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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01354

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His unfitting condition of post concussive headaches status post closed head injury be changed to traumatic brain injury (TBI).
2. His disability discharge with severance pay be changed to a medical retirement.

APPLICANT'S CONTENTIONS

People with post concussive syndrome are expected to recover within 3-6 months from incident. There was more than 6 months from the time of his accident and the day of his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a disability discharged Air Force airman first class (E-3)

On 20 Sep 01, a Medical Evaluation Board (MEB) convened for the applicant's refractory post concussive syndrome with Axis I: major depressive disorder, Axis II: personality disorder, Axis III: history of headache, Axis IV: severe occupational/family problems and Axis V: GAF currently 75. The board recommended the applicant's case be referred to an Informal Physical Evaluation Board (IPEB).

On 26 Nov 01, the IPEB found the applicant's major depressive disorder, definite social and industrial adaptability impairment and post concussive headaches status post closed head injury both unfitting, each with a 10 percent disability rating for a combined 20 percent compensable disability rating and recommended discharge with severance pay (DWSP). The IPEB also found the applicant's back pain associated with existed prior to service (EPTS) scoliosis as Category II – Conditions That Can Be Unfitting But Are Not Currently Unfitting, and his personality disorder Category III – Conditions that are not separately unfitting and not compensable or ratable.

On 28 Nov 01, the applicant concurred with the IPEB findings and recommended disposition, waived his right to a formal hearing of his case, and did not request a one-time rating reconsideration of the disability ratings.

On 18 Jan 02, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*,

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

the applicant was honorably discharged with narrative reason for separation of, "Disability, Severance Pay." He was credited with 3 years, 10 months and 15 days of active service.

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. 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 IPEB processed his disability case. Re-diagnosis of medical conditions and changes to disability ratings by the Department of Veterans Affairs (DVA) after separation do not warrant change to the original Disability Evaluation System (DES) results.

On 26 Nov 01, the IPEB found the applicant was unfit for major depressive disorder, definite social and industrial adaptability impairment with a 10 percent disability rating and post concussive headaches status post closed head injury with a 10 percent disability rating for a combined 20 percent compensable disability rating and recommended DWSP under the Legacy Disability Evaluation System (LDES). He was subsequently DWSP effective 18 Jan 02. Under the LDES, the PEB and DVA performed independent assessments of service member's medical condition(s) and could assign different ratings based on information available at the time. The PEB utilized the medical Narrative Summary (NARSUM) prepared by the local military medical treatment facility during the MEB process and information contained in the service medical treatment records to assign the applicant a rating for post concussive headaches status post closed head injury in accordance with the Veteran Affairs Schedule for Rating Disabilities (VASRD).

Under the LDES the DVA performed independent evaluations after the applicant's separation and initially service-connected post concussive headaches on 4 Apr 03, but awarded a zero percent disability rating. It is noted the applicant filed multiple supplemental DVA claims throughout the years and the service-connection for post concussive headaches was eventually re-diagnosed as chronic headaches with dizziness, residuals of TBI on 3 Sep 13 (over 11.5 years after separation) and awarded a 30 percent disability rating retroactive to 22 Aug 11. This rating decision also noted "Since there is a possibility of improvement, the assigned evaluation is not considered permanent and is subject to a future review examination in approximately five years." DVA records show this condition was later re-diagnosed and combined with major depressive disorder with major neurocognitive disorder, unspecified to include TBI with a 100 percent disability rating effective 16 Sep 19. The most recent DVA rating decision dated 17 Jun 21, shows this mental health condition was re-diagnosed again and changed to schizoaffective disorder, depressive type with unspecified neurocognitive disorder rated at 100 percent. To avoid "pyramiding" pursuant to 38 CFR 4.14., the conditions for migraines and TBI were broken out as separate conditions and rated at 10 percent each effective 17 Dec 20.

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 3 Feb 22 for comment (Exhibit D), but has received no response.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 in part. Specifically, the Board finds the IPEB was in error by deducting 20 percent from the applicant's 30 percent disability rating for his MDD. In accordance with the VASRD guidelines, there are no deductions for mental health conditions. Therefore, the 30 percent assigned for MDD, combined with the 20 percent assigned for post concussive headaches status post closed head injury would equate to a 40 percent disability rating (37 percent rounded up) which would qualify the applicant for medical retirement. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Specifically, the applicant's diagnosis by the IPEB of post concussive headaches status post closed head injury was appropriate and the re-diagnosis of this medical condition by the DVA after separation does not warrant changing the original diagnosis. 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 the APPLICANT be corrected to show

a. On 26 Nov 01, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, the diagnosis in his case was major depressive disorder, with a disability rating of 30 percent under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 9434 and post concussive headaches status post closed head injury, with a disability rating of 10 percent under VASRD code 8045; with a combined disability rating of 40 percent, which previously comprised an errant disability rating deduction of 20 percent, due to an unsuitable Personality Disorder, from the 30 percent rating originally assigned for the Depressive Disorder; the disability incurred while he was entitled to receive basic pay; was received in the line of duty; was not due to intentional misconduct or willful neglect; was not a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 18 Jan 02, he was discharged from active duty by reason of physical disability with a 40 percent compensable disability rating, and permanently retired effective 19 Jan 02.

c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2021-01354 in Executive Session on 21 Mar 22:

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, Panel Chair
Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 20 Dec 20.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 20 Jan 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Feb 22.

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.

2/28/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

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