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

### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2022-00860-2

COUNSEL: NONE

HEARING REQUESTED: NO

#### APPLICANT'S REQUEST

The Board reconsider her request for her discharge with severance pay (DWSP) to be changed to a medical retirement with a 60 percent disability rating.

#### RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4) who was found unfit due to her medical conditions of migraine headaches and L4-L5 disc herniation, both rated at 10 percent each and was DWSP with a 20 percent disability rating on 25 Jul 05.

On 26 Oct 22, the Board considered and denied her request to change her DWSP to a medical retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted. The applicant claimed due to a congressional mandate, her medical separation was eligible to be reviewed if her rating was less than 30 percent and if she was separated between 11 Sep 01 through 31 Dec 09. She contended she should be retired at a compensable rating of 60 percent, 30 percent for migraines and 40 percent for Intervertebral Disc Syndrome (IDS). The Board reviewed all of the Exhibits and concluded the applicant was not the victim of an error or injustice. The Board concurred with the rationale and recommendation of AFPC/DPFDD and found a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board found no error or injustice in the processing of her disability case. The Board took note of the applicant's disability ratings from the Department of Veterans Affairs (DVA) but found this evidence was not compelling enough to warrant relief. The applicant was advised, the military's Disability Evaluation System (DES) established to maintain a fit and vital fighting force, can by law, under 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 or near the time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

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POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

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On 15 Nov 24, the applicant requested reconsideration of her request for a medical retirement. She again contends due to a congressional mandate, the 2008 National Defense Authorization Act (NDAA); her request should have been reviewed by the Physical Disability Board Review (PDBR) Agency because she was DWSP between 2001 and 2009. Her medical conditions of migraines and IDS should be rated at a higher rating than 10 percent each, 30 percent for migraines and 40 percent for IDS which would make her eligible for a medical retirement. She has prostrating headaches which is well documented in her military records. After her evaluation for her lumbar spine injury, she was scheduled for surgery on 5 May 05. However, the recommended surgery by her neurosurgeon would not be approved or performed until after the conclusion of the Medical Evaluation Board (MEB) process, hence why she agreed with the findings. She underwent surgery on 22 Jun 05. She was evaluated by the Social Security Administration (SSA) and was found to be 100 percent totally disabled, effective 16 Jul 05, one day after she separated from the Air Force. She was assigned a DVA disability rating of 40 percent for her IDS and 0 percent for her migraines, effective 16 Jul 05. Even though she is experiencing prostrating migraines, the DVA only assigned a 0 percent rating which she is in the process of appealing.

She also contends, in her original case, she submitted a response to the advisory opinion which was never seen by the previous Board. In this rebuttal, her husband, a chiropractic physician outlines her military career as a combat veteran. The difference between the DES and the DVA in evaluating service-connected conditions is understood; however, arguments involving her DAV record and rating decisions are irrelevant to the consideration of her Physical Evaluation Board (PEB) reevaluation. The response goes on to outline her medical history and highlights why her unfit conditions should have been found at a higher rating. She was processed under the legacy DES in which the Air Force and the DVA made independent assessments. The DVA's initial rating decision on 23 Mar 07 found her lower back pain with the measured lumbar range of motion (ROM) was accessed at 40 percent but mistakenly assigned a 20 percent rating which was corrected in 2008 after an appeal. This 40 percent rating is consistent with her IDS which should also be rated at 40 percent by the PEB. The DVA incorrectly rated her migraines at 0 percent, but her records indicate her condition more aligns with a 30 percent rating, prostrating attacks that occur on average more than once a month. The 2008 NDAA directed the Services through the creation of the PDBR, to review disability cases of members who were DWSP between 2001 and 2009 and if existed, to identify discrepancies and errors in such ratings.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) three letters of appreciation; (2) medical records; and (3) her SSA disability benefits letter.

The applicant's complete submission is at Exhibit F.

## **AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical retirement at a 60 percent disability rating for migraines and L4-L5 disc herniation finding insufficient evidence to support her request. Medical separations are based on several factors and

processes that include medical evaluation board process, physical evaluation boards and/ or temporary retired disability list. There are no documents submitted showing the applicant challenged the medical board's decision on unfitness at 20 percent compensability. She is contending her case should have been reviewed by the PDBR Agency because she was DWSP between 2001 and 2009 based on the 2008 NDAA. The stated migraine headaches note shows she was tried on various medications, Topamax, Maxalt, Beller gal and Calan. By Jan 05 it is noted, she was just on Beller gal and Maxalt as she could not tolerate Calan. It is also noted the applicant has polycystic ovarian syndrome which is known to share an association with migraines and depression. By Sep 04, it is noted the applicant's use of medication for migraine headaches was described as six pills in greater than three weeks and she was sent to the MEB.

