



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-2022-01522

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect a permanent retirement.

APPLICANT'S CONTENTIONS

His separation was characterized incorrectly and should be a medical retirement. The Air Force used the Department of Veterans Affairs (DVA) ratings to conclude his disability had improved and required only a 10 percent rating, whereas the DVA rated him at 50 percent. Additionally, his other service-connected disabilities were not considered when he was placed on the Temporary Disability Retired List (TDRL).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Mar 09, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for bipolar disorder.

On 18 May 09, 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 bipolar disorder with a disability compensation rating of 30 percent with a recommendation of "Temporary Retirement."

On 31 Jul 09, AF Form 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 right to a formal hearing.

Dated 5 Aug 09, Special Order *Work-Product* indicates the applicant was placed on the TDRL in the grade of technical sergeant (E-6) with a compensable percentage for physical disability of 30 percent, effective 30 Oct 09.

On 29 Oct 09, the applicant received an honorable discharge. His narrative reason for separation is "Disability, Temporary." He was credited with 8 years and 19 days of total active service.

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On 4 Jan 11, AF Form 356, *TDRL Reevaluation Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of bipolar disorder with a disability compensation rating of 10 percent with a recommendation of Discharge with Severance Pay (DWSP).

Dated 7 Feb 11, Special Order Work-Product, indicates the applicant was removed from the TDRL and discharged in the grade of technical sergeant (E-6) by reason of physical disability with entitlement to 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/DPFDC recommends denying the application. The applicant indicated the DVA rated his unfitting condition higher than the PEB. At the time his case met the PEB, the Integrated Disability Evaluation System (IDES) had not yet been implemented. Therefore, the Services were responsible for rating all unfitting conditions according to the Veterans Affairs Schedule for Rating Disabilities (VASRD) criteria. It was not uncommon for the Services and the DVA to rate conditions differently.

The applicant also indicated the PEB did not rate other conditions for which he received ratings from the DVA. The PEB's charter was/is to determine which conditions render service members unfit for continued service. The applicant was only boarded for his mental health condition and no other conditions were listed as being potentially unfitting on his AF Form 618, dated 2 Mar 09. Since the IPEB found no other conditions unfitting at the time of their review, there is no indication that the PEB was negligent by not finding other conditions rated by the DVA as unfitting.

Based on the information above, recommend disapproval of the applicant's request to have his separation changed from DWSP to permanent retirement. At the time of his TDRL review, the applicant was functioning very well both in his personal and professional life. A higher rating is not warranted based on this data.

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 25 Jul 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/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions to warrant he be permanent disability retired. 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 (DAFI) 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2022-01522 in Executive Session on 22 Feb 23:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 25 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jul 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.

12/22/2023

Work-Product _____
Board Operations Manager, AFBCMR
Signed by *Work-Product*