



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-01614

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical discharge/retirement.

APPLICANT'S CONTENTIONS

He should have been medically discharged due to exposure to atomic radiation which caused his cancer. In 1967, he was discharged from the service due to Acinic Cell Carcinoma which was caused by exposure to atomic radiation due to ground atomic testing that took place during his time in the service. He was a radar equipment repairman which exposed him to high power and high frequency radiation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-4).

On 30 Oct 67, the DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, provided by the applicant, reflects he was honorably discharged in the grade of airman first class (E-4) after serving four years of active duty. He was discharged, with a narrative reason for separation of "Expiration Term of Service."

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical discharge/retirement. In order to favorably grant his request, he would have to be referred to the Disability Evaluation System (DES) and be found greater than or equal to a 30 percent impairment rating for an unfitting condition. The key word for referral is an "unfitting" condition. In accordance with DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, Section 2, paragraph a (1), when the course of further recovery is relatively predictable or within 1 year of diagnosis, whichever is sooner, medical authorities will refer eligible Service members (SM) into the DES who have one or more medical conditions that may, individually or collectively, prevent

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the SM from reasonably performing the duties of their office, grade, rank, or rating. In other words, their condition has caused them to be unfit for continued military service. A diagnosis alone does not constitute or equate to a disability. AFI 36-3213, *Physical Evaluation for Retention, Retirement, and Separation*, Section 1.11 states the Air Force is only authorized to rate or apply [impairment] ratings to the condition which makes a SM unfit for continued military service and caused or contributed to the premature termination of the SM's military career. The evidence gathered in this particular case failed to show either an unfitting condition or that his treatable cancer was the cause or a contributing factor of a premature departure from service. His enlistment was for a four-year period and he apparently faithfully served four years. His DD Form 214 properly shows "Release from Active Duty" and "Expiration Term of Service" as reasons for separation. His career was not cut short due to a medical condition. This advisor, although having compassion for anyone with a cancer diagnosis (surgically curable or not), opines that the applicant was ineligible for DES referral and therefore, no possibility of a medical retirement.

The complete advisory opinion is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Mar 22 for comment (Exhibit C), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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 the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-01614 in Executive Session on 27 Apr 22:

-  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 12 Mar 20.
- Exhibit B: Advisory Opinion, AFBCMR Medical Advisor, dated 8 Mar 22.
- Exhibit C: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Mar 22.

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.

3/14/2023



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Board Operations Manager, AFBCMR
Signed by: USAF