILOD, only for the National Guard Bureau (NGB) Air Reserve Component (ARC) LOD Determination Board to baselessly overturn them, a failure flagged by the Secretary of the Air Force Inspector General (SAF/IG) Report of Inquiry (ROI). Additionally, the applicant contended in 2021, an impaired medical provider re-injured his left shoulder, requiring surgery. By 2021, the applicant was treating a torn right shoulder during the period of MEDCON termination, and LOD denial. He also contended two ANG mental health intakes confirmed trauma, but PTSD was ignored. Three cuts to his MEDCON orders disrupted his care until his forced retirement on 11 Apr 25[1], costing the applicant $342,247.11 in lost pay, benefits, and undue expenses caused by the systemic failures of the LOD and Disability Evaluation

[1] The applicant's date of transfer to the retired reserve was adjusted to 11 May 25.

System (DES) process to protect injured ARC airmen. The applicant provided data reflecting his periods of active duty orders, to include MEDCON orders, in support of his contentions.

Regarding his migraines, the applicant contended a board-certified neurologist's letter confirms his treatment for migraines with aura since 1 Dec 22, following care by two other providers. He has been prescribed amitriptyline (not tolerated), gabapentin (ineffective), and Nurtec (most effective) with Ubrelvy for abortive therapy. Per the applicant, the letter describes his migraines as severe, debilitating, a condition consistent with the cumulative impact of toxic burn pit exposure, head trauma from parachuting, concussive blast, and special warfare stressors, all inherent in the applicant's Tactical Air Control Party (TACP)/Joint Terminal Attack Controller (JTAC) role and exposures endured during his combat deployments.

Following intervention by the applicant's congressional representative in 2022, his wing commander finalized ILOD determinations for migraines, sleep apnea, and hypertension between 22 Feb 22 and 3 Mar 22. Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, granted wing commanders informal LOD approval authority, and the applicant's commander's ruling aligned with medical evidence linking these conditions to his service. According to the applicant, the NGB ARC LOD Determination Board overturned his finalized ILOD to not ILOD (NILOD) under an improper, unilateral self-granting waiver. The applicant again references the SAF/IG ROI in support stating it confirms his LODs pre-dated the waiver's revocation yet, NGB intervened without publishing the waiver, violating due process and the Secretary of the Air Force's DAFI intent. The applicant contended SAF/IG validated his wing commander's finalized ILOD findings and critiques overturning them to NILOD for lacking clear and unmistakable evidence. NGB provided no pre-service records showing migraines, sleep apnea, or hypertension to support a finding of existed prior to service (EPTS), nor evidence negating service-aggravation. The applicant further contended the DVA's 50 percent rating for migraine, plus recognition of sleep apnea and hypertension corroborates their service-connection, contradicting the NGB NILOD ruling.

The applicant goes on to contend his injuries are ILOD and, therefore, eligible for Combat-Related Special Compensation (CRSC) under Title 10, United States Code § 1413a(e)(1) [10 USC § 1413a(e)(1)] and Department of Defense Instruction (DoDI) 1332.38, *Physical Disability Evaluation*[2], which was unjustly blocked by NGB's actions. Per the applicant, his TACP/JTAC role exposed him to unique risks, such as toxic burn pits, hard parachute landings, concussive blasts, and relentless operational tempo. His medical provider letter confirms severe, debilitating migraines, more likely than not caused by these hazards, consistent with the DVA's 50 percent rating. His sleep apnea and hypertension, tied to combat-related fatigue and stress further qualify as CRSC-eligible. The applicant contended his wing commander's ILOD finding recognized this, and a deprivation of his right to due process, as established in legal precedent under *Kelly v. United States*.

Additionally, the applicant contended his role required peak fitness and intense training, and these rigors caused his right knee meniscus tear and right shoulder injury, and both were sustained, aggravated, and worsened directly due to his special warfare role, duty, and position while in a qualified duty status. The applicant contended, on 9 Aug 19, he injured his right knee during the AFSPECWAR physical fitness test's Farmer's Carry. Per the applicant, in a 21 Aug 20 email, he detailed his knee injury and reported it to the medical group due to re-injuring the knee during training; however, the wing denied LOD initiation. Across subsequent periods of active duty, the

[2] DoDI 1332.38 was superseded by DoDI 1332.18 on 5 Aug 14.

applicant continued TACP/JTAC duties that caused aggravation of the untreated knee without medical intervention. An MRI orthopedic note, dated 3 Sep 24, confirmed a small radial tear of the lateral meniscus with four years of worsening pain due to lack of treatment.

According to the applicant, in 2022, during Air Force-referred physical therapy for his left shoulder, he developed a right shoulder injury from compensatory stress. With his left arm immobilized and weakened post-surgery, his right arm endured increased strain. An MRI report, dated 9 Apr 24, revealed supraspinatus tendinosis and a tear at the superior margin of the glenoid labrum. The applicant notified his MEDCON manager and the medical group during physical therapy, prior to his final MEDCON termination on 9 Aug 22, but no LOD was initiated despite approved referral documentation. The applicant contended an LOD was denied during this initial reporting and a subsequent LOD initiation request was denied with the MEDCON extension request. Per the applicant, the wing failed to process the LOD or provide treatment, leaving him without recourse. This absence of recourse, combined with inconsistent execution and lack of training delayed his knee treatment until 2024 and left his shoulder unaddressed despite a prior valid ILOD ruling by his wing commander. The applicant further contended neither the wing nor the ARC LOD Determination Board provided any pre-service records showing knee or shoulder issues, nor evidence negating service aggravation. According to the applicant, he was referred by the Air Force to physical therapy for his right shoulder, then denied LOD initiation, then curtailed and terminated from MEDCON unjustly. The applicant again referenced the SAF/IG ROI to support his contentions.

