

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03463

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect a Medical Retirement.

### APPLICANT'S CONTENTIONS

Her medical discharge with a 20 percent disability rating for migraines should be upgraded to a medical retirement due to the Department of Veterans Affairs (DVA) diagnosis of chronic migraines and increased medical rating from 20 percent to the maximum migraine rating of 50 percent. While she was in the service, her primary care physician, first sergeant, and squadron downplayed the severity of her migraines and refused to help her. As a result, they fast tracked her medical evaluation to end her military career. She has suffered from service-connected migraines for seven years which have affected her completing college and stabilizing a job.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 11 May 16, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for migraines and low back pain.

On 22 Jun 16, the DVA proposed a 10 percent disability rating for service-connected medical condition of migraines. The DVA also provided disability ratings for several other service-connected disabilities with a combined rating of 90 percent.

On 26 Jul 16, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of low back pain and migraine headaches with a combined disability rating of 20 percent.

On 8 Aug 16, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant did not agree with the findings and recommended disposition of the board and requested a formal hearing.

On 18 Oct 16, the applicant requested to waive her earlier decision for the purposes of concurring with the IPEB's recommendation and findings and requested a one-time reconsideration of the disability ratings for the conditions found unfitting by the IPEB. The applicant acknowledged if the waiver was approved she had no further right to demand a formal PEB hearing.

On 21 Oct 16, the applicant requested to waive her request for a one-time reconsideration of the IPEB disability ratings for her unfitting conditions and proceed with her discharge with severance pay with a 20 percent disability rating.

On 3 Nov 16, the Secretary of the Air Force directed the applicant be separated from active service for a physical disability under the provisions of 10 USC 1203, with severance pay computed under Section 1212 of this title.

On 28 Dec 16, the applicant was honorably discharged in the grade of airman first class (E-3) after serving 3 years and 19 days of active duty. She was discharged, with a narrative reason for separation of "Disability, Severance Pay, Non-Combat (Enhanced)."

On 20 May 21, according to a DVA Compensation Rating Memo, provided by the applicant, the DVA increased the applicant's disability rating of 30 percent for migraines to 50 percent effective 3 May 21.

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 denying the application. There is no indication an error or injustice occurred at the time the PEB processed her disability case. An updated DVA rating after separation from the Air Force does not warrant change to the original PEB disposition, although the applicant received an increase to her compensation from the DVA.

The IPEB found the applicant unfitting for low back pain rated at 10 percent and migraine headaches rated at 105 [sic] with a 20 percent combined disability rating and recommended discharge with severance pay under the Integrated Disability Evaluation System (IDES). Under the IDES, the PEB must utilize the disability ratings assigned by the DVA. On 8 Aug 16, the applicant disagreed with the IPEB findings and appealed to the FPEB. However, on 18 Oct 16 she waived her FPEB hearing and requested a one-time DVA reconsideration for her disability ratings. On 21 Oct 16, the applicant waived the one-time DVA reconsideration and agreed to the IPEB's original findings. Therefore, she was discharged with severance pay on 28 Dec 16.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the Physical Evaluation Board (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. 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.

The applicant did not provide any documentation to support her claim that her chronic migraines should be rated at 50 percent. Additionally, as stated above she waived her right to a one-time DVA rating reconsideration during IDES processing and any changes to her DVA ratings after separation do not meet the snap-shot in time clause for IDES processing.

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 Jul 22 for comment (Exhibit D), 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 AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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)*. 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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-03463 in Executive Session on 24 Aug 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 4 Oct 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 9 Mar 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Jul 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.

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Board Operations Manager, AFBCMR