



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-2022-01864

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her discharge be corrected to reflect a medical retirement.

APPLICANT'S CONTENTIONS

Her other medical disabilities were not considered during the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). The Department of Veterans Affairs (DVA) rated her service-connected obstructive sleep apnea (OSA) with a rating of 50 percent. Any rating over 30 percent for a duty related disability would have allowed her to be medically retired.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve (AFR) master sergeant (E-7).

On 20 Apr 20, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board* (IPEB), indicates the applicant's bipolar I disorder with generalized anxiety disorder are incompatible with the rigors of military service and unfitting.

On 7 May 20, 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 IPEB and requested a formal hearing.

On 10 Jun 20, the applicant requested to waive her earlier decision for a formal PEB hearing.

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

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2022-01864
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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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AFRC/SGP recommends denial of the applicant's request finding no evidence of an error or injustice. The applicant's condition of bipolar disorder was determined to be a non-duty related condition. Therefore, a non-duty related medical discharge process was appropriately completed at the time of discharge. The applicant also had other medical conditions present and the time of medical discharge processing [sic], but those diagnoses were not considered unfitting for continued military service (including migraine headaches). Diagnoses that are not unfitting which do not fall outside of retention standards for continued military service are not directly considered in medical discharge evaluations. The DVA disability ratings of service connection has no bearing on non-duty related disability case processing.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor finds insufficient evidence to support the applicant's request for a medical retirement. After a review of the available records both submitted and those in electronic format, the Medical Advisor opines the applicant, although claiming errors made on behalf of the IPEB, remains in opposition to such claims. The evidence to prove an inability to perform the duties of her office, grade, rank, or rating, were lacking despite brief intervals of profiling. The DVA service-connected ratings have no nexus to that of the Department of Defense (DoD) disability criteria that may have led to a MEB and possibly a medical retirement. The military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, 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 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 members retainability, fitness to serve, or the length of time since date of discharge. There were no physical/medical conditions that would have been ratable by the DoD as to possibly attain a military medical retirement. Therefore, in the absence of compelling evidence to the contrary, the Medical Advisor finds no solid basis for relief sought in this application.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion from the AFBCMR Medical Advisor to the applicant on 7 Feb 23 for comment (Exhibit E), and the applicant replied on 14 Feb 23. In her response, the applicant contends the military was going to start testing for Obstructive Sleep Apnea (OSA), but she was discharged before it happened. Her OSA should have been processed through the DES as she did not meet the medical standards under AFI 48-123, *Medical Examination and Standards*. Her daytime fatigue and somnolence contributed to and are connected to her OSA. Due to the emotional distress of always being tired and struggling to make it through the day has caused her mental health conditions.

The applicant submitted another response to the AFBCMR Medical Advisory opinion on 7 Sep 23; however, she did not respond to the AFRC/SG advisory opinion that was sent to her on 5 Apr 23 (Exhibit G). In this response, she contends the Medical Advisor specifically commented on her OSA condition rated by the DVA but states there is no evidence the condition was incurred during a period of active duty. As previously stated, she was to be tested for OSA but was discharged before this could happen. She was placed on profiles for fatigue/somnolence. Her fatigue and somnolence are connected to her OSA as she suffered from it far before she was diagnosed with a mental health condition; therefore, her OSA is not related to her mental health condition. However, due to the emotional distress of always being tired and struggling to make it through the day, this affected her mental health condition.

The applicant's complete response is at Exhibits F and H.

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 recommendations of AFRC/SGP and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant was properly evaluated for her medical conditions which rendered her unfit for continued military service; however, her injuries were not incurred during a period of active duty. Therefore, she was discharged with a non-duty related fitness determination finding her injuries/illnesses did not occur in the line of duty. Furthermore, the Board did not find the preponderance of evidence supported her contention her OSA or other sleep related issues should have been found as a duty-related unfit condition as this condition did not render her unfit for continued active service nor was it the cause for career termination. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. 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.
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-2022-01864 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 12 July 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRC/SGP, dated 25 Oct 22.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 29 Jan 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Feb 23.
- Exhibit F: Applicant’s Response, w/atchs, dated 14 Feb 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Apr 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.

1/1/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*