



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Attorney-Client

DOCKET NUMBER: BC-2022-00875

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

She be given a medical retirement for her unfit medical condition of fibromyalgia.

APPLICANT'S CONTENTIONS

She was found unfit for military service due to fibromyalgia. The Department of Veterans Affairs (DVA) currently rates her condition at 40 percent with an overall combined rating of 80 percent. She is in the appeal process as the symptoms make it difficult for her to keep employment. By regulation, a member is medically retired with 20 years if they are 30 percent or higher.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) master sergeant (E-7) awaiting retired pay at age 60.

On 1 Jun 19 and 13 Nov 19, the Statements of Selection, indicate the applicant desired to enter into the Disability Evaluation System (DES) for a non-duty related fitness for determination only.

On 9 Dec 19, a request for a non-duty related DES fitness for determination for the applicant was made indicating she was identified with a non-duty related physical defect or condition that rendered her unfit for duty.

On 12 Dec 19, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of fibromyalgia with a recommendation of "Unfit." Her condition was found to have not incurred while entitled to receive basic pay nor in the line of duty or proximate result of performing duty.

On 12 Feb 20, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of fibromyalgia with a recommendation of "Unfit." Her condition was found to have not incurred

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while entitled to receive basic pay nor in the line of duty or proximate result of performing duty. Her other medical condition of migraine headaches was rated as Category II, conditions that can be unfitting but are not currently unfitting.

On 27 Mar 20, the applicant submitted an appeal, through the Office of Airmen's Counsel (OAC) contending her fibromyalgia prevents her from reasonably performing the duties of her office, grade, rank or rating. Both her migraine headaches and her fibromyalgia/joint pains are unfitting conditions for further military service and, because these conditions are prior service impairments, they should be found in the line of duty.

On 31 Jul 20, on behalf of the Secretary of the Air Force, the Air Force Personnel Board (AFPB) concurred with the determination of the prior PEBs and found the applicant unfit for continued military service and determined her fibromyalgia was found not in the line of duty. The board noted although the service member stated the pain in her hips, back and buttocks were symptoms of her fibromyalgia condition, the AFPB found no evidence to suggest the arthralgia (joint pain) was associated with her current diagnosis of fibromyalgia. In regards to her migraine headaches, the AFPB noted the service member had been under the care of a neurologist in 2012 and 2015-2017. However, since 2017, she had not required specialist follow-up nor required any duty or mobility limitations. Therefore, AFPB found no evidence to find her headaches additionally unfitting for duty and as a result, the medical condition was not eligible for a line of duty determination.

On 31 Aug 20, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 22 years, 5 months, and 28 days of total service for pay. She was discharged, with a narrative reason for separation of "Transfer to the USAF Reserve Retired List."

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and F.

AIR FORCE EVALUATION

NGB/SGPS recommends denying the application. The documentation provided is not sufficient to support the applicant's claim. Per AFI 36-2603, *Air Force Board for Correction of Military Records*, paragraph 3.4.4, applicants have the burden of proof for providing evidence in support of their claim. No military and civilian medical records were provided with the application. Without complete military medical records, NGB/SGPS is unable to review the case to recommend if the condition(s) were incurred or service-aggravated while in a qualified duty status or incurred/aggravated in a non-duty status. Request the applicant submit all military and civilian medical documentation related to all illness, injury and potentially disqualifying medical conditions and proof of service at time of injury/illness/disease incurred or was service-aggravated (i.e. Orders, Pay Roster, DD Form 214, etc.). Medical documentation should include pertinent labs, diagnostic reports, specialty consults, and/or encounter notes related to the condition(s).

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 22 Jun 22 for comment (Exhibit D), and the applicant replied on 15 Jul 22. In her response, the applicant submitted additional evidence to include her active duty deployment orders, her DVA disability rating, her DD Form 214, and her complete military and civilian medical records.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding no error or injustice that occurred in the Non-Duty Disability Evaluation System (NDDDES) processing action of the applicant with regards to her fibromyalgia diagnosis. As described, the applicant's condition was not eligible for a DoD impairment rating.

The portion of the applicant's original requested statement of "I was found unfit for fibromyalgia to continue service in the military" was indeed accurate; however, the second portion of her statement, "but I wasn't given a DoD rating" would be a misunderstanding and not accurate in this case. Her notation of the fibromyalgia diagnosis having been service-connected at a 40 percent rating by the DVA has no commonality to the DES processing within the DoD; except for utilizing the same schedule for rating disabilities. The applicant submitted no in-depth evidence to show accuracy that the DVA in 2017 linked a causality of her diagnosed fibromyalgia to her Iraqi tour of duty nearly nine years prior. Her clinical complaint of hand pain in early 2007 (which she claimed was associated with typing remained consistent with the later issue of carpal tunnel syndrome (CTS) and her right finger pain was not further addressed but treated in association with her CTS. Peer-reviewed medical literature describes fibromyalgia as a long-term (chronic) health condition that causes pain and tenderness throughout ones' body. Primarily, it causes musculoskeletal pain and fatigue. Medical experts do not have an exact understanding of what causes fibromyalgia, but studies have found that certain health conditions, stress and other changes in your life might trigger it (Cleveland Clinic). The evidence that was submitted in reference to any link between the two is lacking at best.

In an attempt to compare the actions from the DVA to what one believes should have occurred within the DoD, the Medical Advisor finds it extremely important that in a case like this, all involved should be informed of the difference in disability processing between the DoD and the DVA. 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 the "snapshot" 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.

Although her fibromyalgia condition was unfitting, it also was found not to have occurred in the line of duty (ILOD), and the Medical Advisor found no evidence of service aggravation of the same. Therefore, the noted condition was non-compensable within the Service per AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay*, and AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*. If the condition was adjudicated as being ILOD then the DoD, DES would be the primary process with a resultant impairment rating as authored within the DVA Schedule of Rating Disabilities (VASRD).

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Jan 23 for comment (Exhibit G), 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 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. Specifically, her unfitting fibromyalgia condition was found to have occurred not ILOD and with no service aggravation. In order to qualify for a medical retirement, her medical condition had to have incurred or was service-aggravated while in a qualified duty status; however, the Board finds no evidence of this. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from active service, does not warrant a change in the total compensable rating awarded at the time of the member's separation. 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 the time of separation and not based on post-service progression of disease or injury. 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

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The following quorum of the Board, as defined in the Department of the Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00875 in Executive Session on 22 Mar 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, dated 22 Mar 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 16 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Jun 22.
- Exhibit E: Applicant’s Response, w/atchs, dated 15 Jul 22.
- Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 7 Jan 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Jan 23.

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.

1/3/2024

Attorney-Client

Board Operations Manager, AFBCMR

Signed by: **Attorney-Client** **Work-Product**