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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01657

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His NGB Form 22, *Report of Separation and Record of Service*, be corrected to reflect a medical retirement for being unfit due to his physical disability of obstructive sleep apnea (OSA) with pulmonary embolism (PE) with at least a 50 percent combined disability rating.

APPLICANT'S CONTENTIONS

He was wrongfully denied a medical retirement because the Physical Evaluation Board (PEB) erred by not considering his OSA with PE which the Department of Veterans Affairs (DVA) rated at 50 percent. The Air National Guard (ANG) medically separated him for recurrent deep vein thrombosis (DVT) of his upper right extremity which was not supported by his medical records. His medical records indicated he was suffering from OSA with PE.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former ANG master sergeant (E-7).

On 18 Dec 18, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for deep vein thrombosis of right extremity, long term anticoagulation therapy, and pulmonary embolism.

On 15 Mar 19, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board (IPEB)*, indicates the applicant was found unfit for continued military service for his history of recurrent DVT of the right upper extremity with pulmonary embolism, associated with prothrombin gene mutation, requiring indefinite anticoagulation therapy and recommended discharge with severance pay (DWSP).

On 24 Apr 19, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board (FPEB)*, indicates the applicant's medical conditions prevent him from

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

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reasonably performing the duties of his office, grade, rank or rating and recommended DWSP with a disability rating of zero percent.

On 1 May 19, the applicant did not agree with the findings and recommended disposition of the FPEB and requested an appeal through the Air Force Personnel Board (AFPB).

On 27 Jan 20, the Secretary of the Air Force directed the applicant be DWSP with a disability rating of zero percent under the provisions of Title 10, United States Code, Section 1203.

On 1 May 20, NGB Form 22, reflects the applicant was honorably discharged from the ANG in the grade of master sergeant (E-7) after serving 13 years, 9 months and 6 days of active duty. He was discharged, with a narrative reason for separation “Discharge Disability, Severance Pay, Non-Combat Related (Enhanced).”

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

AIR FORCE EVALUATION

SAF Personnel Council finds the evidence of record indicates there was no error or injustice during the Disability Evaluation System (DES) process. All of the applicant’s conditions were reviewed multiple times during the processing of his case through the DES. The applicant’s case was afforded an additional higher level review because his commander recommended his retention. After more than due consideration, competent authority made a reasoned and knowing decision. The DVA maintained the separate rating for DVT with PE and evidence provided is not sufficient to conclude the applicant’s OSA with PE caused the premature termination of his military career. As military disability benefits are bestowed for conditions that caused the premature termination of the applicant’s military career, the DVA’s decision to rate the applicant’s OSA together with PE is not sufficient to conclude the final determination in the applicant’s discharge represents an error or injustice.

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 4 Apr 23 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 opinion of SAF Personnel Council and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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 condition of OSA with PE. A Service member shall be considered unfit when the evidence establishes the member, due to 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 time of separation and not based on post-service progression of disease or injury. Therefore, the Board recommends against correcting the applicant's records.

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-2022-01657 in Executive Session on 26 Apr 23 and 27 Sep 23:

-  *Work-Product*, Panel Chair
-  *Work-Product*, Panel Member
-  *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 25 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, SAF PC, w/atchs, dated 3 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 4 Apr 23.

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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.

1/1/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*