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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03276

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. The deceased member be medically retired.
2. The applicant be awarded all backpay and future retirement benefits to include Servicemember's Group Life Insurance (SGLI) payments.

APPLICANT'S CONTENTIONS

Her spouse should have been medically retired due to his uncontrolled latent autoimmune diabetes in adults (LADA) which caused dangerously high blood glucose (BG) levels and severe and worsening insulin resistance requiring extremely high doses of insulin which made him unfit for duty as noted in his record. Medical records prove her spouse had a complex medical condition which was uncontrolled, worsening and expected to severely worsen. It was recommended he not perform surgery until he improved his BG control. He never achieved BG control as evidenced by his repeated lab results. His condition worsened as he was on 310 units of insulin per day; yet he was returned to duty and subsequently denied a medical retirement. Her spouse passed away on 13 Dec 19 due to the complications of his LADA.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The deceased member is a former Air Force major (O-4).

On 25 Jun 10, SGLV 8286, *Servicemember's Group Life Insurance Election and Certificate*, indicates the deceased member elected coverage in the amount of \$400,000.00. It is noted this form is for use by active duty and Reserve members. It is also noted reduced or refused insurance will also affect the amount of Veterans' Group Life Insurance which can be converted upon separation from service.

On 14 Jun 15, the deceased member submitted a response to the Medical/Physical Evaluation Board which stated he was having difficulty passing his fitness assessment and due to his increased

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insulin doses, it would be increasingly difficult to pass future fitness tests. He further noted his diabetes did not affect his role as a surgeon; however, it did greatly impact his role as a military officer finding he was unable to support operations in a deployed setting and his diabetes made it difficult to maintain fitness standards.

On 19 Jun 15, in the Initial Review in Lieu Of (IRILO) a Medical Evaluation Board (MEB), the Deployment Availability Working Group (DAWG) returned the deceased member to duty with an assignment limiting code (ALC) for his diabetes adult-onset type I.

On 20 Jul 16, the deceased member was again medically evaluated and was returned to duty with an ALC with deployment and duty limitations noted on the AF Form 469, *Duty Limiting Condition Report*, dated 19 Jul 16. This form indicated the deceased member was non-deployable and could not occupy a mobility position. The form further indicated the deceased member was exempt from all fitness component measurements except for the abdominal circumference.

On 9 Feb 17, the deceased member was again medically evaluated and was returned to duty with an ALC.

On 18 Aug 17, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the deceased member was honorably discharged in the grade of major (O-4) after serving 10 years, 1 month, and 26 days of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

Dated 14 Sep 20, the Department of Veterans Affairs (DVA) Rating Decision indicates the deceased member was granted service-connection for the cause of his death and basic eligibility to Dependents' Educational Assistance.

Dated 14 Dec 20, the DVA Higher-Level Review Decision indicates entitlement to accrued benefits was denied. It is noted the deceased member filed an intent to file a claim of compensation; however, he did not file a formal claim prior to his death. No claims were pending at the time of his death; therefore, there were no accrued benefits payable.

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

APPLICABLE AUTHORITY

According to the Defense Finance and Accounting Service (DFAS), SGLI is a program of low-cost group life insurance for service members on active duty, ready reservists, members of the National Guard, members of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service, cadets and midshipmen of the four service academies, and members of the Reserve Officer Training Corps. SGLI can be used to "protect those who matter most" by securing your family's financial future through end-of-life planning, providing income replacement, and offering financial flexibility for your family once you have passed.

Service members are automatically enrolled in \$400,000.00 of SGLI, increased to \$500,000.00 effective 1 Mar 23, due to Public Law 117-209; however, coverage ends when a member is retired or separated.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends partially granting the application finding sufficient evidence to support the request for the deceased member to be medically separated or retired; correcting an error that may have resulted in retaining him on continued military duty while significantly impaired by his poorly controlled diabetes. It is recommended the deceased member's records be corrected to show he was medically retired with a 40 percent disability rating for diabetes mellitus under Veterans Affairs Schedule for Rating Disabilities (VASRD) code 7913, effective at the time of the IRILO in Jun 15. However, it should be noted, although in retrospect an error may have occurred in retaining the deceased service member on duty, the Air Force appeared to have acted at the time in a manner consistent with applicable regulations and standards whereby a highly trained and capable surgeon was allowed to continue his contributions in a limited albeit significant capacity, providing not only a vital service to the Air Force but also extending him the personal satisfaction of successfully completing his military commitment leading to his desired and requested resignation.

