



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02021

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her retirement for physical disability be changed to retirement under the Temporary Early Retirement Authority (TERA).

APPLICANT'S CONTENTIONS

In Nov 94, she was diagnosed with Stage 3 breast cancer. She requested and was approved to retire under TERA, effective 31 Jan 95. However, on 18 Jul 95, she was placed on the TDRL and retired for disability on 17 Jul 95. She would be eligible to receive both her retirement pay and Veterans Affairs (VA) disability compensation if retired under the TERA.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

On 26 Jan 95, the informal physical evaluation board (IPEB) recommended the applicant be placed on the TDRL for carcinoma left breast status post modified radical mastectomy (diagnosed Nov 94) and lymph node dissection, undergoing chemotherapy with a disability rating of 100 percent. Item 15, *Remarks*, of the DD Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, states "Member has a non-disability retirement date of 31 May 95. In the opinion of the PEB, the member overcomes the presumption of fitness IAW AFI 36-3212, para 3.17."

On 3 Mar 95, the applicant concurred with the findings and recommended disposition of the IPEB

On 17 Apr 95, the Secretary of the Air Force Personnel Council (SAFPC) directed the applicant be placed on the TDRL with a disability rating of 100 percent.

On 17 Jul 95, the applicant was discharged from active duty and placed on the TDRL in the grade of master sergeant with a compensable disability rating of 100 percent. She was credited with 14 years, 2 months and 18 days of active duty service for the period and 4 years, 3 months and 27 days of prior active duty service.

The applicant provides a VA rating decision dated 15 Mar 96, which shows she was granted a combined VA disability compensation rating of 60 percent.

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AF Form 356, dated 10 Jan 97 shows the IPEB recommended the applicant be permanently retired with a compensable rating of 40 percent. The applicant concurred with the findings and recommendations of the IPEB and waived her earlier election to demand a formal hearing.

On 2 Apr 97, the applicant was removed from the TDRL and permanently retired in the grade of master sergeant with a compensable percentage of 40 percent for 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/DP2SSR recommends denial. The applicant did not meet the program criteria to retire under the TERA program. Congress enacted the TERA on 23 Oct 92, which permitted selected military members with more than 15 years but less than 20 years of service to retire early. Program management was established and announced by the Assistant Secretary of Defense Memorandums dated 12 Mar 93 and 22 Apr 93. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter (MPFL) 93-024, *Voluntary Early Retirement Program*, dated 9 Apr 93. Paragraph 6 of the MPFL listed exclusions to program eligibility. Item 6e stated, "Members not physically fit for retention under the provisions of AFR 35-4, *Physical Evaluation for Retention, Retirement and Separation*" were excluded from TERA eligibility.

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 May 22 for comment (Exhibit D). In an email dated 23 May 22, the applicant states she does not agree with the denial and requests her concurrent receipt be approved. She was approved for early retirement and was preparing to start terminal leave when diagnosed with cancer. It was the Air Force that made the decision she could not retire until her treatments were completed. The TERA was still in effect when she met her medical board. Her original retirement should have been honored.

The complete response is at Exhibit E.

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 applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant disputes the advisory opinion stating she was approved for retirement under the TERA prior to being diagnosed with cancer. However, the Board finds no evidence of an error or injustice in the processing of the applicant's medical board process based on the applicant's unfitting condition of breast cancer, placement on the TDRL and permanent retirement for disability. Furthermore, the Board notes the applicant concurred with the findings and recommendations of the IPEB in both the TDRL and permanent disability retirement recommendations. 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). While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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-2021-02021 in Executive Session on 22 Jun 22:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 May 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 2 May 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 May 22.
- Exhibit E: Applicant's Response, dated 23 May 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.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF