



**CUI//SP-MIL/SP-PRVCY**

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01027

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

1. He be medically retired with a disability rating of 70 percent, or such lower rating as merited by the evidence.
2. In the alternative, he be referred to the Disability Evaluation System (DES) for a determination as to whether medical retirement is appropriate.

**APPLICANT'S CONTENTIONS**

In 2022, he requested an evaluation to determine if he was fit for duty due to continuing symptoms from his in the line of duty (ILOD) conditions. He submitted his Department of Veterans (DVA) records which determined ILOD determination for depression and asthma. He was told the Disability Action Working Group (DAWG) would review his case; however, he never received any results. Being cognizant of his upcoming retirement on 1 Mar 23, he again requested an evaluation for the DES process. It was an error not to refer his case to the DES given his service connected disabilities and their impact on his fitness for duty. He requests he be referred to the DES for the following conditions which make him unfit for duty: asthma, major depression, chronic sinusitis, sacroiliac joint dysfunction and bilateral plantar fasciitis. The applicant provides his DVA rating decision dated 18 May 23, AF Form 469, *Duty Limiting Condition Report*, dated 3 Dec 22 and LOD determinations dated 7 Jan 12 and 21 Dec 22.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force Reserve colonel (O-6), awaiting retired pay at age 60.

Per Reserve Order dated 6 Dec 22, the applicant was assigned to the Retired Reserve, effective 1 Mar 23, eligible for retired pay except for attainment of eligibility age.

The applicant provides a DVA rating decision dated 18 May 23 showing his combined compensable service connected disability rating is 90 percent, effective 13 Jan 23.

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

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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

## **AIR FORCE EVALUATION**

AFBCMR Medical Advisor finds insufficient evidence to support the applicant's request for a medical retirement or an unauthorized retro-processing through the DES after separation has occurred. Service connecting and rating a condition by the DVA is not synonymous with what should occur within the Department of Defense (DoD). Despite several diagnostic conditions being found ILOD, the applicant maintained the ability to perform his required duties of his office, grade, rank, or rating. Processing through the DES was appropriately not accomplished in this case. The Medical Advisor finds no compelling basis to recommend granting the relief sought in this application.

In accordance with DoDI 6130.03, Volume 2, *Medical Standards for Military Service: Retention*, the medical standards for military retention are classified into general systems. Unless otherwise stipulated, these are conditions that do not meet the retention standard. These conditions must persist despite appropriate treatment and impair function to preclude satisfactory performance of required military duties of the service member's office, grade, rank or rating. Additionally, DoDI 1332.18, *Disability Evaluation System*, Appendix 2 to Enclosure 3, Section 2, General Criteria for Making Unfitness Determinations, a service member will be considered unfit when the evidence establishes that the member, due to disability, is unable to reasonably perform duties of his office, grade, rank, or rating, including those during a remaining period of Reserve obligation.

In the applicant's submission to the Board, he specifically mentioned depression and asthma, whereas in his brief to the medical group, he listed the specific conditions of asthma, major depression, chronic sinusitis, sacroiliac (SI) joint dysfunction and bilateral plantar fasciitis. Each non-mental health condition is discussed as follows:

a. Asthma: The applicant states as of Jan 23 he suffers daily with asthma, which requires inhalation treatment one to three times a day and cites the Medical Standards Directory (MSD) and the need for an evaluation for retention and that his asthma is service connected by the DVA. There is a distinct difference between the military and the DVA DES. For awareness sake, the military's DES, established to maintain a fit and vital fighting force, can by law, under 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; and then only for the degree of impairment present near the time of their separation and not based on future progression of injury or illness. On the other hand, the DVA, operating under 38 U.S.C., with a different purpose, is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated proven impact upon a service member's retainability, fitness to service, or the length of time since date of discharge. Although the applicant was diagnosed with exercise induced asthma, the condition did not interfere with his ability to perform his military duties as reported by the applicant himself. There was no evidence to show his asthma condition rendered him unable to perform working on a computer, in a courtroom, office work, meeting with airmen or making presentations. Despite flight medicine acknowledging the effective use of pre-exercise Albuterol inhalation, no profiles were established for this condition. This information coupled with the denial of emergent use of an inhaler as seen in the previous two years of his periodic health assessments (PHA) only enhanced and solidified that although such a condition may be disqualifying for service retention (granting a waiver is possible), his condition did not meet the criteria for being unfit. Therefore, processing into the DES was and would be inappropriate.

b. Chronic Sinusitis: The applicant did have a history of a deviated nasal septum, which caused him frequent episodes of nasal and sinus congestion. On 1 Nov 22, the applicant underwent outpatient nasal/sinus surgery. On 9 Nov 22 (8 days after surgery), the applicant in an email to the

DVA clinic staff indicated he was breathing better than he had in years and it was a huge improvement to his quality of life. Subsequent records did not reveal any evidence of the sinus condition causing frequent missed duty days or a requirement for greater than annual follow-up. His nasal/sinus condition was successfully surgically corrected and did not meet the criteria for an unfitting condition. Therefore, processing into the DES was and would be inappropriate.

c. SI Joint Dysfunction: The applicant was first seen for left SI joint pain on 2 Apr 12 where he described an aching pain with an onset of pain beginning three months prior. The origin or mechanism of his painful onset was unknown. Despite infrequent clinic visits and interval physical therapy, the applicant maintained his ability to continue performing his military duties and therefore his condition was not unfitting and referral into the DES would have been inappropriate.

d. Bilateral Plantar Fasciitis: The MSD states if plantar fasciitis results in ongoing duty or deployment limitations for over a year, or requires ongoing specialist follow up more than annually, or causes frequent absence from duty, or prevents the wear of required military footwear it is a disqualifying condition for retention and should be evaluated. The applicant had an approved LOD conducted in early 2012, which noted the original diagnosis was made in 2000 and that it was a flare-up while deployed in Jun 11. A complete examination was performed on 2 Dec 13. The applicant reported walking two miles per day, running four to eight miles two to three times per week and running 10 to 16 miles once per week. The applicant went onto say he moved from 2007 to 2010 and during that time he continued to run 10 to 15 miles week, decreased from 30 miles per week. Although diagnosed with plantar fasciitis and DVA service connected for the condition, the evidence is non-existent that his plantar fasciitis condition caused him an inability to perform his military duties. His long term history of the ability to perform long distance running simply enhances a fit condition.

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 7 Dec 23 for comment (Exhibit D) and the applicant replied on 22 Dec 23. Regarding his asthma and plantar fasciitis, he frequently told his physicians how it came to be; however, not all of the details made it to his medical records. His problems began in the Army where he served as an enlisted infantryman. In those days, hard soled boots were the only ones permitted for use. He frequently carried heavy weight on his back and he began to feel the impacts on his feet and the symptoms of plantar fasciitis. In 1999, he ran two marathons which worsened his symptoms significantly. He sought treatment frequently during the following years, to include injections into his feet. By the end of his service, he suffered significant pain and would often have to take his boots off during his drive home at the end of a drill weekend.

He suffered from asthma following his deployment to Kabul in 2011. While there, he continued to run despite the burn pits and miserable air quality. He frequently coughed up gunk during these runs and felt tightness in his chest and lungs. About 10 years later, the DVA provider finally diagnosed him with asthma. He uses an inhaler each morning and often again while exercising. After his last fitness assessment, it took his lungs three days to stop hurting.

His sinuses and back issues are less serious; however, they still require treatment on a daily basis. To control his back pain, he has to do 30 to 60 minutes of yoga or physical therapy at least four times a week. The medical advisor is correct that surgery improved his sinusitis. However, to prevent infection, he is required to do a sinus rinse daily and use steroid medication.

He served over 28 years but could serve no longer due to his medical conditions. His profile required him to withdraw from consideration for a position that would have allowed him to continue serving. While none of his conditions were non-waivable, they made retirement unavoidable. He provides a list of his DVA prescriptions.

The applicant's complete response is at Exhibit E.

#### **ADDITIONAL AIR FORCE EVALUATION**

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical retirement or referral to the DES. There is insufficient evidence to support the applicant's contention that he was unfit for military service during service or at discharge from a psychological perspective. Despite having a determination his major depressive disorder (MDD) was in the ILOD, there is no evidence he was unable to perform the duties of his office, grade, rank or rating. He consistently met standards on his performance evaluations, he was promoted to the grade of O-6 and earned numerous medals for his outstanding performance.

Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition as unfitting. More information is required to determine unfitness such as being placed on a permanent duty limiting condition (DLC), profile or being deemed not worldwide qualified and the impact or interference of the condition on a service member's ability to reasonably perform their military duties. These designations were absent from the applicant's records. There was no evidence he was unable to reasonably perform his duties from a psychological perspective.

It should be noted there is a difference between the military's DES and the DVA. The military's DES can by law under 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, and then only for the degree of impairment present at the time of separation. To the contrary, the DVA under 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.

Liberal consideration is not applied to the applicant's request because the policy does not apply to medical discharge/retirement requests.

The complete advisory opinion is at Exhibit F.

#### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 3 Jan 24 for comment (Exhibit G) and the applicant replied on 5 Jan 24. He finds the mental health advisory frustrating as he was clear about his mental health symptoms with his medical group (MDG) and requested evaluation for referral to a medical evaluation board (MEB).

His LOD was not completed until 21 Dec 22, almost a year after he left active duty. He was told he was intimidating the MDG staff with his requests and was told the week after he was forced to retire that he was placed on a profile which disqualified him from applying for a position that would allow him to stay in service.

He appreciates that some things take longer in the ANG; however, as a judge advocate general (JAG), he always took the position that the limitations should not be used as an excuse to do right by an airman. He hopes the Board will not do that in his case.

He provides AF Form 348, *Line of Duty Determination*, dated 21 Dec 22 showing the appointing authority found his Adjustment Disorder with Mixed Anxiety and Depressed Mood incurred 30 Sep 21 was found in the ILOD. Part IV, *Wing Staff Judge Advocate*, is not complete and no legal review was completed. He also provides a copy of his DVA compensation and pension (C&P) examination dated 21 Apr 23.

The applicant's complete response, with attachments, is at Exhibit H.

**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 of the AFBCMR Medical Advisor and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends he was unjustly not referred to the DES for his unfitting conditions and that he should be medically retired on the basis of his DVA rating decision dated 18 May 23; however, the Board disagrees. Despite several conditions being found ILOD, the applicant maintained the ability to perform his required duties of his office, grade, rank or rating. The Board finds there is insufficient evidence that the applicant's conditions rendered him unfit for service or caused the termination of his career. Moreover, the military's DES, under 10 U.S.C., can 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. Accordingly, the applicant's DVA service connected conditions remain separate from service disability as it pertains to any military impairment ratings. 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-2023-01027 in Executive Session on 18 Jan 24:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 28 Feb 23.

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- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 30 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Dec 23.
- Exhibit E: Applicant's response, dated 22 Dec 23.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 2 Jan 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Jan 24
- Exhibit H: Applicant's Response, w/atchs, dated 5 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.

1/23/2024

*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: USAF