



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03495

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect that he received a disability rating for Shoulder Limitation of Motion (bilateral), Shoulder Dislocation (bilateral), and Ventral Hernia with entitlement to severance pay.

APPLICANT'S CONTENTIONS

The applicant sustained injuries to his shoulder that deemed him non-deployable and unfit for military service. As a result, his time in service was terminated early with a medical discharge. The Department of Veterans Affairs (DVA) awarded him with 90 percent disability compensation for his conditions.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 May 06, the applicant's commander recommended he be discharged based upon the impact of his medical condition on duty performance and his non-deployable status.

Dated 3 Jun 06, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for Chronic Bilateral Shoulder Subluxations.

Dated 11 Jul 06, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant's medical condition, which existed prior to service (EPTS) and had not been permanently aggravated through military service, was incompatible with the rigors of military service.

Dated 17 Jul 06, 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.

On 17 Jul 06, the Secretary of the Air Force directed the applicant be separated from active service for physical disability due to a condition that existed prior to service (EPTS) and stated the applicant was not entitled to any benefits under the provisions of Chapter 61, Title 10, U.S. Code.

**AFBCMR Docket Number BC-2021-03495
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
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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 applicant's request based on the documentation provided by the applicant and analysis of the facts. There is no indication an error or injustice occurred at the time the IPEB processed his disability case.

The IPEB found the applicant unfit for Chronic Bilateral Shoulder Subluxation and determined the condition EPTS without service aggravation. The IPEB notes the applicant had shoulder subluxations in 97 and had surgery on both shoulders prior to service and the worsening of the condition on active duty represents the natural progression of the disease. The Medical Evaluation Board Narrative Summary (NARSUM) dated 18 May 06 indicates he developed bilateral shoulder subluxations in approximately 97 with a history of surgical repair on the left shoulder in 98 and the right shoulder in 99 prior to service. The NARSUM also states the applicant had additional evaluations of his conditions prior to service. The NARSUM notes the applicant had a past medical history of recurrent epigastric hernia with surgical repair two times.

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.

Merely having a medical condition does not necessarily mean the condition is considered unfitting for disability purposes. Therefore, DPFDD finds no error or injustice of his discharge.

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.
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 recommends against correcting the applicant's record.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-01135 in Executive Session on 8 Aug 22:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, dated 15 Oct 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 3 Feb 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 DAFI 36-2603, paragraph 4.12.9.

5/12/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF