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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2015-05055-3

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request for a medical retirement due to chronic migraine headaches.

RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4) who was honorably discharged on 21 Sep 04 and placed on the Temporary Disability Retired List (TDRL) with a 30 percent disability rating for his chronic migraine headaches. On 15 Jun 06, the applicant was removed from the TDRL with a 10 percent rating for his chronic migraine headaches and was given severance pay.

On 2 Mar 17, the Board considered and denied his request for a medical retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The applicant was advised a rating of 30 percent for physical disability is required for a medical retirement and the Board found no evidence the applicant was improperly discharged from active duty. As recommended by the AFPC Disability Office, the applicant was encouraged to contact the Department of Veterans Affairs (DVA) to ascertain benefits available through their agency. Under 10 U.S.C., the Military Department can only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued service and not based on future progression of disease or injury. However, the DVA, under 38 U.S.C., is authorized to offer compensation and treatment for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the narrative reason for separation. This is the reason why an individual can be found unfit for military service and yet sometime thereafter receive compensation from the DVA.

On 17 Jul 19, the Board reconsidered and denied his request for a medical retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board concurred with the rationale and recommendation of AFPC/DPFDC which found no error or injustice occurred with the applicant's removal from the TDRL and discharged with severance pay.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letters and Records of Proceedings at Exhibits F and K.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 20 Jan 24, the applicant requested reconsideration of his request for a medical retirement. He again contends he was given a temporary retirement, and his migraines are getting worse which has caused additional medical problems to include hypertension and a stroke. He also states he currently cannot work due to his condition.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) DVA Medical Records; (2) Civilian Medical Records; and (3) a Letter from the DVA.

The applicant's complete submission is at Exhibit L.

STATEMENT OF FACTS

Dated 28 Dec 04, the applicant's DVA Disability Rating Decision letter indicates his unfit medical condition of migraines, which was found unfit by the PEB, was granted a 30 percent disability rating, effective 22 Sep 04. It is noted his original disability claim was received on 7 Oct 04 and part of the evidence used to make this determination was the DVA Examination accomplished on 23 and 24 Nov 04. It is further noted the DVA assigned a 30 percent evaluation based on the DVA examination which reported the applicant continued to experience migraine headaches on a daily basis and were present when he woke up and tended to increase during the day with headaches approximately once a day, so severe he had to lay down, with a non-functioning state lasting approximately 10 minutes.

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

APPLICABLE AUTHORITY/GUIDANCE

In accordance with DoD Manual (DoDM) 1332.18, Volume 2, *Disability Evaluation System Manual: Integrated Disability Evaluation System (IDES)*, dated 5 Aug 14, Enclosure 5, paragraph 4, *TDRL Reevaluation*, the DVA will conduct exams and prepare rating decisions for veterans who were temporarily retired for disability in accordance with DVA laws and regulations. DVA will provide a copy of the most current rating and the medical evidence upon which the most current rating is based in accordance with Section 7332 of Title 38, U.S.C. If DVA does not provide examination and rating information sufficient to adjudicate the veteran's case or if the most recent DVA exam is older than 18 months, the Military Department will execute required TDRL examinations and ratings in accordance with Title 38, C.F.R.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient medical evidence, either supplied by the applicant or found in his electronic health records, to support his contention he should have been medically retired for unfitting migraine headaches rather than discharged with severance pay following removal from the TDRL. The Informal Physical Evaluation Board (IPEB) appears to have reached the correct conclusion based on the evidence

available at the time, and currently, so no error or injustice likely occurred that would now need to be remedied.

According to the Veterans Affairs Schedule for Rating Disabilities (VASRD), migraine headaches are rated under code 8100, with very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability rated at 50 percent; with characteristic prostrating attacks occurring on an average once a month over last several months rated at 30 percent; with characteristic prostrating attacks averaging one in two months over last several months rated at 10 percent; or with less frequent attacks rated at zero percent. The DVA typically defines prostrating migraines as severe headaches that incapacitate a person with extreme pain, weakness, exhaustion, and other symptoms requiring the individual to lie down in a dark room for an extended period and rendering him unable to carry out any activities.

Per the medical records available for review, at the time of the applicant's removal from the TDRL and subsequent separation with severance pay, his chronic migraines did not appear to have been prostrating, and even less so at a frequency exceeding one in two months over last several months. There is an increased risk of stroke in individuals who have migraines with aura, but there is no evidence the applicant ever reported neurologic dysfunction associated with his headaches or was ever diagnosed with such a condition. Furthermore, the applicant provided no new evidence in his current appeal pertaining to migraines. The near entirety of the medical records which he supplied concerned various other conditions, such as carpal tunnel syndrome, and none described his condition around the time of separation. Consequently, there is no evidence the IPEB should have assigned a disability rating higher than 10 percent for the applicant's unfitting migraine headaches when removing him from the TDRL.

Although the applicant subsequently received higher disability rating from the DVA for his migraines than the 10 percent granted by the IPEB, it should be noted the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran, as happened in this case. In short, a finding by the DVA the applicant's headaches may have warranted a 30 or a 50 percent disability rating at some point following his discharge would not in itself constitute evidence this condition would have warranted a 30 percent or higher rating at the time of separation and thus would have made him eligible for a medical retirement under the DES.

The complete advisory opinion is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

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The Board sent a copy of the advisory opinion to the applicant on 23 Sep 24 for comment (Exhibit O), 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 the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the new evidence the applicant submitted does not sway the Board to disagree with the findings of the previous Boards. The new evidence he did submit consisted of various other post-service medical conditions which were not unfitting at the time of his separation. Furthermore, the Board does not find the IPEB's decision to remove him from the TDRL with an assigned disability rating of 10 percent for his unfitting migraine headaches was in error as records indicate his condition more closely aligned with characteristic prostrating attacks averaging one in two months over the last several months. Therefore, the Board recommends against correcting the applicant's records.

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-2015-05055-3 in Executive Session on 16 Oct 24 and 24 Oct 24:

Work-Product	Panel Chair
Work-Product	, Panel Member
Work-Product	, Panel Member

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

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 2 Mar 17.
- Exhibit K: Record of Proceedings, w/ Exhibits G-J, dated 17 Jul 19.
- Exhibit L: Application, DD Form 149, w/atchs, dated 20 Jan 24.
- Exhibit M: Excerpts from Military Human Resource Records
- Exhibit N: Advisory Opinion, AFBCMR Medical Advisor, dated 23 Sep 24.
- Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Sep 24.

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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.

11/12/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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