UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2016-04165-2

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for a medical retirement. He is now requesting a medical retirement with a 60 percent disability rating, effective 10 Mar 99; or in the alternative, a medical retirement with a 30 percent disability rating, effective 1 Apr 98.

RESUME OF THE CASE

The applicant is a former Air Force technical sergeant (E-6) who was placed on the Temporary Disability Retired List (TDRL) at a 30 percent disability rating on 19 Aug 97 and was removed from the TDRL approximately a year and a half later (10 Mar 99) with a 10 percent disability rating which entitled him to severance pay.

On 8 May 18, the Board considered and denied his request for his Informal Physical Evaluation Board (IPEB) findings of discharge with severance pay (DWSP) be set aside and his medical records be evaluated for a medical retirement at a 30 percent disability rating. The Board concurred with the AFPC Disability Office and the AFBCMR Medical Advisor and found a preponderance of the evidence did not substantiate the applicant's contentions and additionally found the prior request was not timely submitted. The AFBCMR Medical Advisor concluded it was difficult to substantiate any error or injustice was committed on the part of the Military Department in reducing the applicant's disability rating, or to now speculate on activities that may or may not have caused dyspnea at the time, which would have otherwise warranted permanent retirement with a 30 percent disability rating; and acknowledged the applicant's overall clinical status had changed over the time since his discharge, with the newly diagnosed Diabetes, congestive heart failure, and emergence of pulmonary hypertension. However, none of these conditions were clinically evident at the time of the applicant's service and, thus, were not included as potentially disqualifying conditions during his military service.

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 G.

On 7 Oct 22, the applicant requested reconsideration of his request for a medical retirement. He again contends, through counsel, his condition during the time he was on the TDRL and just prior to his permanent retirement shows he suffered from left ventricle hypertrophy, dyspnea at exertion

scoring METs of 4 and an ejection fraction of 55-60 percent, which indicated he should have been rated at least 30 percent disabled and medically retired, rather that rated at 10 percent and discharged with severance pay. He should had been placed on the TDRL at 100 percent until his reevaluation due to the implantation of a prosthetic valve, but rather, he was paid at the 30 percent disability rate for his first year of retirement. He was treated by doctors at his home while he was on the TDRL. In Jan 98, he was seen by his local doctor, complaining of dizziness. He had a mandatory TDRL re-evaluation by an Air Force cardiologist on 27 Jan 99. This doctor did not conduct an exercise capacity test (commonly referred to as a stress test and measured in METs (metabolic equivalents of task)) even though one factor in determining a disability rating according to the Veterans Affairs Schedule for Rating Disability (VASRD) is based on the result of just such an exercise test. The physician who performed his final TDRL evaluation did not consider his contemporaneous echocardiogram. Echocardiograms performed during his time on the TDRL and just days before he was discharged show he had thickening of the walls of the left ventricle, which is known as hypertrophy and when hypertrophy exists, it is rated at 30 percent according to the VASRD.

