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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-2020-03496-2

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to be evaluated by a Medical Evaluation Board (MEB) and given a medical retirement.

RESUME OF THE CASE

The applicant is a former Air National Guard (ANG) technical sergeant (E-6) who was honorably discharged on 18 Jan 06 with a narrative reason for separation of "Expiration Term of Service."

On 15 Sep 21, the Board considered and denied his request to be evaluated by a MEB and medically retired; finding the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted.

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 J.

On 8 Dec 21, the applicant requested reconsideration of his request for a MEB, granting him a medical retirement. He again contends he had medical conditions that occurred while in an active duty status and was put on a "P4" medical profile shortly before he was discharged. He should have been evaluated by a Physical Evaluation Board (PEB) due to his documented injuries. Because of his service-connected medical conditions, his active duty time, and the amount of retirement points accumulated, he should have been medically discharged with a full military retirement. The applicant did not submit any new evidence that was not previously seen by the Board in the original case.

The applicant's complete submission is at Exhibit K.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a new MEB and an unfit finding, with a medical retirement, and eligibility for back pay. The rationale for the denial will be explained in the discussion portion of this review and was fundamentally based upon the

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fact that a diagnosis does not automatically warrant an unfit finding and must be shown to interfere with the service member's ability to [reasonably and safely] perform the duties of his or her office, grade, rank, or rating. The applicant's performance history, resolution of the Supraventricular Tachycardia (SVT), his expressed desire for retention, and the commander's recommendation for retention, all supported retention and a return to duty with a waiver for the diagnosis of SVT. Secondly, if found unfit for any other medical conditions identified during the applicant's time of service, either singularly or in combination, the rating(s) must meet a minimum 30 percent disability rating to qualify for retirement. Based upon the disability ratings assigned by the Department of Veterans Affairs (DVA), which were based upon the evidence present at the time of discharge, the Medical Advisor determined that the applicant's disability rating, either singularly or in combination, would have fallen short of the minimum 30 percent rating necessary for medical retirement and immediate eligibility for retired pay.

However, should the Board determine the applicant should have been found unfit, for either of the conditions clearly identified during his military service [GERD, SVT, tinnitus, hearing loss, back pain], the Medical Advisor finds it advantageous to the applicant to retire him under Title 10, U.S.C., Section 12731b, for medically disqualified individuals, whose medical condition does not meet the minimum 30 percent disability rating, or were not in the line of duty (ILOD), who have completed at least 15, but less than 20 Satisfactory years of service; with pay upon reaching the age of 60.

In order to justify a medical separation or retirement, first there must be sufficient evidence to indicate the service member was unable to reasonably perform the duties of his or her office grade, rank, or rating, due to one or more medical conditions. Additional criteria considered in determining unfitness, per DoDI 1332.38, *Physical Disability Evaluation*, and DoDI 1332.18, *Disability Evaluation System*, include whether the condition poses a decided medical risk to the health of the member or the welfare and safety of others, and whether the disability imposes unreasonable requirements on the military to maintain or to protect the member. Again, one may consider, in 20/20 hindsight, the applicant's cardiac arrhythmia may have posed a potential health risk, noting the frequency of recurrences; albeit finally being brought under control prior to the applicant's time of discharge, and initially rated at 0 percent, yet worsened years after discharge. Additionally, for the Air Reserve Component member, the medical condition(s) must be found ILOD. Furthermore, if found unfit for any one or more of the medical conditions identified in the service treatment record, the disability rating for a singular condition or a combination, must reach the minimum 30 percent disability rating to meet retirement eligibility. Other than the applicant's "P4T" profile restrictions imposed for his SVT, and for which he received a 0 percent disability rating for an extended period following discharge, there were no other such restrictive profiles prohibiting worldwide qualification for any of the applicant's other claimed medical conditions. Arguably, the applicant's SVT, which likely occurred while in a duty status, was considered ILOD, given his "full time" status at the time of occurrence; and would require clear and unmistakable evidence to refute.

The applicant's gastroesophageal reflux disease was resolved following a Nissen fundoplication procedure. Post-operatively, the condition did not interfere with the applicant's ability to perform the duties of his office, grade, rank, or rating. The DVA initially denied service-connection, but ultimately reversed its decision and assigned a 0 percent disability rating.

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The applicant's bilateral hearing loss should be considered ILOD, given the medical opinion of the ear, nose, and throat (ENT) specialist who noted the comparative occupation-related threshold shift in hearing over the course of his Air Force career. However, this condition would also not have been considered unfitting, based upon normal speech discrimination. After initially denying service-connection, the DVA also assigned a 0 percent disability rating for bilateral hearing loss. The Medical Advisor noted the applicant received a 10 percent rating for tinnitus; however, there is no evidence that the condition warranted career termination; notwithstanding the co-morbid bilateral sensorineural hearing loss. Thus, even with consideration of the combined effect of the two, the Medical Advisor opines neither condition, individually or collectively, would warrant an unfit finding, augmentation of the disability rating, or termination of military service.

While the applicant's low back pain is proposed to have been caused by the wear and carry of heavy gear utilized by Security Force members, its occurrence intermittently over a period of five to six years, and the applicant's intermittent periods in a duty status, does not offer clarity of when the condition first occurred, what duty status he was in at the time of initial and subsequent occurrences, and whether this has resulted in a permanent or chronic disability. The Medical Advisor concedes a LOD determination and investigation would have been appropriate. However, while the applicant's recurrent low back pain could have been potentially ruled disqualifying for continued service, the Medical Advisor opines, even if found ILOD, the objective examination findings would not warrant a disability rating greater than 10 percent, under either the General Rating Formula for Diseases and Injuries of the Spine, which relies largely upon spine range of motion, or formula for rating Intervertebral Disc Syndrome, based on incapacitating episodes; with the caveat that an incapacitating episode is defined as a "period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician." Specifically, noting no service evidence that the applicant was ever ordered to bed rest by a physician due to low back pain, the "excellent" [90 degrees] thoracolumbar spine measurement, normal neuromuscular function, and negative magnetic resonance imaging (MRI) findings, the Medical Advisor opines the applicant's low back condition would not support a rating of greater than 10 percent.

The Medical Advisor noted that the applicant has been assigned a service-connection for Anxiety Disorder, with progressively increased disability ratings assigned over time. However, although post-service disclosures and examinations have established a nexus with the applicant's military service, the service evidence fails to disclose a mental health entity, albeit currently characterized as a disorder that presented as interfering with the applicant's ability to perform the duties of his office, grade, rank or rating or required restrictions to duty or mobility.

The Medical Advisor also acknowledged the self-reported emergence [2008] of symptoms indicative of Irritable Bowel Syndrome (IBS), and the anxiety provoked by its unpredictable occurrence and necessity for proximity to restroom facilities. Again, the Medical Advisor found no objective service evidence of a chief complaint suggestive of IBS, sufficient to trigger a LOD determination, imposition of duty or mobility restrictions, or an unfit finding by a PEB.

Addressing alleged error(s) #1, the "underlying basis of the denial of an MEB is and was procedurally defective" that the applicant "was denied a MEB," with "consideration of his "P4"

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Profile,” and the alleged failure to “properly discharge him or evaluate his fitness under PEB,” the record indicates that the applicant was neither denied an MEB nor a PEB action; nor its equivalent, Fitness for Duty Evaluation (FFDE). The Medical Advisor opines the evidence indicates, to the contrary, the applicant was not denied an MEB. The Medical Advisor could not corroborate that it was “procedurally defective,” noting that the “P4T” profile was changed to “P1” status, based upon resolution of the condition SVT in 2005. While one may opine the applicant could/should have been found unfit for his SVT, noting its ultimate worsening years later, albeit also rated a 0 percent for an intervening extended post-service period, retention with a waiver was within the authority of the Reserve Component/SG; which was based upon available supporting evidence and the applicant’s response to treatment.

Addressing alleged error #2, “failure to find him unfit at the time required an investigation and was unfair at the time,” again, the Medical Advisor collectively considered the resolution of the applicant’s SVT, the recommendation of the cardiologist after a second ablation procedure, the commander’s recommendation for retention, and the applicant’s expressed desire to continue to serve, in finding the evidence supports the decision of NGB/SG to retain the applicant; notwithstanding the applicant’s election to voluntarily separate.

