RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2015-04922

COUNSEL: XXXXXXXXXXXXXXXXXXXXX

HEARING DESIRED: NO

APPLICANT REQUESTS:

Additional disability ratings be included in her disability case so she receives a higher overall total disability rating.

APPLICANT CONTENDS:

The Air Force did not properly evaluate all of the applicant’s medical conditions. Medical Evaluation Boards (MEBs) are required to “confirm the medical diagnosis for and document the full clinical information…of the Service member’s medical conditions that, individually or collectively, may prevent the Service member from performing the duties of his office, grade, rank, or rating.” Her commander stated she was limited to administrative duties. The MEB report did not engage in a complete review of the applicant’s medical conditions as required by DoDI 1332.18, *Disability Evaluation System*, and instead only analyzed the chronic pain. After receiving the applicant’s Department of Veterans Affairs (DVA) rating, rather than evaluate these additional conditions, the Air Force simply added them to the list of conditions that did not render her unfit for duty, and issued an amended AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*. It is clear she was denied a full and fair consideration of her conditions. For example, the applicant’s anxiety and depression was initially designated by the Air Force as only an adjustment disorder with accompanying symptoms, but was corrected by the DVA to a designation of panic disorder with agoraphobia and major depressive disorder (MDD). The Air Force did not evaluate whether any mental issues rendered the applicant unfit for duty, an error which is potentially attributable to the treatment of her condition as an adjustment disorder. It appears her mental issues even had a role in her weight, which was not evaluated but should have been. It is clear her panic disorder with depression rendered her unfit for duty. Her acceptance of the Air Force findings at the time was because, as her medical records demonstrate, she was confused about the process and not provided adequate guidance.

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

STATEMENT OF FACTS:

On 19 Jan 07, the applicant signed her DD Form 2807-1, *Report of Medical History*, certifying she had not used marijuana, engaged in other drug or alcohol abuse, abused prescription drugs, or ever suffered from depression of excessive worry.

On 10 Jul 07, the applicant signed a Standard Form 86, *Questionnaire for National Security Positions*, affirming that since the age of 16 she had never used controlled substances such as marijuana or other illegal drugs.

on 24 Jul 07, the applicant entered the Regular Air Force.

On May 12, an MEB reviewed the applicant’s case and forwarded it to an IPEB due to her chronic pain.

On 17 Aug 12, an Informal Physical Evaluation Board (IPEB) determined a single medical condition rendered her unfit. The condition was left flank pain with unknown etiology, and noted although not unfitting or compensable, she was severely obese.

On 28 Aug 12, the DVA rated the applicant with a combined rating of 80 percent service-connected disability for multiple medical conditions, which included a rating of “0 percent” for chronic left flank pain.

On 10 Sep 12, the IPEB accepted the DVA’s rating of “0 percent” for her chronic left flank pain, and added seven other medical conditions which were determined not to be unfitting.

On 20 Sep 12, the applicant signed the AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, stating “I agree with the findings and recommended disposition of the informal PEB and am waiving the right to a formal PEB hearing.”

On 27 Nov 12, the applicant was furnished an honorable discharge, with a narrative reason for separation of “Disability, Severance Pay, Non Combat (Enhanced),” and was credited with 5 years, 4 months, and 4 days of active service.

The remaining relevant facts pertaining to this application are contained in the memoranda prepared by the Air Force offices of primary responsibility (OPRs), which are attached at Exhibits C, E, and F.

AIR FORCE EVALUATIONS:

AFPC/DPFDD recommends denial indicating there is no evidence of an error or an injustice. The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), PEBs must determine whether an airman’s medical condition renders them unfit for duty. If the board renders a finding of unfit, the law provides for compensation to those military members whose careers are shortened due to a service-incurred or service-aggravated physical disability. However, to receive such compensation, each medical condition must, in and of itself, render the airman unfit for duty. Under the DVA system (Title 38, U.S.C), the law provides for compensation for veterans based on the average impairment in earning capacity resulting from all service-connected diseases and/or injuries. Although the two agencies use the same rating schedule, the military only rates those conditions which make an individual unfit for continued military service, while the DVA rates all medical conditions connected to the veteran’s military service. Additionally, the disability provisions of Title 10. U.S.C. require the military services to rate disabilities based on the military member’s current condition at the time of disability processing. The DVA may rate based upon future employability. This, plus the fact the DVA may perform evaluations at a later time, often results in different ratings by the two agencies.

Under the Integrated Disability Evaluation System (IDES), PEBs must determine which medical condition(s) claimed by the service member render him/her unfit for continued military service. The fact a service member may have multiple medical conditions does not mean each condition is unfitting. In the applicant’s case, she claimed several medical conditions, all of which were rated by the DVA, but only one condition was determined by the Air Force to be unfitting. The Board properly applied the disability rating of 0 percent provided by the DVA for her one unfitting condition, and recommended discharge with severance pay. The applicant concurred with the findings. It should be noted all claimed conditions that could have been unfitting, but were not at the time of her DES processing, were included on the AF Form 356. Additionally, the applicant was briefed on the IPEB recommendation and waived her right to appeal to the Formal PEB and the Secretary of the Air Force Personnel Council (SAFPC)—both options for requesting her other conditions be deemed unfitting.

Recommend denial of the applicant’s request. There is no evidence an error or injustice occurred during the processing of her case through the DES.

A complete copy of the AFPC/DPFDD evaluation is at Exhibit C.

The BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. Operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service-incurred, without regard to [and independent of] its demonstrated or proven impact upon a service member’s retainability or fitness to serve. With this in mind, Title 38, U.S.C., which governs the DVA compensation system, was written to allow awarding compensation ratings for conditions that were not unfitting for military service at the time of separation. This is the reason why an individual can be found unfit for military service for one reason and yet receive a compensation rating from the DVA for one or more medical conditions that were service-connected, but not proven militarily unfitting at the time of release from military service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

On 23 May 12, the applicant’s MEB narrative summary [NARSUM] includes the following statements from the health provider: ““SrA Todd has been on Duty and Mobility Restrictions for 325 days in the past 2 years, all stemming from her chronic left flank pain;” the “pain has prevented her from fulfilling her daily mission requirements;” and, she “reports she is unable to accomplish most aspects of her job.” Under Past Medical History the provider entered Adjustment Disorder with depressed mood – currently treated with Effexor 150 mg daily and “responding well with depressive and mood symptoms.” Among diagnostic conclusions, the provider also entered Obesity.

Although the applicant has been assigned disability compensation for a variety of medical conditions considered service-incurred by the DVA, except for report of pain a patellar dislocations after running a mile or more in CY09, there is very minimal service evidence to indicate the applicant’s chondromalacia patella precluded her from reasonably performing the duties of her office, grade, rank, or rating; particularly at the time her MEB and during the year prior to her separation. In fact it appears it was the applicant’s predisposition for shin splints that resulted in restrictions to running; a condition which was rated at 0 percent. Thus, a preponderance of evidence indicates it was the applicant’s Chronic Pain that resulted in career termination; in lieu of an administrative discharge. Reaching a conclusion the applicant’s chondromalacia patella should have been considered unfitting could not be done without introducing *opinion, conjecture or speculation*; notwithstanding the speculation that the Military Department provider(s) may have errantly failed to include bilateral knee pain in the original MEB proceeding.

The applicant’s most serious and predominant interactions within the medical community were directed to her urogenital system; specifically, chronic recurrent urinary tract infections, the discovery of an atrophic poorly functioning right kidney, and a large staghorn kidney stone; ultimately requiring a nephrectomy with urethrectomy in Feb 10. The residual problem plaguing the applicant, and which required profile restrictions, appears to have been chronic right flank pain. Concurrently, and preceding the applicant’s urologic problems, she was confronted with failure to achieve a satisfactory level of fitness, beginning in 2007. At some point, the applicant had received three such failures, making her vulnerable for an administrative discharge, if she received a 4th failure within a 24-month period.

