



**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-2022-01198

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

---

---

**APPLICANT'S REQUEST**

He be given a medical separation/retirement.

**APPLICANT'S CONTENTIONS**

He should have been medically separated from the Air Force Reserve but was never allowed the opportunity to go through the Medical/Physical Evaluation Board (MEB/PEB) process. He was in a serious vehicle accident on 12 Oct 00 and put on a 4 profile preventing him from joining another unit. He had neck surgery in 2011 through the Department of Veterans Affairs (DVA) and is in constant pain due to the vehicle accident. He is currently receiving a 40 percent disability rating from the DVA but it may increase. To support his request, the applicant submitted his entire medical and dental records.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force Reserve (AFR) technical sergeant (E-6).

On 31 Mar 89, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of sergeant (E-4) after serving 3 years, 11 months and 13 days of active duty and was transferred to the AFR. He was discharged, with a narrative reason for separation of "Early Separation Program-Strength Reduction."

Dated 31 Mar 04, his Point Credit Summary shows he served 71 active duty days and 24 inactive duty training days between 1 Apr 00 to 31 Mar 01.

Dated 12 Nov 04, Reserve Order *Work-Product* indicates the applicant was honorably discharged from the AFR, effective 6 Nov 04.

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

**AFBCMR Docket Number BC-2022-01198  
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

## **AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to demonstrate the existence of an applied error or intentional injustice. Although medical records were plenty, none revealed the acuteness of a motor vehicle accident (MVA), with or without injuries, dated in Oct 00. Based on the record review coupled with Disability Evaluation System (DES) and regulatory guidance, the applicant, as per the reviewed medical records, was not eligible for MEB processing possibly leading towards a medical retirement and all obligated criteria were in place for a proper regular separation from the Reserve. His honorable separation, as conducted, was appropriate and accomplished in accordance with Air Force and Reserve policy.

In the applicant's request to this Board, he attributes being in a MVA on 12 Oct 00 as the inciting event that ultimately resulted in fusion of a portion of his neck spine 11 years after his reported accident. Although he submitted many medical records with his application and many others were contained in the electronic data base, none were from or dated at the time of the reported MVA on 12 Oct 00. There were no acute medical documentation and or specific follow-up documentation of the accident in 2000. All throughout the reviewed records, it was the applicant's reporting of the MVA occurring on that specific date. The earliest of x-rays or scans that were contained in the medical records were performed nearly three and a half years after the reported accident and each revealed essentially normal findings with a degree of degenerative changes with no evidence of chronic trauma. Also, there were many documents contained in the applicant's point summary reserve statistics, but none covered the specific dates of the reported MVA. The only documentation of such reserve points that included the reported MVA timeframe was a yearly summary (not individual dates) from 1 Apr 00 through 31 Mar 01 which revealed 71 days of active duty and 24 days of inactive duty training days; for a total of 95 days for that year. Any evidence to show he was in a duty status when the accident occurred is lacking in the documents. Such documentation notes throughout the entire year between 2000 and 2001, the applicant was not in a duty status for the majority (74 percent) of the year. Often and well after the year 2000, the applicant stated his pain, referred to as spine pain, was chronic, constant, and unremitting, however, his own stated pain scale was often documented as zero (0) on a 10-point scale; dated examples include 27 Feb 03, 5 May 03, 14 Jan 04, 13 May 04, 27 Sep 07, 16 Jan 09, and 19 Oct 10.

The Medical Advisor is not saying a MVA did not occur in late 2000, but rather the actual evidence of such is lacking in this application and review. Based upon the evidence provided, recorded inconsistencies, radiographic findings of non-traumatic changes consistent with age, minimal time in duty status and multiple physical examination (PE) findings of either nearby muscle tension and minimal loss of range of motion (ROM) years after the reported accident, the Medical Advisor without near complete speculation and unabated low confidence would/could provide a medical opinion favoring a nexus between the reported 2000 MVA and a degenerative condition leading to a spinal fusion. Nearly four years after the reported MVA, such radiographic mild degenerative changes do tend to worsen with time resulting in ultimate disc involvement of bulging or protrusion which is consistent with degenerative arthritis.

Considering the potential absence of treatment records from late 2000, there was no evidence the applicant was ever placed on a duty limiting condition profile for any adverse spine condition. There was no documentation he had any potentially unfitting physical condition in late 2000 and beyond that obligated a referral to a MEB within the DES. There was no indication and or documentation the applicant was unable to reasonably perform his military duties in accordance to his rank, grade, office or rating from late Oct 00 until his separation date of 31 Mar 04.

Lastly, although the records did reflect an impairment rating from the DVA, the Advisor finds it necessary to brief the difference between the military and DVA disability evaluation. For awareness, 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 "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 member's retainability, fitness to serve, or the length of time since date of discharge.

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 10 Nov 22 for comment (Exhibit D), and the applicant replied on 15 Dec 22. In his response, the applicant explains the details of the vehicle accident that caused his injuries stating the accident occurred on 12 Oct 00 in *Work-Product* which involved three vehicles. He was leaving the base departing from his Civil Engineer (CE) job to pick up his wife. The *Work-Product* police was called to the scene of the accident but did not issue a citation to the person at fault. His attorney at the time said it was at the discretion of the police officer in *Work-Product* as to whether or not he wanted to issue an accident ticket. His attorney talked him out of going to court. The following Monday he was seen at CareMore Chiropractic and his injuries were diagnosed as moderate to severe. He was on an Air Force 4 profile because of the accident and could not join another unit. His enlistment time ran out in 2004. His C-5/6 popped because of the impact of accident and he experienced arthritic problems down his right leg because his pelvis was offset when he got hit. His walking is now impaired and he has permission for a vehicle handicap [sic] issued by the DVA. On 12 Jan 11, the DVA performed C-5/6 fusion surgery on him but he still has back problems although fusion surgery was necessary and has helped his cervical/neck area. He paid out-of-pocket for much of his treatment.

The applicant's complete response is at Exhibit E.

#### **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 finds no evidence he was in a military duty status during the alleged time of his motor vehicle accident. Additionally, the Board finds no evidence the applicant was ever placed on a duty limiting condition profile for any adverse spine condition nor did they find documentation he had any potentially unfitting medical condition that warranted a referral to a MEB within the DES. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to his medical conditions. A service member shall be considered unfit when the evidence establishes the member, due to a physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, 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 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 post-service progression of disease or injury. 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 2.5, considered Docket Number BC-2022-01198 in Executive Session on 25 Jan 23:

Work-Product	Panel Chair
Work-Product	, Panel Member
Work-Product	Panel Member

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

**CUI//SP-MIL/SP-PRVCY**

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 6 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Nov 22.
- Exhibit E: Applicant's Response, dated 15 Dec 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.

11/30/2023

*Work-Product*

Board Operations Manager, AFBCMR

Signed by: *Work-Product*