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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-00323

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His medical retirement for irritable bowel syndrome (IBS) be designated as combat related.

APPLICANT'S CONTENTIONS

The formal USAF Medical Board misconstrued his and supporting witness testimony. Justifications were fabricated to justify their position, despite seven memos for reference from serving colleagues and three Memos for Records (MFRs) from his surgeon, primary care provider, and Mayo Clinic provider (all these doctors directly treated him). The USAF official response to
Work-Product office does not address his concerns.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force major (O-4).

On 6 Nov 23, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the IPEB recommended the applicant be permanently retired with a disability rating of 40 percent for IBS and Painful Anterior Trunk Scar. The IPEB found the applicant's condition was not combat related as defined in 26 USC 104.

On 7 Dec 23, according to AF Form 356, the applicant contended his IBS should be combat related in accordance with DoDI 1332.18. The Formal PEB (FPEB) concurred with the IPEB's ruling his IBS Status Post Partial Bowel Resection and Painful Anterior Trunk Scar were *unfitting* as outlined on the IPEB AF Form 356, dated 6 Nov 23. However, after careful review of the existing evidence and new information provided in hearing, the FPEB determined the applicant's IBS Status Post Partial Bowel Resection was not combat related.

On 31 Mar 24, per
Work-Product, dated 2 Dec 23, the applicant was permanently disability retired in the grade of major with a 40 percent disability rating.

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

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AIR FORCE EVALUATION

AFPC/DPFDF recommends denying the application. 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, and (4) Caused by an Instrumentality of War. The question at hand is a direct causal relationship between the unfitting medical condition and combat related duties. Although the applicant presented evidence and a medical opinion the condition could have been caused by the combat related duties, it was not demonstrated (based on preponderance of the evidence) that there was a direct causal relationship between the incident in 2012 and the IBS diagnosis in Mar 21 (nine years later). While three medical professionals all opined it was possible the medical condition could have been caused by prior abdominal trauma, the FPEB did not agree the preponderance of the evidence supported the likelihood of the 2012 incident and the medical condition. While it is medically possible the fall caused the condition, the length of time between the incident did not meet the evidentiary standard of preponderance of the evidence to state the 2012 fall caused the medical condition diagnosed in 2021.

Also in question is the operation of the vessel during the 2012 incident. The guidance, as it applies to the instrumentality of war aspect of combat relation directs there must be a direct link between the instrumentality of war and the injury. While there was adequate evidence there was an injury sustained in the 2012 incident, there was question as to the state of the seas that caused the fall. Essentially determining if the fall was due to a misstep or due to rough seas. In the opinion of the FPEB, there was not adequate evidence to demonstrate (based on preponderance of the evidence) that rough seas caused the fall. The applicant's own testimony stated the fall occurred because he lost his footing as he stepped back to redirect his weapon away from team members. His testimony did not include reference to sudden surge of the vessel or of rough seas that caused the fall.

In making a combat related designation, the IPEB and FPEB have consistently relied on the four aforementioned criteria and two key factors: Did the service member sustain a physical injury or was there a reasonable chance of serious injury or death as a result of hostile action (e.g. was the service member in harm's way). Evidence supporting combat related in those criteria and factors was not in the evidence provided to the FPEB or in the AFBCMR application.

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 14 Mar 24 for comment (Exhibit D), and the applicant replied on 18 Mar 24. In his response, the applicant contends [Work-Product] ignored, manipulated, or created new evidence/conjecture. The applicant requests the Board look at the discrepancy between [Work-Product] letter to the Board and the AF Form 356 he presented to the Board as evidence compared to the 29 pages of evidence the FPEB has and continues to dismiss. [Work-Product] also had this evidence. In contrast to [Work-Product] letter and justifying document following it, the full evidence and explanations for it are contained in the PDF.

The applicant's complete response is at Exhibit E.

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. Although the applicant presented evidence and a medical opinion that the condition could have been caused by the combat-related duties, it was not demonstrated (based on preponderance of the evidence) that there was a direct causal relationship between the incident in 2012 and the IBS diagnosis in March 2021 (9 years later). While it is medically possible the fall caused the condition, the length of time between the incident did not meet the evidentiary standard of preponderance of the evidence to state the 2012 fall caused the medical condition diagnosed in 2021. The Board concurs with the rationale and recommendation of AFPC/DPFDF and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-00323 in Executive Session on 20 Nov 24:

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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 23 Jan 24.
- Exhibit B: Relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDF, w/atch, dated 14 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 24.
- Exhibit E: Applicant's Response, w/atchs, dated 18 Mar 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.

12/5/2024

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