



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00822

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. Her line of duty (LOD) determination from 2013 for "General Symptoms" be amended to read "Multiple Sclerosis (MS)."
2. She be given a medical retirement.

APPLICANT'S CONTENTIONS

She received a LOD after fainting during her annual fitness test in 2013. At the time of the episode, no one knew why she fainted as all her tests came back normal. However, shortly after the incident, other symptoms started to manifest which led to an official diagnosis of MS in 2017. As a result of this diagnosis, she was deemed unfit for duty and discharged. Had the error not occurred, her MS could have been considered service connected. When she went back to her unit after receiving the failure to exhaust letter from the AFBCMR, her unit informed her too much time had passed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) Lieutenant Colonel (O-5).

On 5 Feb 13, AFRC IMT 348, *Informal Line of Duty Determination*, provided by the applicant, indicates on 11 Jan 13 she was performing her fitness test when she fainted and remained briefly unconscious. The diagnosis is indicated as injury, general symptoms occurring during a unit training assembly (UTA) in the line of duty (ILOD).

On 1 Apr 19, the applicant indicated on the *Physical Evaluation Board (PEB) Election Form*, she desired to have her non-duty related medical disqualification case referred to the PEB solely for a fitness determination.

AFBCMR Docket Number BC-2023-00822

Work-Product

Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 17 May 19, the applicant's medical case was submitted to HQ AFRC/SGP for fitness for duty review.

On 23 Jul 19, the applicant was determined to be medically disqualified for continued military duty for MS noting no LOD determination was finalized or in the process with a positive determination for the disqualifying condition.

On 2 Oct 19, the applicant's case was referred to the Disability Evaluation System (DES) for a fitness determination.

On 7 Oct 19, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of MS with a recommendation of "Unfit." Her condition was found not to have incurred while entitled to receive basic pay or in the LOD or proximate result of performing duty. It is noted the board acknowledged the commander's statement she was able to perform her Air Force Specialty Code (AFSC) duties in-garrison and recommended retention; however, found her medical condition prevented her from reasonably performing the full duties of her office, grade, rank or rating; represented a medical risk to her health with continued service; required frequent follow-up with a medical specialist; and was subject to unpredictable exacerbations, recurrences, or progression.

On 10 Oct 19, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings of the board and requested a formal hearing. In her statement, she indicated she should be found fit for duty with an assignment limitation code (ALC).

On 6 Nov 19, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to her medical condition of MS with a recommendation of "Unfit" disagreeing with the applicant's contention she be returned to duty.

On 16 Dec 19, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings of the board and requested her case be referred to the Secretary of the Air Force Personnel Counsel (SAFPC) for review and final decision. She also indicated she did not request a one-time reconsideration of the Department of Veterans Affairs (DVA) disability rating. In her appeal letter, she contended she is fit and should be returned to duty.

On 22 Jan 20, SAFPC found the applicant did not submit any new, compelling evidence or information indicating she does not have MS and concluded the previous board determination was final.

On 19 Jul 21, the discharge authority directed the applicant be discharged for a physical disqualification, with an honorable service characterization under AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.14. This document was provided by the applicant.

Dated 12 Aug 21, Reserve Order Work-Product provided by the applicant, indicates she was honorably discharged from the AFR, effective 19 Jul 21.

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

APPLICABLE AUTHORITY/GUIDANCE

The military's DES, 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 set of laws, 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 of time transpired since the date of discharge.

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 1.9, *Standard of Proof for LOD Determinations*, states except where otherwise noted, the standard of evidentiary proof used in making an LOD determination is preponderance of evidence. Preponderance of evidence is defined as the greater weight of credible evidence. When determining whether a preponderance of evidence exists, all available evidence must be considered, including: (1) Direct evidence based on actual knowledge or observation of witnesses; (2) Indirect evidence, such as facts or statements from which reasonable inferences, deductions and conclusions may be drawn to establish an unobserved fact, knowledge or state of mind; and (3) Accepted Medical Principles, based on fundamental deductions, consistent with medical facts that are so reasonable and logical as to create a virtual certainty that they are correct. Preponderance of evidence is not determined by the number of witnesses or exhibits, but by all the evidence and evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall, as well as related events and relationship to the matter being considered. Where clear and unmistakable evidence is required to establish a condition is not in the line of duty (NILOD), it may be provided by accepted medical principles. Accepted medical principles may be discerned through reference to medical literature. Medical determinations relating to the etiology and onset of a disease or condition may constitute clear and unmistakable evidence when supported by the weight of medical literature.

AIR FORCE EVALUATION

HQ AFRC/SG recommends denying the application finding no evidence of an error or injustice as the applicant was given due process and is not eligible for a medical retirement. The applicant had an ILOD finding for "General Symptoms" related to passing out during UTA while performing a fitness test on 11 Jan 13. This passing out episode is alleged by the applicant to have been an early sign of MS, a diagnosis that was made after she subsequently developed new and different symptoms over time. If it is assumed this passing out episode was an early symptom of MS, then

she would have required two separate LODs for this 11 Jan 2013 incident. One LOD would have been for the acute symptoms she suffered on this date during her fitness test (passing out), which was completed in 2013 and appropriately found in the line of duty. There is no need to modify or update this LOD completed in 2013 as it served the purpose of covering the medical care needed for the passing out episode. The second LOD that could have been accomplished was for the suspected chronic, underlying condition of MS. She was on UTA-only orders at the time of this passing out incident (11-13 Jan 13). The standard of proof for LOD evaluation for orders less than 30 days is the preponderance of the evidence. The preponderance of the medical evidence in this case would lead to an Existed Prior to Service – Not Service Aggravated (NILOD) finding for the chronic, underlying condition of MS. Running a fitness test does not cause or permanently aggravate MS. Medical knowledge would underscore, the underlying MS disease changes happened in her brain tissue well prior to this set of orders (illness was incurred prior to this set of orders). After she had many years of waxing and waning MS symptoms, she was entered into the Pre-Integrated Disability Evaluation System (IDES) process initial review in lieu of (I-RILO) and then the Non-Duty Disability Evaluation System (NDDDES) process, which officially disqualified her from further military service due to MS on 28 Sep 21. NDDDES discharges do not have the option of medical retirement as an outcome. Under the Title 10 law, due process was followed, and re-adjudication of this case would not change the outcome. Presumptive service connection falls under the laws governing Title 38 which grants the DVA wide berth for post-military service compensation, which is the appropriate avenue for compensation when a member is not eligible for a medical retirement.

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 18 Dec 23 for comment (Exhibit D), and the applicant replied on 7 Jan 24. In her response, the applicant contends the military’s fitness assessments (FA) have caused an extreme amount of stress since she was an Air Force Reserve Officer Training Corp (AFROTC) cadet and can make or break a career. She suffers from attention deficit disorder and anxiety and the FAs put a lot of additional pressure on her to perform. These FAs also aggravated her depressive disorder and Post-Traumatic Stress Disorder (PTSD). Paramedics were called at least twice because she passed out after taking her FA. Research shows MS can sometimes take years for a diagnosis and is oftentimes misdiagnosed. Although running does not cause or permanently aggravate MS, stress played a significant role in aggravating her condition over the years. The stress that accompanied these FAs could be directly related to MS exacerbations considering the issues she experienced after taking these tests. To attribute the LOD solely to a diagnosis of syncope without a thorough investigation for someone with a repeated history of passing out after running during a FA (not just an isolated incident) would be an injustice, especially when the only tests that were ordered under the LOD were heart related. If the LOD had requested the medical professionals run a computed tomography (CT) scan or a magnetic resonance imaging (MRI), the diagnosis would have set off a different chain of events. Her LOD should be amended, and she should be granted a medical retirement based on medical history from 2003-2021 because this issue goes beyond this one LOD.

The applicant’s complete response is at Exhibit E.

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 AFRC/SG and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board noted the applicant's contention her passing out episode was an early sign of her MS; however, finds the preponderance of medical evidence supports her chronic MS existed prior to service and was not service aggravated. The running portion of her fitness test does not cause or permanently aggravate MS. Furthermore, the Board determined no error or injustice occurred in the IDDES process nor in the LOD determination which indicates she was medically disqualified for continued service due to her non-duty related medical condition which was not incurred during a period of active duty. 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 from active service. Non-duty related fitness determinations are non-compensable. 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-2023-00822 in Executive Session on 18 Jan 24:

Work-Product

Panel Chair

, 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 27 Aug 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, HQ AFRC/SG, dated 14 Dec 23.

AFBCMR Docket Number BC-2023-00822

Work-Product

Work-Product

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Dec 23.

Exhibit E: Applicant's Response, w/atchs, dated 7 Jan 24.

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.

1/26/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2023-00822

Work-Product