

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00775

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to reflect:

1. Block 4a. *Grade, Rate or Rank*: "SSGT" vice "SRA."
2. Block 4b. *Pay Grade*: "E5" vice "E4."
3. Block 13. *Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized*: Award of the Air Force Achievement Medal (AFAM) (**Administratively Corrected to reflect the Air and Space Achievement Medal (ASAM)**).

APPLICANT'S CONTENTIONS

He earned the AFAM and E-5 promotion during his active duty service, but the paperwork came after his retirement. He has sent multiple requests to add this information to his record. He checked his DD Form 214, and it still does not show the medal or grade added.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force staff sergeant (E-5).

On 11 Feb 11, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board* (FPEB), the applicant was diagnosed with Diabetes Type 1, an unfitting condition with a compensable rating of 40 percent and recommended for permanent retirement. On this same date, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the Formal Physical Evaluation Board.

On 22 Feb 11, according to an AFPC/DPSD memorandum, the Secretary of the Air Force directed the applicant be permanently retired under the provisions of Title 10, United States Code, Section 1201 (10 USC § 1201).

On 28 May 11, according to DD Form 214, the applicant was furnished an honorable discharge in the grade of senior airman (E-4), with a Narrative Reason for Separation of Disability, Permanent, and credited with 3 years, 7 months, and 20 days active duty service.

On 29 May 11, according to Special Order Number XXXX, dated 24 Feb 11, the applicant was permanently disability retired in the grade of staff sergeant (E-5), per Air Force Instruction 36-3212, *Physical Evaluation for Retention, Retirement and Separation* and 10 USC § 1372, with a

compensable percentage for physical disability of 40 percent, and the highest grade held on active duty of senior airman (E-4).

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

APPLICABLE AUTHORITY/GUIDANCE

10 USC § 1372 - Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired, and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. There is no indication an error or injustice occurred.

Under 10 USC § 1372, a member is entitled to be retired in the grade to which he or she would have been promoted had it not been for the physical disability for which he or she is retired. Our final disability retirement message, dated 24 Feb 11, indicates the applicant was selected for promotion and was being disability retired in the projected higher grade of staff sergeant (E-5) under the provisions of 10 USC § 1372. Special Order Number XXXX, dated 24 Feb 11, was correctly issued stating the applicant's grade was senior airman (E-4) at the time of release from active duty on 28 May 11, and he was permanently disability retired in the grade of staff sergeant (E-5), effective 29 May 11, due to having a projected promotion. AFPC Enlisted Promotions has also confirmed the applicant's line number did not increment prior to his date of separation.

The applicant's official personnel and pay records would not reflect staff sergeant (E-5) because his line number did not increment and he did not pin-on prior to his date of separation; therefore, his DD Form 214 and retirement order list the grade he held at the time of separation. His retiree identification card reflects his grade as staff sergeant (E-5) as that was the grade at which he was retired.

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 Apr 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 applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's promotion line number did not increment prior to his separation; therefore, his DD Form 214 appropriately reflects his grade as senior airman (E-4). He was subsequently disability retired in the grade of staff sergeant in accordance with 10 USC § 1372, effective 29 Mar 11. 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, beyond that rendered administratively.

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-2023-00775 in Executive Session on 9 Jan 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 10 Feb 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 26 Apr 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Apr 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