

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03119

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 28, *Narrative Reason for Separation*, be changed to "Disability - Entitled to Medical Retirement" versus "Disability - Entitled to Severance Pay," or a narrative reason of equal relevance.

APPLICANT'S CONTENTIONS

He was honorably discharged and granted severance pay in the amount of \$17,656.80. He repaid the Air Force for the total amount of his severance pay in 2005. Once the repayment was satisfied his type of separation should have been entitled to a medical retirement due to his service-connected disabilities. He should be afforded all back pay as well as current compensation. The applicant provided a summary of benefits letter from the Department of Veterans Affairs (DVA), dated 21 Feb 22, reflecting his combined service-connected evaluation is 100 percent without specification of the disabilities.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force sergeant (E-4).

On 25 Aug 92, the applicant underwent a Medical Evaluation Board (MEB) for right knee pain and blowout fracture of right orbit with infraorbital numbness on the right side. The board recommended the applicant be referred to an Informal Physical Evaluation Board (IPEB).

On 10 Sep 92, the IPEB found the applicant's right knee pain, status post anterior cruciate ligament reconstruction was unfitting with 10 percent compensable disability rating and recommended discharge with severance pay (DWSP). The applicant's history of blowout fracture of right orbit with residual infraorbital numbness on the right side was considered but determined not ratable.

On 15 Sep 92, the applicant non-concurred with the IPEB findings and requested a formal hearing before the Formal PEB (FPEB).

On 30 Sep 92, the applicant requested to waive his earlier election for a FPEB for the purpose of "now concurring with the IPEB's recommended findings."

On 15 Oct 92, the Secretary of the Air Force (SECAF) directed the applicant be discharged with severance pay, effective 4 Nov 92.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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

On 27 Oct 92, the applicant was placed on administrative hold pending outcome of an investigation for alleged criminal activity off base and his disability discharge of 4 Nov 92, was cancelled.

On 15 Jan 93, the applicant was issued a referral enlisted performance report for the period 16 Jan 92 thru 15 Jan 93 for conviction by a civil court for illegal narcotics trafficking.

On 4 Feb 93, the applicant's disability discharge was reinstated with a new effective date of, 10 Feb 93.

On 10 Feb 93, according to DD Form 214, the applicant was honorably discharged with narrative reason of separation of "Disability – Entitled to Severance Pay." He was credited with six years, seven months, and nine days of active service.

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

APPLICABLE AUTHORITY/GUIDANCE

The military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active service and were the *cause* for career termination; and then only for the degree of impairment present at the "*snapshot*" time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for *any* medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. There is no indication an error or injustice occurred during the Disability Evaluation System (DES) processing. Additionally, the DVA offset of disability severance pay is outside of the Air Force's purview and repayment of this offset does not change the final DES outcome.

Under Title 10 United States Code, Section 1174, the DVA must deduct the entire amount of separation pay, severance pay, or readjustment pay from any DVA compensation paid except for members who have been injured in a combat zone. At the discretion of the DVA, the member may repay the entire amount or the DVA may withhold the monthly compensation until the total amount withheld equals the amount of the Air Force disability severance pay received.

On 10 Sep 92, the IPEB found the applicant unfit for right knee pain, status post anterior cruciate ligament reconstruction, assigned a 10 percent disability rating, and recommended DWSP. Under the DES the overall rating determines if a member will be discharged with severance pay or disability retired. Members with less than 20 years of service with an overall disability rating of less than 30 percent are discharged with severance pay and members with an overall disability rating of 30 percent or higher are retired. Therefore, since the applicant only had six years, seven months, and nine days of active service on his date of separation and a 10 percent overall disability rating the only disposition the IPEB could assign was DWSP.

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 6 Sep 22 for comment (Exhibit D), and the applicant replied on 14 and 15 Sep 22. In his response, the applicant indicated he will mail additional evidence to further prove his case and requested he be allowed further time to submit the additional evidence. He contended he was never given any psychiatric evaluations or offered any sort of mental counseling following two traumatic events where he suffered traumatic brain injury (TBI) and emotional and physical trauma. While he was stationed at Kapaun Air Station, Germany, he was served food that caused him severe food poisoning. He was hospitalized and treated for salmonella poisoning and discharged. He still has digestive problems from this incident. The IPEB did not rate him for post-traumatic stress disorder or major depressive disorder. His service-connected disabilities are rated at 100 percent causing him to be unemployable. If he were treated, his Air Force disability rating would have been much higher and qualify him for a medical retirement. The applicant provided additional evidence in the form of copies of DVA service-connected disability compensation without specification of the disabilities, dated 7 May 21, 2 Jun 21, and 15 Jul 21. On 20 Oct 22, the Board closed the applicant's case to provide him more time to submit the additional evidence (Exhibit F) and on 6 Dec 22, the applicant requested his case be re-opened and for the Board to proceed with all of his updated requests and did not provide further evidence. He again contended he should have been granted a medical retirement after the Air Force recouped all of his severance pay given to him upon his separation from service.

The applicant's complete responses are at Exhibits E and G.

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, including the applicant's response to the advisory opinion and additional evidence, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's request his service-connected disabilities, to include his stated physical and mental conditions, to be found unfitting and rated by the Air Force, and he receive a medical retirement; however, the Board finds his service-connected disabilities were not warranted to process through DES as a matter of equity or good conscience in accordance with DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. While the specific service-connected medical conditions is unknown, there is no evidence to suggest any further physical and/or mental health conditions, beyond what was found by the IPEB, were unfitting, a medical basis for career termination nor entry into the DES. The Board reminds the applicant repayment of his severance pay was to the DVA and not to the Air Force and falls within the purview of the DVA. Upon repayment, he will be eligible to receive the "full" disability amount for his service-connected disabilities. Therefore, the Board recommends against correcting the applicant's records.
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-2021-03119 in Executive Session on 27 Sep 23:

Work-Product

Panel Chair
el Member
Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atch, dated 25 Apr 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 22.
- Exhibit E: Applicant's Response, w/atchs, dated 15 Sep 22.
- Exhibit F: Notification of Case Closure, SAF/MRBC, dated 20 Oct 22.
- Exhibit G: Applicant's Response, dated 6 Dec 22.

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.

3/6/2024

X Work-Product

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Board Operations Manager, AFBCMR
Signed by: Work-Product