



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-2021-03366

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His discharge with severance pay (DWSP) be changed to a medical retirement.

APPLICANT'S CONTENTIONS

His medical disability rating of 10 percent should be higher based on the Department of Veterans Affairs (DVA) ratings of his disabilities. The DVA found a service-connection for his lower left extremity (left foot pain) and his sciatic nerve injury related to his back and foot is currently under review.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 9 Mar 21, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for left ankle pain.

On 22 Feb 21, the DVA proposed a disability rating for his service-connected medical conditions of left ankle complex regional pain syndrome (claimed as left ankle pain) at 10 percent and radiculopathy, left lower extremity (claimed as left foot pain) at 20 percent.

On 23 Mar 21, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of left ankle pain, chronic; DVA rated as left ankle complex regional pain syndrome with a disability compensation rating of 10 percent with a recommendation of "DWSP." It is noted the Board considered all other medical conditions rated by the DVA and found that these conditions were not currently unfitting for duty, separately or collectively.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 31 Mar 21, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the Board and waived his rights to any further appeal.

On 1 Jul 21, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving five years, seven months, and nine days of active duty. He was discharged, with a narrative reason for separation of “Disability, Severance Pay, Non-Combat Related IDES.”

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends partially granting the application. Based on the documentation contained in the PEB case file, DVA treatment records, and analysis of the facts, DPFDD recommends that the left foot sprain, claimed as left foot pain, Veterans Affairs Schedule for Rating Disabilities (VASRD) Code 5284 rated at 20 percent be added to the list of the applicant’s Integrated Disability Evaluation System (IDES) unfitting conditions. Although the medical narrative summary (NARSUM) did not detail any complaint of left foot pain, it is reasonable to conclude that the applicant’s left ankle pathology, after multiple traumatic injuries, could also result in left foot strain/sprain with chronic left foot pain. If approved, his overall DES disability rating should be changed from 10 percent to 30 percent and his DWSP changed to a permanent disability retirement.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the PEB must determine whether an airman’s medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (*a snapshot in time*). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member’s medical condition at the current time. However, a higher rating by the DVA “*based on new and/or current exams conducted after discharge from service*” does not warrant a change in the total compensable rating awarded at the time of the member’s separation.

DPFDD does not recommend addition of the left lower extremity radiculopathy. The medical NARSUM did not provide any documentation regarding a chronic back pain condition or describe any potential left lower extremity radicular symptoms. Specifically, no history of back pain or lower extremity radiculopathy, no imaging such as a lumbar spine magnetic resonance imaging (MRI), no diagnostic testing such as nerve conduction velocity (NCV) study confirming radiculopathy, no treatment history for back pain or radiculopathy, and no AF Form 469, *Duty Limiting Condition Report*, restrictions due to back pain with radiculopathy were submitted to the

PEB for adjudication. The medical reviewer does not find substantiating evidence of unfitting low back pain condition and/or associated left lower extremity radiculopathy documented to be consistently severe, unrelenting, or refractory to treatment to be found as separately unfitting.

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 31 May 22 for comment (Exhibit D), 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 concludes the applicant is 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 substantiates the applicant's contentions in part. Specifically, the applicant has provided medical documentation which is sufficient to justify granting the applicant's request to find his left foot pain as a Category I unfitting condition which would give him a combined disability rating of 30 percent and permanent retirement. However, for the remainder of the applicant's request, finding his medical condition of left lower extremity radiculopathy as unfitting, 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. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the following:

- a. On 23 March 2021, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was left foot pain, that his condition was under VASRD code 5284; with a disability rating of 20 percent; with a combined disability rating of 30 percent, which comprised an initial disability rating of 10 percent due to his left ankle pain, chronic; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.
- b. On 1 July 2021, he was discharged from active duty and on 2 July 2021, he was permanently retired with a combined compensable percentage for physical disability of 30 percent.

c. His election of the Survivor Benefit Plan 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03366 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 to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDD, w/atchs, dated 7 Mar 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 31 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