

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01797

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

Her AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, be amended to include an unfitting hip condition.

### APPLICANT'S CONTENTIONS

Her Physical Evaluation Board (PEB) reflects her chronic lower back pain and hip pain as being unfitting; however, the AF Form 356 only lists her lower back pain as being unfitting and qualifying the applicant for a rating from the Air Force. When she got out, the applicant applied for Department of Veterans Affairs (DVA) disability and received a total combined rating of 50 percent for her hips (both left and right), her back, and other conditions. Each hip was rated at 10 percent due to bursitis and her back was originally rated at 20 percent by the DVA in 2006.

The applicant is requesting the AF Form 356 be corrected to include her hips as an unfitting condition as it was her hips and back that caused her to be unable to perform physical training and still cause tremendous pain. This correction should be made so the applicant's records can be accurate and ensure her rating at the time of discharge by the Air Force is correct. The applicant was referred by the Physical Disability Board of Review (PDBR) to have this corrected.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman first class (E-3).

On 17 Jan 06, according to the *Medical Board Narrative Summary*, the applicant had a history of chronic lower back pain and bilateral hip pain both of which have not improved or resolved with multiple modalities of physical therapy. On 16 Sep 05, hip x-ray impression reflected very mild symmetric bilateral hip joint space narrowing without acute radiographic abnormality.

On 27 Jan 06, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Chronic Lower Back Pain; Incurred while entitled to basic pay: Yes; Existed prior to service: No; Permanently aggravated by service: No; Line of Duty: Yes. The applicant was referred to the informal Physical Evaluation Board (IPEB).

On 13 Feb 06, 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 was diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:

- Chronic Back Pain; Incurred while entitled to basic pay: Yes; Line of Duty: Yes;  
Disability Rating: 10 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5237

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:

- Allergic Dermatitis; VASRD Code: 7806
- Seasonal Allergic Rhinitis; VASRD Code: 6522

- Category III – Conditions That Are Not Separately Unfitting And Not Compensable Or Ratable:

- Lactose Intolerance
- Tobacco Habituation

The IPEB recommended Discharge With Severance Pay (DWSP) with a compensable percentage of 10 percent.

On 15 Feb 06, according to AF Form 1180, *Action on 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). On this same date, according to an AFPC/DPPD 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 28 Mar 06, the applicant was furnished an honorable discharge with narrative reason for separation of “Disability, Severance Pay” and was credited with 2 years, 11 months, and 7 days active service.

On 10 Jan 07, according to a DVA Rating Decision, based on an original disability claim received on 5 Apr 06, the applicant was granted service-connection for:

- Chronic ligament strain, lumbar spine with herniated disc, T12-L1, with an evaluation of 20 percent, effective 29 Mar 06.
- Bursitis with joint space narrowing, right hip, with an evaluation of 10 percent, effective 29 Mar 06.
- Bursitis with joint space narrowing, left hip, with an evaluation of 10 percent, effective 29 Mar 06.
- Allergic rhinitis, with an evaluation of 10 percent, effective 29 Mar 06.
- Gastroesophageal reflux disease, with an evaluation of 10 percent, effective 29 Mar 06.
- Neuropathy, right lower leg, with an evaluation of 0 percent, effective 29 Mar 06.

According to an online DVA disability rating report, printed on 15 May 24, provided by the applicant, she has a combined disability rating of 90 percent and is service-connected for:

- Post-Traumatic Stress Disorder, chronic and moderate, with an evaluation of 70 percent, effective 2 Dec 21.
- Lumbar strain, spondylosis, and intervertebral disc syndrome, with an evaluation of 40 percent, effective 24 Apr 18.
- Neuropathy, right lower leg, with an evaluation of 20 percent, effective 24 Apr 18.
- Left lower extremity radiculopathy, with an evaluation of 20 percent, effective 24 Apr 18.
- Left hip limitation of flexion, with an evaluation of 0 percent, effective 15 Sep 15.
- Right hip limitation of flexion, with an evaluation of 0 percent, effective 15 Sep 15.

- Left hip limitation of internal rotation, with an evaluation of 0 percent, effective 15 Sep 15.
- Right hip limitation of internal rotation, with an evaluation of 0 percent, effective 15 Sep 15.
- Bursitis with joint space narrowing and arthritis, right hip, with an evaluation of 10 percent, effective 22 Oct 14.
- Bursitis with joint space narrowing, left hip, with an evaluation of 10 percent, effective 22 Oct 14.
- Allergic rhinitis, with an evaluation of 10 percent, effective 29 Mar 06.
- Gastroesophageal reflux disease, with an evaluation of 10 percent, effective 29 Mar 06.

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 the 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. There is no evidence to support the applicant's claim her bilateral hip condition rose to the level of being considered unfitting.

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 27 Jan 06, a Medical Evaluation Board (MEB) found the applicant potentially unfitting for Chronic Lower Back Pain. The accompanying narrative summary indicates the applicant had a history of lower back pain due to a herniated disk and complaints of hip pain. X-rays of the applicant's hips, conducted on 16 Sep 05, indicated she had very mild symmetric bilateral hip joint space narrowing without acute radiographic abnormality.

On 3 Feb 10, the IPEB found the applicant unfitting for Chronic Back Pain. The IPEB recommended she be DWSP with a 10 percent compensable disability rating. On 15 Feb 15<sup>1</sup>, she agreed with the IPEB's findings and did not appeal to the FPEB to request any other additional medical conditions be added to her findings. The applicant was subsequently DWSP, effective 28 Mar 06.

A review of the applicant's DVA records indicates, on 10 Jan 07, the DVA initially awarded a 20 percent rating for her back condition and assigned a 10 percent rating for both right and left hip bursitis. Although the DVA determined the applicant's bilateral hip bursitis was service-

---

<sup>1</sup> Applicant concurred with IPEB findings on 15 Feb 06.

connected for DVA disability purposes, it was not considered unfitting for DoD DES purposes. The DVA noted they assigned the lowest rating due to pain with motion, but a higher evaluation of 20 percent was not warranted due to minimal loss in flexion or abduction of the thigh and no evidence of a malunion of the femur with moderate hip disability. The DVA also noted the applicant's subjective complaints provided no measurable functional loss and was not considered representative of her chronic disability picture to warrant a higher evaluation. It is noted the applicant was processed under the older legacy DES in which the PEB and DVA made independent assessments of a member'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. However, the PDBR previously agreed with the applicant's contention the PEB should have rated her unfitting back condition at 20 percent like assigned by the DVA.

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 31 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 IPEB, the only condition which rendered the applicant unfit was Chronic Back Pain. 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-2024-01797 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 15 May 24.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 29 Oct 24.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 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.

X

---

Board Operations Manager, AFBCMR