Under IDES, the DVA was the only body, at the time, authorized to assign the disability rating(s). The DVA ultimately released its disability rating for the applicant’s Chronic Pain at 0 [zero] percent, but also issued disability ratings for additional medical conditions determined service-incurred. It is these ratings for conditions not considered in the applicant’s original MEB, nor her PEB determination, that fuels the current appeal. While it may appear counterintuitive that a collection of conditions rated at 80 percent, effective the day after leaving military service, would not have included additional unfitting conditions, the Medical Consultant found insufficient objective service evidence that established, or should have established, a cause and effect relationship between the termination of the applicant’s service and any condition except her Chronic Right Flank Pain; except for the applicant’s mental disorder, that requires further exploration.

The Medical Consultant recommends denial of the applicant’s petition to include additional medical conditions in her military disability rating computation; dependent upon the findings of the Mental Health Consultant.

A complete copy of the BCMR Medical Consultant evaluation is at Exhibit E.

The BCMR Mental Health Consultant recommends denial indicating there is no evidence of an error or an injustice. DODI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services,* dated 28 Apr 10, was established to eliminate inconsistencies and inequities based on race, sex, or location of examination. It is intended to ensure individuals under consideration for appointment, enlistment or induction into the Military Services are both free of contagious diseases and are free of medical conditions or physical defects that may require excessive time lost from duty for necessary treatment or hospitalization, or probably will result in separation from the Service for medical unfitness. This includes denial of admission to the military if there is a current or history of alcohol dependence, drug dependence, alcohol abuse, or other drug abuse.

On 11 Apr 12, during an interview with a clinical psychologist, the applicant reported her grandmother was diagnosed with Bipolar Disorder and her mother was on some psychiatric medication. She gave a substance abuse history which included drinking as a freshman in high school while in Germany and then using drugs by 10th grade. She reported smoking marijuana and some use of acid on the weekend for a few months. She reported she stopped all drugs by the time she was 19 years of age, but continued to drink up to two bottles of wine on weekends. She reported she stopped all alcohol by the time she was 21 years of age. She reported that “it was not fun anymore.” The applicant also reported serious physical abuse at the hands of her mother. She notes her depression started in 2008 and she would sit in her room and take sleeping pills after work. She did this for about six months and then met a boyfriend and felt better and then moved to England and her symptoms came back.

It is very clear the applicant’s experience in the military was quite traumatic. It was complicated by multiple physical and emotional complications. However, she had a pre-existing or prior to admission to military history of drug/alcohol use/experimentation. Furthermore her family and individual mental health conditions were not reported as well. If she had reported all of these issues and if this history was excused/allowed, then it would have most certainly been a consideration in her discharge. However, this did not preclude the applicant’s DVA compensation, because the DVA operates under a different set of laws, Title 38, U.S.C., which empowers the DVA to offer compensation for any medical condition with an established nexus with military service. The evidence is insufficient to warrant the desired change of the record. Recommend denial.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

A copy of the Air Force evaluation was forwarded to the applicant on 2 May 16 for review and comment within 30 days (Exhibit D). As of this date, no response has been received by this office.

THE BOARD CONCLUDES:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant’s complete submission in judging the merits of the case and agree with the opinions and recommendations of the Air Force office of primary responsibility (OPR) and the BCMR’s Medical Consultants and adopt the rationale expressed as the basis for our conclusion the applicant has failed to sustain her burden of proof that she has been the victim of an error of injustice. In the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2015-04922 in Executive Session on 12 Mar 18 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 12 Nov 15, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Memorandum, AFPC/DPFDD, dated 23 Feb 16.

Exhibit D.  Letter, SAF/MRBR, dated 2 May 16.

Exhibit E.  Memorandum, BCMR Medical Consultant, dated 6 Oct 16.

Exhibit F.  Memorandum, BCMR Mental Health Consultant, dated 6 Jun 17.

Exhibit G.  Letter, SAF/MRBR, dated 7 Nov 17.

Pursuant to paragraph 1 of AFI 36-2603 (Title 32 Code of Federal Regulations, Part 865.1), it is certified a quorum was present at the Board's review and deliberations, and the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.