UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2022-02260

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His records be corrected to reflect the following:

1. He be reinstated to active duty, retroactive to his date of separation (DOS).

2. He be considered for promotion to the grade of master sergeant (E-7).

3. His 84 days of accrued leave be restored.

4. Any other and further relief as the Board deems just and proper.

APPLICANT'S CONTENTIONS

Through counsel, the applicant contends a material error and/or injustice exists based on the incorrect decision to separate him for disability pursuant to Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. After 10 years of exemplary service on active duty, his career was cut short by his wrongful separation. In Jun 20, he was diagnosed with Crohn's Disease that flared temporarily during that summer. In just a few months of treatment, his symptoms completely resolved, and he was considered in remission.

Due to initially being prescribed a treatment that used an immunosuppressant, his deployability was restricted, and he was referred to the Disability Evaluation System (DES). Before reaching the final stages of the DES, his treatment plan was altered to no longer include the immunosuppressant, thereby removing his deployability restriction. With his condition in remission and his restrictions lifted, his physicians, and his superiors all believed he was capable and should be returned to duty. Nonetheless, the Formal Physical Evaluation Board (FPEB) erroneously determined him to be unfit for further military duty and recommended he be separated for disability. The FPEB deemed his condition to be severe enough to impose "unreasonable requirements" on the military, yet it assigned him a Department of Veterans Affairs (DVA) rating of zero percent. Despite substantial evidence he remained fit for duty, he was separated for a disability as a direct result of the material errors and injustices that occurred.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a disability discharged Air Force technical sergeant (E-6).

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 7 Aug 20, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed on physical restrictions to include no permanent change of station (PCS) assignment, deployment, or temporary duty (TDY), and he was undergoing Initial Review In Lieu of (IRILO) Medical Evaluation Board (MEB).

On 12 Aug 20, according to a Physical Health Template MEB Narrative Summary (NARSUM), the applicant could do all the duties in his Air Force Specialty Code (AFSC) and the Remicade infusions would limit his deployment availability requiring an assignment limitation code. The prognosis was, "Good – on Remicade 5mg/kg monotherapy in clinical remission. Patient will continue treatment plan as is infusion every 8wks. Pt [patient] is doing well w/o [without] complications. His condition is unlikely to resolve but will continue under control with treatment."

On 24 Aug 20, according to AF Form 1185, *Commander's Impact Statement,* the applicant's commander indicated the applicant could satisfactorily perform all primary AFSC duties in-garrison and could not perform his primary duties in an austere/deployed environment unless the installation had military treatment facility capable of providing his medication intravenously every eight weeks. The commander and primary care manager (PCM) felt if the applicant continued to show improvement in his condition, he would be able to continue to serve. The commander recommended the applicant be retained.

On 12 Apr 21, the MEB recommended the applicant be referred to an Informal Physical Evaluation Board (IPEB) for Crohn's Disease without complications.

On 16 Apr 21, the Department of Veterans Affairs (DVA) provided Integrated Disability Evaluation System (IDES) proposed disability rating of zero percent for Crohn's Disease based on mild symptoms.

On 18 Apr 21, the applicant submitted a Letter of Exception to the IPEB requesting he be retained.

On 3 May 21, the IPEB found the applicant's Crohn's Disease requiring treatment with immunomodulatory medication (infliximab/Remicade) by intravenous infusion (DVA rated as Crohn's Disease) unfitting with zero percent compensable disability rating and recommended discharge with severance pay (DWSP). The IPEB noted the applicant was "diagnosed with Crohn's disease by MRE imaging and colonoscopy which revealed too numerous to count non-bleeding linear and punctuated small ulcers throughout the entire colon with rectal sparing." The IPEB acknowledged the commander's recommendation for retention; however, found the applicant's condition and treatment limitations did not meet the demands of broader military service. The applicant's medical condition imposed unreasonable requirements on the Air Force to maintain or protect the applicant's health; was subject to exacerbations and/or progression; required frequent follow-up with a medical specialist; required treatment with immunosuppressive medication infusions precluded deployment to austere locations; and limited the applicant from performing the full duties of his AFSC.

