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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01785

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His administrative discharge for erroneous enlistment be changed to a medical retirement with a 40 percent rating for each of his Intervertebral Disc Syndrome (IVDS) and fibromyalgia disabilities.
2. In the alternative, the Board remand this matter to the Medical Evaluation Board (MEB) and instruct the MEB to consider all the medical evidence, including all available evidence relating to his diagnosed disabilities of IVDS and fibromyalgia.

APPLICANT'S CONTENTIONS

Administratively separating him for erroneous enlistment was an error and unjust. First, the Air Force and the Air National Guard (ANG) had knowledge of his medical disabilities, which had been documented and treated since 2015. Second, upon learning his medical disabilities prevented him from reasonably performing the duties required of him, the ANG should have, and was even required to, refer him into the Disability Evaluation System (DES). Moreover, it can be assumed, and will be shown, his IVDS and fibromyalgia would have been found to fail medical retention standards by the MEB. It can also be assumed, and will be shown, his IVDS and fibromyalgia would have been unfitting by the Physical Evaluation Board (PEB).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former ANG senior airman (E-4).

On 28 Feb 14, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force on 20 May 14 for a period of four years.

On 11 Feb 18, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from the Air Force with a narrative reason for separation of "Intradepartmental Transfer."

On 12 Feb 18, according to Special Order *Work-P....* the applicant enlisted in the ANG.

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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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On 6 Jul 18, according to a Department of Veterans Affairs (DVA) Rating Decision Memo, provided by the applicant, he was granted a service-connected disability for IVDS with an evaluation of 40 percent effective 12 Feb 18.

On 11 Jan 19, according to a DVA Rating Decision Memo, provided by the applicant, he was granted a service-connected disability for Fibromyalgia with an evaluation of 40 percent effective 12 Feb 18.

On 22 Apr 19, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was honorably discharged from the ANG under authority of AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.15.2: Erroneous Enlistment.

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

APPLICABLE AUTHORITY/GUIDANCE

In accordance with AFI 36-3209, paragraph 3.15.2. Erroneous Enlistment, an erroneous enlistment, reenlistment, or extension exists if:

3.15.2.1. It would not have occurred had the relevant facts been known by the Air Force, or had appropriate directives been followed.

3.15.2.2. It was not the result of fraudulent conduct on the part of the member.

3.15.2.3. The defect is unchanged in material respects.

AIR FORCE EVALUATION

NGB/SGP recommends denying the application. The applicant was seen and treated for his chronic low back pain during his active-duty period of service May 14 – Feb 18. Prior to separating from active duty, the applicant completed his Separation Health and Physical Examination (SHPE) and was cleared to separate from active duty. The applicant's SHPE did not indicate any outstanding medical issues that restricted him from any type of duty, mobility or fitness restrictions which indicates he was able to perform his duties of his office, grade, and rank/rating prior to separating from active duty. The applicant's AF Form 422, *Notification of Air Force Members Qualification Status*, dated 29 Nov 17, also validated the member was medically cleared for Palace Chase to the ANG. He joined the ANG but was unable to complete the Structural Apprentice technical school and requested to be withdrawn from training due his chronic low back pain. Upon returning home, the applicant sought treatment from a civilian provider(s) as well as the DVA. The civilian Rheumatologist diagnosed the applicant's fibromyalgia and the DVA diagnosed the IVDS. The fibromyalgia and IVDS were not disqualifying medical conditions while applicant served in the ANG. Both medical conditions did not have any ongoing duty or deployment restrictions for over a year nor any ongoing specialist follow-up more than annually. The DES can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and

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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 future progression of injury or illness. The DVA on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and 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 DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the Veteran. The applicant has a 40 percent service-connected rating for IVDS and 40 percent for fibromyalgia effective 12 Feb 18. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of 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 counsel and the applicant on 6 Dec 22 for comment (Exhibit D). Counsel replied on 7 Dec 22 and 2 Jan 23. In the response, counsel contended NGB/SGP concluded the applicant’s medical conditions were subject to a one-year requirement, which is incorrect and should not be relied on. The applicant’s conditions rendered him unfit for continued service and were the cause for career termination while he was in the ANG. The applicant is entitled to a reversal of his administrative separation for erroneous enlistment and full DES processing.

The applicant replied on 3 Jan 23 and reiterated counsel’s response to the advisory.

Counsel and the applicant’s responses are at Exhibit E.

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 NGB/SGP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. 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 the 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-2022-01785 in Executive Session on 22 Mar 23:

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Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
[Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGP, dated 8 Nov 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 6 Dec 22.
- Exhibit E: Counsel and Applicant's Responses, dated 7 Dec 22, 2 Jan 23, and 3 Jan 23.

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.

12/27/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR

Signed by: *Work-Product* [Redacted]