

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01707

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His official military personnel record be amended to reflect a medical retirement vice a medical discharge.

APPLICANT'S CONTENTIONS

At the time of separation, not all of his medical conditions were considered, leading to a lower disability rating, thus recommending separation instead of medical retirement. With all of the other medical conditions, the disability rating would be considerably higher.

Upon reviewing his Department of Veterans Affairs (DVA) records recently, the applicant noticed not all of his medical conditions were considered when the medical review board made their determination and recommendation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force technical sergeant (E-6).

On 8 Jun 09, according to AF Form 469, *Duty Limiting Condition Report*, the applicant had duty and mobility restrictions, to include no running more than zero miles, and was processing with the Medical Evaluation Board (MEB).

On 30 Apr 09, according to a *Narrative Summary for Medical Evaluation Board*, the applicant had right knee anterior cruciate ligament (ACL) reconstruction approximately one and a half years prior, and exhibited degenerative changes in both knees that bothered him during prolonged walking or running. Despite conservative therapy, it was still difficult or impossible for the applicant to run for his physical training test.

On 16 Sep 09, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Bilateral Tricompartmental Degenerative Changes – Knees; Incurred while entitled to receive basic pay: Yes; Existed prior to service: No; Permanently aggravated by service: NA; Line of Duty: Yes; and was referred to the informal Physical Evaluation Board (IPEB).

On 3 Feb 10, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable and Ratable:
 - Bilateral Knee Tricompartmental Degenerative Changes; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Rating: 10 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5003.

- Right Ankle Pain due to Gout; Incurred while entitled to receive basic pay: Yes; Line of Duty; Yes; Disability Rating: 10 percent; VASRD Code: 5017.

The IPEB recommended Discharge With Severance Pay (DWSP) with a compensable percentage of 20 percent.

On 8 Feb 10, according to AF Form 1180, *Action on Informal Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived the right to a formal PEB (FPEB) hearing.

On 18 Feb 10, according to an AFPC/DPSD memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be separated from active service for physical disability under the provisions of Title 10, United States Code § 1203 (10 USC § 1203) with severance pay computed under Section 1212 of this title.

On 26 Apr 10, the applicant was furnished an honorable discharge, with narrative reason for separation of “Disability, Severance Pay,” and was credited with 16 years, 6 months, and 29 days of active service.

On 20 Sep 11, according to a DVA Rating Decision for an original disability claim received on 16 Mar 10, the applicant was granted service-connection for the following conditions:

- Hypertensive Heart Disease, evaluated at 30 percent from 27 Apr 10
- Gout, evaluated at 20 percent from 27 Apr 10
- Diabetes Mellitus, Type II, evaluated at 20 percent from 27 Apr 10
- Lumbar Spine Strain, evaluated at 10 percent from 27 Apr 10
- Left Knee Strain, evaluated at 10 percent from 27 Apr 10
- Status Post Right ACL Reconstruction and Partial Meniscectomy, evaluated at 10 percent from 27 Apr 10
- Hypertension, evaluated at 0 percent from 27 Apr 10
- Status Post Right/Left Fasciotomy Surgery of Compartment Syndrome with Residual Numbness in the Right Foot, evaluated at 0 percent from 27 Apr 10.

The applicant’s combined evaluation for compensation was 70 percent from 27 Apr 10.

According to an undated computer screenshot, provided by the applicant, his combined disability rating is 90 percent for the following conditions:

- 30 percent rating for Status Post Right ACL Reconstruction and Partial Meniscectomy, effective 9 Jul 20
- 20 percent rating for Radiculopathy, Right Upper, claimed as nerve pain/numbness, effective 9 Jul 20
- 20 percent rating for Cervalgia¹, effective 9 Jul 20
- 0 percent rating for Scar, Right Knee, effective 9 Jul 20
- 20 percent rating for Diabetes Mellitus, Type II, effective 27 Apr 10
- 0 percent rating for Hypertension, effective 27 Apr 10
- 0 percent rating for Status Post Right/Left Fasciotomy Surgery of Compartment Syndrome with Residual Numbness in the Right Foot, effective 27 Apr 10
- 10 percent rating for Left Knee Strain, effective 27 Apr 10
- 20 percent rating for Gout, effective 27 Apr 10
- 10 percent rating for Lumbar Spine Strain, effective 27 Apr 10
- 30 percent rating for Hypertensive Heart Disease, effective 27 Apr 10

¹ Cervicalgia

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during Disability Evaluation System (DES) processing. Many veterans who undergo the Department of Defense (DoD) DES process have other conditions that may be service-connected for DVA compensation purposes but are not considered as unfitting for DoD DES purposes.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (10 USC), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (DWSP, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (38 USC), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA "based on new and/or current exams conducted after discharge from service" does not warrant a change in the total compensable rating awarded at the time of the member's separation.

On 16 Sep 09, an MEB found the applicant potentially unfitting for Bilateral Tricompartmental Degenerative Changes of the Knees. The accompanying narrative summary indicates he had a 1.5-year history of knee pain following knee surgery which did not respond to conservative treatment. This condition resulted in the applicant being placed on extended profiles and made it difficult or impossible for him to complete fitness testing.

On 3 Feb 10, the IPEB found the applicant unfit for (1) Bilateral Knee Tricompartmental Degenerative Changes, and (2) Right Ankle Pain due to Gout. The IPEB added Gout after a review of his medical records revealed the applicant had also been on profile for this condition which restricted walking or biking. The IPEB recommended the applicant be DWSP with a 20 percent compensable disability rating. On 8 Feb 10, the applicant agreed with the IPEB's findings and did not appeal to the FPEB to request any other additional medical conditions be added to his findings. The applicant was subsequently DWSP, effective 26 Apr 10.

A review of the applicant's DVA records indicates on 20 Sep 11, the DVA initially awarded a 10 percent rating for Left Knee Strain (service-connected condition), 10 percent for Status Post Right ACL Reconstruction and Partial Meniscectomy (the DVA noted this was a disability severance condition), 20 percent for Gout, along with ratings for five additional DVA service-connected conditions. It is noted the applicant was processed under the older legacy DES in which the PEB and DVA made independent assessments of the applicant's unfitting condition(s) and could, therefore, assign different diagnosis/ratings for the same condition based on available documentation/exams at the time of processing. The DVA examinations were completed after separation and were not available nor utilized by the PEB in its unfitting decision for DES rating purposes.

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 Oct 24 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Under 10 USC, the PEB must determine if the service member's condition renders them unfit for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing and that rating determines the final disposition. The DVA, under 38 USC, may evaluate a service member over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA based on exams conducted after discharge from service does not warrant a change in the total compensable rating awarded at the time of the member's separation.

At the time of the applicant's MEB, the only condition which rendered the applicant unfit was Bilateral Tricompartmental Degenerative Changes – Knees. Subsequently, the IPEB also considered Right Ankle Pain due to Gout as an unfitting condition. Under the legacy DES process, the Air Force and DVA performed independent assessments of the applicant's unfitting conditions. The DVA examinations were completed after separation and were not available nor utilized by the PEB in its determination for DES rating purposes. Therefore, the board recommends against correcting the applicant's records.

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 Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2024-01707 in Executive Session on 19 Feb 25:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 7 May 24.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 24 Oct 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Oct 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.

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Board Operations Manager, AFBCMR