He warrants a 60 percent disability rating due to having one or more of the following conditions: (1) two or more episodes of congestive heart failure in the past year; (2) the condition scoring 4 or 5 metabolic equivalents of tasks (METs) and causes shortness of breath, fatigue, chest pain, dizziness or fainting; and/or (3) left ventricular dysfunction with an ejection fraction between 30 and 50 percent. His 3 Mar 99 medical record documents he "huffs and puffs" when he went up the stairs. Walking upstairs scores 4 METs. He also experienced dizzy spells in 1998 and 1999 while he was on the TDRL. When a condition scores 4 or 5 METs and causes shortness of breath, fatigue, chest pain, dizziness or fainting it is rated at 30 percent according to the VASRD. He experienced shortness of breath, dizziness and near fainting during exercise that scores 4 METs, including shopping and walking up stairs. He experienced dizziness and near-fainting while he was on the TDRL. Furthermore, in 1997 the ejection fraction of his heart was measured at 55 percent, only slightly better than a condition warranting a 60 percent rating on its own, which is an ejection fraction less than 50 percent. He had well-documented ventricular hypertrophy in a 1997 Echocardiogram, and days before he was permanently retired, his hypertrophy was noted again, in a 5 Mar 99 Echocardiogram. There is no evidence his condition improved, as asserted by the 1999 IPEB findings. In fact, his well-documented condition merits a rating of 60 percent. The IPEB erred when they separated him at a 10 percent disability. Furthermore, he should have been paid at the 100 percent rate for the year after he was hospitalized following the valve replacement surgery.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Echocardiogram dated 25 Feb 97 and 5 Mar 99; (2) letters from his doctor dated 12 May 98 and 3 Mar 99; (3) an article regarding metabolic equivalents and (4) his response to the medical advisory opinion from the previous case that was not previously seen by the Board. In this response, the applicant contended the Air Force did not complete a thorough examination or maintain important records associated with his care and asked to receive the benefit of doubt due to this oversight. The Medical Advisor noted he did not provide the echocardiogram which may have offered additional useful information. He additionally noted the Medical Advisor comments regarding his fitness level; however, he notes he was attempting to improve his physical fitness by riding his bike to work for a brief period of time but was not able to maintain this level of activity.

Furthermore, he goes on to explain he has not been able to do manual labor since 1996. Even when he was not on active duty, he had an irregular heartbeat, atrial fibrillation, supraventricular tachycardia, high blood pressure, ischemic attacks, and shortness of breath. Every symptom that disqualified him from service has continued to worsen over years. He regrets the doctor did not appropriately annotate his record in the 6 Jan 96 evaluation as it appears he did not even ensure he received the appropriate electrocardiogram that is noted as missing from his records. The symptoms are noted in his records.

The applicant's complete submission is at Exhibit H.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends granting the applicant's request for a medical retirement with a 30 percent disability rating effective 10 Mar 99, the effective date he was previously removed from the TDRL and officially discharged with entitlement to severance pay based upon persistent evidence of left ventricular hypertrophy. Although not bound by law to accept at the time, the Board may consider the probative value of the 30 percent disability rating assigned by the DVA, based at least in part upon six METs, (workload greater than five METs, but not greater than seven METs) roughly three months following the decision of the IPEB, and two months before his actual removal from the TDRL.

Prior to the National Defense Authorization Act, 2008, the Services' Physical Evaluation Boards (PEB) conducted their own disability rating determinations for all unfitting conditions, following provisions of DoDI 1332.39, *Application of the Veterans Affairs Schedule for Rating Disabilities*; albeit has since been rescinded. In the case under review, the IPEB, following a documentary-only review of the applicant's medical evidence, determined he met the criteria for an initial 30 percent disability rating, with placement on the TDRL. As explained in the previous advisory opinion, following guidance in DoDI 1332.39, the Military Department was not authorized to assign convalescent ratings; which was the basis for the initial 100 percent disability rating assigned by the DVA, under provisions of Title 38, Code of Federal Regulations, Part IV, Section 4.30, whereas he was assigned a 30 percent disability rating following Department of Defense policy, for which he was placed on the TDRL.

Hence, having received surgical replacement of the aortic and mitral valves and completed cardiac rehabilitation, the TDRL re-evaluation, dated 6 Jan 99, was interpreted by the IPEB as representing an improvement in the applicant's overall clinical status; warranting a reduction in the previous 30 percent disability rating to 10 percent. The applicant did not contest the decision of the IPEB. Although previously upheld by the AFBCMR, further scrutiny of medical evidence, matched against the disability rating criteria for Heart Valve Replacement (Prosthesis), as outlined in the VASRD, the Medical Advisor finds reason to open discussion for a possible change in the record to reflect the applicant was not removed from the TDRL and discharged with severance pay, but rather he was retired permanently with a 30 percent disability rating.

