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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03114

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His 30 percent disability compensation rating be increased to 100 percent.

APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) has awarded him with a 100 percent disability rating for his service-connected asthma. Since then, his ailments have been debilitating requiring caregiver support, home modifications, mental health support, and an extensive amount of medication.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 21 Sep 04, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for mild intermittent asthma exacerbated by environmental allergies and exercise.

Dated 8 Nov 04, AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of asthma, and recommended he be discharged with severance pay (DWSP) with a 10 percent compensable disability rating.

On 13 Dec 04, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the IPEB and waived his right to a formal PEB hearing.

On 28 Feb 05, the DVA Rating Decision Memo indicates the DVA granted the applicant a disability rating of 10 percent for asthma, effective 16 Feb 05.

Issued 14 Mar 05, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects he was honorably discharged in the grade of E-4 after serving six years, six months, and six days of active duty. His narrative reason for separation is "Disability, Severance Pay."

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 9 Oct 14, the DVA Rating Decision Memo indicates the DVA increased the applicant's disability rating of 10 percent for asthma to 30 percent, effective 18 July 13.

On 25 Aug 22, the DVA Rating Decision Memo indicates the DVA increased the applicant's disability rating of 60 percent for asthma to 100 percent, effective 1 May 17.

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. Based on a review of the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the Disability Evaluation System (DES) processing. Changes to a disability rating, either up or down, by the DVA after separation does not warrant change to the original DES ratings after the fact. Additionally, evidence shows the PEB correctly rated the applicant's condition prior to separation. Any worsening of this condition following separation has been properly addressed by the DVA under its veteran's disability system but has no impact on the original DES determination.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the Physical Evaluation Board (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. 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.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor reviewed all available records and finds insufficient evidence to support the applicant's request for an upgrade to his discharge. Based on a review of the available records, the Psychological Advisor finds no error or injustice identified with his discharge or Medical Evaluation Board/Physical Evaluation Board processing. Moreover, insufficient evidence has been presented to support his request for an increased (or additional) disability rating from his mental health condition. There is no evidence he had post-traumatic stress disorder (PTSD) or any other mental health condition during service that was determined to be unfit for continued military service.

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. To the contrary, the DVA, operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time

transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 May 23 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 recommendation of AFPC/DPFDD and the opinion of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence he had PTSD or any other mental health condition during service that was determined to be unfit for continued military service. The military's DES established to maintain a fit and vital fighting force, can by law (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. The DVA (Title 38, U.S.C) may evaluate a member 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. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-03114 in Executive Session on 25 Aug 23:

Work-Product, Panel Chair
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 7 Nov 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 20 Dec 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 15 May 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 May 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.

5/13/2025

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Board Operations Manager, AFBCMR

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