The applicant's widow stated he should have been medically retired due to uncontrolled latent autoimmune diabetes in adults and the available records appear to largely support this contention. At the time of the deceased member's voluntary separation from the Air Force, and throughout much of his active-duty career, he suffered from poorly controlled insulin-dependent diabetes and associated metabolic derangements, such as obesity, hypertension, and hyperlipidemia. Of these, diabetes was the significantly limiting condition, resulting in periodic inability to perform surgery – his primary job – due to episodes of hypoglycemia, permanent inability to deploy (another key requirement for a surgical provider), repeated fitness failures, and severe restrictions on the geography of his assignments. Per the AFI 48-123, *Medical Examinations and Standards*, and the *Medical Standards Directory* Section M6, diabetes mellitus is a disqualifying diagnosis for retention, necessitating a MEB. The deceased member's case was appropriately submitted to an MEB and underwent an IRILO in accordance with regulations, which returned him to duty with an ALC, although it is unclear why this appeared to have been done only years after his LADA diagnosis. Neither the deceased member, his commander at the time, nor his medical providers indicated he was a good fit for continued military service. While it is perhaps understandable, he may have been initially retained because, as his commander put it, he was still providing a valuable service to the Air Force managing the residents, there were nonetheless clear indications of significant duty and mobility limitations. These did not improve at the time of the subsequent Review in Lieu Of (RILO) in 2016, and the deceased member was placed on an even more restrictive ALC, perhaps to allow him to complete his relatively short remaining service commitment, although the limitations upon his duty performance imposed by his poorly controlled diabetes were no less apparent.

The military Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., 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 future progression of disease or injury. Per DoDI 1332.38, *Physical Disability Evaluation*, paragraph E3.P3.2.1, a service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation. Although the previous instruction may have since been set aside, key aspects of the policy were retained under the more recent publication, DoDI 1332.18, *Disability Evaluation System*, and include two additional criteria for determining unfitness, which read a service member may also be considered unfit when the evidence establishes (1) the Service member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; or (2) the Service member's disability imposes unreasonable requirements on the military to maintain or protect the Service member. With respect to evidentiary standard for determining unfitness because of disability, under DoDI 1332.18, the Secretary of the Military Department concerned must cite objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture, to determine a service member is unfit because of disability. Additionally, with the exception of presumption of fitness cases, the Secretary of the Military Department concerned will determine fitness or unfitness for military service on the basis of the preponderance of the objective evidence in the record.

In this case, the preponderance of the available evidence appears to indicate the deceased member was indeed unfit to continue military service due to his poorly controlled LADA and should have been medically separated or retired. In addition to the limitations imposed by his condition upon his military duties, it is also reasonable to conclude hypoglycemic episodes which necessitated, at least for a time, restriction of certain surgical responsibilities, may have posed a decided medical risk to the welfare or safety of other military members upon whom he may have been tasked to operate. No contemporaneous, or indeed posthumous, disability ratings for the deceased member are available from the Department of Veterans Affairs (DVA). However, if his LADA was found to be unfitting and, the rating would likely have been at least 40 percent per the criteria outlined in the 38 Code of Federal Regulations Book C, VASRD, for rating diabetes mellitus diagnostic code 7913: (1) requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated at 100 percent; (2) requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated at 60 percent; or (3) requiring insulin, restricted diet, and regulation of activities compensable at 40 percent.

Higher ratings of 60 or 100 percent may have been possible, although the evidence needed to meet these criteria could not be fully ascertained from the available medical records. The deceased member did not have any episodes of ketoacidosis or require hospitalization. However, he did need frequent visits to a diabetic care provider, most of which he apparently did not keep, and he did sustain documented complications from his diabetes, such as diabetic retinopathy documented in Jul 16, which may perhaps have been compensable if separately evaluated. In any event, the

deceased member's likely unfitting LADA would have been rated 40 percent disabling at a minimum, resulting in a medical retirement.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 28 May 24 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 applicant has provided medical evidence which indicates the deceased member's LADA rendered him unfit for duty which is sufficient to justify granting the applicant's request for a medical retirement. The Board finds the deceased member's LADA warrants a 40 percent rating according to the VASRD due to his need for frequent visits to a diabetic care provider and his documented complications from his diabetes. 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. The Board finds the applicant is not entitled to SGLI premium benefits. The applicant's spouse passed away after he was separated from the Air Force and he was no longer enrolled or paying premiums into his SGLI policy.

RECOMMENDATION

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

- a. On 9 February 2017, 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 diabetes mellitus, that his condition was under VASRD code 7913; with a disability rating of 40 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 as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 18 August 2017, he was discharged from active duty and on 19 August 2017, he was permanently retired with a compensable percentage for physical disability of 40 percent.

c. He elected full max Survivor Benefit Plan (SBP) coverage for his spouse and annuity payments will be made once the retroactive premiums owed as calculated by DFAS are collected.

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-2023-03276 in Executive Session on 17 Jul 24:

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Panel Chair

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Panel Member

Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 11 Sep 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, AFBCMR Medical Advisor, dated 13 May 24.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 28 May 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.

9/4/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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