



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03454

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His medical separation of disability with severance pay (DWSP) be changed to a medical retirement with a 50 percent combined disability rating.

**APPLICANT'S CONTENTIONS**

The Medical Evaluation Board (MEB) and the Physical Evaluation Board (PEB) misapplied the retention standards outlined in the applicable Air Force and Department of Defense instructions when determining his fitness and disability. He should have been found unfit for his medical conditions of radiculopathy, right lower extremity, and femoral nerve at 20 percent; radiculopathy, right lower extremity, sciatic nerve at 20 percent; and radiculopathy, left lower extremity, sciatic nerve at 10 percent. These conditions should have been added to his list of unfitting conditions due to updated Department of Veterans Affairs (DVA) disability ratings shortly after his separation. He provides numerous clinical encounters documenting both persistent low back pain and development of lumbar radicular symptoms of the right lower extremity prior to back surgery. He also provides evidence of subsequent recurrence of right leg radicular symptoms following surgery and DVA examinations and subsequent rating decisions post separation.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force staff sergeant (E-5).

On 3 May 17, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for lower back pain and Obstructive Sleep Apnea (OSA).

On 26 May 17, 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 lower back pain with a disability compensation rating of 10 percent with a recommendation of "DWSP." His other condition of OSA was rated as Category II, conditions that can be unfitting but are not currently unfitting. As noted, the Board considered all other medical conditions rated by the DVA and found that these conditions are not currently unfitting for duty either separately or collectively.

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Controlled by: SAF/MRB  
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On 9 Jun 17, 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 right to a formal hearing.

On 28 Aug 17, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving 8 years, 10 months, and 8 days of active duty. He was discharged, with a narrative reason for separation of “Disability, Severance Pay, Non-Combat (Enhanced).”

On 20 Nov 18, the DVA proposed a disability rating for his medical conditions of degenerative disc disease referred as lower back pain at 10 percent and his OSA at 50 percent. He was also given a disability rating of 10 percent each for his medical conditions of Tinnitus and Hypothyroidism.

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 finding his overall Disability Evaluation System (DES) disability rating should be changed from 10 percent to 40 percent and his DWSP be changed to a permanent disability retirement. Based on the documentation contained in the PEB case file, DVA treatment records, and analysis of the facts we find evidence of right lower extremity radiculopathy symptoms both pre- and post- neurosurgical intervention, associated with and contributing to the unfitting condition of low back pain/degenerative disc disease. Per the Medical Standards Directory (MSD), radiculopathy symptoms which are severe, persistent, and do not respond to treatment may not meet retention standards and may be potentially unfitting for continued military service. We recommend inclusion of (1) Radiculopathy, Right Lower Extremity, Sciatic Nerve Associated with Intervertebral Disc Syndrome and Degenerative Disc Disease, Status Post Hemilaminotomy with Microdiscectomy, Veterans Affairs Schedule for Rating Disabilities (VASRD) Code 8520 rated at 20 percent and (2) Radiculopathy, Right Lower Extremity, Femoral Nerve Associated with Intervertebral Disc Syndrome and Degenerative Disc Disease, Status Post Hemilaminotomy with Microdiscectomy, VASRD Code 5243 rated at 20 percent to the list of applicant’s Integrated Disability Evaluation System (IDES) unfitting conditions. However, we do not find substantiating evidence in the medical records of an additionally unfitting left lower extremity sciatic nerve radiculopathy at the time of PEB adjudication. It is noted that the DVA has increased the disability rating for his previously IDES awarded low back pain condition from 10 percent to 20 percent effective 15 May 18. However, this will not affect his Air Force IDES rating.

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 16 May 22 for comment (Exhibit D), but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 DVA medical records to conclude that his radiculopathy, right lower extremity, femoral nerve and radiculopathy, right lower extremity, sciatic nerve qualify as unfitting conditions, which is sufficient to justify granting the applicant's request. However, for the remainder of the applicant's request, the Board finds the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting the applicant's request to find his left lower extremity sciatic nerve radiculopathy as unfitting. 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 26 May 2017, 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 Radiculopathy, right lower extremity, sciatic nerve associated with Intervertebral Disc Syndrome and Degenerative Disc Disease, status post Hemilaminotomy with Microdiscectomy, VASRD Code 8520, rated at 20 percent; and Radiculopathy, right lower extremity, femoral nerve associated with Intervertebral Disc Syndrome and Degenerative Disc Disease, status post Hemilaminotomy with Microdiscectomy, VASRD Code 5243 rated at 20 percent; when combined with his initial disability rating of 10 percent due to lower back pain, results in a combined [not added] disability rating of 40 percent. It is noted 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 28 August 2017, he was discharged from active duty and on 29 August 2017, he was permanently retired with a compensable percentage for physical disability of 40 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.

## **CERTIFICATION**

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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-2021-03454 in Executive Session on 27 Jul 22:

*Work-Product* [Redacted], Panel Chair  
*Work-Product* [Redacted], Panel Member  
*Work-Product* [Redacted], Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 10 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDD, w/atchs, dated 23 Mar 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 16 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.

2/21/2023

*Work-Product* [Redacted]

Board Operations Manager, AFBCMR  
Signed by: USAF