



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-01481

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect a Medical Retirement.

APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) increased his disability rating of 20 percent for traumatic compression fracture, L1, lumbar spine to 40 percent effective 29 Sep 21.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 23 Jul 18, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for chronic low back pain.

On 29 Aug 18, the DVA proposed a 20 percent disability rating for service-connected medical condition of traumatic compression fracture, L1, lumbar spine (claimed as chronic low back pain and chronic lower back pain). The DVA also provided disability ratings for several other service-connected disabilities with a combined rating of 40 percent.

On 5 Sep 18, 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 chronic low back pain (DVA rated as traumatic compression fracture, L1, lumbar spine) with a combined disability rating of 20 percent and recommended Discharge With Severance Pay (DWSP).

On 25 Sep 18, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant did not agree with the findings and recommended disposition of the board and requested a formal hearing.

On 15 Oct 18, on behalf of the applicant, the Office of Airman's Counsel requested a one-time rating reconsideration of the proposed disability evaluation system (DES) rating decision for the applicant's chronic low back pain (DVA rated as traumatic compression fracture, L1, lumbar spine) condition.

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On 31 Oct 18, the DVA found no change was warranted in the proposed evaluation of traumatic compression fracture, L1, lumbar spine (claimed as chronic low back pain and chronic lower back pain), proposed as 20 percent disabling.

On 28 Jul 19, DD Form 214, reflects the applicant was honorably discharged in the grade of airman first class (E-3) after serving 4 years 1 month and 26 days of active duty. He was discharged, with a narrative reason for separation of “Disability, Severance Pay, Non-Combat, Related IDES.”

On 13 Dec 21, according to the DVA Disability Rating, provided by the applicant, the DVA increased the applicant’s disability rating of 20 percent for traumatic compression fracture, L1, lumbar spine to 40 percent effective 29 Sep 21.

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. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the DES process. During the DES processing the applicant’s DVA rating increase reconsideration request was disapproved by the DVA due to his level of impairment during DVA examination at that time. An upgrade of a disability rating by the DVA after separation does not warrant a change to the original DES rating after the fact.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the Physical Evaluation Board (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. That rating determines the final disposition (discharge with severance pay, 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 6 Sep 22 for comment (Exhibit D), 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 AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The military's DES established to maintain a fit and vital fighting force, can by law (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. The DVA (Title 38, U.S.C) may evaluate a member 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.
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 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-2022-01481 in Executive Session on 22 Feb 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:

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 1 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 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.

12/22/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product