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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-00567

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical retirement or medical separation.

APPLICANT'S CONTENTIONS

His Non-Duty Disability Evaluation System (NDDDES) determination should have been routed through the duty Disability Evaluation Process (DES) process resulting in a compensable medical separation per Air Force guidance. He was having health issues while he served on active duty in support of Operation SOUTHERN WATCH at *Work-Product* from 31 Mar 98 through 8 Aug 98 and was subsequently found medically unfit on 28 Sep 01. It appears his unit allowed his enlistment to expire instead of being processed for a medical separation for multiple sclerosis (MS). He is 100 percent disabled by the Department of Veterans Affairs (DVA) and is in a wheelchair.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Aug 98, DD Form 214, *Certificate of Release or Discharge from Active Duty*, provided by the applicant, reflects he was honorably discharged after serving four months and eight days of active duty in support of Operation SOUTHERN WATCH for the period of 31 Mar 98 through 8 Aug 98. He was discharged, with a narrative reason for separation of "Completion of Required Voluntary Active Service."

On 15 Sep 04, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 11 years, 9 months, and 23 days of total service for pay. He was discharged, with a narrative reason for separation of "Ineligibility for Worldwide Deployment."

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

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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 could not make a determination on the applicant's case due to insufficient submitted and available electronic health records detailing when he became unfit to serve and the basis of his discharge.

The applicant was having unusual visual acuity problems while deployed to [Work-Product] [Work-Product]. Per the memorandum dated 2 Aug 98 from the Chief of Medical Operations, the applicant sought care and was referred to Consulting Clinics in [Work-Product] to be evaluated by an Ophthalmologist. The Ophthalmologist found no intrinsic source of the applicant's visual acuity episodes. The applicant also underwent a brief cardiac examination, which was normal.

The applicant sought care at the DVA in Jan 99. The applicant had a magnetic resonance imaging (MRI) completed on the brain without and with contrast enhancement; the radiology report indicated the applicant's diagnosis as MS or possible vessel disease (vasculitis). The applicant continued to receive care through the DVA to present and currently has a rating of 100 percent permanently and totally disabled, effective 20 Dec 06. For reference, the DES, 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 service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. The 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.

A periodic non-fly physical examination package was submitted to ANGRC/SGP for consideration of a waiver for continued ANG duties from the 134 Medical Squadron/SGPS, memorandum dated 15 Aug 01. ANG/SGPS reviewed the applicant's periodic non-fly physical examination package for MS and dispositioned the case as certified medically disqualified for worldwide duty (WWD) due to history of MS on 31 Aug 01. The applicant's case was reevaluated by ANG/SGP on 22 Jan 02 and dispositioned as certified fit for duty, medically nondeployable for history of MS and he was placed on a Deployment Availability Code (DAC) of 42 with a P3 profile valid until 31 Jan 04. After review of all submitted and available electronic health records, it is unclear why ANG/SGP reevaluated the applicant's case as there was no additional supporting documentation. In addition, there is no supporting documentation related to when the applicant became unfit to perform the duties of his Air Force Specialty Code (AFSC), office, rank, or grade.

The complete advisory opinion is at Exhibit C.

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NGB/AIPS recommends denying the applicant's request for a medical separation/retirement. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant's case was reevaluated on 22 Jan 02 by ANG/SGP and he was dispositioned as "Certified Fit for Duty" and found medically nondeployable for a history of MS.

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 28 Nov 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/SGP and NGB/AIPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based on the evidence presented, the applicant went through the NDDES and was initially found disqualified for worldwide duty on 31 Aug 01; however, his case was re-evaluated by ANG/SGP on 22 Jan 02, and he was found "certified fit for duty" and given a DAC-42 until 31 Jan 04. He was administratively discharged 15 Sep 04 due to "ineligibility for worldwide deployment." The applicant did not provide evidence that any improper actions were taken, or proper actions failed to be taken in his DES evaluation or waiver process. The assumption of regular order requires the assumption that DoD and Air Force processes and laws governing his situation were appropriately followed. Therefore, the Board assumes his condition was determined to be not in line of duty (NILOD), he underwent proper NDDES processing, he was found to be not worldwide deployable, and he was provided a waiver by the proper authority to continue serving until 2004 with a DAC, and then he was administratively discharged. The applicant retains the right to request reconsideration of this decision. If the applicant has any additional documentation regarding the basis of his discharge or documentation of any identifiable errors, he should submit them for a Board reconsideration. When the applicant became unfit is not the main issue in whether he should have had a medical separation or retirement, but rather whether the MS condition was determined to be ILOD, NILOD, or never had a LOD determination. If the applicant has a LOD determination showing his MS was found ILOD, he should submit this to the Board for reconsideration. 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 (DAFI) 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

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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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-00567 in Executive Session on 20 Dec 23 and 20 Mar 24:


-  Panel Chair
-  Panel Member
-  Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 31 Aug 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Nov 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.

3/22/2024



Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF