



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-2022-01108

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His discharge with severance pay (DWSP) be changed to a medical retirement.

APPLICANT'S CONTENTIONS

His medical condition of mask phobia and insomnia was changed from 0 percent to 70 percent by the Department of Veterans Affairs (DVA) effective 10 Jan 21. He is now 80 percent disabled due to his service-connected disabilities and he should be disability retired from the Air Force. The DVA is now recouping the amount he received in disability severance pay for his mask phobia and insomnia.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 9 May 05, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for claustrophobia/anxiety in Mission Oriented Protective Posture (MOPP) ensemble and gas mask.

On 3 Jun 05, 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 Specific Phobia (Gas Mask and MOPP Gear) associated with Anxiety, Civilian Social and Industrial Adaptability Impairment, None with a disability compensation rating of 0 percent with a recommendation of "DWSP."

On 17 Jun 05, AF IMT 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the board and waived his rights to a formal hearing.

AFBCMR Docket Number BC-2022-01108
CUI//SP-MIL/SP-PRVCY

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On 19 Aug 05, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving nine years and two months of active duty. He was discharged, with a narrative reason for separation of “Disability, 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 denying the application finding no evidence of an error or injustice during Disability Evaluation System (DES) processing. Upgrade of a disability rating by the DVA after separation does not warrant change to the original DES ratings after the fact. On 3 Jun 05 the Informal PEB found the applicant unfitting for Specific Phobia (Gas Mask and MOPP Gear) associated with Anxiety, Civilian Social and Industrial Adaptability Impairment, None and recommended DWSP with a 0 percent compensable disability rating. On 17 Jun 05 he concurred with the IPEB’s findings and was subsequently DWSP effective 19 Aug 05. Accordingly, the 18 Mar 21 DVA rating decision submitted by the applicant upgraded the rating for this condition from 0 percent to 70 percent effective 10 Jan 21, almost 15.5 years after his separation from the Air Force. Additionally, this rating decision shows that the DVA must withhold part of his DVA compensation until the amount received in severance pay is paid back. This DVA withhold action is outside of the Air Force’s purview; however, under Title 10 U.S.C., Section 1174 the DVA must deduct the entire amount of separation pay, severance pay, or readjustment pay from any DVA compensation paid except for members who have been injured in a combat zone. At the discretion of the DVA, the member may repay the entire amount or the DVA may withhold the monthly compensation until the total amount withheld equals the amount of the Air Force disability severance pay received.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the 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 (DWSP, 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 30 Jun 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. 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)*. 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.

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-2022-01108 in Executive Session on 30 Nov 22:

Work-Product [Redacted], Panel Chair
[Redacted], Panel Member
Work-Product [Redacted], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 3 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Jun 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.

12/8/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product