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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02076

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

He be given a medical separation.

### APPLICANT'S CONTENTIONS

He was discharged due to a medical condition which made him ineligible for worldwide duty (WWD). He was an Air National Guard (ANG) technician and would have worked many more years if it were not for his medical discharge. Because his membership in the ANG was a necessary condition for employment as a technician, he also lost his civilian position.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former ANG technical sergeant (E-6) awaiting retired pay at age 60.

On 18 Apr 02, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him he has completed the required years under the provisions of Title 10 U.S.C., Section 12731 and is entitled to retired pay upon application prior to age 60.

Not dated, a letter, provided by the applicant, indicates he was found medically disqualified and was recommended for discharge.

On 30 Aug 02, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 20 years, 8 months, and 11 days of service for this period. He was discharged, with a narrative reason for separation of "Retirement."

On 15 Nov 02, SF 50, *Notification of Personnel Action*, provided by the applicant, indicates he was disability retired from his technician position in lieu of termination due to the involuntary loss of his military membership.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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

Dated 20 Jan 03, Reserve Order **Work-Product** indicates the applicant was placed on the Reserve Retired List (RRL), effective 1 Sep 02.

On 22 Feb 22, NGB/SGPS provided a letter stating they could not make a recommendation due to the applicant's military and civilian medical records not being available for review (Exhibit C).

On 25 Feb 22, the applicant was sent a letter stating his case could not be adjudicated due to the unavailability of his medical records and his case was closed (Exhibit D).

On 1 Mar 24, the applicant responded by providing additional documentation (Exhibit E).

For more information, see the excerpt of the applicant's record at Exhibit B and letters/advisory at Exhibits C, D, E, and F.

## **AIR FORCE EVALUATION**

NGB/SGPS recommends denying the application finding no evidence of an error or injustice regarding the applicant's discharge. The applicant acknowledged his separation from his full-time military technician due to the loss of his military membership for his medical condition(s) actinic keratoses and basil cell carcinoma. The applicant was eligible for disability retirement for his technician through the Office of Personnel Management (OPM). On 23 Aug 02, the applicant signed the disability waiver to apply for a regular disability retirement under the OPM regulations. There is no additional medical documentation submitted nor found in the available electronic health record substantiating the applicant's medical conditions were incurred in a qualified military duty status.

The Disability Evaluation System (DES), can by law, under Title 10, U.S.C., only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and were the cause for career termination, and then only for the degree of impairment present at or near the time of separation and not based on future progression of injury or illness. The Department of Veterans Affairs (DVA) on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit F.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 26 Nov 24 and again on 13 Dec 24 for comment (Exhibit G) 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.
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 NGB/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant's medical conditions were not incurred during a period of active duty. The applicant was properly evaluated for his medical conditions which rendered him unfit for continued military service and was disability retired from his technician position. In order to be eligible for a compensable military medical disability retirement under Title 10 U.S.C., the applicant's medical conditions must have been incurred while in a military duty status to which the Board finds no evidence of such. Therefore, the Board recommends against correcting the applicant's records. 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 Department of the 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 and finds the application untimely.
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 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 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-2021-02076 in Executive Session on 18 Dec 24 and 14 Jan 25:

Work-Product, Panel Chair

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 26 May 21.

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

Exhibit C: Letter, NGB/SGPS to the Applicant, dated 22 Feb 22.

Exhibit D: Letter (Case Closed), SAF/MRBC to the Applicant, dated 25 Feb 22.

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Exhibit E: Applicant's Response, w/atchs, dated 1 Mar 24.

Exhibit F: Advisory Opinion, NGB/SGPS, dated 22 Nov 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Nov 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.

1/14/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF