



[REDACTED]

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03728

[REDACTED] **COUNSEL:** NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His record be corrected to show a disability rating change for Multiple Sclerosis (MS) from 30 percent to 50 percent to 100 percent.

APPLICANT'S CONTENTIONS

In 2004, while on active duty, he was diagnosed with MS. In 2011, he was medically retired at 30 percent due to his MS. After receiving his Department of Veterans Affairs (VA) rating of 100 percent for MS, he knew the 30 percent rating was unfair. The 30 percent rating he received does not adequately compensate him for his suffering while on active duty.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a permanently disability retired Air Force technical sergeant (E-6).

On 29 Feb 00, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 22 Aug 00 for a period of six years.

On 9 Apr 04, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for the purpose of continued active duty for MS.

On 27 Apr 04, AF Form 356, *Findings and Recommended Disposition of USAF IPEB*, indicates the IPEB recommended the applicant be returned to duty for further care and observation.

On 19 May 11, AF IMT 618 indicates the applicant was referred to the IPEB for the purpose of continued active duty for Relapsing, Remitting MS.

On 17 Jun 11, AF Form 356 indicates the IPEB recommended permanent retirement, finding his medical condition, which is not likely to change over the next several years, prevents him from reasonably performing the duties of his office, grade, rank, or rating and recommending [REDACTED] permanent retirement.

AFBCMR Docket Number BC-2021-03728

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retirement with a disability rating of 30 percent in accordance with Department of Defense guidance for applying the Veterans Administration Schedule for Rating Disabilities guidelines.

On 24 Jun 11, AF Form 1180, *Action on PEB Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommendation of the IPEB and waived his right to a Formal PEB (FPEB).

On 5 Jul 11, a memorandum from Secretary of the Air Force Personnel Council directed the applicant be permanently retired under the provisions of 10 USC § 1201.

On 27 Jul 11, Special Order [REDACTED], indicates the applicant will be permanently disability retired in the grade of technical sergeant with compensable percentage for physical disability of 30 percent, effective 30 Sep 11.

On 29 Sep 11, DD Form 214 indicates the applicant was retired from the Air Force with a narrative reason for separation of "Retirement Disability, Permanent" and he was credited with 11 years, 1 month, and 7 days of active service.

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends partially granting the application. The Air Force and the Department of Veterans Affairs (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 (*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.

The Veterans Affairs Schedule for Rating Disabilities (VASRD) lists MS (code 8018) as Minimum Rating of 30 percent disability. The PEB awarded only the minimum rating of 30 percent for MS. However, based on the information in the medical Narrative Summary it would have been more accurate to include the described ratable residuals and assign a 40 percent disability rating:

8018-8520: Sensory and strength disturbances (classified as neuropathy with incomplete paralysis) for the right lower extremity disability (moderate) based on mildly decreased strength testing with normal gait and ambulation and mild sensory disturbances of decreased sensation to pinprick-20 percent.

[REDACTED]

8018-8620: Sensory disturbances of the left lower extremity best analogized as neuritis; disability (mild) based on described intermittent numbness/tingling-10 percent.

8018-7542: Urinary voiding dysfunction as neurogenic bladder with urinary frequency as disability (moderate) per the VA description of daytime voiding interval between one and two hours-20 percent.

Based on the documentation contained in the PEB case file and analysis of the facts they recommend the applicant's overall disability evaluation system disability rating be changed from 30 percent to 40 percent.

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 21 Jun 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, there is sufficient evidence that PEB awarded only the minimum rating of 30 percent for MS. However, based on the information in the medical Narrative Summary it would have been more accurate to assign a 40 percent disability rating based on the appropriate ratable residuals. However, for the remainder of the applicant's request, 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 on 29 Sep 11, he was released from active duty by reason of physical disability with a 40 percent compensable disability rating, and permanently retired effective 1 Oct 11.

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.

[REDACTED]

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-2021-03728 in Executive Session on 24 Aug 22:

[REDACTED], Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDD, dated 26 Jan 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 21 Jun 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.



Expired certificate

X

[REDACTED]

Board Operations Manager, AFBCMR
Signed by: USAF