

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02012

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His full retirement be backdated to the date of separation from the Air Force Reserve with all pay and allowances, to include TRICARE Eligibility.

APPLICANT'S CONTENTIONS

At the time of his separation the Medical Board gave him a 20 percent rating but only evaluated his current injuries and didn't consider his past injuries. The Department of Veterans Affairs (DVA) has awarded him a 40 percent disability rating and he has a current disability rating from the DVA of 70 percent, with more issues being reviewed. Further, it is because the past Secretary of the Air Force under President Obama's administration refused to hear about his issue that he and his family had to struggle over five years financially due to the Medical Board's decision.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve technical sergeant.

On 19 Aug 13, *AF Form 356, Findings and Recommended Disposition of USAF Informal Physical Evaluation Board (IPEB)*, indicates the applicant was found unfit and recommended for discharge with severance pay (DWSP) with a disability rating of 20 percent IAW Veteran Affairs Schedule for Rating Disabilities (VASRD) guidelines.

On 3 Sep 13, *AF Form 1180, Action on PEB Findings and Recommended Disposition*, indicates the applicant disagreed with the findings and recommended disposition of the IPEB and requested a formal hearing.

On 14 Nov 13, *AF Form 356*, indicates the applicant's medical condition prevented him from reasonably performing the duties of his office, grade, rank, or rating and the Formal PEB (FPEB) found him unfit and recommended DWSP with a disability rating of 20 percent IAW VASRD guidelines.

On 15 Nov 13, *AF Form 1180* indicates the applicant disagreed with the findings and recommended disposition of the FPEB and requested his case be referred to the Secretary of the Air Force Personnel Council (SAFPC) for review and also requested a one-time reconsideration of disability ratings for unfitting conditions. In his rebuttal, he contended that his right shoulder injury should have been included as unfitting.

On 23 Jan 14, SAFPC directed the applicant be discharged and receive severance pay with a disability rating of 20 percent under the provisions of Title 10, United States Code, Section 1203.

Following a review of all facts and evidence in the case, to include the testimony presented before the FPEB, the remarks by the FPEB, the remarks by the IPEB, the service medical record, the remarks of the DVA examiner, and the narrative summary of the MEB, the board concurred with the disposition recommended by the previous boards to discharge the member with severance pay with a disability rating of 20 percent.

On 29 Mar 14, a DVA decision memo indicates no change is warranted to the prior disability rating decision at discharge.

On 15 May 14, the applicant elected to transfer to the Inactive Status List Reserve Section (ISLRS) to await retired pay at age 60.

On 29 Jan 20, Reserve Order Work-Product indicates the applicant was placed on the USAF Retired list with entitlement to retired pay, effective 27 Feb 20.

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

AIR FORCE EVALUATION

SAF/MRBP recommends denying the application. Under Title 10, United States Code, the DoD only offers compensation for the medical conditions which are the cause for career termination; and then, only to the degree of impairment present at the time of separation. Specifically, disability ratings are only applied to the medical conditions that preclude the performance of military duties. On the other hand, the DVA, operating under Title 38, United States Code, is authorized to offer compensation for any service-incurred medical condition, regardless of whether the condition renders the member unfit for military service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating award as the level of impairment or severity of a given medical condition may vary over the lifetime of the veteran. For the reasons noted above, the disability percentages assigned by DoD and DVA are often different.

At the time of the applicant's Disability Evaluation System (DES) evaluation, only his bi-lateral knee condition rendered him unfit for military service. While the DVA had awarded the applicant a disability rating for his shoulder condition, this condition did not interfere with the performance of the applicant's duties and, thus, did not qualify for disability compensation. This issue was considered by SAFPC and the rationale for this decision is fully explained in the decision memo. Therefore, in the absence of evidence to the contrary, there is no basis to conclude that the determination made by SAFPC in 2014 represents an error or injustice. The applicant has offered no evidence to undermine the conclusion made when it was determined the applicant was unfit for his bi-lateral knee condition with a combined compensable disability rating of 20 percent. Finally, the applicant's request is also untimely. He indicates a date of discovery of 24 May 14 and offers no justification as to why the Board should waive the three-year statute of limitations. Therefore, we recommend the Board deny the request as untimely. Should the Board find a reason to waive timeliness, we recommend the request be denied based on its merits.

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 28 Feb 22 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.

After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contentions. At the time of the applicant's Disability Evaluation System evaluation, only his bi-lateral knee condition rendered him unfit for military service. While the DVA had awarded the applicant a disability rating for his shoulder condition, this condition did not interfere with the performance of the applicant's duties and, thus, did not qualify for disability compensation. 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 applicant's records.

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-2021-02012 in Executive Session on 21 Mar 22 and 25 Apr 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 10 May 21.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, SAF/MRBP, dated 25 Feb 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 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.