Regarding the low back pain, the first note was dated in Dec 04 mentioning a new problem with the low back. The applicant was sent to physical therapy and was started on Motrin after red flag symptoms were confirmed as absent. In a note dated 20 Dec 04 it was termed chronic low back pain, existed prior to service (EPTS) and she was sent to MEB. Magnetic Resonance Imaging (MRI) of the back of same month showed L4-5-disc desiccation, as well as a broad-based disc protrusion extending posteriorly to deform the thecal sac. It involves the midline and left paracentral area and narrows the entrance zone of the neural foramen, slightly. Minimal, left-sided, zygapophyseal osteoarthritis. A neurology consultation in Jan 05 reported it as pyriformis syndrome of unknown etiology with the examination showing negative straight raise and flip test and tender SI joint on the left and spasm of musculature of left hip. Reflexes were brisk and symmetrical and normal pinprick and strength. Recommendation was physical therapy, SI joint and piriformis injections. Another neurosurgical evaluation assessment in Mar 05 stated the applicant thought she had symptomatic lumbar disc disease; however, the neuro exam showed no focal motor deficit, sensory examination well preserved, straight leg raise test positive on the left at 40 degrees, lumbar range of motion minimally restricted on extension and ordered a discography, results showing L3-4 normal, L4-5 abnormal appearance and L5-S1 abnormal with atypical pain production. The plan was for L4-5 lumbar laminectomy for May 05. There are two differing opinions and two differing neurological examinations. None of the examination results are severe and both arrived at different treatment modalities. None, however, based on the timing, calls for a higher rating as the applicant requests. There was no incapacitation noted on all medical notes submitted prior to military separation. The board acknowledges surgery was delayed for MEB processing and reading a chiropractic physician detailed history of the applicant's military career and medical challenges, but evidence was not provided to warrant a higher rating.

Lastly, in a case such as this, whereby the applicant makes note of the DVA's approved impairment ratings for service-connected conditions, an important distinction between the DVA and the Department of Defense disability systems should be understood. For awareness sake, the military's DES, established to maintain a fit and vital fighting force, can by law, under 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 or near the 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 member's retainability, fitness to serve, or the length of time since date of discharge. Furthermore, it is paramount to understand the DVA's decision of an effective date for the initiation of benefits has to do with when the DVA receives a claim or when the DVA is notified of an individual's intent to file a claim, with rare exceptions. It has nothing to do with what is crucial from the DoD/military perspective, which is duty status and fitness ability.

The complete advisory opinion is at Exhibit G.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 14 May 25 for comment (Exhibit H) and the applicant replied on 4 Jun 25. In her response, the applicant contends she should have been rated at 30 percent for her migraines and 40 percent for her IDS. In 2004, she reported her low back pain when she returned from her deployment and shortly after, her doctor noted her migraines headaches and chronic lower back pain would be evaluated by the MEB. Despite this, the MEB only evaluated her migraine headaches. Despite the lack of evidence in her electronic medical records, she has provided ample medical evidence to support her claim. She was scheduled for surgery for her back, but it was postponed until after the medical board decision was rendered. When the board rendered their decision, she did not appeal the decision because she was in pain and the surgery was needed; she did not want to delay the surgery further. The surgery took place in Jun 05, and she was DWSP the following month. She filed for SSA disability benefits following her discharge which found her 100 percent disabled, one day after her separation.

She was on various medications for her migraines which were not effective. It was noted by her provider on 3 Dec 04, she was not doing well, and her prostrating migraine headaches had increased to about 12 per month and well uncontrolled. At the time of the PEB, her migraine headaches more closely aligned to the 30 percent DVA rating, experiencing uncontrolled prostrating migraines on average more than once a month. Additionally, she was exposed to burn pits and there is a strong association between burn pits exposure and medically diagnosed headaches.

Regarding her low back pain, there are two different opinions, each exploring the more conservative diagnoses of piriformis syndrome ruled out first after a failed round of physical therapy, failed joint injections, and failed medication pain management. Her surgery was medically necessary but was used as leverage to get her to accept the PEB decision. The six-month follow-up from her surgery showed further loss of range of motion which aligned with a 40 percent DVA disability rating.

The applicant's complete response is at Exhibit I.

## FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of the AFBCMR's Medical Advisory and finds a preponderance of the evidence does not substantiate the applicant's contentions. Regardless of whether the applicant should have been reviewed by the PDBR Agency due to NDAA 2008; this Board reviewed all of the evidence submitted and finds the applicant did not qualify for a medical retirement. The Board finds the medical documentation submitted does not indicate her lower back pain was unfitting at the 40 percent disability rating suggesting incapacitation or a severity to warrant a higher rating or that she had the prostrating frequency of migraine headaches to qualify for a higher rating at the time of her separation. Furthermore, the DVA's and the SSA's decisions are governed by different laws and do not factor into the military's DES process for this applicant. The DVA's decision to increase her disability rating for her lower back pain to 40 percent was made three years after her separation and was partly due to her examinations after separation and not solely based on the severity of her condition at the time of separation. Therefore, the Board recommends against correcting the applicant's records.

## RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, 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-2022-00860-2 in Executive Session on 22 Aug 25:

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Panel Chair

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Panel Member

Panel Member

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

Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 26 Oct 22.

Exhibit F: Application, DD Form 149, w/atchs, dated 15 Nov 24.

Exhibit G: Advisory Opinion, AFBCMR Medical Advisor, dated 2 May 25.

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Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 14 May 25.  
Exhibit I: Applicant's Response, w/atchs, dated 4 Jun 25.

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.

10/6/2025

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Board Operations Manager, AFBCMR  
Signed by: USAF

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