

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01958

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His prior service conditions (PSC) be eligible for a medical evaluation board (MEB)/physical evaluation board (PEB).

### APPLICANT'S CONTENTIONS

The NGB/SGP PSC memorandum dated 14 Jul 22 states he was not eligible for a MEB/PEB for his PSC due to his prior service medical records from 2002 to 2012 not being included in the review. As a result, he was referred for a Non-Duty Disability Evaluation Systems (NDDDES) review. His injuries were incurred during his active duty service and progressed to more severe symptoms as he continued his service in the Air National Guard (ANG). His prior service medical records identify the trauma, diagnosis, and treatment to his lumbar, joints, migraine headaches and heart (bradycardia with ventricular scape rhythm/abnormal heartbeat).

He was initially treated for lower back injuries in 2005. In 2008, he incurred another injury, which became chronic and progressed to a severe diagnosis of degenerative disc disease with sciatica in 2015. In 2008, he also incurred additional injuries to his right hip and lower back when struck by a moving vehicle. In 2009, he became an airborne parachutist and sustained multiple injuries due to parachute landings. Most of his injuries were not reported due to being chronic and were managed with over the counter (OTC) inflammation and pain medications.

He had no break in service when he transitioned to the ANG and has received a 100 percent service connected disability rating from the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a technical sergeant (E-6) in the ANG.

The applicant served a prior period of active duty in the Regular Air Force from 19 Nov 02 to 12 Jan 13. He was honorably discharged for completion of required active service and was credited with 10 years, 1 month and 24 days of active duty service.

AF Form 1288, *Application for Ready Reserve Assignment*, dated 11 Jan 13 notes "Member has been medically approved." On 13 Jan 13, he enlisted in the ANG.

The applicant provides an AF Form 469, *Duty Limiting Condition Report*, dated 19 Jun 15 which shows he was not cleared to complete the fitness assessment (FA) components of run/walk, push-ups and sit-ups. There were no duty restrictions noted and the restriction was through 20 Jul 15 (30 days).

The AF Form 469 dated 6 Sep 17 reflects the applicant was not cleared to complete the FA components of run/walk, push-ups and sit-ups. Duty restriction included no strenuous activities. The release date for the restriction was 5 Dec 17 (90 days).

The AF Form 469 dated 10 Nov 21 reflects the applicant was not cleared to complete the FA components of run/walk, push-ups and sit-ups. The restriction was through 9 May 22 (180 days)

The AF Form 469 dated 26 Jan 22 reflects the applicant was not cleared to complete the FA components of run/walk, push-ups and sit-ups. No duty restrictions were noted; however, mobility restrictions were noted due to being identified with a potential disqualifying condition requiring processing through the disability evaluation system (DES).

AF Form 1185, *Commander's Impact Statement for MEB*, dated 9 Mar 22 shows his commander recommended the applicant not be retained due to his conditions. The applicant was a traditional guardsman. He was excused from drill when needed but was allowed to make up dates missed due to injuries. It stated the applicant's injury occurred in 2006 while on active duty. The injury progressed and became chronic in 2016 while in the ANG.

On 14 Jul 22, NGB/SGB reviewed the applicant's PSC condition for chronic low back pain with bilateral sciatica due to degenerative disc disease in accordance with DoDI 1332.18, *Disability Evaluation System (DES)*. The reviewer determined "PSC not applicable." Although he had more than eight years of total active federal military service (TAFMS), his condition did not become potentially unfitting while on orders for more than 30 days. The applicant was active duty security forces from 2002 to 2013, then transferred to the ANG. Per the narrative summary (NARSUM), his chronic low back pain with sciatica began in 2006; however, there were no medical records for corroboration. Records from 2019 through 2021 show he received an epidural steroid injection in Oct 19 without relief. He has also been treated with multiple medications and chiropractor adjustments. There was not a plan for surgical intervention. The applicant's limitation include inability to lift more than 20 pounds, no overhead lifting, no excessive bending from the waist, no squatting and no walking longer than one mile. There was no mention of what his civilian occupation was but documents show he consistently worked out at the gym and a clinical note from Jan 20 indicated he suffered an exacerbation of his low back pain while doing kettle ball squats. The applicant was unable to perform routine Air Force Specialty Code (AFSC) duties, fitness testing, or deploy due to his medical condition. As a result, further processing through the IPEB for NDDDES was recommended.

The applicant provides a DVA rating decision dated 28 Jul 22, which shows his total combined service connected rating is 100 percent. The provided table of rated disabilities list his disability conditions and ratings.

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

## **AIR FORCE EVALUATION**

NGB/SGP recommends denial. The applicant was seen and treated for his back pain, migraine headaches and bradycardia during his active duty service from Nov 02 to Jan 13, but none of the conditions rendered the applicant unable to perform the duties of his office, grade, rank or rating.

In 2005, he was seen for back pain due to pain after lifting weights and was treated with a non-steroidal anti-inflammatory drug (NSAID) and muscle relaxers. He was also seen in Mar 08 for a lumbar strain after being struck by a sport utility vehicle (SUV). The pelvis and left hip radiology report from 9 Mar 08 showed no significant bony, articular or soft tissue abnormality. The

impression was no radiographic abnormality and there was no visible contusion/superficial injury at the impact site.

On 2 Dec 09, he completed an Initial Flying Class III (IFC III) physical to perform static line parachute duties and was certified as medically qualified by USAFE/SGPF. He also received medical clearance paperwork from his primary care manager (PCM) on 12 Jul 12 allowing him to participate in a mixed martial art (MMA) competition, which he had also done in the past. The IFC III physical and clearance to participate in the MMA competition indicate his back pain, migraines and bradycardia did not preclude him from being medically qualified.

The applicant completed his Separation Health Physical Examination on 13 Dec 12, which did not indicate any outstanding medical issues that restricted him from any type of duty, mobility or fitness restrictions. It indicated he was able to perform his duties prior to separating from active duty.

It appears he was not seen again for back pain until 2017. An MRI of the lumbar in 2019 revealed a significant increase in pathology as compared to an MRI in 2017, which is evidence of an intervening event to support a determination of PSC Not Applicable.

The DES can by law, under 10 U.S.C., only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued 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. The DVA on the other hand, operates under a different set of laws (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 complete advisory opinion is at Exhibit C.

NGB/A1PS recommends denial. According to AROWS from 2013 to 2021, the applicant served less than 400 days of active duty and only five orders were for more than 30 days. There was no line of duty (LOD) determination found in the electronic case tracking for any conditions. An LOD finding was unable to be located to possibly be eligible for the eight-year rule.

The applicant contends his back pain, migraines and bradycardia occurred while on active duty during the years 2002 to 2012. The PSC Determination memorandum states the PSC package submitted only included medical records from 2019 to 2021. NGB/SG also reviewed the 2002 to 2012 medical documentation submitted. The records indicate the applicant was treated for the conditions, but none of the conditions rendered the applicant unable to perform the duties of his office, grade, rank or rating.

The complete advisory opinion is at Exhibit D.

## **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 31 Oct 22 for comment (Exhibit E) 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 recommendations of NGB/SGP and NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends his conditions occurred on active duty from 2002 to 2013 and then worsened while performing duties in the ANG. However, insufficient evidence has been presented to show there were any medical conditions that rendered him unable to perform the duties of his office, grade, rank or rating at the time he was honorably discharged from active duty on 12 Jan 13 for completion of required service, which is evidenced by his Separation Health Physical Examination dated 13 Dec 12. The applicant then enlisted in the ANG the following day, on 13 Jan 13, upon being found medically approved as indicated by his AF Form 1288. Moreover, there is also no evidence the applicant incurred any potentially unfitting injury or illness during a period of active duty for more than 30 days with the ANG. The applicant provides medical documentation and AF Forms 469; however, simply receiving care from a medical treatment facility (MTF) or being placed on temporary duty restrictions for short periods of time is insufficient to conclude the applicant incurred or aggravated an LOD injury and should have been placed in the DES for PEB processing. The applicant also provides a DVA rating decision in support of his request showing his combined service connected disability rating of 100 percent; however, as pointed out by NGB/SGP, the military departments and the DVA operate under different laws with different purposes. Accordingly, the Board finds the applicant's DVA rating decision insufficient to warrant granting the applicant's request. 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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2022-01958 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 29 Jul 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, NGB/SGP, dated 11 Oct 22.  
Exhibit D: Advisory Opinion, NGB/A1PS, w/atchs, dated 26 Oct 22  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Oct 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.