Specifically, as shown under extracted VASRD code 7016, the Board will note there is more than one criterion to justify the 30 percent rating. These include a workload of greater than five METs, but not greater than seven METs, which results in dyspnea, fatigue, angina, dizziness, or syncope,

or evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray. Thus, while one can argue the applicant's mild shortness of breath (dyspnea) climbing stairs on 2 Nov 98, could be attributed to poor conditioning, and not heart disease, and his dizziness was attributed to a transient or near vasovagal episode, there remains the consistent evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram; albeit also present both prior to the applicant's surgical treatment, his placement on the TDRL, and at or about the time of TDRL reevaluation.

The Medical Advisor acknowledged the progressive increase in the applicant disability rating since his release from military service. However, unlike the DVA, which is empowered to adjust (increase or decrease) disability ratings over the lifetime of the veteran, the Military Department's decision and final disposition are based upon the evidence present at the termination of military service or, in this case, the time of removal from the TDRL and discharge.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 Jan 24 for comment (Exhibit J), and the applicant replied on 19 Jan 24. In his response, the applicant contends, through counsel, he agrees with the advisory opinion's recommendation for a permanent retirement with a 30 percent disability rating. The advisory opinion correctly stated the previous TDRL IPEB did not consider all of the relevant criteria listed in the VASRD when it changed his disability rating from 30 percent to 10 percent. Additionally, the medical evidence he submitted supports the 30 percent rating; he was suffering from shortness of breath when climbing stairs, had suffered several episodes of dizziness, and his echocardiogram noted left ventricle hypertrophy. While the advisory opinion supports an effective date of 10 Mar 99, it should be noted, his condition rated at 30 percent, persisted prior to his surgical treatment and placement on the TDRL and should be effective 1 Apr 98. Furthermore, there is sufficient evidence to support a 60 percent disability rating with an effective dated of 10 Mar 99. He had ventricular hypertrophy, experienced shortness of breath, dizziness, and near fainting during exercise that scored 4 METs, and had low ejection fraction.

The applicant's complete response is at Exhibit K.

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. The Board concurs with the rationale and recommendation of the AFBCMR Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions, in part. Specifically, the Board finds his left ventricular hypertrophy rated at 30 percent disabling assigned by the DVA roughly three months following the decision of the IPEB, and two months

before his actual removal from the TDRL, compelling enough to warrant partial relief. Therefore, the Board recommends correcting the applicant's records as indicated below. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. He was not permanently retired on 19 Aug 97 because his condition was not stable at the time and instead, was placed on the TDRL. When a member is found unfit for military service, and the disability is not determined to be of a permanent nature and stable, they are placed on the TDRL per 10 U.S.C. Section 1202. Even though the DVA rated his condition at 30 percent disabled a few months prior to his removal from the TDRL, he was still required to be medically evaluated by the Air Force before he was released from the TDRL. Furthermore, the Board finds his placement on the TDRL with a 100 percent disability rating not warranted. Per DoDI 1332.39, the Military Department was not authorized to assign convalescent ratings, which was the basis for the initial 100 percent disability rating assigned by the DVA. Additionally, a 60 percent permanent disability rating is also not warranted due to the DVA assigning a 30 percent rating to his condition finding his condition rated a METs of six. Counsel's contention his "huffing and puffing" equated to a four METs rating is not supported by documented medical evidence.

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

a. On 27 January 1999, 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 status post aortic and mitral valve replacements following subacute bacterial endocarditis on anticoagulation with coumadin, that his condition was under VASRD code 7016-7000; with a disability rating of 30 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 10 March 1999, he was not removed from the TDRL and discharged with a compensable disability rating of 10 percent with severance pay; but on that date, he was permanently retired with a compensable percentage for physical disability of 30 percent.

c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2016-04165-2 in Executive Session on 21 Feb 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 G: Record of Proceedings, w/ Exhibits A-F, dated 8 May 18.
Exhibit H: Application, DD Form 149, w/atchs, dated 7 Oct 22.
Exhibit I: Advisory Opinion, AFBCMR Medical Advisor, atchs, dated 16 Jan 24.
Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Jan 24.
Exhibit K: Applicant's Response, dated 19 Jan 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.

3/5/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF