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

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### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00918-2

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COUNSEL: NONE

HEARING REQUESTED: NO

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### APPLICANT'S REQUEST

The Board reconsider his request to find his medical condition of idiopathic dilated cardiomyopathy in line of duty (ILOD) to qualify him for a medical retirement.

### RESUME OF THE CASE

The applicant is a former Air Force Reserve (AFR) technical sergeant (E-6) who was found unfit for continued military duty; however, his medical condition of nonischemic cardiomyopathy was found not in line of duty (NILOD).

On 15 and 21 Sep 21, the Board considered and denied his request to have his heart condition found ILOD; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The advisory opinion from the Secretary of the Air Force Personnel Counsel's (SAFPC) office found the applicant's condition existed prior to service (EPTS) with no evidence of service aggravation beyond the natural progression due to his military duty. He already had significant cardiac disease before coming on orders in Jan 17 with a family history of cardiovascular disease and the Department of Veterans Affairs (DVA) rating his condition as service-connected does not equate to an ILOD determination as both the DVA and the DoD under the Disability Evaluation System (DES) operate under different laws.

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 F.

On 1 Mar 23, the applicant requested reconsideration of his request for his medical condition to be found ILOD and be given a medical retirement. He contends he is entitled to disability retirement benefits due to his EPTS medical condition because he served in the military for more than eight years in an active-duty status under 10 U.S.C. Section 1207(a). He did not understand at the time he was going through the PEB his condition was caused by gene abnormality that EPTS.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) his DVA Medical Records; (2) Diagnostic Test Results from Invitae; and (3) his DVA Health Summary.

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POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

The applicant's complete submission is at Exhibit G.

## AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support a finding his unfitting heart condition should be deemed as having been incurred ILOD and should therefore be submitted for processing under the DES in consideration of a possible medical retirement.

In his current reconsideration request, the applicant appears to concur with the determination of the prior decisions, his unfitting heart condition existed prior to military service and was not permanently aggravated. In fact, he provided genetic testing results establishing a potential link between a "likely pathogenic variant" of a particular gene and his dilated cardiomyopathy, thereby supporting the EPTS conclusion. However, he now proposes his condition should nonetheless be found ILOD by virtue of 10 U.S.C. Section 1207 (a), since he served more than eight years of active duty. Regarding the new testing results provided by the applicant allegedly establishing a genetic etiology of his unfitting heart disease, it is worth emphasizing, dilated cardiomyopathy may be linked to the autosomal dominant form of the pathogenic Titin gene (TTN) variant that he appears to possess, not to being a carrier for the autosomal recessive TTN-related conditions. However, this point is largely moot, since all the previous PEBs had already accepted the EPTS categorization of the applicant's heart problem.

The crux of the applicant's current argument lies with his contention his unfitting condition should undergo line of duty determination and possible DES processing in accordance with the provisions of the eight-year rule, per 10 U.S.C. Section 1207a. However, per AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 1.13, for members with over eight years of active service, in order to be eligible for disability retirement for pre-existing conditions under Title 10 U.S.C. Section 1207a, an illness, injury or disease that is EPTS must be deemed to have occurred in a duty status for the purpose of determining disability separation or retirement by a PEB if the member has at least eight years of total active service at the anticipated time of separation; was on Title 10, U.S.C. active duty orders, or Title 32 orders, specifying a period of greater than 30 days at the time the condition became unfitting; and was not released from active duty within 30 days commencing the period of active duty under Title 10 U.S.C. Section 1206a, *Reserve Component Members Unable to Perform Duties when Ordered to Active Duty: Disability System Processing*, due to an EPTS condition not aggravated during the period of active duty. While the eight-year rule is not an LOD determination, LOD referring authorities are responsible for identifying and referring to the DES those EPTS cases to which the eight-year rule might apply.

Since the applicant was not on Title 10, U.S.C. active-duty orders, or Title 32 orders, specifying a period of greater than 30 days at the time the condition became unfitting, the eight-year rule is not relevant to this case, irrespective of whether his dilated cardiomyopathy may or may not have existed prior to military service, and the conclusions reached by the preceding boards remain valid.

The complete advisory opinion is at Exhibit H.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Apr 24 for comment (Exhibit I), and on 15 Jun 24 the applicant responded. In his response, the applicant contends his medical condition was service aggravated beyond the natural progression of the disease and therefore, he should have been found unfit and medically retired. He submitted further evidence to include a letter from his DVA doctor and two medical articles regarding his condition.

The applicant's complete submission is at Exhibit J.

## 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. The applicant's medical condition of idiopathic dilated cardiomyopathy which EPTS must be deemed to have occurred in a duty status for a period of greater than 30 days for the purpose of determining disability separation or retirement by a PEB under the eight-year rule; however the Board finds no evidence the applicant was in a duty status for a period of greater than 30 days at the time the condition became unfitting. Additionally, the Board finds no evidence his EPTS condition was service aggravated while he was in a duty status beyond the natural progression of the disease. As previously stated, he had significant cardiac disease before he was on active-duty orders with a family history of cardiovascular disease. Therefore, the Board recommends against correcting the applicant's records.

## 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 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-2021-00918-2 in Executive Session on 23 May 24, 30 May 24, and 25 Jun 24:

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Panel Chair

, Panel Member

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Panel Member

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

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 15 and 21 Sep 21.
- Exhibit G: Application, DD Form 149, w/atchs, dated 1 Mar 23.
- Exhibit H: Advisory Opinion, AFBCMR Medical Advisor, dated 25 Apr 24.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Apr 24.
- Exhibit J: Applicant's Response, w/atchs, dated 15 Jun 24.

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.

7/24/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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