Addressing error #3, the “MEB would have allowed him to finish his time in service with twenty years of active service and required retirement,” given the applicant was in fact returned to duty with a waiver, the Medical Advisor agrees he might have been allowed to finish his time in service, with an annual Review In Lieu of MEB, reaching twenty years of service; but not for his election to cut his career short by not exercising his option to re-enlist. The applicant had the support of his commander and cardiologist for retention. The Medical Advisor acknowledges the applicant has receiving increasing levels of compensation by the DVA; however, we are reminded that the Military Department bases its fitness and rating decisions on the evidence present at the “snapshot” time of final military disposition, and not based on post-service progression or recurrence of disease or injury. While the applicant contends that he experienced several medical conditions during his military service, as proven by the compensation he received from the DVA, the preponderance of objective service medical evidence indicates that it was the applicant’s SVT, that primarily interfered with his ability to safely perform the duties of his office, grade, rank, or rating and which warranted initiation of a “P4T” profile. Indeed, an AF Form 618, *Medical Board Report coversheet*, dated 3 Oct 03, indicates that the applicant underwent, or was scheduled to undergo, an MEB for the conditions listed as: (1) Symptomatic Supraventricular Tachycardia (2) Radio-frequency ablation of accessory tract, and (3) Gastroesophageal reflux disease (GERD), controlled; which resulted in return to duty for “continued care and observation.” Among other medical conditions claimed, denied, or later granted service-connection by the DVA, to include Anxiety Disorder, Irritable Bowel Syndrome (IBS), Inguinal Hernia, Obstructive Sleep Apnea, there is no service evidence that either condition interfered with the applicant’s ability to perform the duties of his office, grade, rank, or rating. Similarly, although there are post-service claims for service-connection for Post-Traumatic Stress Disorder (PTSD), based upon the applicant deployment history, there is no service evidence that this condition, albeit with a claimed nexus with military experiences, was identifiable as a condition that interfered with the applicant’s ability to perform the duties of his office, grade, rank, or rating, required duty or mobility restrictions, or warranted a basis for career termination.

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The applicant and counsel are respectfully advised that the Military Department Disability Evaluation System, operating under Title 10, U.S.C., is established to maintain a fit and vital fighting force; and to remove from military service individuals who can no longer reasonably perform the duties of his or her office, grade, rank, or rating. Moreover, the assessment of the presence or severity of a given medical condition is based upon the evidence presence at the “snapshot” time of military final disposition; and not based upon progression of disease or injury over the lifetime of the veteran. On the other hand, operating under Title 38 U.S.C., a different set of laws with a different purpose, the DVA assigns compensation for any medical condition determined service-incurred, without regard to its proven or demonstrated impact upon a former service member’s retainability or fitness to serve. This is the reason why an individual can be discharged for one reason, but receive compensation ratings from the DVA for medical conditions considered service-incurred, but were not proven militarily unfitting at the time service. The DVA is also empowered to adjust [increase or decrease] disability ratings, as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran; as observed in the applicant’s rating for Anxiety Disorder and the ultimate increased rating of 30 percent for SVT, awarded on 29 Mar 21.

The complete advisory opinion is at Exhibit L.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 31 Aug 22 for comment (Exhibit M), 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. Specifically, the Board does not find any of the applicant’s medical conditions at the time of his discharge unfitting. He was returned to duty with a waiver; however, he elected to voluntarily separate. Furthermore, the Board finds no error or injustice occurred at the time of disability processing nor did they find his fitness determination and return to duty with a waiver, board decision unjust. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant’s military duties were not severely degraded due to his medical conditions. The Board took note of the applicant’s disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 to which the DVA can offer compensation. Therefore, the Board recommends against correcting the applicant's records.


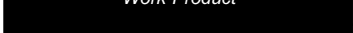

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2020-03496-2 in Executive Session on 26 Oct 22:

 <i>Work-Product</i>	Panel Chair
 <i>Work-Product</i>	Panel Member
 <i>Work-Product</i>	Panel Member

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

- Exhibit J: Record of Proceedings, w/ Exhibits A-I, dated 15 Sep 21.
- Exhibit K: Application, DD Form 149, w/atchs, dated 8 Dec 21.
- Exhibit L: Advisory Opinion, AFBCMR Medical Advisor, dated 30 Aug 22.
- Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Aug 22.

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.

5/23/2023
 <i>Work-Product</i>
Board Operations Manager, AFBCMR Signed by: USAF