
RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00903

XXXXXXXXXX (DEC)
(MEMBER)

COUNSEL: XXXXXXXXXXX

XXXXXXXXXXXX
(APPLICANT)

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her deceased husbands retirement date be changed to 1 Feb 71.

APPLICANT'S CONTENTIONS

Her deceased husbands was retired on 31 Dec 70, which was over a month before his requested date of 1 Feb 71. Due to this, he was denied hostile fire pay for the month of January 1971.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The deceased service member is a retired Air Force technical sergeant (E-6).

On 8 Jun 70, AF Form 1160, *Application for Voluntary Retirement*, indicates the deceased service member applied for and was approved for voluntary retirement, effective 1 Feb 71.

On 25 Nov 70, AF Form 618, *Medical Board Report*, indicates the deceased service member was referred to the Physical Evaluation Board (PEB) for a history of gastric ulcer.

On 3 Dec 70, AF Form 1185, *Statement of Record Data*, indicates the deceased service member requested a 1 Feb 71 retirement date.

On 9 Dec 70, AF Form 356, *Proceedings and Findings of the USAF Physical Evaluation Board*, indicates the deceased service member was found unfit due to his medical condition of duodenal ulcer disease manifested by remote and recent gastric ulcer with a disability compensation rating of 20 percent with a recommendation of "Permanent Retirement."

On 15 Dec 70, AF Form 1180, *Recommended Findings of Physical Evaluation Board*, indicates the deceased service member concurred with the recommended finding.

On 16 Dec 70, the Assistant Executive Secretary of the Air Force approved the recommendation of the Physical Review Counsel with an effective date of retirement for the deceased service

member of 1 Jan 71. The retirement order XXXXX was published with an effective date of retirement of 1 Jan 71.

On 21 Dec 70, correspondence was sent to the XXXXX USAF Medical Center to request a 1 Feb 71, change to the deceased service member's retirement date as he was entitled to hostile fire pay. The correspondence indicates the deceased service member states he has 54.5 days of accrued leave and that the 1 Jan 71 retirement date will cause severe hardship for himself and his family.

On 23 Dec 70, correspondence from the XXXXX USAF Medical Center indicates since the retirement date for the deceased service member was established by HQ USAF, he must submit a complete justification to the commander of the XXXXX USAF Medical Center for an extension of his retirement date.

On 31 Dec 70, DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, reflects the deceased service member was honorably discharged in the grade of technical sergeant (E-6) after serving 20 years, 1 month, and 9 days of active duty. He was discharged, with a narrative reason for separation of "Permanently Retired by Reason of Physical Disability."

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. On 8 Jun 70, the deceased service member applied for and was approved for voluntary retirement, effective 1 Feb 71. On 30 Sep 70, it was identified that he had a previous medical condition that required immediate treatment so he was air evacuated to the continental United States for treatment and retirement purposes. On 25 Nov 70, a Medical Evaluation Board (MEB) was conducted which found the member possibly unfit for continued service for gastric ulcer. On 9 Dec 70, the Informal PEB found him unfit for duodenal ulcer disease manifested by remote and recent gastric ulcer, confirmed by x-ray and recommended permanent disability retirement with a 20 percent compensable rating. On 15 Dec 70, he agreed with the PEB findings. On 3 Dec 70, he completed an AF Form 1185 requesting a 1 Feb 71 retirement date, however, on 16 Dec 70 the Secretary of the Air Force Personnel Council directed the deceased service member to be permanently disability retired, effective 1 Jan 71 with 20 years, 1 month, and 9 days of service. On 12 Dec 70, the Consolidated Base Personnel Office, at XXXXXX submitted a retirement date change request to the XXXXX USAF Medical Center on the deceased service member's behalf. On 23 Dec 70, the Medical Center responded with the following instructions, "Since the retirement date has been established by HQ USAF, the individual must submit complete justification to the commander, XXXXX USAF Medical Center, XXXXXX for extension of retirement date. Upon receipt of justification, recommendation concerning extension will be furnished by USAFMPC/DPMARA2A (USAF Military Personnel Center)." There is no further correspondence in the deceased service member's personnel records to indicate he submitted the requested information for the commander's consideration or that it was submitted to the USAFMPC for final approval.

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 20 Oct 21 for comment (Exhibit D), 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 deceased service member is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Since the deceased service member's retirement date of 1 Jan 71 was established by HQ USAF, he needed to submit complete justification and there is no indication he submitted the required paperwork to the XXXXX USAF Medical Center to change his retirement date to 1 Feb 71. 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 deceased service member'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-2021-00903 in Executive Session on 26 Jan 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 24 Mar 21.

- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 19 Oct 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Oct 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.

X

Board Operations Manager, AFBCMR