Additionally, the applicant contended his career exposed him to combat trauma, mortar barrages, IEDs, loss of brothers-in-arms, combat stress, and military sexual trauma (MST)[3], causing and aggravating his PTSD. The DVA diagnosed PTSD with a 50 percent combined rating, reflecting service-related traumas, yet the Air Force failed to diagnose or treat his PTSD, and the wing refused to initiate LODs. In 2020, in the midst of MEDCON delays, the applicant sought mental health support for childhood abuse compounded by service-related trauma. This coupled with being abandoned by his wing while fighting injustices left the applicant in crisis. The applicant referred to his Facebook post to the Chief Master Sergeant of the Air Force (CMSAF) in support of his contention. Per the applicant, two Air Force mental health intakes confirmed trauma, but the Air Force failed to diagnose PTSD and terminated his treatment when the psychiatrist brought him to a fragile state in cognitive based therapy that forced the applicant to relive events to move past them. Per the applicant, he was made to relive traumatic events spanning his early years up to combat and was abandoned by the Air Force mental health in this state. This abandonment made the applicant fearful of seeking help again, knowing he could be further harmed by this process. The applicant reported the ongoing treatment to his MEDCON case manager and the medical group, yet the wing refused to initiate LODs. The FPEB relied on the fact that there was no diagnosis or LOD for his combat and MST PTSD condition to deny its inclusion for consideration. This reinforces that untrained LOD program managers were allowed to refuse LOD initiation at their whim, usurping the authority of the wing commander by refusing initiation before the wing commander had a chance to appoint or approve based on DAFI 36-2910. DAFI 36-2910 mandates LOD initiation for reported conditions, a duty the wing shirked. According to the applicant, this systemic neglect disrupted therapy and care, worsening his condition until DVA intervention. The Air Force failed him, and no one checked in on him, not his chain of command or his psychiatrist. The applicant detailed the effects and his family's support at this time.

[3] The applicant provided no evidence of MST; however, in his civilian Mental Health Treatment Records, his Psychiatric Evaluation notes, dated 26 Jan 23, reflect the applicant's report of childhood sexual abuse at age 3 until age 12. While reported during the applicant's military service, this trauma does not fall within the Air Force or DVA definition of MST.

Per the applicant, three untrained LOD program managers and the ARC Case Management Division (CMD) Chief terminated his MEDCON orders despite ongoing treatment, leaving gaps in his medical coverage and causing harm. The applicant contended his initial MEDCON addressed injuries from Jun 20, left shoulder and heart condition. The medical group representative failed to submit documentation, possibly retaliating after the applicant escalated his delays to the CMSAF and his congressional representative. This terminated his MEDCON on 30 Oct 20, halting his first mental health intake, treatment for his high blood pressure and heart conditions, and other care until his active duty orders began on 20 Jan 21. After these active duty orders, the applicant entered MEDCON on 18 Jul 21 for a left shoulder injury. Another medical group representative botched his MEDCON extension submissions, terminating his orders on 1 Jan 22, after an impaired provider re-injured the applicant's shoulder. Per the applicant, left with no status, he drove to his base when provided leadership support. Instead, the medical group representatives mocked him while dismissing his LOD requests. The applicant was left without care until subsequent active duty orders resumed on 8 Feb 22. The applicant re-entered MEDCON on 12 Apr 22, under a third medical group representative who continued LOD denials for his left shoulder, right shoulder, PTSD, migraines, sleep apnea, hypertension, and heart condition despite his treatment. The applicant's MEDCON was terminated on 9 Aug 22, mid-course in Air Force-referred physical therapy. Initially ignorant of the reason, the MEDCON program manager used boilerplate excuses regarding insufficient frequency, later fabricating an unverified home exercise program pretext and blaming the applicant for not querying the medical group representative. This terminated the applicant's ongoing care and eligibility for MEDCON, leaving him without status until his retirement. The applicant referred to the SAF/IG ROI contending the MEDCON program manager stated he uses discretionary termination from MEDCON as viewed from a fiscal standpoint and it is up to his discretion whether an injured service member is granted MEDCON.

The applicant further contended his DVA-rated conditions, totaling 80 percent (capped at 75 percent per 10 USC § 1401) qualify him for a Chapter 61 [10 USC Chapter 61] retirement and CRSC under 10 USC § 1413a, a property interest protected by the fifth amendment. On 9 Feb 23, the Informal Physical Evaluation Board (IPEB) denied disability benefits, rating only his left shoulder at 20 percent, despite finding migraines also unfitting, citing an erroneous NILOD finding. The applicant appealed the IPEB, which upheld the denial on 1 Dec 23, after a procedurally flawed hearing. Per the applicant, his former attorney documented SAFPC's refusal to accept additional evidence and its failure to define the appeal's scope, despite the applicant's six substantive issues. The FPEB decision, signed 5 Jan 24, by the Air Force Review Board Agency (AFRBA) Director, dismissed all issues as outside the scope or untimely. According to the applicant, this was corroborated as wrong and unjust by the SAF/IG ROI and DVA evidence. SAFPC provided no formal appeal rules, only an unpublished FPEB Appeal Rules of Procedure, dated 18 Nov 22, later admitted as non-policy. The applicant contended his evidence and observer requests were rejected violating 10 USC § 1222 and DoDI 1332.18, *Disability Evaluation System (DES)*. The applicant makes further allegations regarding non-receipt of clear and unmistakable evidence (CUE) for his NILOD. Per the applicant, the SAF/IG ROI validates his wing commander's finalized ILOD determinations for migraines, sleep apnea, and hypertension, overturned by NGB's invalid, improper, and unilateral waiver, and critiques the IPEB/FPEB denials as inconsistent with evidence. The applicant further contended the SAF/IG ROI's 497 harmed parties (11 named, 486 additional in 15 months) reflect systemic evidence deprivation and failures, mirroring his case. Per the applicant, medical records and DVA ratings corroborate combat causation, yet the FPEB denied a 75 percent rating and CRSC. The applicant summarized his contentions referring to due process violations rendering the FPEB invalid, citing *Cushman v. Shinseki* and *Kelly v. United States*. He further cites *Withrow v. Larkin* regarding biased adjudication, ethics breach, and conflict of interest. According to the applicant, SAFPC's lack of

rules and evidence rejection, as well as deprivation of CUE, denied his 10 USC § 1214 right to a full and fair hearing, a pattern affecting 497 ARC members in just a 15-month period. The applicant contended granting relief averts Court of Federal Claims litigation, where broader damages, beyond the Air Force Board for Correction of Military Records' (AFBCMR) scope, and the Air Force's liability for 497 injured parties could escalate, urging comprehensive relief here to uphold justice for all affected. The applicant included a narrative and detailed breakdown of his contended financial harm.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving [State] ANG master sergeant (E-7).

On 30 Apr 06, the applicant was furnished an honorable discharge from the Regular Army and credited with 7 years, 1 month, and 14 days active service.

On 24 Apr 09, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant enlisted in the [State] Army National Guard.

On 6 Aug 10, according to DD Form 2807-1, *Report of Medical History*, Block 15a., the applicant reported no history of dizziness or fainting spells, frequent or severe headache, or a head injury, memory loss, or amnesia.

On 8 Apr 10, according to DD Form 368, *Request for Conditional Release*, the applicant requested transfer to the [State] ANG. On this same date, the applicant's request was approved.

On 30 Apr 10, according to DD Form 4, the applicant enlisted in the [State] ANG.

On 25 Sep 20, according to AF Form 348, *Line of Duty Determination*, the applicant was diagnosed with M75.102 - unspecified rotator cuff tear or rupture of left shoulder, not specified as traumatic: left rotator cuff tear, with date of treatment provided of 10 Jul 20. On 8 Mar 21, the condition was found to be ILOD.

On 1 Oct 20 – 30 Oct 20, according to AROWS Order Number Work-Product, dated 3 Oct 20, the applicant was called to active duty for the purpose of MEDCON.

On 18 Jul 21 – 16 Aug 21, according to AROWS Order Number Work-Product, dated 2 Aug 21, the applicant was called to active duty for the purpose of MEDCON.

On 17 Aug 21 – 30 Sep 21, according to AROWS Order Number Work-Product, dated 9 Aug 22, the applicant was called to active duty for the purpose of MEDCON.

On 1 Oct 21 – 1 Jan 22, according to AROWS Order Number Work-Product, dated 9 Aug 22, the applicant was called to active duty for the purpose of MEDCON.

According to the SAF/IG ROI, dated Dec 24, on 3 Sep 21, DAFI 36-2910 was revised, providing wing commanders the authority to approve informal LODs.

On 4 Nov 21, according to the SAF/IG ROI, dated Dec 24, NGB/A1 approved an AF Form 679, *Department of the Air Force Publication Compliance Item Waiver Request/Approval*, waiver for

the LOD Determination Board with the intent to continue to act as the reviewer and approving authority for ANG informal LOD determinations. The waiver was approved for up to one year or earlier, pending full analysis of audit results. NGB/A1 withdrew the waiver on 15 Mar 22.

On 26 Jan 22, according to AF Form 348, the applicant was diagnosed with S46.012D - strain of muscle(s) and tendon(s) of the rotator cuff of left shoulder: strain of muscle and tendon of the cuff of the left shoulder, S46.012, with date of treatment provided of 17 Nov 21. On 2 Jun 22, the condition was found to be ILOD.

On 22 Feb 22, according to AF Form 348, the applicant was diagnosed with G43.009 – migraine without aura, not intractable, without status migrainosus: migraines, with date of treatment provided of 13 May 21. On 3 Mar 22, the Appointing Authority determined the applicant's condition of migraine to be ILOD. On 2 Jun 22, that finding was overturned by the Approving Authority who found the applicant's condition of migraine to be NILOD – Not Due to Member's Misconduct; Existed Prior to Service-Not Service Aggravated [EPTS-NSA].

On 3 Mar 22, according to AF Form 348, the applicant was diagnosed with 149.3 – ventricular premature depolarization: ventricular premature depolarization (VPD), with date of treatment provided of 11 Sep 20. On 6 Jul 22, the condition was found to be ILOD. The applicant was cleared for continued service without duty or mobility restrictions for this condition.

On 3 Mar 22, according to a redacted version of the AF Form 348, provided as an exhibit in the SAF/IG ROI, dated Dec 24, the applicant was diagnosed with I10 – essential (primary) hypertension: hypertension, with a date of treatment provided of 28 Aug 20. On that same day, the Appointing Authority determined the applicant's condition of hypertension to be ILOD. On 2 Jun 22, that finding was overturned by the Approving Authority who found the applicant's condition of hypertension to be NILOD – Not Due to Member's Misconduct; EPTS-NSA.

On 12 Apr 22 – 9 Aug 22, according to AROWS Order Number ZCXU61, dated 31 Mar 22, provided by the applicant, he was called to active duty for the purpose of MEDCON.

On 8 Jun 22, according to an applicant memorandum, Subject: Appeal of ARC LOD Determination Board Finding of NILOD-EPTS-NSA for migraine, the applicant appealed his NILOD determination for migraine to the ARC LOD Determination Board.

On 15 Jul 22, according to Orthopedic Clinic post-operative follow-up notes, the applicant stated he graduated from official physical therapy for his left shoulder but continues Home Exercise Program (HEP). The treatment plan included continuing with HEP with follow-up as needed in three months, or sooner if there were problems. The applicant was released without limitations.

On 2 Sep 22, according to an ANGRC/CC memorandum, Subject: Line of Duty Determination Appeal Decision – [applicant], the applicant's appeal request was disapproved, and the final decision remained NILOD – Not Due to Own Misconduct.

On 19 Oct 22, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed on mobility, duty, and fitness restrictions pending a Medical Evaluation Board (MEB), with an estimated expiration date of 13 Oct 23.

On 26 Oct 22, according to a DVA Rating Decision for the applicant, service-connection for:

- tinnitus was granted with an evaluation of 10 percent, effective 30 Nov 21

- head injury was denied

The remaining decisions on entitlement for compensation were deferred.

On 20 Dec 22, according to a DVA Rating Decision, the applicant was granted service-connection, effective 30 Nov 21, for:

- PTSD (also claimed as anxiety condition and sleep disturbances) with an evaluation of 50 percent
- migraines with an evaluation of 30 percent
- sleep apnea with an evaluation of 30 percent
- left shoulder strain with rotator cuff tear (claimed as left shoulder condition and arm condition, left) with an evaluation of 20 percent
- atrial fibrillation (claimed as heart condition) with an evaluation of 10 percent
- right foot plantar fasciitis (claimed as foot condition, right) with an evaluation of 10 percent
- right knee instability with an evaluation of 10 percent
- right knee strain (claimed as knee condition, right) with an evaluation of 10 percent

The remaining decisions on entitlement for compensation were deferred.

On 4 Jan 23, according to an NGB/SGP [Chief, Clinical Case Management Branch] memorandum, Subject: Prior Service Condition Determination – [applicant], the applicant did not need a Prior Service Condition (PCS) determination for the left shoulder.

On 26 Jan 23, according to civilian mental health treatment records, provided by the applicant, he was diagnosed with major depressive disorder, single episode, moderate (acute) and PTSD, unspecified (chronic).

On 2 Feb 23, according to a DVA Rating Decision, the applicant was granted service-connection for:

- allergic rhinitis with an evaluation of 0 percent, effective 30 Nov 21
- irritable bowel syndrome (IBS) (also claimed as gulf war unexplained chronic multi-symptoms illness) with an evaluation of 0 percent, effective 10 Aug 22
- scars (extremities and trunk) with an evaluation of 0 percent, effective 30 Nov 21

Service-connection for right shoulder degenerative arthritis was denied.

On 16 Feb 23, according to a DVA Rating Decision, the applicant's evaluation was increased for:

- atrial fibrillation, from 10 percent disabling to 100 percent, effective 30 Nov 21
- migraines, from 30 percent disabling to 50 percent, effective 5 Jan 23
- sleep apnea, from 30 percent disabling to 50 percent, effective 5 Jan 23

On 14 Mar 23, according to a *Legacy DES Election Statement Memorandum*, the applicant requested entry into the Legacy Disability Evaluation System (LDES).

On 12 Apr 23, according to DAF Form 618, *Medical Board Report*, the applicant was diagnosed with:

- unspecified rotator cuff tear or rupture of left shoulder; approximate date of origin: Aug 20; incurred while entitled to basic pay: yes; existed prior to service: no; permanently aggravated by service: yes.

- strain of muscle(s) and tendons of the rotator cuff, left shoulder; approximate date of origin: May 20; incurred while entitled to basic pay: yes; existed prior to service: no; permanently aggravated by service: yes.

- VPD; approximate date of origin: Oct 20; incurred while entitled to basic pay: yes; existed prior to service: no; permanently aggravated by service: yes.

- migraines – not in the line of duty (NILOD); approximate date of origin: Dec 15; incurred while entitled to basic pay: no; existed prior to service: no; permanently aggravated by service: yes.

- sleep apnea – NILOD; approximate date of origin: Jan 21; incurred while entitled to basic pay: no; existed prior to service: no; permanently aggravated by service: yes.

The applicant was referred to the IPEB. On this same date, according to an *Impartial Medical Review (IMR) and Rebuttal Election Form*, the applicant agreed with the MEB results and elected not to submit a request for an IMR or rebuttal.

On 21 Apr 23, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with the following:

- Category I – Unfitting Conditions

- Left Shoulder Rotator Cuff Strain and Tear; Condition Compensable: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5201; Disability Rating: 20 percent; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes.

- Migraines; Condition Compensable: No; VASRD Code: 8100; Disability Rating: NA; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes. Applicant initially reported headaches since 2015 in a May 22 Neurology encounter; later self-reported a 2006 onset during a subsequent Dec 22 Neurology encounter.

- Periodic Limb Movement Disorder (PLMD); Condition Compensable: No; VASRD Code: 8103; Disability Rating: NA; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes. The IPEB found there was no ILOD determination for sleep apnea and both positive and negative polysomnography results for obstructive sleep apnea; however, the polysomnography did identify PLMD with underlying hypersomnia symptoms that were not well controlled and created worldwide qualification constraints.

- Category III – Conditions That Are Not Unfitting and Not Compensable or Ratable

- VPD; the applicant has required no associated restrictions

The IPEB found all additional conditions listed or defined in these records are not currently unfitting for duty either separately, collectively, or through combined effect. The IPEB recommended discharge with severance pay (DWSP) with a combined compensable percentage of 20 percent.

On 1 May 23, 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 of his case.

According to an Ascension Medical Group letter, dated 1 May 23, provided by the applicant, he was treated by the author of the letter for his migraines with aura since 1 Dec 22. Prior to this date, the applicant had been treated by two other neurologists. The author presented the history/service-connection of the applicant's migraines as related to him by the applicant.

On 23 May 23, according to SAF/IG ROI, dated Dec 24, DAFI 36-2910 was revised, removing delegation of authority to wing commanders to approve informal LODs.

On 31 May 23, according to an Office of Disability Counsel (ODC) memorandum, Subject: SAFPC Appeal of Line of Duty (LOD) Appellate Review – [applicant], the applicant requested appellate review of the LOD determination for his DES-referred condition of migraines.

On 1 Jun 23, according to SAF/MRBP [SAFPC] memorandum, Subject: Secretary of the Air Force Personnel Council (SAFPC) Appeal Process for Line of Duty (LOD), Prior Service Condition (PSC), and 8-Year Rule Determinations, SAFPC established procedural guidance for appeals related to LOD, PSC, and 8-Year Rule determinations for DES-related conditions.

On 17 Jul 23, according to a SAF/MRBP [Deputy Director, SAFPC] memorandum, Subject: Line of Duty Appeal – [applicant], the Air Force Personnel Board (AFPB) concluded the applicant did not provide sufficiently compelling evidence to meet the burden of proof in contending for a reversal of the previous NILOD determination. The applicant's medical records, to include active duty Army, did not include any complaints of headache/migraine until 2020. The applicant was not on orders for more than 30 days when his migraine was found unfitting despite his total active service of more than 12 years.

On 9 Aug 23, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was found unfit because of physical disability and diagnosed with the following:

- Category I – Unfitting Conditions

- Left Shoulder Rotator Cuff Strain and Tear; Condition Compensable: Yes; VASRD Code: 5201; Disability Rating: 20 percent; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes.

- Migraines; Condition Compensable: No; VASRD Code: 8100; Disability Rating: NA; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes.

- PLMD; Condition Compensable: No; VASRD Code: 8103; Disability Rating: NA; Combat-Related as defined in 26 USC § 104: No; Disability incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes.

- Category II – Conditions That Can Be Unfitting But Are Not Currently Unfitting

- VPD; VASRD Code: 7011; applicant was cleared for continued service without duty or mobility restrictions

- PTSD; VASRD Code: 9411; not found to be ILOD or PSC; available records indicate no disqualification from flying, and no duty, fitness, or mobility restrictions for this condition. Military mental health clinic completed termination of care note in Apr 23; record states, "No safety concerns identified. Pt denied SI/HI/MI when notified of case closure." Diagnosis recorded was "Other specified problems related to psychosocial circumstances."

The FPEB has considered all other medical conditions related to the applicant's military service as required under the DES and finds these conditions are currently not unfitting for duty separately, collectively, or through combined effect. The FPEB recommended DWSP with a combined compensable percentage of 20 percent.

On 11 Aug 23, according to AF Form 1180, the applicant did not agree with the findings and recommended disposition of the FPEB and requested his case be forwarded to SAFPC for review and decision.

On 15 Aug 23, according to an applicant letter, Subject: SAFPC Appeal of Formal Physical Evaluation Board (FPEB) Appellate Review Personal Letter – [applicant] FPEB Date: 4 Aug 23, provided by the applicant, he requested appellate review for his DES-referred condition of migraines contending violations of federal law, DoD, and Air Force policy combined with abuse of discretion altered the outcome of the FPEB findings.

On 21 Aug 23, according to an ODC memorandum, Subject: Appeal of the Formal Physical Evaluation Board (FPEB) Hearing, [applicant], hearing date 4 Aug 23, the applicant appealed the FPEB findings for VPD and PTSD and requested the conditions be found unfitting, based on new and compelling evidence. The applicant requested an impartial documents-only hearing.

On 22 Sep 23, according to a SAF/MRBP memorandum, Subject: Integrated Disability Evaluation System Appeal – [applicant], the AFPB concluded there was no basis to overturn the findings and conclusions of the FPEB. The applicant's VPD was benign and there was no AF Form 469 issued imposing duty, mobility, or fitness restrictions. There was no evidence of an LOD investigation for the applicant's PTSD, no AF Form 469 indicating his PTSD had adverse effect on duty or mobility, or imposed fitness restrictions, and no corroborating memoranda from the applicant's supervisor, commander, or colleagues. The AFPB directed the applicant be discharged with a disability rating of 20 percent in accordance with the determination of the FPEB.

On 27 Sep 23, according to an AFPC/DPFD memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be transferred to the Inactive Status List Reserve Section under 10 USC § 12731 in lieu of DWSP, by the applicant's election.

On 5 Jan 24, according to a SAF/MRB [Director, Air Force Review Board Agency] memorandum, Subject: Addendum to Integrated Disability Evaluation System Appeal – [applicant], the applicant was allowed an opportunity to appear before the AFPB in a hearing on 1 Dec 23 for the limited

purpose of addressing why documents omitted from the applicant's appeal by his counsel should affect the final adjudication of his case. The AFPB determined the additional evidence presented was not sufficient to conclude SAFPC's original determination was erroneous. On that same day, according to an AFPC/DPFD memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be transferred to the Inactive Status List Reserve Section under 10 USC § 12731 in lieu of DWSP, by the applicant's election.

On 12 Feb 24, according to *Election Regarding Transfer to Inactive Status List*, the applicant elected to transfer to the Retired Reserve Inactive Status List for the purpose of applying for retirement, under 10 USC, Chapter 1223, Section 12731, to receive retired pay at his soonest available entitlement age.

On 15 May 24, according to a *Member LOD Initiation Form*, provided by the applicant, he completed the form for a SLAP tear of his right shoulder.

On 17 May 24, according to AF Form 102, *Inspector General Complaint Form*, provided by the applicant, he submitted a complaint regarding denial of LOD initiation for reported injury of his right shoulder.

On 7 Oct 24, according to SAF/MR [Assistant Secretary of the Air Force, Manpower and Reserve Affairs] letter, provided by the applicant, Subject: Case Closure Letter, the applicant was notified of the findings of a commander-directed investigation into four allegations regarding SAFPC processing of the applicant's LOD appeals and one allegation regarding NGB/A1X processing of his SAFPC FPEB appeal. All five allegations were found to be unsubstantiated.

On 10 Oct 24, according to an AFPC/DPF [Deputy Director, Airman and Family Care] email, Subject: IG Complaint Referral – Response, provided by the applicant, as his condition improved post-operatively, his medical treatments no longer met the minimum frequency to meet MEDCON eligibility. Additionally, MEDCON is limited to 365 days from initial diagnosis, unless referred to the DES. Had the applicant been on MEDCON when he was referred to the DES, he would have remained on MEDCON through the DES process in accordance with DoDI 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*.

In Dec 24, the SAF/IG published a Report of Inquiry (ROI) (S9844), *Air Reserve Component Line of Duty (LOD) Determinations*.

On 27 Feb 25, according to a SAF/IG [Complaints Resolution Directorate] letter, provided by the applicant, based on the AF IG's ARC LOD ROI S9844, and an independent case review conducted by the SAF/MRR Quality Assurance Program, he was not provided with adequate CUE for three LOD determinations, as is required by DAFI 36-2910.

On 13 Mar 25, according to a SAF/MR memorandum, Subject: Clear and Unmistakable Evidence, LOD Case 20220303-003 [Essential (Primary) Hypertension], the applicant was provided CUE for the finding of NILOD for his Essential (Primary) Hypertension.

On 13 Mar 25, according to a SAF/MR memorandum, Subject: Clear and Unmistakable Evidence, LOD Case Work-Product [Migraine], the applicant was provided CUE for the finding of NILOD for his migraine condition.

On 13 Mar 25, according to a SAF/MR memorandum, Subject: Clear and Unmistakable Evidence, LOD Case Work-Product [Sleep Apnea, Unspecified], the applicant was provided CUE for the finding of NILOD for his sleep apnea.

