

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXX

DOCKET NUMBER: BC-2022-01801

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical retirement.

APPLICANT'S CONTENTIONS

He should be given a medical retirement due to the many errors made on behalf of his leadership and healthcare team. He needs to be medically retired due to his deteriorating condition which was present long before his voluntary separation. His decision to voluntarily separate was due to his fear of losing his grade and being able to provide for his family. He went from shin splints to neuropathy due to reoccurring injuries to his legs; and even though his condition deteriorated with constant waivers and failed treatment, his case was never sent to the Deployment Availability Working Group (DAWG). The issue was stretched over years of proven deterioration but was never taken to the proper authorities as similar cases, seeing others retired for similar reasons. He does not believe a 90 percent disabled veteran should be considered deployable and would consider himself a liability to any combat situation and a general burden on the mission.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 31 Mar 21, the applicant acknowledged his requirement to ensure a Separation History and Physical Examination (SHPE) is completed prior to his date of separation. A medical representative signed the form acknowledging the applicant completed the SHPE requirements and was medically cleared for separation.

On 30 Apr 21, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving 5 years, 2 months, and 22 days of active duty. He was discharged, with a narrative reason for separation of "Miscellaneous – General Reasons."

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

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical retirement. The Medical Advisor opines the applicant, although claiming errors made on behalf of his leadership as well as members of the military's healthcare team, remains in opposition to such reported/claimed statements. The submitted and reviewed evidence was insufficient in proving the applicant did not meet retention standards as contained in the Medical Standards Directory (MSD) for his symptomatic bilateral leg pain. The objective evidence to prove an inability to perform the duties of his office, grade, rank, or rating, were lacking despite intervals of fitness-only profiling.

In the applicant's request to the Board, he specifically noted going from a condition of shin splints to a deteriorating condition of neuropathy (damage to peripheral nerves, and signs to include a prickling, burning, or numb sensation extending into the limbs), and such a neuropathic condition was the result of recurring injury to his legs. Additionally, it appeared his mentioning of his 90 percent disability impairment rating obtained from the Department of Veterans Affairs (DVA) should be considered in demonstrating his inability to deploy while on active duty.

First, the diagnosis of shin splints (also known by other diagnostic names) was indeed in evidence among his medical records. However, the applicant's comment of recurring injuries to his legs was not found in the record review. Repeatedly at various clinic encounters, the applicant reported no history of traumatic injuries and his leg nearly exclusively became painful only after running with complete pain relief upon rest. Secondly, as the applicant claimed his deteriorating condition was that of neuropathy, such a condition was also not found as evidence in the record review. Both orthopedic evaluations of Dec 19 and Mar 21 noted the applicant's history of the denial of any associated neuropathy type symptoms. Again, his visit to Pain Management in Apr 21 also noted a denial of having any sort of radicular type of symptoms (numbness, loss of sensation, weakness, decreased movement which extended into his legs).

Lastly, his DVA impairment rating of 90 percent as applied on 1 Dec 21 (seven months after separation) has no nexus to that of the Department of Defense (DoD) disability criteria that may have led to a medical board and possibly a medical retirement. The DVA and DoD are not the same in this regard and they both operate under different authorities. For awareness sake, the military's Disability Evaluation System (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 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.

Caveats that were closely considered in this case included (as a summary from above) short-term profiles interspersed with times of being released from encounters without limitations, multiple diagnosing of only involvement of the right lower leg, continued normal results of x-rays and other invasive tests, the maintenance for duty and mobility status, and adhering to MSD criteria for retention despite having an associated factor of personal obesity. Despite such a listing of areas

of consideration, the applicant's SHPE conducted near the time of separation, clearly and appropriately concluded that when looked at the entity of all his concerns, none of them, to include his main concern for this advisory (bilateral leg pain), reached the threshold of being potentially unfitting for continued service and therefore would not have led to a DAWG review and a potential Medical Evaluation Board (MEB). His intermittent fitness-only restrictions did not meet MEB processing criteria.

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 Jan 23 for comment (Exhibit D), and the applicant responded on 15 Sep 23 and submitted a copy of a DVA Radiology Report showing he had a magnetic resonance imaging (MRI) screening completed on 12 Sep 23.

The applicant's complete response is 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 the AFBCMR Medical Advisor 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 conditions, although they periodically impacted his fitness testing. 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. Lastly, the Board finds the evidence presented did not substantiate the applicant's claim that errors were made by his leadership and healthcare team; his discharge was consistent with the substantive requirements of the discharge regulation. Therefore, the Board 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 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-2022-01801 in Executive Session on 22 Mar 23 and 19 Oct 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 23 Jun 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 26 Dec 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Jan 23.
Exhibit E: Applicant's Response, w/atch, dated 15 Sep 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.

X

Board Operations Manager, AFBCMR