



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-2022-01176

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His permanent disability retirement be changed to a 15-year retirement under the Temporary Early Retirement Authority (TERA), to qualify for Concurrent Retirement and Disability Pay.

APPLICANT'S CONTENTIONS

He should have been offered a 15-year retirement under TERA during his Disability Evaluation System (DES) processing.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air Force technical sergeant (E-6).

Dated 3 Jun 98, AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of chronic low back pain and recommended permanent retirement with a 40 percent compensable disability rating.

On 9 Jun 98, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates applicant agreed with the findings and recommended disposition of the PEB.

On 2 Oct 98, according to Special Order *Work-Product* dated 25 Jun 98, the applicant was permanently disability retired in the grade of E-6 per AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, with compensable percentage for physical disability of 40 percent.

Issued 1 Oct 98, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects he was honorably discharged in the grade of E-6 after serving 14 years, 7 months, and 5 days of active duty. His narrative reason for separation is "Disability, Permanent."

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

AIR FORCE EVALUATION

**AFBCMR Docket Number BC-2022-01176
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Controlled by: SAF/MRB CUI Categories: SP-MIL/SP-PRVCY Limited Dissemination Control: N/A POC: SAF.MRBC.Workflow@us.af.mil
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AFPC/DPFDD recommends denying the applicant's request. Based on the documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time of the applicant's DES processing. The applicant was not eligible for early retirement under TERA because he was not recommended for a disability discharge or placement on the temporary disability retired list (TDRL). Additionally, on the date of applicant's disability retirement he had 14 years, 7 months, and 4 days of creditable service towards retirement which is less than the 15 years of service required under TERA. Concurrent Retirement and Disability Pay (CRDP) eligibility is determined by Defense Finance and Accounting Service (DFAS) and the Department of Veterans Affairs (DVA) and is not a determining factor in establishing the Air Force disability retirement date.

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 24 Oct 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 Department of the 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 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-2022-01176 in Executive Session on 24 May 23:

Work-Product

Panel Chair

Work-Product

Panel Member

AFBCMR Docket Number BC-2022-01176

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 11 Apr 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 11 Oct 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 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.

1/29/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product