ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXX

DOCKET NUMBER: BC-2017-05406-4

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request for the following:

1. His non-duty related injury be corrected to reflect an in the line of duty (ILOD) injury.

2. He be granted a military retirement for physical disability with a compensable disability rating of 60 percent for his herniated disc and 10 percent for his associated neuralgia.

RESUME OF THE CASE

The applicant is a former Air National Guard (ANG) staff sergeant (E-5).

The applicant enlisted in the ANG on 24 Jul 12 and was honorably discharged on 23 Jul 18 for expiration of his enlistment.

On 23 Oct 18, the Board considered and denied the applicant's initial request his back injury be found ILOD, he be entered into the disability evaluation system (DES) and granted a medical retirement; or in the alternative he be placed on the temporary disability retired list (TDRL). The applicant contended he provided substantial evidence to show his injury was caused by military service or was at least service aggravated; however, the deployment availability working group (DAWG) found his injury was non-duty related. He had no prior back issues when he enlisted in the ANG in 2012 and was diagnosed with a herniated disc in 2013 while in a duty status attending formal training. NGB/SGP provided an advisory stating there was no documentation to substantiate the applicant incurred or aggravated his back injury during a period of service. The applicant was presumed fit to perform his duties during his periods of active duty and there was no LOD to connect the medical condition with evidence of a duty status at the time of the injury or aggravation. The Board agreed with NGB/SGP there was no evidence the applicant's injury occurred or was aggravated during a period of military service. The Board acknowledged the applicant's disagreement with NGB/SGP that the events described a "possibility" of an acute exacerbation of a chronic, pre-existing (EPTS) condition; however, noted the applicant had not provided any evidence the applicant's injury occurred or was aggravated during a period of military service. The applicant also cited BC-2007-00406 as precedent to grant his request; however, the Board found the cases were not similar and the cited case was denied by the Board.

On 14 Jun 21, the Board denied the applicant's request for reconsideration. The applicant contended the reason for denial was that his condition was EPTS. The treating surgeon stated there was no method or manner to predict when a disc would become herniated or bulging and impinge on a nerve. However, NGB/SGP asserted they had the expertise to make a qualified statement it was EPTS, although there was no evidence of an EPTS condition. He requested the Board provide unmistakable information from his medical records to show his condition was

EPTS. The Board again noted the applicant had failed to substantiate he incurred or aggravated an ILOD injury during a period of service. The Board also noted it was the applicant's burden to provide evidence to support his claim.

In an order dated 13 Jan 22, the Court of Federal Claims (CoFC) remanded the applicant's case to the AFBCMR for reconsideration. Pursuant to the CoFC Order, the Board on 13 Jul 22 and 15 Jul 22 reconsidered the applicant's request. The applicant contended he joined the ANG in 2012 and was diagnosed with a herniated disc in Mar 13 and his back injury was incurred in the ILOD or at least aggravated while in a period of service. The applicant provided orders to show he performed periods of service from 19 May 13 to 28 Jun 13, 12 Sep 16 to 19 Sep 16 and 26 Jun 17 to 30 Jun 17. The applicant also provided medical documentation to show treatment received. In view of the applicant's contentions and evidence provided, the Board obtained updated NGB/SGP and NGB/A1PS advisories. Upon review of the advisory opinions, the applicant strongly objected to the implication of an EPTS condition and contended it was apparent he would not receive a fair review by the AFBCMR. The applicant requested his case be sent back to the CoFC for an impartial judicial examination. The Board reviewed the evidence and conducted its own independent review. The Board concluded while the applicant argues he did not have an EPTS injury, he provided no evidence to show his injury and diagnosis of a herniated disc in Mar 13 occurred or was aggravated during a period of service. The Board stated reporting to the military treatment facility (MTF) or the flight surgeon's clinic during periods of active duty for back pain was insufficient to substantiate an ILOD injury. The applicant was not placed on any restrictions or duty limitations; nor was there any evidence he could not perform his duties, a requirement to be placed into the disability evaluation system (DES). The Board concluded there was no evidence of a nexus between his injury and a period of service.

In response to the Board's decision, the applicant petitioned the CoFC. He contended he would not receive a fair review at the AFBCMR. The Board simply returned his claim indicating he had an EPTS condition and the Board's decisional process was arbitrary. He contended he did not have an EPTS condition. He enlisted in 2012, suffered pain behind the knee in early 2013 and was subsequently diagnosed with a herniated disc; this was the chronic problem throughout his enlistment. He provided his civilian doctor's note for a medical excuse for his annual fitness assessment (FA) on 28 Feb 13. The applicant requested rescheduling of his FA due to the diagnosis; however, he was forced to complete his FA. Forcing him to complete the FA while injured and with a medical excuse through a direct order was a nexus and causal link for the problems he encountered.

On 11 Aug 22, the applicant submitted new evidence for reconsideration of his request, to include email thread with his unit dated 4 Jan 13, medical treatment note dated 12 Feb 13, his FA Scorecard and an email to his supervisor dated 8 Aug 22. The email thread dated 4 Jan 13 shows his unit training manager asked for the status of his FA and flight physical which were required to schedule him for technical training. The applicant responded he would report to drill and that he could complete the FA and physical during the Feb drill or during a regularly scheduled unit training assembly (UTA). The 12 Feb 13 medical treatment note from his civilian provider shows he presented for left knee pain, reported the symptoms began a few weeks prior and that the pain started behind his left knee and radiated into his hip. A physical examination showed sciatic notch tenderness on the left knee, paraspinal muscle spasm on the left and left side paraspinal muscle tenderness. The treatment note stated the applicant was scheduled for his FA in Feb/Mar and a medical excuse was written based on sciatic symptoms and associated pain.

The FA score card provided by the applicant reflects the applicant completed his FA on 28 Feb 13, with a composite score of 83.9 for a satisfactory passing score. The email to his supervisor dated 8 Aug 22, states he was working on his disability case and asked for his recollection of the events on 27 Feb 13. On this date, he had presented with a medical excuse for his FA but was

told the medical excuse would not be accepted because it was not from the flight surgeon but from his civilian doctor. The issue was elevated and he was subsequently ordered to take the FA the following day, even while having to borrow a physical training uniform. The applicant stated if his former supervisor provided a response, he would provide it to the AFBCMR or the Court. Alternatively, the Air Force counsel could contact him to validate the facts. There was no response provided from his supervisor.

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 R.

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.4. Deciding Cases. The Board normally decides cases on the written evidence contained in the record. It is not an investigative body; therefore, the applicant bears the burden of providing evidence of an error or injustice.

AFI 36-2910, Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay, An illness, injury, disease or death sustained by a member while in qualified duty status is presumed ILOD. Qualified Duty Status: Reserve Component members are considered on active duty when on Title 32 and Title 10 orders.

DoDI 1332.18, *Disability Evaluation System,* and AFI 36-2910, paragraph 1.12. Prior Service Condition (PSC). For DES processing, a PSC is any medical condition incurred or aggravated during one period of active service or authorized training in any of the Military Services that recurs,
is aggravated, or otherwise causes the member to be unfit.

DoDI 1332.18, *Disability Evaluation System*, 1(c), To be rated as unfitting for a condition, the Service member must be impaired to such extent that his or her condition is unfitting independently or due to combined effect. Physical examination findings, laboratory tests, radiographs and other findings do not, in and of themselves, constitute a basis for determining that a service member is to be rated for a condition.

AFI 36-2905, *Air Force Physical Fitness Program*, paragraph 3.3., Fitness Screening Questionnaire (FSQ), Members must complete the FSQ prior to their FA. If any item on the FSQ indicates a condition, which may limit performance of any component of the FA and there is not an accompanying current AF Form 469, *Duty Limiting Condition,* a medical provider will complete and review the FSQ, and complete an AF Form 469, if applicable. Paragraph 3.8, Illness or Injury. If during or after the FA, the member experiences unusual symptoms or injury, they should notify the FA administrator immediately. The member has the option to be evaluated at the military treatment facility (MTF).

