



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-00027

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

The deceased service member’s honorable discharge be upgraded to a medical retirement.

APPLICANT’S CONTENTIONS

The deceased service member was separated from the military for his medical condition of human immunodeficiency virus (HIV). Due to his medical condition, he was informed he would not be able to receive medical assistance from the military. Upon separation, he applied for transfer to the USAF Reserve Retired List.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The deceased service member is a former Air National Guard (ANG) technical sergeant (E-6).

Dated 21 May 03, Special Order Work-Product indicates the deceased service member was relieved from assignment effective 21 Jun 03 and transferred to the USAFR. He had applied for transfer to the USAF Reserve Retired List.

On 21 Jun 03, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the deceased service member was honorably discharged from the ANG after serving 17 years, 9 months, and 26 days of total service for pay. He was discharged with a narrative reason for separation of “Medical Condition.”

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

AIR FORCE EVALUATION

NGB/SGP recommends denying the application. The documentation provided by the applicant is insufficient to support the applicant's claim and does not prove evidence of an error or injustice. Based on a review of all available electronic health records there was no supporting documentation indicating the deceased service member was eligible for Medical Evaluation Board (MEB) processing in accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*. To recommend possible approval of the applicant's request, the following documentation must be provided:

1. All military and civilian medical documentation related to all illnesses, injury and potentially disqualifying medical conditions, to include pertinent labs, diagnostic reports, specialty consults, and/or encounter notes related to the condition(s).
2. Proof of service at time of injury/illness/disease incurred or was service aggravated (i.e., Orders, Pay Roster, DD Form 214, etc.).

The Disability Evaluation System (DES) 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 progression of injury or illness. The Department of Veterans Affairs (DVA) on the other hand, operates under a different set of laws (Title 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 DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

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 5 Sep 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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 deceased service member is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/SGP and finds a preponderance of the evidence does not substantiate the applicant's contentions.

Applicants have the burden of proof for providing evidence in support of their claim and the Board finds no supporting documentation indicating the deceased service member was eligible for a MEB. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. 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. 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. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-00027 in Executive Session on 25 Oct 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 16 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGP, dated 5 May 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Sep 23.

Work-Product

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.

3/26/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*