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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2019-04529-2

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to be granted a medical retirement from the Air National Guard (ANG).

RESUME OF THE CASE

The applicant is a former ANG captain (O-3) who was honorably discharged on 1 Oct 00 with a narrative reason for separation of "Resignation-Miscellaneous Reasons." He was assigned to the Inactive Status List Reserve Section (ISLRS) to which he was removed on 5 Apr 07.

On 15 Jul 20, the Board considered and denied his request for a medical or 20-year service retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted. The Board found the applicant provided no evidence to substantiate that his medical condition was unfitting or was the cause of his career termination.

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 F.

On 29 Nov 21, the applicant requested reconsideration of his request for a medical retirement. He contends he received a 30 percent Department of Veterans Affairs (DVA) impairment rating in 2018 and was notified he was eligible to request a medical retirement. He was told by the DVA that his medical condition was a direct nexus to a reported injury while on active duty and he should have been medically retired due to this. The initial review of his case did not take into account his active duty medical records which denied his request.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) an updated DVA rating and (2) his civilian medical records.

The applicant's complete submission is at Exhibit G.

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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical retirement. Based on the submitted documentation, it appears that the discharge processing as well as the narrative reason for separation were appropriate and accomplished in accordance with Air Force and DoD policy. This case expands a great deal of time from the reported two incidents of a back injury in 1987 to the DVA's medical opinion of a direct nexus to the same in 2018. Although the 2018 Compensation and Pension (C&P) evaluation noted an original injury of slipping on ice and experiencing a strain while playing basketball, there was no medical evidence that stemmed from the late 1980's thru 20 plus years later. Additionally, there was inconsistency in reporting a progressive aggravation of back pain since 1987, as compared to his commissioning physical examination (PE) in 1991 whereby he denied ever having recurrent back pain. Not having any details of his reported slippage on ice, the medical advisor can only accurately explain the reported back strain from playing basketball. A strain does not pertain to any bony structure of the spinal vertebra, whereas degenerative changes or arthritis is a condition that does involve the bony structure of the spine. A strain is a condition of the nearby muscles which typically heal with time, many within a few days, and most within three to four weeks. There exist no argument that the applicant underwent two low back surgeries within the timeframe between 2002 and 2007; however, despite a medical opinion from the DVA correlating two events nearly 30 years apart, the medical advisor opines such a claim is significantly lacking in medical merit. The minimal medical merit, coupled with the unavailability of medical records ever recording injuries reportedly sustained in 1987 and lastly with inconsistent historical reporting on his commissioning PE tends to highly support an unfavorable finding with regards to the applicant's request.

In a case such as this, it remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only 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 "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Jul 22 for comment (Exhibit I), but has received no response.

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 Board considered the additional evidence submitted by the applicant; however, it is not sufficient to overturn the previous Board's decision finding it lacked significant medical merit to conclude his back injuries rendered him unfit to serve or caused his career termination. As stated in his previous case, the military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only 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 "snapshot" time of separation and not based on post-service progression of disease or injury. 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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2019-04529-2 in Executive Session on 21 Sep 22:

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 F: Record of Proceedings, w/ Exhibits A-E, dated 15 Jul 20.
- Exhibit G: Application, DD Form 149, w/atchs, dated 29 Nov 21.
- Exhibit H: Advisory Opinion, AFBCMR Medical Advisor, dated 23 Jun 22.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Jul 22.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

5/18/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

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