



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-2022-00192

Attorney-Client

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect a disability retirement.

APPLICANT'S CONTENTIONS

His disabilities have been greater than 30 percent prior to his Medical Evaluation Board (MEB), Informal Physical Evaluation Board (IPEB) and Formal Physical Evaluation Board (FPEB). He was involved in a motor vehicle accident which caused loss of use of his left foot. The Department of Veterans Affairs (DVA) has given him a rating of 100 percent totally and permanently disabled for loss of use.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 Feb 90, 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 post-traumatic osteoarthritis of left ankle following grade 3B left open tibiofibular fracture with reduced range of motion with a combined disability rating of 20 percent and recommended Discharge with Severance Pay (DWSP).

On 5 Mar 90, 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 3 Apr 90, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of post-traumatic osteoarthritis of left ankle following grade 3B left open tibiofibular fracture with reduced range of motion with a combined disability rating of 20 percent and recommended DWSP. On this same date, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the board.

**AFBCMR Docket Number BC-2022-00192
CUI//SP-MIL/SP-PRVCY**

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

Issued 8 May 90, the applicant's DD Form 214 reflects he was honorably discharged in the grade of senior airman (E-4) after serving 5 years, 6 months, and 10 days of active duty. His narrative reason for separation is "Disability-Entitled to Severance Pay."

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 denial of applicant's request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the Disability Evaluation System (DES) processing. Award of a disability rating for a new medical condition or upgrade of a rating by the DVA after separation does not warrant change to the original DES ratings after the fact.

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 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 Aug 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. Therefore, the Board recommends against correcting the applicant's records. The military's DES established to maintain a fit and vital fighting force, can by law (Title 10, U.S.C) only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for

continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. The DVA (Title 38, U.S.C) may evaluate a member 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 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 Department of the 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 and finds the application untimely.

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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00192 in Executive Session on 24 May 23:

Attorney-Client	Panel Chair
Attorney-Client	Panel Member
Attorney-Client	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 25 May 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 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.

9/11/2024

Attorney-Client	_____
Board Operations Manager, AFBCMR	
Signed by:	Attorney-Client