On 10 May 21, the applicant non-concurred with the IPEB findings and requested a formal hearing before the Formal PEB (FPEB).

On an unknown date, the applicant and his counsel submitted a Contention Slip to the FPEB, to include a copy of AF Form 469, *Fitness History Report*, and the following documents:

1. Commander's memorandum, dated 20 May 21, recommending the applicant be returned for duty. The applicant was filling the Command Support Staff Superintendent role and considered by the Commander as "a huge asset to the internal squadron's success." The

commander indicated, the applicant's "medical condition does not limit his ability to perform his daily tasks and has no limitation from the physical fitness assessment. Even when the applicant's disease was flared up. He was still coming to work and performing all tasks effectively and efficiently. These included tasks in his career field (Heating, Ventilation, and Air Conditioning Technician). The Commander also indicated the applicant did not have any mobility, fitness, or work limitation and recently completed his immunosuppressant treatment plan successfully and was fully mission capable in garrison and deployed.

2. Memorandum from his gastroenterologist, dated 19 May 21, indicating the applicant "is asymptomatic and desires to discontinue Renflexis to maintain service eligibility (not deployable while on immunomodulators or immune therapy). ;While this is not the usual course of therapy for this medication (would usually continue two-three years), it is not unreasonable to cease medication given he has been asymptomatic for nearly one year with normalization of his CRP in setting of a sub-therapeutic trough of Renflexis." The applicant, "is willing to maintain close follow up with the GI clinic should he develop new symptoms and will continue to see IBD clinic every 6-12 months. He will repeat a colonoscopy later this year to monitor for disease recurrence. This would allow return to duty without current restriction, though would prefer some period of observation (6-12 months) to ensure no disease progression prior to sending to any austere environment."

3. Memorandum from his primary care manager, dated 11 May 21, recommending he "be returned to duty because it is anticipated that he will have no fitness, duty, or deployment restrictions.

4. Reference letter from the Superintendent, Airman and Family Readiness Center and applicant's previous supervisor, dated 18 May 21, attesting the applicant was an asset to the Air Force and should be returned to duty.

5. Personal statement, dated 19 May 21, requesting he be returned to duty and indicating, "I am no longer on immunosuppressant therapy, which caused some type of mobility restrictions."

On 25 May 21, the FPEB agreed with the IPEB findings and recommended disposition. The justification included, "The FPEB carefully considered comments and the commander's recommendation. However, the Board remains concerned that after maintaining a stable course of therapy and achieving clinical remission, [the applicant's] treatment plan has abruptly changed. As of this month, he will receive no further treatment for his condition. This change in treatment was not initiated due to a new clinical indication but rather due to [the applicant's] concerns regarding the impact of his medication on his deployability. As noted by [the applicant's] gastroenterologist in his May 21 clinical note, "ceasing (infliximab) does increase the risk [the applicant] will develop complications of Crohn's disease (infection, abscess formation, stricture, progression of disease) and may limit the use of (infliximab) in the future due to antibody formation. Clearly [the applicant] is a superior performer and an asset to his unit. However, he has been diagnosed with a chronic autoimmune condition that has no cure and is subject to exacerbations and/or progression and he will continue to require regular follow-up with a medical specialist. The recent change in his treatment has now introduced a new variable which has increased the possibility of [the applicant] developing a complication of his Crohn's disease. For these reasons, the Board finds [the applicant's] medical condition imposes unreasonable requirements on the Air Force to maintain or protect his health and the Board believes his condition will likely continue to necessitate limitations on his deployability in the future."

On 7 Jun 21, the applicant did not request a one-time reconsideration of the DVA disability ratings for the conditions found unfitting by the PEB.

On 9 Jun 21, under the authority delegated by the Secretary of the Air Force (SAF), SAF Personnel Council (SAFPC) directed the applicant be separated from active serve for physical disability with severance pay and compensable percentage for physical disability of zero percent.

On 27 Oct 21, the applicant received an honorable discharge with narrative reason of separation of "Disability, Severance Pay, Non-Combat, Related IDES" and was credited with 10 years and 10 days of active service.

