

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00580

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record amended to reflect a medical retirement.

APPLICANT'S CONTENTIONS

The Physical Evaluation Board (PEB) unjustly determined his mental health condition was not caused or aggravated by his military service. When he began the medical evaluation process, he was already rated at 30 percent by the Department of Veterans Affairs (DVA) for mental health and anxiety. By the time he was discharged, he had been upgraded to 70 percent after being evaluated again because of things he left out of his first C&P [compensation and pension] exam.

His panic attacks started while he was working full time for the Air National Guard. His anxiety existed prior to this but was undiagnosed. His mental health continued to get worse from when it was diagnosed in 2015 until his separation in 2020. After his diagnosis, he was put on a waiver that said he was world-wide qualified to deploy but was pulled from two deployments due to his condition. The DVA noted that his deployments to Afghanistan and Iraq may not have directly caused Post-Traumatic Stress Disorder, but ultimately added to his stress and came out as anxiety and panic attacks. Since his separation, he has been diagnosed with rhinitis and sleep apnea, which he did not have before his military service, and are known to contribute to anxiety.

After being told he was going to be separated and the [medical] board denied his medical retirement, he did not appeal due to his lack of understanding of the whole process. After reflecting, he feels it was an unjust decision to say his service did not aggravate his condition, which ultimately ended his career prematurely. He still struggles with his mental health every day and continues to take medications and work with his medical providers to keep it in check. Unfortunately, he cannot get his career back, or the ability to fly. His marriage and relationships are in shambles, and he missed out on multiple things with his kids due to his anxiety. He hopes the Board will give a more thorough evaluation of how his disabilities, if not caused by his service, were certainly aggravated by it, and warrant a medical retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired [State] Air National Guard master sergeant (E-7), awaiting retired pay at age 60.

On 12 Mar 17, according to Narrative Summary, provided by the applicant, he was diagnosed with Generalized Anxiety Disorder (GAD) and Insomnia in Feb 15. The Aerospace Medicine Flight Commander recommended a waiver to the applicant's disqualifying medical condition and consideration of an Assignment Limitation Code (ALC) that limits him to areas with access to medical facilities without an active combat environment.

On 18 Jun 18, according to NGB/SGPS memorandum, Subject: Report of Medical Evaluation, provided by the applicant, he was placed on ALC C-1 [Service member has been found fit and was returned to duty with the following restrictions: Member may be assigned or deployed only to DoD facilities with fixed medical treatment facilities. Member may be assigned to a mobility position. ANG/SG must approve exceptions to this restriction in writing.]

On 19 Aug 19, according to AF Form 469, *Duty Limiting Condition Report*, provided by the applicant, he was found Fit for Duty and Returned to Duty with restrictions: ALC C-1.

On 5 Nov 19, according to DVA Rating Decision, provided by the applicant, his service-connected GAD was granted with an evaluation of 30 percent, effective 1 Sep 19.

On 11 Jan 20, according to Initial RILO [Review in Lieu of] Cover Sheet/Checklist, provided by the applicant, his potentially unfitting diagnosis of GAD required evaluation for continued military service.

On 12 Jan 20, according to Medical Evaluation Board Narrative Summary, provided by the applicant, he was diagnosed with GAD and his [current] level of functioning [does] not appear compatible with continued military service.

On 28 Jan 20, according to AF Form 1185, *Commander's Impact Statement for Medical Evaluation Board*, provided by the applicant, his commander did not recommend retention.

On 22 Jun 20, according to DVA Rating Decision, provided by the applicant, his evaluation of GAD, rated 30 percent disabling, was increased to 70 percent, effective 11 Mar 20.

On 7 Jul 20, according to NGB/SGP memorandum, Subject: Prior Service Condition Determination, provided by the applicant, his condition, GAD, existed prior to service, he was unable to fully perform mission duties, and was referred for review by the Informal PEB.

On 2 Sep 20, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, paragraph 3.14. Physical Disqualification, SPD: RBD [Sufficient Service for Retirement], and credited with 16 years total service for retired pay.

On 3 Sep 20, according to Reserve Order XXXX, dated 9 Oct 20, the applicant was placed on the USAF Reserve Retired List, with Reason: Retirement -15 to < 20 Sat Svc – Med Disq, Elig for Retired Pay except for Attainment of Eligibility Age.

On 8 Jan 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility for Retired Pay at Age 60 letter informing him that he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C § 12731) and is entitled to retired pay upon application prior to age 60.

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

AIR FORCE EVALUATION

The AFRBA psychological advisor finds insufficient evidence to support the applicant's request.

The applicant is seeking to "review the decision the PEB board made in 2020 for [his] separation, that [his] mental condition was not caused or aggravated by [his] military service so [he] would not receive a medical retirement." In effect, he is asking the Board to reverse the

determination made by the National Guard Bureau in Jul 20 that his anxiety disorder, undisputedly unfitting for continued military service, was not incurred in the line of duty, nor permanently aggravated by it. While the applicant's GAD was likely initially diagnosed in 2015, an extensive review of the available evidence did not conclusively demonstrate that the condition was in fact incurred during military service, or permanently aggravated by it. In fact, several provider notes support the NGB/SGP's conclusion that the condition pre-existed his military service. It should be noted that liberal consideration is not appropriate to be applied to the applicant's request for a medical discharge/retirement. This type of request is not covered under this policy.

Furthermore, it should also be noted that the applicant is currently receiving a 70 percent disability rating from the DVA for his generalized anxiety disorder. The military's Disability Evaluation System, established to maintain a fit and vital fighting force, 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 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 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 C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Sep 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 AFRBA psychological advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant's GAD was likely initially diagnosed in 2015, the available evidence did not demonstrate that the condition was in fact incurred during military service, or permanently aggravated by it. In fact, several provider notes support the NGB/SGP's conclusion that the condition pre-existed his military service. The applicant may consider submitting new documentation for a reconsideration of his petition in the future, supporting his assertion that his GAD was incurred, or permanently aggravated, in the line of duty, if such documentation exists. Therefore, the Board recommends against correcting the applicant's records.

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-2023-00580 in Executive Session on 20 Dec 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, w/atchs, dated 10 Feb 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Aug 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 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.

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Board Operations Manager, AFBCMR