On 25 Mar 25, according to a [State] Adjutant General's Office memorandum, provided by the applicant, his claim the wing commander used her position to directly or indirectly deny him the opportunity to file an LOD was not substantiated. The applicant's request for a right shoulder LOD was also not substantiated.

On 9 Apr 25, according to Reserve Order EK Work-Product, the applicant was relieved from current assignment and assigned to the Retired Reserve Section ZA and placed on the USAF Reserve Retired List, effective 11 Apr 25.

On 10 Apr 25, according to AFPC/DPFDD [Disability Case Manager] email, Subject: DOS Change – Disability Transfer to the Retired Reserve Inactive Status List – 20 Yrs ANG – [applicant], the applicant's transfer to the Retired Reserve Inactive List was adjusted to 11 May 25.

On 21 Apr 25, according to Special Order Work-Product, the applicant is relieved from assignment with the [State] ANG, effective 10 May 25, and transferred to the United States Air Force Reserve, effective 11 May 25.

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

APPLICABLE AUTHORITY

AFI 33-360, *Publications and Forms Management*, dated 1 Dec 15

DAFI 90-160, *Publications and Forms Management*, dated 14 Apr 22

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 8 Oct 15

DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 3 Sep 21

AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, dated 15 Jul 19

DoDI 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, dated 19 Apr 16

DoDI 1332.18, *Disability Evaluation System (DES)*, dated 5 Aug 14

DoDI 1332.18, *Disability Evaluation System*, dated 10 Nov 22

38 USC § 1110 – *Basic Entitlement*

10 USC § 1074a - *Medical and dental care; members on duty other than active duty for a period of more than 30 days*

10 USC Chapter 61 – *Retirement or Separation for Physical Disability*

10 USC § 1201 – 1206

10 USC § 1207a – *Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions*

10 USC § 1214 – *Right to full and fair hearing*

10 USC § 1219 – *Statement of origin of disease or injury; limitations*

10 USC § 1401 – *Computation of retired pay*

10 USC § 1413a – *Combat-Related Special Compensation*

10 USC § 1222 – *Physical evaluation boards*

10 USC § 10503 – *Functions of National Guard Bureau: Charter*

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, a majority of the Board concludes the applicant is not the victim of an error or injustice. The majority of the Board finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board unanimously found the NGB waiver of that portion of DAFI 36-2910 which delegated LOD approval authority to the wing commander was in accordance with established guidance and legally sufficient. The majority of the Board found no evidence the ANG LOD Determination Board erred in their finding of NILOD for the applicant's conditions of migraines, sleep apnea, and hypertension. DAFI 36-2910, effective 3 Sep 21, delegated Approving Authority for LODs to the wing commander. An AF Form 679, *Air Force Publication Compliance Item Waiver Request/Approval*, was initiated by NGB/A1 on 9 Sep 21, to continue to utilize the current routing and approval authority through the ANG LOD Determination Board as a blanket policy. Per the SAF/IG ROI, the waiver was coordinated with and validated by HAF/A1P, the Office of Primary Responsibility for DAFI 36-2910, as well as SAF/MR. The AF Form 679 was signed by NGB/A1 on 4 Nov 21. The request for waiver of this non-tiered requirement is in accordance with AFI 33-360, dated 1 Dec 15 (incorporating AFI33-360_AFGM2018-02.01). This AFGM also prohibited interim changes to publications during the period of this initiative to review Headquarters Air Force directive publications. According to the ROI, SAF/IG found the NGB/A1 waiver removed authority from the wing commanders and was not the appropriate mechanism to change the DAFI; however, did not identify the avenue NGB should have taken to address changes to the DAFI, especially given interim changes were prohibited at that time. SAF/IG further determined it was inappropriate for a staff element to unilaterally remove a wing commander's specified approval authority; however, the Chief of the National Guard Bureau's statutory responsibility in accordance with 10 USC § 10503(11) and the National Guard Bureau charter established this agency's authority to issue directives, regulations, and publications consistent with approved policies of the Air Force, as appropriate. Additionally, DAFI 36-2910 clearly states the Director of the Air National Guard, in collaboration with AF/A1, develops personnel policy for LOD determinations. Finally, AFI 33-360_AFGM2018-02.01

allows AFIs to be supplemented at any level below Headquarters Air Force, to include Air National Guard Instructions published by the National Guard Bureau, and these supplements may be more restrictive. These references clearly establish NGB's jurisdiction and authority to effect change to an ANG wing commander's authority.

The SAF ROI continued to state AF/JA conducted a review to determine whether the waiver implemented by NGB/A1 on non-tiered provisions granting ANG wing commanders authority to approve informal ANG LOD determinations constituted a valid waiver. AF/JA assessed that while the waiver was atypical and contained administrative errors, it was legally valid. Therefore, the Board unanimously finds the NGB waiver valid and binding for all LOD determinations initiated during the period the waiver was in effect.

The applicant appealed the finding of NILOD for migraine to the ANGRC/CC, who denied his appeal. The applicant, through the ODC, then appealed the finding of NILOD for his condition of migraine to SAFPC. After consideration, SAFPC also denied the applicant's appeal finding the applicant's medical records, to include active duty Army, did not include any complaint of headache/migraine until 2020. In response to this last denial, the applicant filed a complaint with SAF/MR alleging SAFPC failed to evaluate and/or process his appeals in accordance with established guidance. The SAF/MR ordered a commander-directed investigation into the allegations, which were found to be unsubstantiated.

The Board notes the IPEB AF Form 356 reported the applicant initially reported suffering from right-sided retro-orbital headaches since 2015 during a May 22 Neurology encounter. However, he then self-reported a 2006 onset during a subsequent Dec 22 Neurology encounter. The Ascensions Medical Group letter, dated 1 May 23, provided by the applicant, states the applicant reported a hard landing while at airborne school in 2013, resulting in a loss of consciousness and concussion, after which the applicant began to suffer more frequent migraine attacks; however, as noted above, there is no evidence or medical records reflecting the applicant experiencing headache/migraine until 2020. Additionally, there is no evidence of a medical incident or injury sustained by the applicant during training in 2013. Further, the applicant reported no history of frequent or severe headaches on his DD Form 2807-1, dated 6 Aug 10. As it is difficult to reconcile the conflicting information regarding the initial onset of the applicant's migraine, the majority of the Board relies on the CUE which reports while the applicant may have experienced migraine symptoms during qualified duty status, his medical records do not suggest a specific trauma occurred during military service or that military service aggravated his condition beyond its natural progression.

The SAF/IG ROI found the rationale for NILOD stated on the AF Form 348 was insufficient to meet the CUE standard of proof, recommending the applicant be provided the evidence used to make this determination. SAF/MR, via memorandums dated 13 Mar 25, provided the applicant with the NILOD CUE for migraines, sleep apnea, and hypertension. Ultimately, the majority of the Board reviewed the CUE supporting the findings of NILOD for the applicant's conditions of migraine, sleep apnea, and hypertension and found the evidence detailed, compelling, and when taken in conjunction with the applicant's medical records, sufficient to meet the standard of proof as outlined in DAFI 36-2910. The applicant was afforded full due process in the adjudication of his LOD determinations.

Regarding the applicant's request for adjudication of LOD status for his right shoulder and right knee, the Board reviewed the applicant's military service treatment records and civilian medical documentation and found that while he received treatment for his right shoulder and right knee, there is no evidence the applicant met his obligation to initiate a request for an LOD determination, with required supporting documentation, within the timelines established by DAFI 36-2910. There

is no evidence the applicant submitted a written explanation to the commander and servicing medical unit detailing the rationale for delayed reporting. Further, there is no evidence the applicant's wing commander denied him the opportunity to file an LOD. As a result of the applicant's complaint submitted to the SAF/IG on 17 May 24, an investigation was conducted at state-level and the findings reviewed by the Staff Judge Advocate. The Board noted the [State] National Guard IG memorandums, dated 25 Mar 25, found the applicant's allegations regarding LOD initiation denial to be unsubstantiated. Further, the Board also finds it unlikely the applicant's chain of command denied initiation of a validly submitted request for LOD initiation given the applicant's available recourse outside the wing, as demonstrated by the applicant's congressional representative's earlier intervention in the LOD process. Moreover, while the applicant contended his right knee injury was service-aggravated due to denial of treatment for four years, this Board finds the applicant's contention unconvincing. In accordance with Air Force Manual 41-210, *TRICARE Operations and Patient Administration*, the applicant was entitled to medical care while on continuous active duty orders greater than 30 days. As evidenced by his treatment of his right shoulder injury without an ILOD finding, the applicant was authorized medical care for his right knee condition during the period Sep 19 – Aug 22 while he was on active duty order for over 30 days, if he chose to avail himself of it.

Upon review, the Board unanimously found the FPEB accurately assessed the applicant's PTSD as not currently unfitting, while the majority of the Board found the applicant's PTSD to be NILOD. While the applicant contended he was not provided with CUE regarding service-aggravation of his PTSD, there was no evidence the applicant submitted a valid request for LOD initiation in accordance with DAFI 36-2910 and that this request was refused by his wing representatives; therefore, there was no finding of NILOD for which CUE was required. Further, there was no evidence presented to reflect the applicant's PTSD was diagnosed by a military medical provider. The applicant was diagnosed with "other specified problems related to psychosocial circumstances" associated with anxiety over his health and lack of concern by his medical department, as annotated in his military mental health encounter notes. Additionally, the applicant's contentions regarding MST do not fall within the Air Force or DVA definitions of sexual assault or sexual harassment experienced during military service. According to the applicant's mental health records, he reported childhood sexual trauma from age 3 through 12, which occurred prior to his military service. Although the applicant contended his in-service therapy to address his childhood trauma incited and/or aggravated his PTSD, the applicant did not require any duty or mobility restrictions due to any mental health condition and was never placed on psychotropic medications by his military mental health providers. The applicant's condition of PTSD was never determined to be ILOD and did not render the applicant unfit for service. To the contrary, in his contentions regarding his right knee injury, the applicant stated he continued TACP/JTAC duties while on orders during 2020-2022, the same period during which he received Cognitive Behavioral Therapy and counseling on coping strategies for his diagnosis of "other specified problems related to psychosocial circumstances" through the mental health clinic. Furthermore, according to the FPEB remarks, in Apr 23, the military mental health clinic completed a termination of care note that reflected "no safety concerns identified. Pt denied SI/HI/MI when notified of case closure."

The Board also unanimously found a preponderance of the evidence does not substantiate the applicant's contentions with respect to his MEDCON orders. The applicant was placed on active duty orders to facilitate treatment for his left shoulder injury until he was returned to duty or out-processed through the DES. The Board determined his left shoulder injury was the only conditions that met all three requirements for MEDCON, in accordance with DAFI 36-2910: an ILOD determination, an active and restorative plan, and mobility/duty restrictions on the AF Form 469. While the applicant was eligible to seek medical treatment for other ailments while on active duty

orders in excess of 30 days, these additional ailments do not entitle him to continued medical coverage under MEDCON. The applicant's breaks in MEDCON orders for the period 30 Oct 20 – 19 Jan 21 and 1 Jan 22 – 7 Feb 22 were due to the lack of a treatment plan that met the requirement for at least two health care appointments per week. The SAF/IG ROI determined the Air Force requirements for MEDCON are not arbitrary and are based on what is required to effectively oversee and manage the program. Further, the SAF/IG ROI found the requirement for a twice-a-week treatment plan did not violate USC or DoD policy, providing it is appropriate the DAF-level instruction implementing this broader guidance has specific processes and requirements that are not necessarily found in that higher-level guidance. The applicant was finally released from MEDCON orders on 9 Aug 22 as, according to his military orthopedic clinic notes dated 15 Jul 22, the applicant stated he graduated from physical therapy but continued his Home Exercise Program. The disposition of his left shoulder injury was "released without limitations" with follow-up as needed in three months. Furthermore, the applicant's latest ILOD determination for re-injury of his left shoulder expired on 17 Nov 22, one year from initial diagnosis. Had the applicant's condition not resolved, he still would not have been retained on MEDCON orders past this date without a new LOD determination or entry into the DES. The applicant's contention that he should have been retained on MEDCON to process through the DES in accordance with DoDI 1241.01 is contradicted by DAFI 36-2910 which specifically states members without an active treatment plan will not be maintained on MEDCON solely for the purpose of entry into DES. Finally, the applicant's request for retroactive MEDCON pay in the sum of $342,247.11 estimated not only pay and allowances, but also included reimbursement for TRICARE Reserve Select premiums, lost Thrift Savings Plan contributions, and attorney's fees, all well outside of the intent and authority of the MEDCON program.

