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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-2016-02229-3

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

The Board reconsider his request to update his DD Form 214, *Certificate of Release or Discharge from Active Duty*, and his AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, to reflect his updated Department of Veterans Affairs (DVA) disability impairment ratings and to increase his medical disability rating from the Air Force.

RESUME OF THE CASE

The applicant is a medically retired Air Force staff sergeant (E-5) who was permanently disability retired with a 50 percent disability rating, effective 30 Aug 14.

On 2 Oct 18, the Board considered and partially granted his request to increase his medical disability retirement rating from 40 percent to 50 percent. He requested all of his medical conditions, right/left knee, rhinitis, anxiety, sleep attacks, sleep paralysis, sleep hallucinations, hyper somnolence and neck, be found unfitting and his current unfitting conditions of depression and narcolepsy be increased along with his Obstructive Sleep Apnea (OSA) currently found fitting, be found unfitting. The Board noted the comments of AFPC/DPFDD, and the AFRBA Psychiatric Consultant indicating relief should be denied, as evidence presented did not indicate there were other unfitting conditions, and subsequent DVA findings should not alter the diagnostic distinction present at the “snap shot” in time of the applicant’s release from military service. However, the Board agreed with the AFBCMR Medical Advisor’s assessment. Although the Medical Consultant concurred with the contents and recommendations provided by AFPC/DPFDD and the Mental Health Advisor, he found the applicant’s final disability retirement rating should be recomputed with the left knee ailment disability found as unfitting, and the rating as determined by the DVA on or about the applicant’s 2014 retirement, should be used to achieve a new combined disability rating and permanent retirement. However, for the remainder of the applicant’s request, the Board found the evidence presented did not demonstrate an error or injustice, and the Board therefore found no basis to recommend granting that portion of the applicant’s request.

On 17 Jul 19, the Board reconsidered and denied his request to increase his overall disability rating reviewing all exhibits to include his rebuttal response; however, remained unconvinced the evidence presented demonstrated an error or injustice to justify relief.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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 I and L.

On 7 Jun 23, the applicant requested reconsideration of his request to increase his medical disability rating. He contends not all his medical conditions were included in his previous disability rating and his new DVA ratings merit an increase in his retirement disability rating. He references the previous decision by AFBCMR stating the last letter he received from the Board addressed the DVA needed to correct its errors that were made in his disability ratings before the Board could correct these ratings. The DVA corrected the errors that were made to his disability ratings in its decision letter dated 17 Apr 23.

In support of his reconsideration request, the applicant submitted his DVA appeals rating decision dated 17 Apr 23. In this appeal decision, he was assigned a 70 percent rating for depression, not otherwise specified (NOS), a 100 percent rating for narcolepsy, and a 50 percent rating for obstructive sleep apnea, all with an effective date of 30 Aug 14.

The applicant's complete submission is at Exhibit M.

APPLICABLE AUTHORITY

In accordance with DoD Manual (DoDM) 1332.18, Volume 1, *Disability Evaluation System Manual: Processes*, paragraph 2.6, the Secretaries of the Military Departments correct the records, upon former Service members' successful appeal of disability ratings received in the Disability Evaluation System (DES). Service members may also appeal post-discharge to the DVA and their respective Military Department Board for Correction of Military Records or Naval Records. This includes the records of Service members who are veterans temporarily retired through the Integrated Disability Evaluation System (IDES) who appeal ratings that affect unfitting conditions for which the retiree was placed on Temporary Disability Retired List (TDRL).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his retirement disability rating from a psychological perspective. A Formal Physical Evaluation Board (FPEB) determined the applicant had an unfitting condition of depression, NOS, and was rated at 30 percent, with an additional 10 percent for narcolepsy for a combined rating of 40 percent. The applicant appears to contend, because the DVA has increased his ratings, his medical disability rating from the Air Force should be increased as well. As outlined in previous opines, the military's DES and the DVA operate under a different set of laws.

At discharge, the applicant was rated at 30 percent unfitting for his mental health condition. This determination is in line with a Compensation and Pension (C&P) exam completed 16 May 13 which found, while his mental health condition has been formally diagnosed, his symptoms were not severe enough either to interfere with occupational and social functioning or to require continuous medication. His depression appeared to have worsened somewhat the following year

at discharge as the FPEB noted he was being treated with Effexor and the cumulative impact of his diagnoses limits his sufficiency and productivity. They also noted the two diagnoses of narcolepsy and depression, serve to collectively prevent him from successfully completing his duties. This led to his 40 percent compensable disability rating. The DVA changed his rating post-service. This adjustment does not alter the final military discharge disposition, which was based upon the diagnostic information and degree of symptomology present at the time of his discharge when the applicant was released from military service.

The complete advisory opinion is at Exhibit N.

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request for inclusion of higher appealed DVA disability impairment rating. There exists guidance on what is to be shown on a DD Form 214 and such DVA information is not applicable to be revealed and the Physical Evaluation Board (PEB) was appropriately documented as per the timing of the board, which was near service separation. There was no definitive evidence of a material error, injustice, impropriety, or inequity found in the process leading up to the applicant's separation.

As the applicant cited, on a previous request to the AFBCMR, the outcome included when the DVA corrects his disability ratings, the AFBCMR will do the same. The Medical Advisor did not find evidence to corroborate such a statement. However, when reviewing the Record of Proceedings (ROP) from the applicant's prior request, what was documented was the statement the Board would reconsider the application only upon receipt of relevant evidence not already presented. There was no documented evidence found of the prior Board stating otherwise. Although the applicant did provide the most current DVA summary of rated conditions with the submitted package, it remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, the military's 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 near the time of service separation and not based on future progression of injury or illness. On the other hand, 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, fitness to serve, or the length of time since date of discharge.

In this case, the OSA condition was not deemed unfitting and not eligible for processing via a Medical or Physical Evaluation Board. The DVA report of 17 Apr 23, long after his service separation, did reveal higher percent impairment ratings above the ratings assigned while in service which resulted in a medical retirement. However, as described above, the DVA is authorized to offer compensation for any medical condition determined service incurred...since date of discharge. Bottomline, a post-service DVA rating is not synonymous or equivalent to the military's disability evaluation near the time-of-service separation.

Lastly, in addressing the applicant's specific request of updating his post-service new DVA disability ratings on his DD Form 214 and the PEB report, it must be understood of what is

authorized to be documented on such reports and when such documentation is gathered. No where on a DD Form 214 are percent disability impairment ratings documented, nor should they be included. As for the PEB Form 356, documentation of DVA impairment ratings is appropriate. However, such impairment ratings reflect only the degree of impairment near the time of separation and not post-service separation.

The complete advisory opinion is at Exhibit O.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Mar 24 for comment (Exhibit P), and the applicant responded on 25 Mar 24. In his response, the applicant asked that his previous request for his OSA be added to his Category I unfitting determination be disregarded; however, states he was diagnosed with narcolepsy in Aug 12 and continues to suffer from excessive daytime sleepiness and was why he continued to appeal his 10 percent DVA rating. The DVA corrected his rating for his narcolepsy and depression on 7 Apr 23. The DVA knew the evidence showed he had narcolepsy with cataplexy, sleep attacks, sleep paralysis, hallucinations, from Jul 12 to Jul 15. The DVA appeals board corrected his rating for his narcolepsy with cataplexy, sleep attacks, sleep paralysis, hallucinations with an effective date 30 Aug 14. Under the Title 10 U.S.C. and the CFR, his effective date for Narcolepsy with cataplexy, sleep attacks, sleep paralysis, hallucinations should fall within the degree of impairment present near the time-of-service separation and within one year of his retirement date.

As for his MDD and PTSD, the DVA appeals board rated him at 70 percent effective 30 Aug 14. He experienced several traumatic events during his childhood and when he entered the Air Force in the 90s he was told there was no such thing as depression and suicide was for cowards. He began using alcohol to cope with the trauma from his experiences in witnessing several traumatic events. He sought mental health treatment and was told he had a personality disorder, adjustment disorder, depression NOS, narcissistic personality disorder, etc. After the command directed mental health evaluations, he tried to avoid mental health and prescription pills because people were not listening or did not care.

He requests the Board to use the DVA Appeal Board ruling which corrected his DVA ratings and effective dates for the following conditions, Narcolepsy – 60 percent rating effective 30 Aug 14 and Anxiety/PTSD/MDD – 70 percent rating effective 30 Aug 14 and to have these ratings shown on his DD Form 214 in Block 18, *Remarks*, which currently states “Effective 30 Aug 14, you are permanently disability retired in the grade of SSG per AFI 36-3212 with compensable percentage for physical disability of 40 percent.”

The applicant's complete response is at Exhibit Q.

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 concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. Notwithstanding the advisories, the Board finds the applicant has provided the 17 Apr 23 results of his successful petition to the Board of Veterans' Appeals which increased his disability ratings for depression, not otherwise specified to 70 percent and narcolepsy to 100 percent effective 30 Aug 14, which combined with the guidance provided by DoDM 1332.18 Volume 1, is sufficient to justify granting the applicant's request to be placed on the PDRL with a disability rating of 100 percent. The applicant's OSA was not deemed unfitting by the PEB and the applicant has not provided sufficient evidence to overturn the PEB's finding. Furthermore, in the applicant's rebuttal, he does acknowledge this and withdraws that portion of his request. Finally, the Board finds the reflection of DVA disability ratings on the DD Form 214 is not authorized; however, his medical disability rating of 100 percent recommended by this Board, should be annotated on his DD Form 214 as it currently states in Block 18, "Effective 30 Aug 14, you are permanently disability retired in the grade of SSG per AFI 36-3212 with compensable percentage for physical disability of 40 percent." Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. On 9 May 2014, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was depression (VARSD code 9499-9434), increased to 50 percent and narcolepsy (VARSD code 8108-8911), increased to 100 percent; along with his previous rating of 10 percent for his left knee arthritis, tendonitis, patellofemoral syndrome, and shin splints, results in an overall disability rating of 100 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.
- b. On 29 August 2014, he was discharged from active duty and on 30 August 2014, he was permanently retired with a compensable percentage for physical disability of 100 percent.
- c. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued on 29 August 2014, in Block 18, *Remarks*, be amended to reflect "Effective 30 Aug 14, you are permanently disability retired in the grade of SSG per AFI 36-3212 with compensable percentage for physical disability of 100 percent."

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-2016-02229-3 in Executive Session on 17 Apr 24 and 18 Jun 24:

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

All members voted to correct the record. The panel considered the following:

- Exhibit I: Record of Proceedings, w/ Exhibits A-H, dated 2 Oct 18.
- Exhibit L: Record of Proceedings, w/ Exhibits J-K, dated 17 Jul 19.
- Exhibit M: Application, DD Form 149, w/atchs, dated 7 Jun 23.
- Exhibit N: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Dec 23.
- Exhibit O: Advisory Opinion, AFBCMR Medical Advisor, dated 7 Mar 24.
- Exhibit P: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Mar 24.
- Exhibit Q: Applicant’s Response, w/atchs, dated 25 Mar 24.

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.

	6/21/2024
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Board Operations Manager, AFBCMR Signed by: USAF	