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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00750

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His narrative reason for separation be changed from "Failed to meet physical standards for enlistment" to "Discharged due to pre-existing condition aggravated by service, service-connected disability."

APPLICANT'S CONTENTIONS

He did not realize his DD Form 214, *Certificate of Release or Discharge from Active Duty*, Block 28, *Narrative Reason for Separation* be changed to receive Department of Veterans Affairs (DVA) benefits.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 29 Oct 81, Standard Form 502, *Narrative Summary (Clinical Resume)*, indicates the applicant was diagnosed with "Spondylolysis with Grade I spondylolisthesis L5 on S1, symptomatic." The condition existed prior to entry into service and had not been aggravated by service beyond the normal progression of the disease. The applicant was recommended for discharge.

On 6 Nov 81, AF Form 618, *Medical Board Report*, indicates the applicant was diagnosed with "Spondylolysis with Grade I spondylolisthesis L5 on S1, symptomatic" and did not meet minimum standards for enlistment. The board recommended the applicant be discharged from the service by reason of physical disability which existed prior to service (EPTS) and has not been aggravated permanently thereby.

On 11 Nov 81, the applicant's commander recommended the applicant be discharged from the Air Force under the provision of AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship*. AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship*, chapter 3, paragraph 3-Bg. Specifically, he did not meet minimum medical standards for enlistment because of "Spondylolysis with Grade 1 spondylolisthesis L5 on S1, symptomatic," therefore his enlistment was erroneous. Further, he was not recommended for a disability separation because the Medical Board found that he did not meet Air Force medical standards for retention.

On 1 Dec 81, the separation authority approved the applicant's discharge.

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On 7 Dec 81, the DD Form 214 indicates the applicant received an honorable discharge. His narrative reason for separation is “Failed to meet physical standards for Enlistment” and he was credited with 4 months and 22 days of total active service.

On 26 May 21, a DVA Benefits Summary letter, provided by the applicant, indicates he was awarded service connection disability for “Radiculopathy Involvement of L2/L3/L4 nerve roots femoral nerve) right” and “Lumbosacral strain with spondylolisthesis,” effective 10 Feb 21.

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

AIR FORCE EVALUATION

The AFBCMR Medical Advisor opines the submitted evidence is insufficient to demonstrate the existence of an applied error or injustice from the Air Force (AF). Although the applicant provided a DVA “Summary of Benefits” regarding a spine condition (dated 2021...nearly 40 years after his service separation), an equivalency factor is not automatically back extrapolated to service time in 1981. Therefore, it remains paramount to brief the difference between the military and DVA disability evaluation system (DES). For awareness sake, the military’s DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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 “snap-shot” time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service members retainability, fitness to serve, or the length of time since date of discharge. The applicant was not deemed unfit to perform the duties of his office rank or rating while in active military service. Based on reviewed records, it appeared that the administrative discharge processing as well as the narrative reasoning for separation were appropriate and accomplished in accordance with AF and Department of Defense policy. A favorable authorization of DVA service connection determined decades after active military service does not equate nor dictate a change be made to the narrative reason for separation. Although the applicant’s condition met retention standards, it did not meet enlistment or accession standards. For enlistment, it was a disqualifying condition as per DoD Instruction 6130.03, *“Military Medical Standards Volume 1: Appointment, Enlistment, or Induction.”* The applicant’s enlistment physical examination dated 16 Mar 1981 was clear of any significant abnormal physical or laboratory findings. The applicant was deemed qualified for military enlistment. Not knowing any degree of existing spinal abnormality was present at the time of the enlistment physical examination coupled without deliberate or known concealment by the applicant, the label of “erroneous entry” and the stated narrative reason for separation were both appropriate. Therefore, in the absence of evidence to the contrary, this advisor finds no compelling basis to recommend granting the relief sought in this application.

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 11 Nov 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 the AFBCMR Medical Advisor 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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.
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 the 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-2022-00750 in Executive Session on 22 Feb 23:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 Mar 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 11 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Nov 22.

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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.

12/21/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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