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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-02640-2

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COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request his knee injury be considered in the line of duty (ILOD), and he be medically retired.

RESUME OF THE CASE

The applicant is a retired Air Force master sergeant (E-7).

On 20 Oct 21, the Board considered and denied his request his knee injury be considered ILOD, and he be medically retired; finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

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 H.

On 22 Jun 22, the applicant requested reconsideration of his request his knee injury be considered ILOD and he be medically retired. He again contends his injuries were incurred while serving in the Air Force and believes he should be eligible for medical compensation. His discharge was unfair because it did not provide him with service-connected injury and a Medical Evaluation Board (MEB). In support of his reconsideration request, the applicant submitted the following new evidence: (1) Department of Veterans Affairs (DVA) summary of benefits, illegible date; (2) DVA decision letters, dated 4 Sep 20 and 3 Feb 21; and (3) DVA rating decisions, dated 31 Aug 20 and 6 Aug 20. The DVA decisions indicate the applicant was service-connected for posttraumatic stress disorder (PTSD) with an evaluation of 30 percent, migraine headaches with an evaluation of zero percent, and tinnitus with an evaluation of 10 percent; service connection was denied for left knee condition; and service connection was deferred for left ankle condition.

The applicant's complete submission is at Exhibit I.

AIR FORCE EVALUATION

The BCMR Medical Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. As per the DVA's reasoning for denial [for service connection], a major factor was checking "no" to any knee issues on the applicant's post deployment questioning. Despite such a statement, the medical advisor finds it important to acknowledge that such a worded question and a negative answer was **not found** on post deployment questioning. Rather, the applicant was simply '*bothered a little*' during

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the previous month for ‘pain’. The denial reasoning of a knee condition also included the issue of condition chronicity and in this case, additional DVA documents did not reveal any new and or compelling information to give credence that a disqualifying knee injury either occurred or that an existing knee condition was permanently aggravated as to render the applicant unable to perform the duties of his office, grade, rank, or rating and therefore, becoming eligible for processing under the Disability Evaluation System. Having no new and or compelling evidence that was not previously submitted or reviewed, the medical advisor cannot oppose the Board’s prior final decision. Therefore, the medical advisor finds no compelling basis to recommend granting relief sought in this application.

The complete advisory opinion is at Exhibit J.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 5 Sep 23 for comment (Exhibit K), and the applicant replied on 1 Oct 23. On behalf of the applicant, counsel contended the applicant is currently working with the DVA to evaluate his underlying conditions. Like many service members, he did not always report every time he was injured in the military, but in this case, he did specifically mention he had been injured while deployed. After his deployment in 2013, he reported he had been in an accident, and those injuries were annotated in his military medical files. He also reported post-deployment symptoms including back pain, headaches, feeling heart pound or race, feeling tired or having low energy, trouble sleeping, noises in the head/ears, e.g. ringing, humming, and trouble hearing. The combination of these injuries specifically aggravated his knee condition and over time, it has resulted in permanent damage. He eventually had difficulty passing his physical training tests and went to the doctor to seek a profile. The military doctors at the time did not adequately assess his injuries. His command chose to have him stop drilling but never determined whether or not he was fit for duty. This was a procedural error and should be rectified. The doctor’s opinion, provided in his initial case, dated 7 Mar 21, discusses how his service-connected back injury contributed to the aggravation of the knee injury, making it service-related. He should be granted liberal consideration and be upgraded.

The applicant’s complete response is at Exhibit L.

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, to include the applicant’s response to the BCMR Medical Advisor, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale of the BCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board finds insufficient evidence his knee condition was ILOD or warranted processing through IDIS as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Specifically, his knee condition was not a medical basis for career termination, nor did it meet the criteria for a referral to the MEB for a medical discharge or retirement.

Furthermore, the Board notes counsel stated the applicant’s request should be granted under liberal consideration; however, liberal consideration does not apply to fitness determinations nor medical retirements, nevertheless, if it was applied to the applicant’s request due to his service-connected PTSD, there is no evidence this condition contributed to his knee injury, nor is there evidence it

was unfitting separately to warrant referral to the IDES. 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 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 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-2019-02640-2 in Executive Session on 30 Nov 23:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

Exhibit H: Record of Proceedings, w/ Exhibits A-G, dated 20 Oct 21.
Exhibit I: Application, DD Form 149, w/atchs, dated 22 Jun 22.
Exhibit J: Advisory Opinion, BCMR Medical Advisor, dated 17 Aug 23.
Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Sep 23.
Exhibit L: Applicant's Response, dated 1 Oct 23.

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.

12/21/2023

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