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**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

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**DOCKET NUMBER:** BC-2006-03734

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

**APPLICANT’S REQUEST**

The Board reconsider her request for the following:

- 1. She be credited with 5 months and 20 days of service to reflect she completed 20 years of total active service making her eligible for a military retirement.
- 2. Her disability rating be increased to 100 percent from 30 percent (*new request*).

**RESUME OF THE CASE**

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

On 24 May 07, the Board considered and denied her request to adjust her date of separation to reflect she completed 20 years of total active service; finding the applicant had been credited with all active service creditable under the governing regulation and laws in effect at the time of her disability retirement.

For an accounting of the applicant’s original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit F.

On 10 Aug 22, the applicant requested reconsideration of her request and she be credited with 5 months and 20 days of service to reflect she completed 20 years of total active service making her eligible for a military retirement. She also requested her disability rating be increased to reflect 100 percent. She contends her assigned counsel was not present to represent her at the Physical Evaluation Board (PEB) and a stranger stopped her in the hallway 15 min before the PEB advising her to take the offer on the table or she would lose everything. She was not advised at the time she could have extended six months to be eligible for full military retirement benefits. Additionally, due to the severity of her medical condition, she was not in a position to process what the stranger told her or to make the best choices for her future. Since being discharged, the Department of Veterans Affairs (DVA) has upgraded her disability rating assigned by the PEB, which she believes was a “sham” proceeding. In support of her reconsideration request, the applicant submitted the following as new evidence: (1) DVA decision letter, dated 11 Jun 13; and (2) DVA decision letter, dated 29 Sep 04.

The applicant’s complete submission is at Exhibit G.

According to the DVA decision letter, dated 11 Jun 13, provided by the applicant, the applicant was assigned a combined disability rating of 90 percent; however, she was being paid at the 100 percent rate due to individual unemployability. According to the DVA decision letter, dated 29 Sep 04, the applicant's migraine/tension headaches, the same condition found to be unfitting by the PEB and permanently retired for with a 30 percent disability rating, was assigned a zero percent disability rating by the DVA.

## **APPLICABLE AUTHORITY/GUIDANCE**

The Department of Defense (DoD) and the DVA operate under two separate laws. Under Title 10, United States Code (U.S.C.), Physical Evaluation Boards must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. The fact that a person may have a medical condition does not mean the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. If the board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Further, it must be noted the Air Force (AF) disability boards must rate disabilities based on the member's condition at the time of evaluation, in essence a snapshot of their condition at that time. It is the charge of the DVA to pick up where the AF must, by law, leave off. Under Title 38, the DVA may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies.

## **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. On 30 Nov 06 applicant originally applied for a correction of military records requesting adjustment of her total active federal military service in order to receive 20 years of service. Under the original submission she claimed that during the Medical Evaluation Board (MEB) process her doctor told her that she would remain in the Air Force with an Assignment Limitation Code C but instead she was referred to the PEB and subsequently retired with 19 years 4 months and 8 days of active service. The original submission was disapproved, and the AFPC/DPFDD original advisory opinion dated 25 Jan 07 stands as written since she provides no new evidence as part of this submission to substantiate her claims that she was inadequately counseled by her appointed attorney during Disability Evaluation System (DES) processing. Her contention that she was not advised that she could have simply extended for six months in order to qualify for full retirement is also false since member's undergoing disability processing may only extend under provisions of AFI 36-2606, *Reenlistments and Extension of Enlistment in the United States Air Force*, to complete disability processing. Per the previous advisory once disability processing was completed, she was afforded the full 20 days of permissive temporary duty and 20 days of out-processing time which was the policy for establishing the disability retirement date during that timeframe.

To address the applicant's request to upgrade her DES disability from 30 percent to 100 percent, the Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (a snapshot in time). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time.

However, a higher rating by the DVA “based on new and/or current exams conducted after discharge from service” does not warrant a change in the total compensable rating awarded at the time of the member’s separation.

The complete advisory opinion is at Exhibit H.

**APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 20 Mar 23 for comment (Exhibit I), but has received no response.

**FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant has not provided any new or relevant evidence to establish she served the required amount of time to be eligible for a full military retirement nor she was eligible to extend the remaining amount of time needed for a full military retirement. Furthermore, the Board finds insufficient evidence has been presented to warrant increasing her disability percentage established by the PEB since her DVA service-connected and rated disabilities are not warranted to process through IDES as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Specifically, the applicant’s DVA service-connected and rated disabilities were not a medical basis for career termination, nor did they meet the criteria for a referral to the MEB for a medical discharge or retirement. 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-2006-03734-2 in Executive Session on 20 Dec 23:

Work-Product	Panel Chair
	Wo... Panel Member
	Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 24 May 07.

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- Exhibit G: Application, DD Form 149, w/atchs, dated 10 Aug 22.
- Exhibit H: Advisory Opinion, AFPC/DPFDD, dated 14 Mar 23.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Mar 23.

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.

12/22/2023

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Board Operations Manager, AFBCMR  
Signed by: USAF

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