



Work-Product

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

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00046

Work-Product

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

**APPLICANT’S REQUEST**

His discharge from the Work-Product Air National Guard Work-Product be corrected to show he was medically separated under honorable conditions.

**APPLICANT’S CONTENTIONS**

He received an honorable discharge in Feb 15 (sic) after his accident in May 12. He appeared before a medical board in Sep 14 and was found physically disqualified from service. The Department of Veterans Affairs (DVA) rated him at 100 percent permanently disabled. He wants a medical discharge which will possibly give him compensation.

The applicant’s complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 8 Jun 12, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving three years, three months, and seven days of active duty for this period. He was discharged, with a narrative reason for separation of “Completion of Active Guard/Reserve (AGR) Military Duty Tour.” This DD Form 214 was corrected on 14 Sep 23 to reflect the period of active duty from 2 Mar 09 thru 30 Apr 12 with a period served of 3 years, 1 month, and 29 days.

On 3 Oct 14, a Fitness Determination Letter indicates the applicant was found unfit to perform the duties of his office, grade, rank, or rating due to his medical injuries. The letter notes he is a traditional guardsman who was injured in a motor vehicle accident in May 12 and due to the residual pain from his injuries was found unfit for continued service.

On 8 Nov 14, the applicant’s commander recommended the applicant be discharged from the ANG, under the provisions of AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.14 for a physical disqualification.

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On 8 Nov 14, the applicant acknowledged receipt of the notice for involuntary discharge and waived his rights to counsel and a hearing before the administrative discharge board and indicated he would not submit a statement on his behalf.

On 7 Dec 14, the Staff Judge Advocate found the discharge action legally sufficient.

On 13 Dec 14, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 8 years, 1 month, and 14 days of total service for pay. He was discharged, with a narrative reason for separation of "Ineligibility for Worldwide Deployment - Medical Disqualification." This NGB Form 22 was corrected on 11 Sep 23 to reflect a narrative reason for separation of "Physical Disqualification."

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

### **AIR FORCE EVALUATION**

NGB/SGPS defers the recommendation to NGB/A1 to determine if the applicant was in a military status in May 12 when the accident reportedly occurred. If it is determined the applicant was in a military status, medical records would still need to be provided by the applicant to substantiate the date of the accident. Furthermore, NGB/SGPS recommends upholding the applicant's Formal Physical Evaluation Board (FPEB) Fitness Determination. The applicant agreed with the FPEB disposition and was given the opportunity to rebut the findings. Additionally, the applicant accepted the involuntary discharge and waived his right to a hearing.

The applicant sustained multiple facial fractures, fracture of the left iliac wing and superior aspect of the acetabulum and pubic ramus, and rib fractures with left pneumothorax during a motor vehicle accident which reportedly occurred in May 12. Contemporaneous medical records could not be located. Due to the nature of the applicant's facial and pelvic injuries he continued to experience chronic pain. The residual symptoms prevented the applicant from performing most of his primary duties and impacted his ability to deploy. The applicant underwent a Fitness Determination due to the residual chronic pain resulting from the motor vehicle accident injuries. The FPEB found the applicant unfit to perform the duties of his office, grade, rank, or rating. The applicant agreed with the FPEB recommendation, waived his right to a hearing before an administrative discharge board, and elected not to submit a statement on his behalf.

The complete advisory opinion is at Exhibit C.

NGB/A1PS recommends denying the application finding no evidence the applicant was on military orders at the alleged time of the accident. Based on the documentation provided and review of the Air National Guard Reserve Order Writing System (AROWS) records, the applicant was not on orders in May 12 when the accident reportedly occurred. The applicant was on an Active Guard Reserve (AGR) order from 12 Dec 11 to 30 Apr 12. On 26 Apr 12, the original order in AROWS was modified to amend the order period end date from 8 Jun 12 to 30 Apr 12, prior to the accident that reportedly occurred. Furthermore, NGB/A1PS concurs with

NGB/SGPS's decision to uphold the applicant's FPEB Fitness Determination. The applicant agreed with the FPEB disposition and was provided the opportunity to rebut the findings. Additionally, the applicant accepted the involuntary discharge and waived his right to a hearing.

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 6 Sep 23 for comment (Exhibit E), 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 applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendations of NGB/A1PS and NGB/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. 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 finds the applicant was properly evaluated for his medical condition which rendered him unfit for continued military service; however, his injuries were not incurred during a period of active duty. Therefore, he was discharged from the ANG with a non-duty related fitness determination finding his injuries did not occur in the line of duty. 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)*. 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.

## **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-2023-00046 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 15 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 28 Apr 23.
- Exhibit D: Advisory Opinion, NGB/A1PS, w/atchs, dated 31 Aug 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Sep 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.

	3/18/2024
Work-Product	
Board Operations Manager, AFBCMR	
Signed by	Work-Product