RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2006-01024

 COUNSEL: NONE

 HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His record be corrected to show he was placed on the permanent disability retirement list with a 100 percent disability rating.

APPLICANT CONTENDS THAT:

He was unjustly assigned a 50 percent disability rating when he was permanently medically retired. His illnesses of major depressive disorder (MDD), severe, with psychotic features, occurred when he was on active duty. After his discharge he was unable to work, and the Department of Veterans Affairs (DVA) rated him at 100 percent disabled.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 23 Oct 96.

On 30 Aug 04, and Informal Physical Evaluation Board (IPEB) found the applicant unfit for continued service and recommended he be placed on the temporary disability retired list (TDRL) for MDD with a disability rating of 30 percent. The applicant requested a Formal PEB (FPEB).

On 9 Nov 04, the FPEB concurred with findings of the IPEB.

On 5 Mar 05, the applicant was placed on the TDRL with a 30 percent disability rating for MDD.

On 26 Oct 09, an IPEB recommended permanent retirement with a 30 percent disability rating. The applicant again requested an FPEB.

On 27 Jan 10, an FPEB concurred with the IPEB’s recommendation to transfer the applicant to a permanent medical retirement, and increased his disability rating to 50 percent. The applicant appealed this decision to the Secretary of the Air Force Personnel Counsel (SAF/PC).

On 13 Dec 10, SAF/PC reviewed the applicant’s case and denied his request to increase his disability rating beyond 50 percent.

Under Special Order ACD-00898, dated 19 Jan 11, the applicant was removed from the TDRL and transferred to permanent medical retirement with a 50 percent compensable disability rating, effective 4 Mar 10.

On 13 May 10, the DVA assigned the applicant a 100 percent permanent disability rating, effective 5 Mar 05.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

The BCMR Clinical Mental Health Consultant recommends denial indicating there is no evidence of an error or an injustice. The Clinical Mental Health Consultant reviewed all available medical and personnel records and found no evidence or impropriety or error sufficient as to warrant remediation. The advisories of both the applicant’s final FPEB and that of the Personnel Board (SAF/PC) are extensive and address the applicant’s complaints and claims in detail. The Clinical Mental Health Consultant sees no error in mental health diagnosis, treatment, or disposition. Additionally, the applicant submitted no additional or new evidence to justify change of the Personnel Board’s latest opinion.

A complete copy of the BCMR Clinical Mental Health Consultant evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In further support of his request, the applicant submitted a lengthy personal statement in which he disagrees with the advisory opinion of the BCMR Clinical Mental Health Consultant, calling his evaluation “something less than professional,” and arguing the advisory did not adequately address the severity of his symptoms. He further contends all prior decisions concerning his case were wrong, and requests the errors of all the PEBs be corrected. The applicant provides an extensive review of his career, his medical history and treatment, and his experience with the Department of Veteran’s Affairs; requests both an additional medical advisory and a legal advisory; and, provides a list of requests for more detailed explanations on multiple issues. (Exhibit E)

FINDINGS AND CONCLUSIONS OF THE BOARD:

1.  The applicant was not timely filed. While the applicant claims a date of discovery of less than three years ago, in our view, the reasonable date of discovery of the alleged error or injustice was more than three years ago and the application is therefore untimely. Applicant has not shown a plausible reason for the delay in filing, and we are not persuaded that the record raises issues of error or injustice which require resolution on the merits. Thus, we cannot conclude it would be in the interest of justice to excuse the applicant’s failure to file in a timely manner.

2.  The applicant’s case is adequately documented and it has not been shown a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered AFBCMR Docket Number BC-2006-01024 in Executive Sessions on 3 Nov 15 and 9 Nov 15, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

 Exhibit A.  DD Form 149, dated 6 Nov 13, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Memorandum, BCMR Clinical Mental Health Consultant, dated 24 Sep 15.

 Exhibit D.  Letter, SAF/MRBC, dated 30 Sep 15.

 Exhibit E.  Letter, Applicant, dated 29 Oct 15, w/atch.