

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00262

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records be corrected to return him to the Temporary Disability Retired List (TDRL).

APPLICANT'S CONTENTIONS

He was released from the TDRL without benefits. He was in treatment with the Department of Veterans Affairs (DVA). He was advised this program would end in five years. Instead, it ended in three years leaving him without benefits. He feels his case worker did not do a good job directing him. There was no hard mail, no phone calls, only email requests were made to him.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air National Guard staff sergeant (E-5).

On 27 Sep 17, according to Special Order Number XXXXX, dated 6 Sep 17, the applicant was relieved from active duty, organization, and station of assignment. Effective 28 Sep 17, he was placed on the TDRL in the grade of staff sergeant (E-5), with a compensable percentage for physical disability of 50 percent.

On 27 Sep 17, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, Paragraph Chapter 8, SPD: SEK [Disability, Temporary, IDES], and was credited with 11 years, 9 months, 20 days total service for pay.

According to the TDRL Statement Letter, on 2 Nov 18, the applicant signed and acknowledged he must report for and complete his required TDRL periodic physical examination on the scheduled time and date and must provide the TDRL examining physician copies of all medical records (civilian, DVA, and military) documenting treatment he had received since his last evaluation.

On 2 Nov 18, according to the TDRL Re-Evaluation Election Form, the applicant elected to have the TDRL Section at AFPC request his medical appointment with the nearest Military Treatment Facility (MTF) that is able to evaluate his disability(ies).

On 27 Nov 18, according to an AFPC/DPFDC email, Subject: TDRL Re-Eval Appt [Applicant], the Temporary Disability Retirement Branch requested assistance from the applicant's Physical Evaluation Board Liaison Officer (PEBLO) with scheduling the applicant's TDRL examination.

On 10 Apr 19, according to an AFPC/DPFDC/TDRL memorandum to DFAS-CL/AF Liaison, a request was submitted to suspend the applicant's retired pay, effective 10 Apr 19, in accordance with Title 10, United States Code, Section 1210(a) (10 USC 1210(a)).

On 26 Sep 19, according to an AFPC/DPFDC/TDRL letter to the applicant, he was informed his time on the TDRL was due to expire, effective 27 Sep 20, and his eligibility to receive Air Force retired pay was terminated, effective 10 Apr 19.

On 2 Sep 20, according to an AFPC/DPFDC memorandum to AFPC/DPFDC/TDRL, the Secretary of the Air Force (SecAF) directed the applicant's name be removed from the TDRL and he be discharged without benefits under the provisions of 10 USC 1210(b), for failure to report for periodic physical examination.

On 27 Sep 20, according to Special Order Number XXXXX, dated 9 Sep 20, the applicant was removed from the TDRL and discharged without benefits in the grade of staff sergeant (E-5), per AFI 36-3212, third anniversary date of placement on TDRL, for having failed to report for scheduled physical examination as required by law.

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

APPLICABLE AUTHORITY/GUIDANCE

Public Law 114-328, 23 Dec 16:

Sec 525. *Reduction of Tenure on the Temporary Disability Retired List.*

(a) *Reduction of Tenure.* Section 1210 of title 10, United States Code, is amended –

(1) In section (b), by striking “five years” and inserting “three years”; and

(2) In subsection (h), by striking “five years” and inserting “three years.”

(b) *Applicability.* The amendments made by subsection (a) shall take effect on January 1, 2017, and shall apply to members of the Armed Forces whose names are placed on the temporary disability retired list on or after that date.

10 USC § 1210. *Members on temporary disability retired list: periodic physical examination; final determination of status*

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of three years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The TDRL office provided proof they communicated with the applicant during his time on the TDRL. The

applicant failed to meet TDRL requirements; therefore, his retired pay was suspended, and because he did not meet TDRL requirements prior to his three-year statutory deadline, he was removed from the TDRL and discharged without benefits.

On 28 Aug 17, the Informal Physical Evaluation Board determined the applicant was unfit for duty and recommended he be placed on the TDRL. The applicant agreed with the findings and recommended disposition, and on the same day, signed and acknowledged a TDRL Statement of Understanding, which outlined the applicant's responsibilities while on the TDRL. He acknowledged his understanding he would attend his scheduled examination(s) and keep the TDRL office updated of any changes to his home address and phone number.

On or about 15 Oct 18, the TDRL office reached out to the applicant to initiate the TDRL re-evaluation process. On 2 Nov 18, he signed the TDRL Re-Evaluation Election Form to have the TDRL office facilitate the examination at the closest servicing MTF. Additionally, he signed the TDRL Statement Letter where he provided his physical address and telephone number, which mirrors the information in the TDRL case management system. On 27 Nov 18, the MTF appointment request was sent to Dover Air Force Base. On that same day, the PEBLO reported to have spoken to the applicant and stated he wanted to change his election to have his evaluation completed locally. The TDRL office confirmed with the applicant, via telephone, that he desired to change his election so he could coordinate with his civilian provider to accomplish the TDRL examination. Over the next four months, the TDRL office was unable to contact the applicant via telephone or email. After numerous failed attempts, the TDRL office verified the applicant's contact information using the Veteran's Benefit Management System and Defense Enrollment Eligibility Reporting System people search. Research revealed his demographic information matched what he provided on the TDRL Statement Letter in Nov 18.

In Apr 19, the TDRL office mailed a letter to the applicant explaining his Air Force retired pay had been terminated for failure to comply with TDRL requirements. On 26 Sep 19, a 12-Month Letter was mailed to the applicant informing him that his time on the TDRL was set to expire on 27 Sep 20. Both letters were mailed to the address he provided on his TDRL Statement Letter. The applicant did not respond to either letter, phone call, voicemail, etc. The last correspondence the TDRL office had with the applicant was on 27 Nov 18, where he confirmed he was changing his election to have his civilian provider accomplish his TDRL examination.

Regarding the applicant's contention he was informed the TDRL tenure was five years, 10 USC 1210(b) limits time on the TDRL to a maximum of three years. Prior to 1 Jan 17, the maximum time was five years; however, Public Law 114-328, Sec. 525 changed the statutory time from five to three years, effective 1 Jan 17. On 2 Sep 20, the SECAF directed the applicant's name be removed from the TDRL, under the provisions of 10 USC 1210(b), and he be discharged without benefits for failure to report for the periodic examination.

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 31 Aug 23 for comment (Exhibit D) 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/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant signed and acknowledged his responsibilities regarding his placement on the TDRL. The TDRL office provided evidence of their attempts to communicate with the applicant and facilitate his compliance with TDRL requirements. The applicant's removal from the TDRL was the result of his failure to meet requirements and was in accordance with the law. 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-2023-00262 in Executive Session on 30 Nov 23:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, dated 17 Jan 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDC, w/atchs, dated 30 Aug 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 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.

X

Board Operations Manager, AFBCMR