RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-01615

XXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

He be medically retired from active duty due to the medical conditions he incurred in the line of duty (LOD).

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APPLICANT CONTENDS THAT:

He should have been medically retired instead of being discharged for being disqualified for world-wide duty. He has documentation from the Department of Veterans Affairs (DVA) that proves he was diagnosed with asthma, sleep apnea, and gastro esophageal reflux disease (GERD) while on active duty. He never had symptoms prior to his active duty service and these conditions should have been the subject of an LOD determination along with his shoulder injury.

In support of his request, the applicant provides copies of correspondence from the DVA and excerpts from his military personnel records, which include his DD Form 214, *Certificate of Release or Discharge from Active Duty*, pre and post-deployment health assessments, and correspondence related to his medical disqualification from world-wide duty.

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

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate he served with the Air National Guard (ANG) in the grade of technical sergeant (E-6), effective and with a date of rank of 1 May 08.

On 7 May 08, the applicant was ordered to active duty voluntarily in support of Operation JOINT GUARDIAN. According to his DD Form 214, he was deployed to Aviano, Italy from 9 May 08 through 15 Sep 08.

Upon his return to home station, the applicant was retained on active duty for medical hold until his release on 14 May 09, when he reverted to his traditional (part-time) status as a member of the ANG.

On 5 Mar 10, the applicant was notified of his medical disqualification for world-wide duty and pending recommendation for discharge from the ANG. He was further notified of his rights to appeal the decision through the Disability Evaluation System (DES).

According to AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation,* members of the Ready Reserve who are pending separation for a non-duty related impairment shall be afforded the opportunity to enter the disability system for a determination of fitness only but shall not be afforded disability benefits.

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AIR FORCE EVALUATION:

NGB/A1 makes no recommendation, indicating the applicant’s submission and evidence of record lack sufficient documentation upon which to base a recommendation.

A complete copy of the NGB/A1 evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant provides an expanded statement indicating he began receiving treatment from the Department of Veterans Affairs (DVA) in May 09. He contends he has proven that his medical symptoms are actual conditions which occurred during his active duty service. In support of his response, the applicant provides copies of his active duty orders and medical progress notes.

A complete copy of the applicant’s response, with attachments, is at Exhibit E.

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THE BOARD CONCLUDES THAT:

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. The applicant contends he suffered an injustice when he was disqualified from world-wide duty and discharged rather than being medically retired for his asthma, sleep apnea, and gastro esophageal reflux disease (GERD). He also contends that all of these conditions coincided with his active duty tour and should have been evaluated for service connection. However, after a thorough review of the evidence of record and the applicant’s complete submission, including his response to the Air Force evaluation, we are not convinced he has been the victim of an error or injustice. While the evidence provided indicates he was retained on active duty for medical hold for nearly eight months, apparently due to a shoulder injury he incurred in the line of duty (LOD), and he received some medical treatment for his disqualifying conditions from the Department of Veterans Affairs (DVA) just prior to and after his release from active duty, he has not provided sufficient evidence to persuade us that his disqualifying conditions were incurred or aggravated by his military service. In the absence of such evidence, and in light of the fact he had ample opportunity to have any suspected injury, illness, or disease properly evaluated for service connection during his nearly eight months of medical hold, we are not convinced he is the victim of an error or injustice. Therefore, absent persuasive evidence the applicant was denied rights to which he was entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to recommend granting the relief sought.

4.  The applicant’s case is adequately documented and it has not been shown that 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.

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THE BOARD DETERMINES THAT:

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.

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The following members of the Board considered AFBCMR Docket Number BC-2010-01615 in Executive Session on 11 Jan 11, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2010-01615 was considered:

Exhibit A. DD Form 149, dated 20 May 10, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/A1PS, dated 25 Jun 10.

Exhibit D. Letter, SAF/MRBR, dated 29 Oct 10.

Exhibit E. Letter, Applicant, 16 Nov 10, w/atchs.