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

APPLICABLE AUTHORITY/GUIDANCE

The military 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 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 future occurrences. Pursuant to Chapter 61 of Title 10, U.S.C., PEBs determine the fitness of Service members with medical conditions that are, either singularly, collectively, or through combined effect, potentially unfitting and, for members determined unfit, determine their eligibility for compensation. DoDI 1332.18, *Physical Disability Evaluation*, reads; A Service member shall be considered *unfit* when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank or rating; the disability represents a decided medical risk to their health or to the welfare or safety of other members; or the disability imposes unreasonable requirements for the military to maintain or protect the Service member.

DoDI 1332.18, paragraph 6.6. Evidentiary Standards for Determining Unfitness Because of Disability.

a. Objective Evidence. 1) The Secretary of the Military Department concerned must cite objective evidence in the record, as distinguished from opinion, speculation, or conjecture, to determine a Service member is unfit because of disability, 2) Doubt that cannot be resolved with evidence will be resolved in favor of the Service member's fitness through the presumption that the Service member desires to be found fit for duty.

b. Preponderance of Evidence. Except for presumption of fitness cases, the Secretary of the Military Department concerned will determine fitness or unfitness for military service based on the preponderance of the objective evidence in the record.

AIR FORCE EVALUATION

AFPC/DPFDF recommends denying the application. There is no objective evidence an error or injustice occurred at the time of DES processing, and the applicant's recent medical history appears to validate the FPEB's concern his Crohn's Disease would not remain in remission off his original recommended course of treatment.

In rendering its decision, the FPEB considered the General Criteria for Making Unfit Determinations as outlined in DoDI 1332.18, Appendix 2 to Enclosure 3. These criteria state a Service member will be considered unfit when the evidence establishes that the member, due to disability, is unable to reasonably perform duties of his or her office, grade, rank, or rating. A Service member may also be considered unfit when the evidence establishes: 1) The Service

member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; or 2) The Service member's disability imposes unreasonable requirements on the military to maintain or protect the Service member. As documented on the applicant's AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the FPEB justified its decision to find the applicant unfit both due to the medical risk associated with his Crohn' s Disease and the unreasonable requirements his condition would impose on the military to maintain and protect his health.

There is precedent for a PEB to return a service member with inflammatory bowel disease back to duty. Not all medications used to treat the condition require special handling and administration. Also, there are medications used to treat the condition which do not impact the immune system to the degree the risk of severe infection and other potential complications become so great they preclude deployment (as with Renflexis). A return to duty could have been possible had the applicant's clinical history indicated he had remained in remission on an alternative medication without the risks and limitations associated with Renflexis. However, the FPEB was presented with a different set of facts. The applicant achieved clinical remission of his Crohn's Disease on Renflexis and then maintained that remission for nearly one year prior to the time of his FPEB appeal. Unfortunately, due to the potential complications associated with Renflexis, the medical risks of performing his duties in an austere environment rendered him unable to deploy. He was able to accomplish his in-garrison duties in an exemplary manner, but once he was started on treatment for Crohn's Disease, the applicant was generally working indoors as a heating, ventilation, and air conditioning technician because Renflexis is associated with a higher risk of skin cancer with prolonged exposure to sunlight. Just prior to his FPEB hearing, the applicant chose to significantly alter the future course of his treatment for Crohn' s Disease; not due to any specific clinical indication but because of the potential impact on his military career. While his gastroenterologist concluded it was "not unreasonable to cease medication," he did advise the applicant this course of action would increase his risk of developing complications of his condition.

At the time his case was adjudicated by the FPEB, the applicant's condition was in remission, and he was reporting essentially no symptoms. The applicant's counsel questions how the FPEB could deem his condition "severe enough to impose "unreasonable requirements' on the military, yet it assigned him a DVA rating of zero percent." At the time this case was adjudicated, the Board based its decision on its knowledge of the chronic waxing and waning nature of Crohn' s disease, as well as its attendant complications and associated systemic, extraintestinal manifestations, as described in the medical literature. The applicant's record of clinical remission up to the time of his FPEB hearing could not be relied upon as a predictor of his future course because of his decision to discontinue the treatment which had enabled him to achieve remission. The applicant's gastroenterologist opined his risk of complications off the medication had increased and that consideration of deployment in the near-term was not optimal. Had the applicant been returned to duty and allowed to deploy, a recurrence in any of his symptoms had the potential to necessitate redeployment from the combat theater, at least for the time it took to conduct a specialty evaluation not possible in the combat theater. Such a scenario not only poses unnecessary risk to the service member, but it also has the potential for negative impact on the mission of the deployed unit. As far as the rating applied by the FPEB is concerned, the applicant reported essentially no active symptoms to the DVA when he underwent his Compensation and Pension Exam. At that time, he was being treated with Renflexis and he was in clinical remission. The FPEB found the applicant unfit, in part, for the reasons outlined previously rather than the symptoms he was reporting. When the member is found unfit as the result of a compensable condition, the FPEB is required to apply the ratings assigned by the DVA as per AFI 36-3212, para 3.18.

While the applicant has remained asymptomatic for much of the time since he was separated from active duty, it appears from the available medical records he did not undergo a repeat colonoscopy

to monitor for disease recurrence as his military gastroenterologist suggested in May 21. In Feb 22, the applicant experienced symptoms consistent with those during his first flare, to include "arthritis, chills, headache, body ache, could not walk, etc." He requested labs be drawn to look for evidence of a Crohn' s flare. At this time, his CRP and fecal calprotectin were normal, and his gastroenterologist was reassured this episode did not represent a Crohn's Disease flare. However, clinical records indicate the applicant presented to the emergency room on 26 Jul 22 with complaints of abdominal pain, bright red blood in the stool, fever, and lower extremity pain. While these symptoms were suggestive of a Crohn' s flare, the cause of this constellation of symptoms was not established at the time of this evaluation. However, the applicant's CRP was significantly elevated, at 32.7. In a follow-up note from his PCM on 5 Aug 22, it was noted a referral to gastrointestinal medicine was pending. These two episodes reflect the fact that each time he has symptoms suggestive of a Crohn's flare, he will require access to medical facilities and consultants capable of assessing for and treating flares of his chronic medical condition.

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 22 Feb 23 for comment (Exhibit D), and the applicant replied on 24 Mar 23. In his response and through counsel, the applicant contends contrary to the speculation contained within the advisory based on lacking a complete understanding of the circumstances, similar to when the FPEB decision was first rendered, throughout the last three years since he achieved remission of his Crohn's disease, he has never had a flare up and has continued to see a gastroenterologist responsibly to ensure his condition has remained in check. Each time his blood work returns with favorable results reflecting no Crohn's complications. Because he achieved remission prior to the FPEB's faulty decision and his doctor at the time was advising that his decision to cease Renflexis was "not unreasonable," the FPEB erred in its determination that he should be medically separated.

The local Airmen Medical Readiness Optimization (AMRO) suggested he be returned to duty for multiple reasons. One of them being the treatment plan was to discontinue the Renflexis and start oral treatment. He was not given that opportunity to show he could stay in remission. Instead, he was diagnosed, went to a full MEB, and medically discharged in less than a year. The correct course of action that should have been taken was to allow him to be returned to duty and care and then revaluated after a year. The FPEB's speculation that he may have a flare up, in and of itself is not disqualifying if he just needed basic medical treatment. And more importantly, their speculation has been proven unfounded for these past three years.

The two-episodes the advisor references were both viruses. He underwent a scan and a colonoscopy at the end of 2022 and the gastroenterologist noted everything looked good with no inflammation and no recommended treatment at this time. In support of his request, the applicant provided copies of additional medical records.

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, to include his response to the advisory opinion, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDF and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board does not find the evidence compelling to overturn the FPEB's findings and its decision the applicant was unfit both due to the medical risk associated with his Crohn' s Disease and the unreasonable requirements his condition would impose on the military to maintain and protect his health. As a result, the Board finds no error with the FPEB's findings and disposition. 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-2022-02260 in Executive Session on 21 Jun 23:

Work-Product Panel Chair
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 20 Aug 22 and 25 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDF, w/atchs, dated 9 Sep 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Feb 23.
Exhibit E: Applicant's Response, w/atchs, dated 24 Mar 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.

1/3/2024

X Work-Product

Work-Product
Board Operations Manager, AFBCMR
Signed by: Work-Product