AIR FORCE EVALUATION

The BCMR Medical Advisor recommends denial. This is the fourth consideration of the applicant's petition to supplant his separation with a permanent retirement. The applicant contends his back and related knee condition were either caused by service in the ANG or at least aggravated in service. He specifically contends his medical conditions were either caused by or aggravated in preparation for his periodic FA and/or during the performance of his FA. It is noted the applicant's symptom on-set was followed by intervening periods of symptom resolution or abatement, only to return at or about the same time each year in preparation for and performing his FA. This ultimately resulted in his exemption from certain FA components. The question confronting the Board is to determine whether the symptoms experienced by the

applicant during or in preparation for the FA were either caused by his military service, or if deemed to have EPTS.

The expression EPTS applies to an illness or injury that occurred prior to any military service or presented after entering military service, or presented after entering military service, but was not the proximate result of performance of duty, during a period of 30 days or less, or occurred when not in a duty status at occurrence. If serving 31 days or more at the time of the occurrence, there must be "clear and unmistakable evidence" the condition EPTS and was not aggravated by military service. The applicant's symptoms appear episodic and precipitated or exacerbated during his FAs. Although in a duty status during the FAs, the causal origin of the underlying degenerative disc disease is unlikely the direct or proximate result of FA or training for the FA. This is noted in the degenerative magnetic resonance imaging (MRI) findings of 21 Mar 16. The Medical Advisor acknowledges the statements in the applicant's case as uttered by an orthopedic surgeon, who stated, "there is no method or manner to predict when a disc will become herniated or bulging and impinge on a nerve" and that no "medical expert in the world could make this prediction." However, the chronic degenerative findings on his MRI scan are indicative of a longer standing medical condition that presented with exacerbations of pain, not progression or acceleration of the degenerative process, which occurred during episodic periods of active duty status, while performing annual FAs and without disclosure or discovery of other possible duty-related definitive causes.

In addition to information of the pathogenesis of degenerative disc disease and herniated nucleus pulposus, the Medical Advisor provides the following evidence:

a. An originating email on 4 Jan 13 from the unit training representatives asks the applicant his status and that they were awaiting on his FA and physical to request a school date. The applicant responded he could take the FA in Feb 13 or a regularly scheduled UTA. At this juncture, there is no notice or report of any injury or physical impediment to performing the FA.

b. The medical document dated 12 Feb 13 shows the applicant presented with left knee pain that began a few weeks ago. The applicant stated the pain started behind the left knee and radiated into his left hip. The provider diagnosed sciatica and a medical excuse was written based on sciatic symptoms and associated pain. There is no objective evidence regarding the causation of this initial report of pain, only known as "began a few weeks" prior to presentation.

c. On 28 Feb 13, the applicant completed his FA, scoring 83.9.

d. It is not known until Apr 16 that the applicant in late Apr 13 underwent an MRI scan which confirmed herniated nucleus pulposus (HNP) at L5-S1 and associated disc issues.

e. From 19 May 13 through 28 Jun 13, the applicant completed the command and control battle manager apprentice course. There is no specific traumatic or potentially aggravating event disclosed during this period.

f. On 7 Feb 14, he completed his periodic health assessment (PHA). The medical note reported he was a traditional ANG member and a martial arts instructor with recent history of vertebral disc disease L5-S1. It noted the applicant was able to perform his job without limitation, complete his FA without limitation, was able to deploy and was medically cleared for flying and controlling duties. The PHA also documented he had not received other care since his last visit and the functional examination of

his musculoskeletal system reflected that general/bilateral mobility was not limited and his stance and gait were normal.

g. The applicant completed initial qualification training from 26 May 14 to 21 Jun 14.

h. The Statement of Duty for the training, which the applicant signed upon reporting for duty stated he would be required to drive 300 miles on 26 May 14 to his formal training and again on his return on 20 Jun 14. There is no evidence of a specific traumatic or potentially aggravating event disclosed during this period.

i. On 8 Mar 15, the applicant reported for another Flyer Special Ops Annual PHA. The SF 600, *Chronological Record of Medical Care* shows denial of any significant medical history, no active problems, no prior service illness, no recent events and a general overall feeling of fine. The assessment of the musculoskeletal and neurological system were recorded as normal.

