

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01871

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His disability with severance pay (DWSP) be changed to a medical retirement with an 80 percent disability rating.

APPLICANT'S CONTENTIONS

He completed over 10 years of service and was medically separated due to Narcolepsy. Because of his medical separation, he was unable to complete 20 years of service as he intended. His Narcolepsy has been rated by the Department of Veterans Affairs (DVA) at 80 percent disabling. To support his claim, the applicant submitted two DVA disability rating letters showing his service-connected Narcolepsy rated at 80 percent. The letters also list other service-connected disabilities which, when combined, give him a 100 percent disability rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 26 Apr 18, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for Narcolepsy.

On 18 May 18, the DVA proposed a disability rating for his Category I unfitting medical condition of Narcolepsy (also claimed as primary Hyperinsomnia and fatigue) at 10 percent. The DVA found several other service-connected conditions which, when combined, gave him a 50 percent disability rating.

On 21 May 18, 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 Narcolepsy with a disability compensation rating of 10 percent with a recommendation of "DWSP." It is noted the Board considered all other medical conditions rated by the DVA related to the applicant's military service and found these conditions were currently not unfitting for duty separately or collectively.

On 24 May 18, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings of the IPEB and requested a formal hearing of his case.

On 13 Jun 18, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of Narcolepsy with a disability compensation rating of 10 percent with a recommendation of “DWSP.”

On 26 Jun 18, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings of the Formal PEB and requested a his case be referred to SAFPC for review and final decision. In addition, the applicant requested a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB.

Dated 25 Oct 18, a letter from the XX Medical Group indicates a special recall was requested due to the applicant having a significant change in status due to a change in his diagnosis. The letter further stated the applicant was seen by a physician from the XXXXXX Sleep Disorder Center which disagreed with the diagnosis of Narcolepsy, finding his symptoms were more consistent with hypersomnia secondary to shift work.

Dated 2 Nov 18, a letter from SAFPC indicates the Board agreed with the previous Boards’ decision and determined the applicant be discharged and receive severance pay with a disability rating of 10 percent under the provisions of Title 10, U.S.C., Section 1203. The Board noted a return to duty posed an unreasonable risk to the health and safety of the applicant and successful accomplishment of the mission concluding the safety risks outweighed the potential benefit of return to duty for the applicant.

According to the applicants DD Form 214, *Certificate of Release or Discharge from Active Duty*, on 28 Mar 19, he was honorably discharged in the grade of staff sergeant (E-5) after serving 10 years and 19 days of active duty. He was discharged, with a narrative reason for separation of “Disability, Severance Pay, Non-Combat, Related IDES.”

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the applicant’s request for a medical retirement finding no evidence of an error or injustice during the Disability Evaluation System (DES) processing. Upgrade of a disability rating by the DVA after separation does not warrant change to the original DES ratings after the fact. Additionally, the veteran now seems to request a higher percentage for a condition he originally claimed he did not have or should have been returned to duty for during DES processing.

As part of his submission, the applicant provided an updated DVA rating decision dated 11 Jul 22 (over 3 years after separation). This rating decision shows the DVA increased his rating for

Narcolepsy from 10 percent to 80 percent effective 28 Mar 22 which was the date he submitted his supplemental claim. For reference, the Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the PEB must determine whether an Airman's medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (a snapshot in time). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, 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.

On 13 Jun 18 the Formal PEB found the applicant unfitting for Narcolepsy with a 10 percent compensable disability rating and recommended DWSP. The AF Form 356 indicates he contended he was fit for duty and should be returned to duty. However, the FPEB disagreed due to medical evidence which stated otherwise. Additionally, the FPEB noted his commander stated the applicant would likely require a waiver to deploy and operating materiel handling equipment could be problematic if the condition persisted or was permanent. Based on these concerns, the commander did not recommend retention. The FPEB understands the applicant is confident in his ability to work varying shifts and to perform all duties of his Air Force Specialty Code (AFSC); however, his duty and mobility restrictions have remained in place and his commander continues to have reservations regarding his ability to perform the full scope of his duties and deploy. For these reasons, the FPEB found the applicant's narcolepsy to be unfitting for military service. On 26 Jun 18, the applicant disagreed with the FPEB findings and appealed to the Secretary of the Air Force Personnel Council (SAFPC). At which time he also indicated he intended to request a one-time DVA rating reconsideration upon completion of the SAFPC decision. Additionally while his case was pending a decision from the SAFPC, he solicited his Medical Group leadership to have his case recalled due to a new study from an off-base provider which determined he did not have Narcolepsy, but instead his symptoms were more consistent with hypersomnia secondary to shift work. On 2 Nov 18 the SAFPC directed DWSP with a 10 percent disability rating. On 21 Nov 18, he waived his rights to a one-time DVA rating reconsideration as part of the DES process and was subsequently DWSP on 28 Mar 19.

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 31 Aug 22 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 recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no evidence an error or injustice occurred during the applicant's DES processing. 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 and the boards found his disability unfitting at a 10 percent rating and recommended he be discharged with severance pay. This was the rating he received from the DVA at the time of his disability processing for his Narcolepsy. 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 "snapshot" 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 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-2022-01871 in Executive Session on 25 Jan 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 12 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 24 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 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.

X

Board Operations Manager, AFBCMR