

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-01183

XXXXXXXXXX

COUNSEL: XXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His records be changed to show he received a permanent medical retirement with at least a 30 percent disability.

He receive all back pay dating back to the appropriate effective date of his medical retirement.

He receive any other relief that is equitable and just.

APPLICANT'S CONTENTIONS

He was placed on the Temporary Disability Retired List (TDRL) in 2016 with 100 percent disability ratings from the service and the Department of Veteran's Affairs (DVA). He was discharged with severance pay (DWSP) after a determination that he was unfit for military duty due to Crohn's disease and Right hip Arthroscopies (with labral repair and decompression of femoral acetabular impingement with chronic pain) and assigned a rating of 20 percent for these disabilities. His Crohn's disease has worsened and based on the medical evidence both at the time of his discharge and at present, he should have been medically retired with a DVA rating of at least 30 percent. His condition now interferes with his ability to work and he frequently misses work due to the severity of the symptoms and the need to attend his related medical appointments.

In support of his application, he submits letters from his medical providers.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically discharged Air Force staff sergeant (E-5).

AF IMT 618, *Medical Board Report*, dated 15 Mar 16 indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) with a diagnosis of Crohn's Disease.

AF Form 356, *Informal PEB Findings*" dated 14 Apr 16 indicates the IPEB found the applicant's medical condition, Crohn's Disease, prevented him from reasonably performing the duties of his

office, grade, rank or rating. The IPEB recommended temporary retirement with a disability rating of 100 percent IAW the Veterans Affairs Schedule for Rating Disabilities (VASRD) guidelines.

AF Form 1180, *Actions on PEB Findings*, dated 18 Apr 16 indicates the applicant agreed with the IPEB findings and did not request a one-time reconsideration of the disability rating for the conditions found unfitting by the IPEB.

Special Order **Work-Product**, dated 27 Apr 16 indicates the applicant was discharged from the Air Force and placed on the TDRL effective 29 Aug 16 with compensable percentage for physical disability of 100 percent. He was credited with 6 years, 6 months and 20 days of active service for retirement.

AF Form 356, dated 30 Jan 18 indicates the IPEB re-assessed the applicant's condition, Crohn's Disease, and determined the condition had improved and stabilized. The IPEB found the applicant remained unfit for military service and recommended DWSP with a disability rating of 20 percent IAW the VASRD.

Applicant response to the IPEB findings, dated 14 Feb 18 indicates the applicant did not concur with the IPEB recommendation, waived a formal hearing and submitted a written rebuttal to the Secretary of the Air Force (SECAF).

On 25 Oct 18, the SECAF concurred with the determination of the IPEB and directed the applicant be removed from the TDRL under the provisions of Title 10, United States Code (USC), Section 1210, and be DWSP with a disability rating of 20 percent under the provisions of Title 10, USC, Section 1203. This disability rating was determined based on the VASRD in accordance with the National Defense Authorization Act of 2008.

Special Order **Work-Product**, dated 6 Nov 18 indicates the applicant was discharged from the Air Force effective 26 Nov 18 for physical disability with entitlement to DWSP. He was credited with 6 years, 6 months and 20 days of active time.

For more information, see the excerpt of the applicant's record at Exhibit B

AIR FORCE EVALUATION

SAFPC recommends denying the application. The military's Disability Evaluation System (DES) can 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 in time" of separation and not based on post-service progression of the disease or injury. This differs from DVA disability whereby based upon periodic re-evaluations, the DVA can adjust disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. In this case, the TDRL re-examination is the "snapshot in time" basis for the final rating based on VASRD criteria. The Crohn's disease (CD) impairment rating difference between 10 percent and 30 percent is that of moderate vs.

moderately severe symptoms and infrequent vs. frequent exacerbation of symptoms. Although this advisor does concede that there may be some degree of subjectiveness between the 10 percent and 30 percent ratings, but the medical evidence found in the TDRL re-examination of “intermittent” low-level abdominal pain, “improvement of symptoms”, and a denial of prior aggravating symptoms does not support the 30 percent criteria of frequent and moderately severe symptoms. Therefore, the PEB’s rating of 10 percent for the CD was appropriate. The advisor opines there is insufficient evidence to support the applicant’s contentions and his request.

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 6 Jan 21 for comment (Exhibit D), and the applicant replied on 26 Jan 21. In his response, the applicant again contends his condition meets the definition of moderately severe symptoms with frequent exacerbations. He has provided additional medical evidence to support his claim. The applicant’s complete response is at Exhibit E.

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 concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of SAFPC and finds a preponderance of the evidence does not substantiate the applicant’s contentions. 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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-01183 in Executive Session on 15 Jan 21 and 2 Mar 21:

, 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 19 Mar 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, SAFPC, dated 4 Nov 20.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 6 Jan 21.
- Exhibit E: Applicant's response, dated 26 Jan 21.

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.