j. On 21 Mar 16, a repeated MRI scan revealed the L2-L3 showed a small right foraminal disc protrusion with mild narrowing of the right neural foramen. The L3-L4 showed a small disc bulge/osteophyte complex. The L4-L5 also showed a small disc bulge/osteophyte complex. The L5-S1 showed a small left paracentral disc protrusion. Some very mild narrowing of the left L5-S1 lateral recess was also noted. The paraspinal musculature and the visualized retroperitoneal strictions appeared unremarkable. A small disc bulge was noted at L3-L-4, L4-L5 and L5-S1.

k. On 29 Jun 16, a lengthy summary from his orthopedics provider noted he returned for follow up of his lumbar osteoarthritis. His symptoms started three months prior from no particular event and had been improving. He reported having back trouble for the past four years and that the back pain came around the same time every year. On examination, the surgeon noted "paraspinal muscle tenderness improved. Range of motion (ROM) mildly reduced, mild pain on ROM. Tests/signs for straight leg raise (SLR) was positive on the left-improving; femoral stretch test was negative. The diagnoses was degenerative disc disease lumbosacral, thoraco-lumbar, lumbago with sciatica left side, facet arthropathy, lumbar."

l. On 19 Jul 16, a chiropractic note stated the applicant had been undergoing chiropractic care since 14 Mar 13. He initially visited his primary care physician on 5 Mar 13, complaining of intense pain behind his left knee. His primary care physician suspected an issue with the sciatic nerve rather than an actual knee problem. His provider recommended referral to an orthopedic specialist or chiropractor. The applicant presented on 14 Mar 13 for initial consultation and X-rays. The examination showed a possible HNP at the L5-S1 disc level with impingement on the associated nerve root, causing pain in the left knee. The applicant was scheduled for weekly visits with treatment of massage and heat to his lower back, with manual compression to the affected discs to facilitate joint cavitation. An MRI in late Apr 13 confirmed HNP at L5-S1 and associated disc issues. The orthopedic surgeon subsequently recommended weekly physical therapy. The applicant reported he worked out of his home and it was recommended he set his home office so he could work while in the prone position in bed. This position, along with heat on the lower back, reduced the pain until the condition and symptoms subsided. The total time of incapacitation was approximately eight weeks. In Jun 13, he returned to his running, exercise and weightlifting regiment. Then in Mar 14, he experienced intense pain behind the left knee. He consulted with an orthopedic surgeon and the same regiment of heat and working out of his bed was followed. The applicant was incapacitated for

approximately seven weeks in 2014. It was noted the same symptoms occurred during the same timeframe in 2014, 2015 and 2016. Since the exact symptoms occurred during the same time each year, the orthopedic surgeon believed the applicant's preparation for and actual performance of the annual FA to be the cause of the aggravation to the disc, the subsequent bulging and impingement on the sciatic nerve. At the time, the applicant was able to perform his normal civilian and military activities with minor discomfort. However, based on historical data and findings, it was anticipated his symptoms would continue to worsen as he trained for his annual FA in Feb 17. The prognosis was that running and sit-ups would exacerbate the condition, resulting in another incapacitated episode in the spring of 2017. The orthopedic surgeon recommended no running or sit-ups.

m. On 15 Sep 16, his unit emailed the applicant about medical concerns and requested the applicant provide answers to several questions, including any restrictions, duty limitations or orthopedic evaluations or follow-ups and whether the applicant was able to deploy to austere/isolated environment, carry 40 pounds, run 100 yards and perform his duties without restrictions and limitations.

n. In a medical note dated 15 Sep 16, the flight medicine clinic noted the applicant presented with a complaint of low back pain. It stated the applicant had been seen by his own primary care provider for chronic pain and disc issues. The provider noted he did not demonstrate full range and had pain elicited by motion. The applicant provided documentation from his off-base doctor who suggested he be placed on a fitness profile to minimize exacerbation of back pain and herniated disc symptoms. The applicant was placed on profile for no running, walk or sit-ups as recommended. The applicant was prescribed Naproxen as needed for pain and was advised to follow up.

o. A medical note from the orthopedic center dated 22 May 17 shows the applicant returned for follow up on his lumbar osteoarthritis. He stated his pain started to worsen again as it always did around Feb or Mar 17. He had limited his activities. On examination it was noted manual muscle testing showed normal ROM, LS spine showed mild to moderate reduction of ROM with mild pain on ROM. The SLR test was negative bilaterally and femoral stretch was negative bilaterally.

p. On 28 Jun 17, an Armed Forces Health Longitudinal Technology Application (AHLTA) note states the applicant, a telecommunications specialist, presented for follow-up on his herniated disc. It stated the applicant received treatment off base and was last seen in the clinic in Sep 16. The applicant indicated he participated in 150 minutes of moderate intensity exercise each week and muscle strengthening activities two or more days per week. He was released without limitations and advised to follow-up with the flight medicine clinic as needed.

q. On 8 Aug 22, the applicant emailed a former member for confirmation that in Feb 13, he was advised a medical excuse would not be accepted unless it was from the flight medical squadron. The applicant protested but was forced to complete his FA when the issue escalated.

In accordance with AFI 36-2905, *Fitness Program*, it is the individual responsibility of the service member to maintain year round physical fitness through self-directed and unit based fitness programs. However, for the Air Reserve Component, any illness or injury sustained in preparation for or training for the FA, when not in a duty status, cannot be considered service-incurred or aggravated by military service. While the Medical Advisor finds it inappropriate for

the applicant to be essentially ordered to perform the FA, despite a note from his civilian provider recommending restrictions, there again is no definitive evidence this caused a permanent worsening or progression of an existing degenerative process; given the absence of clinical complaints and normal examinations during PHAs thereafter.

Therefore, the Medical Advisor is of the opinion that the applicant's degenerative disc disease and disc bulges and herniation are the result of the natural physiologic progression of the aging process and not by or permanently aggravated by performance of or preparation for his annual FA. The multilevel osteophytes along the applicant's lumbar spine are the secondary result of chronic disc desiccation and intervertebral disc space narrowing, predisposing to disc herniation and periodic abutment of the anterior or posterior lip of vertebral bodies with spine motion, due to proximity of vertebral bodies to one another, resulting in in secondary reactive new bone formation, referred to as osteophytes, commonly seen on X-rays of the lumbosacral spine.

Addressing the fact, the applicant elected to perform work at home in the prone position as agreed upon by the chiropractor raises two issues. In accordance with 38 Code of Federal Regulation, Part 4(2), a chiropractor is not considered a physician; therefore, his advice for bed rest would not have qualified as physician directed bed rest. Further, while the applicant may have experienced comfort in the prone position while performing administrative duties, the Medical Advisor opines it is insufficient proof of medical necessity for "physician directed" bed rest. Another point not explored is that the applicant was a martial arts instructor. The Medical Advisor cannot speculate or draw any arbitrary or capricious conclusions on any possible contribution this played into the clinical expression or contributory causation of the applicant's medical condition. However, other than non-contact Tai-Chi, several other forms include elements of forceful body contact with an opponent, whether through purposeful or accidental blunt force or a fall, posing an additional risk for spine or other injury. No information was disclosed corroborating any such injury occurred.

The complete advisory opinion is at Exhibit U.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 30 Nov 22 for comment (Exhibit V), and the applicant replied on 1 Dec 22. Throughout this process the Board did not address the reason they believed his condition to be as EPTS. The advisory opinion finally addresses the subject and attempts to frame speculative and theoretic EPTS scenarios to substantiate the opinion.

He served two prior enlistments in the Army National Guard with no issues during annual physicals or physical fitness training tests. He never suffered any pain in his lower back or lower extremities when he enlisted in the ANG in Sep 12. He began experiencing pain behind his left knee beginning 2013, the evidence clearly shows an aggravation of his condition. He suffered pain behind the knee in Jan 13, went to his primary care physician in Feb 13 and had an MRI in Apr 13. The evidence shows the clear progression of his condition through 2018.

The argument is the relationship between the condition and military service. The nexus for his chronic problem was being ordered by his command to take his FA in 2013 while under the care of his provider and receiving treatment. If not ordered to take the test, the symptoms would have subsided and his condition would have normalized. The Medical Advisor substantiates there was marked improvement after he received a waiver from the FA. The aggravation of the injury by the FA was followed by two active duty training periods over the following two years. While the unit assessed him as healthy for receiving active duty orders, the documentation shows he was still receiving treatment and the condition was shown in the flight physical, which conflicted with the unit's statements.

