



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01884-2

COUNSEL: NONE

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request to correct the deceased service member's record. She now asks the record to be corrected to reflect a medical retirement and initiation of Reserve Component Survivor Benefits Plan (RCSBP) option C beginning 4 Oct 19.

RESUME OF THE CASE

The applicant is the widow of a deceased Air National Guard (ANG) master sergeant (E-7).

On 2 Dec 21, the Board considered and denied her request to correct the deceased service member's record to reflect 20 years of satisfactory service toward retirement; finding the applicant provided insufficient evidence of an error or injustice to justify relief. The Board concurred with the rationale and recommendation of ARPC/DPTT and found a preponderance of the evidence did not substantiate the applicant's contentions. DoDI 1215.07, *Service Credit for Non-Regular Retirement*, requires service members to earn at least 50 points as well as complete a full retention/retirement (R/R) year to earn a satisfactory year of service. The deceased service member completed 56 points during the R/R year in question; however, he only received a partial year of creditable service, totaling 5 months and 25 days because he did not complete his full R/R year.

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 G.

On 24 Feb 21, ARPC sent a response to the applicant's congressional inquiry stating the applicant is not eligible for RCSBP benefits because her deceased husband was unable to complete the full year for retirement credit. If he had, he would have been afforded the opportunity to make an RCSBP election in accordance with Title 10 U.S.C 1448 (a) (B) (2) (B). The only way the applicant can get her late husband's records looked at and potentially gain eligibility for Reserve retirement consideration and the benefits that go along with the retirement would be to request a decision by the Air Force Board for Correction of Military Records (AFBCMR).

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Controlled by: SAF/MRB
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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

The complete submission is at Exhibit H.

On 30 Jun 22, the applicant requested reconsideration of her request to correct her deceased husband's records to qualify for a medical retirement. She contends she should be receiving retirement benefits as an initiation of RCSBP option C should have begun upon his death. She contends her deceased husband was separated from the ANG upon his death on 4 Oct 19, which was caused by an unfit medical condition that should have been referred to a Medical Evaluation Board (MEB). Failure to place him in the Disability Evaluation System (DES) prevented his medical retirement in lieu of a fitness determination upon his death due to the unfit medical condition. Due to lack of diagnostic information at the time of his illness, the unit failed to identify his condition as unfit in a timely manner and his case was not scheduled to be heard until 19 Oct 19, after his death. Furthermore, the unit failed to acknowledge, his condition that led to his death, should have been processed through the DES. If these actions would have been taken, he would have been identified for a medical retirement due to his eligibility with more than eight years of Total Active Federal Military Service (TAFMS) and more than 19 years of satisfactory service.

In support of her reconsideration request, the applicant submitted the medical records for the deceased service member.

The applicant's complete submission is at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

Members of the Reserve and National Guard attain eligibility for retired pay under Title 10, U.S.C., 12731, normally at age 60, after completion of at least 20 years of satisfactory service. However, airmen who have been found physically unfit for continued military service and have completed at least 15 years, but less than 20 years, of satisfactory military service are eligible for transfer to the Retired Reserve under Title 10, U.S.C., 12731b, *Special rule for members with physical disabilities not incurred in the line of duty* and qualify for a retirement at age 60.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends actions on the applicant's case be deferred, contingent upon receipt from the applicant any supporting medical documentation from all available sources, private, military, or Department of Veterans Affairs (DVA). Alternatively, given the possible presence of a serious hepatic, gastrointestinal, respiratory, or metabolic disorder, days or weeks before death, with resultant hyperammonemia and secondary cerebral edema, tonsillar herniation, and respiratory failure, and in the absence of intentional misconduct, willful neglect, or willful failure to comply with standards, or absence without official leave, the Medical Advisor recommends the Board consider retirement under Title 10, U.S.C., Section 12731b; available to Reserve component members with a disqualifying non-service incurred illness or injury, who have achieved at least 15, but less than 20 years of satisfactory service.

To justify placement into the Non-Duty Disability Evaluation System (NDDES), there must be a disqualifying medical condition present, which is either found in the line of duty or the proximate result of military service, while performing a period of 30 days or less as a traditional guardsman.

The Medical Advisor acknowledges the applicant's implicit contentions the deceased member's unit contributed to the implicitly wrongful failure to identify an unfitting condition, due to lack of medical documentation; and the implicit wrongful failure to document his "rapid decline" that implicitly resulted in the wrongful deprivation of a timely referral to a Deployment Availability Working Group (DAWG). However, the Medical Advisor has no medical evidence that corroborates the applicant's contentions, nor evidence that discloses the deceased service member's clinical symptoms or complaints at initial presentation for treatment, the date of initial presentation for care, nor the place, duration, nature, and response to treatment. Without this documentation, a comprehensive evaluation of contentions is hampered.

Directing attention to the medical conditions listed on the deceased service member's Certificate of Death, the Medical Advisor opines any one of these conditions, individually or collectively, if diagnosable prior to his death, and within reasonable time to conduct a Fitness for Duty Evaluation (FFDE), could have been the cause or reason for entry into the NDDES. The Medical Advisor elects not to discuss the pathophysiology or causes of the conditions listed on the service member's Certificate of Death. However, bringing special attention to tonsillar herniation, typically a rapidly occurring and life-threatening event alone, is the result of a progressive increase of intracranial pressure within the unyielding confines of the cranium. As it may be iatrogenic during a diagnostic lumbar puncture, other recognized causes include traumatic brain injury, bleeding (subdural hematoma, subarachnoid hemorrhage), abscess, tumor, or in this case, progressive cerebral edema. It occurs when brain contents are pushed from one compartment of the cranium to another through any potential space e.g., the cerebellum through the foramen magnum. The Medical Advisor cannot speculate on the causation or duration of the deceased service member's hyperammonemia, as it may be due to liver disease or a defect of the urea cycle; albeit also a recognized risk for secondary cerebral edema. The causation of the deceased service member's respiratory failure is also not disclosed; notwithstanding, there is potential for a respiratory illness, acute respiratory distress syndrome (ARDS) or respiratory arrest related to progressive increased intracranial pressure. Similarly, the causation, source, or duration of the deceased service member's gastrointestinal bleeding is not known by the Medical Advisor, therefore one cannot speculate on any alleged failures to timely diagnose, treat, or refer into the NDDES.

While historically there has been a mechanism to medically retire actively serving members confronted with imminent death, the Medical Advisor is not aware of such a provision for Reserve component members; particularly if non-duty related. Therefore, should the Medical Advisor identify a disqualifying medical condition present prior to the applicant's death, this evidence would be considered in recommending a possible retirement under Title 10, U.S.C. Section 12731b, available to service members with a disqualifying medical condition, either service incurred rated less than 30 percent or non-duty related, and who has served at least 15, but less than 20 years of service. The Medical Advisor also acknowledged the deceased service member may have achieved at least 8 years of total active federal military service (TAFMS), which under Title 10, U.S.C., Section 1207a could qualify him for entry into the Disability Evaluation System (DES) with eligibility for compensation; except the service member must be performing a period of 30 days or more at the time the condition is identified as disqualifying or unfitting for the law to apply.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Mar 23 for comment (Exhibit J), 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 finds 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 substantiate the applicant's contentions, in part. Specifically, the Board finds the deceased member was physically unfit for continued military service and has completed at least 15 years, but less than 20 years, of satisfactory military service which makes him eligible for transfer to the Retired Reserve under Title 10, U.S.C., 12731b, *Special rule for members with physical disabilities not incurred in the line of duty* and qualifies him for a retirement at age 60, which is sufficient to justify granting the applicant's request for a Reserve Retirement for her deceased spouse. 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. To be processed under the Disability Evaluation System (DES) and qualify for medical retirement, there must be a disqualifying medical condition present, which is either found in the line of duty or the proximate result of military service, while performing a period of 30 days or more as a traditional guardsman. However, the Board could not verify this as additional medical records and documentation of active military status would need to be submitted to ascertain whether the deceased member would have been found unfit and eligible for a disability medical retirement with compensation. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to the DECEASED SERVICE MEMBER be corrected to show the following:

- a. The deceased service member was relieved from Reserve duty on 3 October 2019 and, effective 4 October 2019, he was medically retired under the provisions in Title 10, United States Code (U.S.C.) Section 12731b.
- b. His election of the Reserve Component Survivor Benefit Plan (RCSBP) 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 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-2021-01884-2 in Executive Session on 26 Apr 23:

[REDACTED] *Work-Product*, Panel Chair
[REDACTED] *Work-Product*, Panel Member
[REDACTED] *Work-Product*, Panel Member

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

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 2 Dec 21.
- Exhibit G: Application, DD Form 149, w/atchs, dated 30 Jun 22.
- Exhibit H: Congressional Response from ARPC, w/atchs, dated 24 Feb 21.
- Exhibit I: Advisory Opinion, AFBCMR Medical Advisor, atch, dated 13 Mar 23.
- Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Mar 23.

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.

12/2/2023

[REDACTED]
[REDACTED] *Work-Product* _____
Board Operations Manager, AFBCMR
Signed by: [REDACTED] *Work-Product* [REDACTED]