Additionally, the applicant elected to participate in the LDES, wherein the FPEB and DVA adjudicate the applicant's conditions independently vice the Integrated DES wherein the FPEB and DVA coordinate review and determination of disability ratings for conditions found unfitting. The majority of the Board found the FPEB accurately adjudicated the applicant's medical conditions identified on the AF Form 356 and the recommendation for a combined compensable percentage of 20 percent with a disposition of DWSP is supported by the medical evidence provided. The only condition that met the FPEB requirements for compensation in accordance with AFI 36-3212, ILOD and unfitting, was the applicant's left shoulder rotator cuff strain and tear. As stated above, there was no evidence the applicant was diagnosed with PTSD by a military mental health provider while in-service, no evidence his PTSD was determined to be ILOD, and no evidence the applicant's PTSD caused duty or mobility restrictions. Further, while the applicant's condition of VPD was found to be ILOD, the AF Form 348 reflects the applicant was cleared for continued service without duty or mobility restrictions. The applicant was afforded due process via the DES appeals process and SAFPC denied his request for PTSD and VPD to be found unfitting. Post-SAFPC review, the applicant was provided an opportunity to present new evidence; however, the additional documentation was not sufficient to overturn the original FPEB findings and recommended disposition. The majority of the Board found the combined compensable percentage supported DWSP under 10 USC § 1203 and did not meet the threshold for a disability retirement in accordance with 10 USC § 1201. Moreover, the military's DES, established to maintain a fit and vital fighting force, can by law, under 10 USC, only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA

may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

Finally, the Board unanimously found while the applicant appears to conclude an FPEB finding of combat-related and award of CRSC are interdependent, and refers to the programs interchangeably, the FPEB and CRSC fall within two separate, distinct programs which share similar criteria but interpret and apply those criteria independent of one another. Furthermore, as previously mentioned, the FPEB under the DES is governed by 10 USC, while the CRSC benefits are authorized via the DVA and 38 USC. The sole condition for which the applicant is eligible for compensation under the FPEB is his left shoulder rotator cuff strain and tear. According to the applicant's military service treatment record and the AF Form 348, dated 25 Sep 20, the initial injury occurred on 9 Aug 19 during the applicant's TACP functional physical fitness test. The applicant's AF Form 348, dated 26 Jan 22, reflects his left shoulder was re-injured during physical therapy. Neither injury occurred under conditions meeting the criteria for combat-related in accordance with DoDI 1332.18 and/or AFI 36-3212. To be eligible for CRSC, the applicant must be entitled to retired pay and have a combat-related disability that meets the criteria outlined in 10 USC § 1413a. The applicant is not yet in receipt of retired pay and the circumstances of his unfit condition do not meet the criteria for combat-related in accordance with 10 USC § 1413a. Further, as there is no evidence the applicant applied for CRSC, and was denied, he has failed to exhaust lower administrative remedies, and this issue is not yet ripe for adjudication by the Board.

In summary, this Board recognizes the physically demanding nature of the applicant's Air Force Specialty Code; however, this fact in and of itself, does not justify findings of ILOD for any or all medical condition experienced during service. There is a process in place for ILOD determinations, with obligations for both the service members and individuals within the unit medical community and command structure detailed in DAFI 36-2910. Additionally, the DES program addresses those conditions that may render the service member unfit for continued service. Both the LOD and DES programs contain opportunities for appeal, for which the applicant took full advantage. The fact that the original findings and appeals did not result in favor of the applicant does not equate to the existence of malfeasance or incompetence. IG investigation at the state level and a commander-directive investigation at the SAF/MR level found no evidence of either contention. The FPEB's finding of non-combat related is consistent with the criteria outlined in AFI 36-3212 and DoDI 1332.18, while the applicant provided no evidence he submitted a request for CRSC and that request was denied, rendering this issue not ripe for AFBCMR adjudication. Furthermore, the MEDCON program's purpose is to facilitate access to medical care for service members who incur or aggravate an injury, illness, or disease while in a qualified duty status and to return members to duty as expeditiously as possible. The Air Force has the authority, not the indiscriminate obligation to bring service members on active duty, and service members may obtain medical care without placement on MEDCON orders. The MEDCON program is not intended as a means of providing service members with active duty benefits and compensation, though that is a collateral result of placement on MEDCON order. While the SAF/IG ROI found deficits within ARC LOD determinations program, with disparities in execution across the ARC, it appeared program guidance was uniformly applied across service members similarly situated. There was no evidence the applicant's NILOD determinations, MEDCON orders requests, or DES processing were managed in a way that was specifically or intentionally detrimental to the applicant. Finally, SAF/MR complied with the SAF/IG ROI recommendation to provide the applicant with CUE for NILOD determinations for migraine, sleep apnea, and hypertension. Upon receipt of the CUE, the applicant's petition to the AFBCMR afforded him yet another opportunity for appeal. The majority of the Board reviewed the CUE and found it persuasive and in accordance

with DAFI 36-2910. Therefore, the majority of 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 majority of 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-2023-03165 in Executive Session on 1 May 25 and 2 May 25:

Work-Product, Panel Chair
Work-Product el Member
Work-Product Panel Member

A majority of the panel voted against correcting the record. Ms. Davidson voted to correct the record to provide partial relief and did not provide a minority opinion. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 31 Mar 25.
Exhibit B: Documentary evidence, including relevant excerpts from official records.

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.

5/12/2025

Work-Product

Work-Product