The advisory opinion attempts to state he suffered from degenerative disc disease and the disease was following its normal path of progression. The Medical Advisor then uses speculative elements to construct a base and path with supporting illustrative templates as evidence. Since the MRI was completed in Apr 13, the Medical Advisor has no clear method to know the baseline condition prior to onset. Further, he does not know how the disease would progress. The Board is basing an argument of an EPTS on speculation and prediction. Further, it is not known if degenerative disc disease is really a limiting factor in performance of duty.

In reviewing the regulations and instructions related to medical review of a federal appeal, it appears the medical examiner cannot merely arrive at a conclusion of "normal wear and tear" or "age related progression" for degenerative disc disease. They must provide adequate rationale to support their determination. It is not enough for the advisory to simply say the applicant's degenerative disc disease is due to natural progression and aging. Instead, they must explain why it is not due to other factors, such as military service. Perhaps this was the reason the advisor attempts to reference he was a martial arts instructor. It is his understanding the Medical Advisor has no primary expertise in orthopedics but is in emergency medicine.

38 C.F.R§ 3.310 states the government "Will not concede that a non-service connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the non-service connected disease or injury is established by medical evidence created before the onset of aggravation. In his case, the AFBCMR was privy to the documented evidence when the injury began and throughout the term of enlistment. To this end, the baseline of severity and aggravation are fully documented and the Medical Advisor outlines all events and documentation in the advisory opinion.

His argument remains unchanged. He also requests the advisory opinion be evaluated as entirely credible in relation to the disease progression outcome. The Medical Advisor confidently states he was fairly certain the condition was based on natural age progression. At the end of the report, he wondered if the injury could have been the result of a fall or blunt force trauma in practicing martial arts. Is the condition related to age progression or an injury from blunt force trauma. The applicant stands by his assertion there was no EPTS condition and the AFBCMR has not proven the fact in the previous four review responses.

The applicant's complete response is at Exhibit W.

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. The applicant contends the Board's denial of his case was based on speculation and prediction and asks the Board to provide evidence his degenerative disc disease, disc bulge and herniation was EPTS. The applicant also challenges the credibility of the Medical Advisory and requests it be evaluated as entirely credible. The Board, which included a physician panel member, conducted an independent review of the applicant's case and finds the applicant's degenerative disc disease, disc bulge and herniation as EPTS in that no evidence has been presented to show a nexus of his condition with a period of military service. While the applicant contends the nexus was forcing him to complete the FA in 2013 through a direct order while injured and with a medical excuse was the nexus and causal link, the applicant has

provided insufficient evidence to sustain this to be the case. The Board notes the applicant was deemed medically qualified when he enlisted in the ANG on 24 Jul 12. In Jan 13, his unit contacted the applicant regarding the status of his physical and FA. On 4 Jan 13, the applicant responded he could complete the physical and FA during the Feb 13 drill or the regularly scheduled UTA. The applicant did not mention any injury or illness that would preclude him from completing the physical or the FA. In Feb 13, he presented with a medical excuse from his civilian provider. He contends his unit refused to accept the medical note from his civilian provider since it was not from the flight surgeon and ordered him to complete the FA. The Board finds it was in accordance with AFI 36-2905 for the applicant to have been referred for evaluation by a military provider rather than exempting the applicant from the FA based on the note from his civilian provider. Upon evaluation, the military provider, if applicable, would have issued the applicant an AF Form 469, *Duty Limiting Condition Report* for any duty limiting conditions or exemptions from the FA or any FA components. Further, prior to being administered the FA, the applicant would have been required to complete a fitness screening questionnaire in accordance with AFI 36-2905, *Fitness Program*. Should the applicant have identified any medical conditions, the applicant would not have been administered the FA but would have been referred to the military treatment facility. The Board notes it was the applicant's responsibility to identify to the FA administrator he had a medical condition and was unable to complete the FA. The applicant did not provide any fitness screening questionnaire but provides his FA scorecard dated 28 Feb 13 showing he completed the FA with a score of 83.9. The Board does not know why the applicant did not proceed to be evaluated by the flight surgeon when his unit refused to accept the note from his civilian provider or why he did not report he had a medical condition to the FA administrator prior to completing the FA. However, based on the presumption of regularity and the absence of evidence, the Board finds insufficient evidence to conclude his chain of command or the FA administrator would have forced him to take the FA on 28 Feb 13 while injured.

