



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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-00359

Work-Product

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His discharge with severance pay (DWSP) be changed to a medical retirement.

**APPLICANT'S CONTENTIONS**

He was given a disability rating of 10 percent for lower back pain. However, as of 10 Jul 20, his disability rating was increased to 40 percent, which should change his DWSP to a medical retirement.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

According to the AF IMT 618, *Medical Board Report*, dated 19 Dec 16, the applicant was referred to the Informal Physical Evaluation Board (IPEB) with a diagnosis of Low Back Pain (LBP).

Per the AF Form 356, *Informal Findings and Recommended Disposition of USAF PEB*, dated 10 Mar 17, the IPEB found the applicant's medical condition, LBP, Department of Veterans Affairs (DVA) rated as Lumbar Spine Degenerative Arthritis, was not compatible with the long-term rigors of military service and it prevented him from reasonably performing the duties of his office, grade, rank or rating. The IPEB recommended DWSP with a rating of 0 percent in accordance with the Veterans Affairs Schedule for Rating Disabilities (VASRD).

On 16 Mar 17, according to AF Form 1180, *Actions on PEB Findings and Recommended Disposition*, the applicant disagreed with the IPEB findings and requested a Formal PEB (FPEB) hearing of his case.

On 10 Jul 17, the applicant, after consulting with counsel, waived his FPEB hearing and requested a one-time DVA reconsideration of the disability rating for the LBP.

The DVA Decision Review Officer Reconsideration dated 22 Aug 17, reflects the DVA proposed to increase the evaluation of Lumbar Spine Degenerative Arthritis (claimed as low back pain, lumbar arthritis) to 10 percent disabling based on localized tenderness not resulting in abnormal gait or abnormal spinal contour. The applicant's combined range of motion of the thoracolumbar spine and forward flexion of the thoracolumbar spine were within normal range. Painful motion upon examination was noted. Based on the medical evidence, the DVA found a higher evaluation

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of 20 percent was not warranted. It was noted the applicant stated at his medical board other veterans advised him to exaggerate to be taken seriously. In the course of seeking reconsideration, he reported to his primary care physician that he sought multiple range of motion tests as suggested by his counsel to increase his disability claim. No weight was given to the additional range of motion results provided as they were found less credible than the previous examinations provided.

On 28 Aug 17, according to AF Form 356, the IPEB found the applicant's medical condition, LBP-DVA rated as Lumbar Spine Degenerative Arthritis, was not compatible with the long-term rigors of military service and it prevented him from reasonably performing the duties of his office, grade, rank or rating. The IPEB recommended DWSP with a disability rating of 10 percent IAW the VASRD guidelines and the DVA Decision Review Officer Reconsideration dated 22 Aug 17.

On 28 Dec 17, the applicant was honorably DWSP, with a narrative reason for separation of "Disability, Severance Pay, Non-Combat (Enhanced)" with corresponding separation code of "JEB" and Reentry code "2Q" for "Personnel medically retired or discharged." He was credited with 4 years, 2 months and 21 days of active duty service.

The applicant provided a DVA letter dated 10 Jul 20 reflecting the DVA made a decision on his substantive appeal received on 18 Oct 19 (20 months after his DWSP). The applicant's rating for his Lumbar Spine Degenerative Arthritis (claimed as low back pain, lumbar arthritis) was increased from 10 percent disabling to 40 percent disabling and backdated to effective 29 Dec 17.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory opinion at Exhibit C.

#### **APPLICABLE AUTHORITY/GUIDANCE**

DoDM 1332.18, Volume 1, *Disability Evaluation System Manual: Processes*, paragraph 2.6u, Secretaries of the Military Departments will provide Integrated Disability Evaluation System (IDES) service members the opportunity and assistance to request reconsideration of proposed DVA disability ratings awarded for the unfitting condition before separation. Paragraph 2.6z, Secretaries of the Military Department will correct the records upon former service members' successful appeal of disability ratings received in the IDES. Service members may also appeal post-discharge to the DVA and their respective BCMRs.

#### **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. There is no indication an error or injustice occurred at the time the PEB processed his disability case. An updated DVA rating several years after separation from the Air Force does not warrant a change to the original PEB disposition.

On 16 Mar 17, he nonconcurred with the IPEB findings and requested a FPEB but subsequently waived the FPEB and requested a one-time DVA rating reconsideration on 27 Jul 17 as a last appeal effort through the IDES. The applicant requested the DVA upgrade his disability rating from 0 to 40 percent. On 22 Aug 17, the DVA upgraded his disability rating to 10 percent. The IPEB completed an updated AF Form 356 directing DWSP with a 10 percent disability rating and he was separated on 28 Dec 17.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force, 10 U.S.C., the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability

processing. That rating determines the final disposition and is not subject to change after the service member has separated. Under the DVA system, 38 U.S.C., the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA based on new and/or current examinations conducted after discharge from service does not warrant a change in the total compensable rating awarded at the time of the member's separation. Based on the documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time the PEB processed his disability case. An updated DVA rating several years after separation from the Air Force does not warrant change to the original PEB disposition.

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 30 Mar 21 for comment (Exhibit D) 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 concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of AFPC/DPFDD against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The Board notes DoDM 1332.18, Volume 1, paragraph 2.6u directs the Secretary of the Military Departments to provide IDES service members the opportunity and assistance to request reconsideration of proposed DVA disability ratings awarded for their unfitting condition before separation. Upon a former member's successful appeal of disability ratings received in the IDES, members may also appeal post-discharge to the DVA and their respective BCMRs. In this case, the applicant provided evidence the DVA corrected the rating of his back condition and backdated it to the day after his separation. Accordingly, the Board recommends the applicant's records be corrected to reflect a 40 percent rating for his unfitting Low Back Pain, DVA rated as Lumbar Spine Degenerative Arthritis (VASRD Code 5242), be backdated to the time of separation and he be awarded a permanent disability retirement in lieu of DWSP. Therefore, the Board recommends correcting the applicant's records as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. On 28 Aug 17, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Low Back Pain, DVA rated as Lumbar Spine Degenerative Arthritis, his condition was under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 5242; with a disability rating of 40 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

- b. On 28 Dec 17, he was discharged from active duty and on 29 Dec 17, he was permanently medically retired under 10 U.S.C. §1201, with a compensable percentage for physical disability of 40 percent.

**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-2021-00359 in Executive Session on 18 Aug 21, 25 Oct 23 and 16 Oct 24:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Dec 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, dated 29 Mar 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Mar 21.

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.

11/6/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF