



**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02385

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

**APPLICANT'S REQUEST**

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect a separation date of 14 Feb 05.

**APPLICANT'S CONTENTIONS**

His case was adjudicated by the Department of Defense (DoD) Physical Disability Board of Review (PDBR), with a recommended change in narrative reason for separation from discharge with entitlement to severance pay (DWSP) to permanent retirement. This action requires identification of possible additional points to be credited to the former service member's points credit summary, and the specific date(s) incurred. However, making such a determination was not within the scope of authority of the PDBR and would require a separate application to the Air Force Board for Correction of Military Records (AFBCMR) for a remedy.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force Reserve (AFR) major (O-4).

On 20 Oct 03, according to DD Form 214, the applicant was discharged from the AFR. His narrative reason for separation is "USAFR Member Released Due to Demobilization." He was credited with 6 months and 16 days of active service this period.

On 31 Aug 04, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for patellar subluxation and possible sural nerve injury with intractable pain and psychological stress, herniated disc L1-L2, and abdominal wall hernia.

Dated 6 Jan 05, AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to depressive disorder associated with pain disorder and right patellar subluxation/knee pain, definite social and industrial adaptability impairment with a recommendation of DWSP with a disability rating of 10 percent.

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Controlled by: SAF/MRB

Work-Product

Limited Dissemination Control: N/A

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On 10 Jan 05, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the PEB and waived his right to a formal PEB hearing.

Dated 8 Aug 21, according to Special Order [REDACTED], the applicant was relieved from active duty and permanently disability retired in the grade of major with compensable percentage for physical disability of 40 percent, effective 15 Feb 05.

According to an undated Memorandum for the Chief of Staff, the applicant was not discharged on 14 Feb 05 with entitlement to DWSP; rather, on that date, he was released from active duty and on 15 Feb 05, his name was placed on the Permanent Disability Retired List (PDRL).

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 has reviewed all available records and finds sufficient evidence to support the applicant's request. The applicant's DD Form 214 should be corrected to reflect he was on active duty orders, and associated points, inclusive of the time from the day after the date of termination of his previous orders, due to demobilization, on 20 Oct 03, through his date of retirement on 14 Feb 05.

While the initial trajectory of the applicant's case appears to have been for processing as a non-duty related condition, the Medical Advisor opines the injury sustained while attending Survival School should have been considered In Line of Duty (ILOD), based either as a de novo injury, aggravation of a prior injury, or based upon the recurrence of initial injury sustained during Flight Surgeon training; under the Prior Service Impairment policy, per DoDI 1332.38, *Physical Disability Evaluation*, in effect at the time. Attention is directed to an extract from DoDI 1241.1, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatment and Incapacitation Pay Entitlements*, relevant to the applicant's case which states when a Reserve Component (RC) Service member is on active duty (AD) or full-time National Guard duty (FTNGD) for a period of more than 30 days and, at the scheduled end of that period, has an unresolved ILOD condition that may render the member unfit for duty under the Disability Evaluation System (DES), the member will, with his or her consent, be retained on AD or FTNGD until the outstanding ILOD conditions are resolved; or he or she is either found fit for duty, separated, or retired as a result of a DES finding.

The applicant injured himself ILOD while attending the Aerospace Medicine Primary (AMP) Course. Then following improvement, he proceeded to the USAF Survival School where his injuries were either worsened or he developed new onset injuries; while still performing in an active-duty status. Accordingly, his injuries were, or should have been, determined ILOD. Thus, the brief reference to Medical Disqualification and referral to a PEB for a fitness only should not

apply in the applicant's ILOD case; instead, this should have rendered him eligible to be maintained on AD orders until his condition was resolved and he was returned to duty, or for DES processing [separation or retirement] as a compensable condition.

The Medical Advisor is unaware of whether the applicant received Incapacitation (INCAP) pay during his period of illness or injury. If so, this has to be taken into consideration in computation of any pay and points. The Medical Advisor also opines the inordinate delay in completing the applicant's DES process should not be held against him, as the reference extracted from DoDI 1241.1, states with his implicit consent, he would be retained on AD orders, at the date he was demobilized, until he was retired as a result of a DES findings.

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 19 Oct 22 for comment (Exhibit D) but has received no response.

### **FINDINGS AND CONCLUSION**

1. Although the application was not timely filed within the three-year limitation period established by 10 U.S.C. § 1552 (b), the untimeliness is waived in the interest of justice.
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 the victim of an error or injustice. The Board concurs with the rationale and opinion of AFBCMR Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board finds the applicant's injuries were incurred during a period of active duty and per the regulations in place at the time of the applicant's service, he qualified for and should have been put on MEDCON orders until his DES case was processed for conclusion. Therefore, the Board recommends correcting the applicant's records as indicated below.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. He be placed on Medical Continuation (MEDCON) orders for the period of 21 October 2003 through 14 February 2005.
- b. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to reflect a separation date of 14 February 2005.

**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-2022-02385 in Executive Session on 21 Jun 23:

[Redacted], Panel Chair  
[Redacted], Panel Member  
[Redacted], Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 3 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFBCMR Medical Advisor, dated 19 Oct 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 19 Oct 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.

[Redacted Signature]

Board Operations Manager, AFBCMR