The applicant contends his unit assessed him as healthy for receiving training orders although he was receiving treatment. The Board does not disagree the applicant was receiving treatment for his back pain from his civilian provider; however, receiving treatment is insufficient to conclude the applicant incurred an ILOD injury or that his condition was further aggravated during a period of duty and that his condition precluded him from performing the duties of his office, grade, rank or rating, which would have been required for placement in the disability evaluation system (DES) and evaluation by a physical evaluation board. The applicant challenges the determination his condition was EPTS and non-duty related. However, the applicant's records include no LOD determination. The deployment availability working group (DAWG) in 2017 determined the applicant's condition was non-duty related. The applicant's appeal was also denied. The Board finds the applicant has not provided sufficient evidence to conclude the DAWG's decision was erroneous. Further, the evidence provided and the applicant's medical records are replete with documentation to show a chronic, progressive non-duty related condition. In this respect, the medical note from his civilian provider dated 12 Feb 13 states the applicant's report of pain began a few weeks prior. There is no mention or documentation of a specific injury or aggravation that occurred during a period of military service. The applicant then successfully completed his command and control battle manager formal training course from 19 May 13 through 28 Jun 13 with no evidence of any traumatic or potentially aggravating event. The applicant also completed another formal training course from 26 May 14 to 21 Jun 14 without any documented injury or aggravating event. He also on 8 Mar 15, during his annual flying special operations PHA, indicated he had no active problems or prior problems or illness. On 29 Jun 16, he was evaluated by his orthopedics provider and reported he had back problems for four years and his symptoms had started three months prior but again no event was attributed to his symptoms. On 19 Jul 16, his chiropractor opined since the applicant's symptoms seemed to reoccur during the same time every year, which coincided with the completion of his FA, it was likely that preparing and taking the FA was the cause of his aggravation to the disc, the bulging and impingement on the sciatic nerve. As pointed out by the AFBCMR Medical

Advisor, for the Air Reserve Component, any illness or injury sustained in preparation for or training for the FA, when not in a duty status, cannot be considered service-incurred or aggravated by military service.

The applicant challenges the credibility of the AFBCMR Medical Advisor; however, the Board finds the applicant has provided no evidence to sustain the AFBCMR Medical Advisor is not qualified to evaluate the applicant's medical records and provide an opinion and recommendation. With respect to the applicant's contention the AFCMR Medical Advisor attempted to question whether he may have fallen or incurred blunt force trauma practicing martial arts is without merit. The Board finds it is a reasonable conclusion to believe practicing martial arts could likely have contributed to the natural progression of his chronic degenerative disc disease, disc bulging and herniation in the absence of any evidence of an ILOD injury or aggravation. Nonetheless, even if the applicant did not incur any injuries while performing martial arts, there is no evidence he incurred an injury or aggravation during a period of military service.

In view of the above and the totality of the evidence, the Board finds the applicant's degenerative disc disease, disc bulges and herniation condition is EPTS, it was the result of the natural progression of the aging process and was not caused by or permanently aggravated during a period of military service to warrant granting the applicant a military retirement with a physical disability rating of 60 percent for his herniated disc and 10 percent for his associated neuralgia. 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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2017-05406-4 in Executive Session on 22 Mar 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit Q: Record of Proceedings, w/ Exhibits A-P, dated 18 Jul 22.
Exhibit R: Petitioner's Response to AFBCMR Denial and Supplemental Evidence.
Exhibit S: Applicant's DD Form 149, w/atchs, dated 11 Aug 22.
Exhibit T: Documentary evidence, including relevant excerpts from official records.
Exhibit U: Advisory Opinion, AFBCMR Medical Advisor, dated 3 Nov 22.
Exhibit V: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Nov 22.
Exhibit W: Applicant's Response, w/atchs, dated 1 Dec 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.