



**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-2023-01227

*Work-Product*

**COUNSEL:**

*Work-Product*

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

1. He be given a medical retirement and be awarded all backpay and allowances.
2. In the alternative, he be processed through the Disability Evaluation System (DES).

**APPLICANT'S CONTENTIONS**

He was injured while in an active status while performing his duties on a military aircraft. After multiple deployments, including service in Afghanistan, he was discharged from the Air National Guard (ANG) for being medically unfit. He elected to be processed through the DES; however, his unit failed to submit the proper paperwork and he was discharged without a Medical Evaluation Board (MEB) or DES processing. He was informed by the Department of Veterans Affairs (DVA) his injuries were service connected to which he received a 50 percent rating for his obstructive sleep apnea (OSA) and a 30 percent rating for his migraine headaches. There was a mistake made when he was separated prior to the completion of his MEB. The failure to process the MEB was solely the fault of his unit and was outside of his control as he met all deadlines he was given.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former ANG staff sergeant (E-5).

On 28 Oct 09, AF IMT 348, *Line of Duty Determination*, indicates the applicant's left shoulder pain was found in the line of duty (ILOD) stating the applicant's injury initially occurred while he was deployed on Title 10 orders. The applicant states his left shoulder started to hurt and his hands would go numb upon waking in the morning, and he initially thought it was due to his sleeping arrangements, but it did not resolve upon returning home.

On 31 Mar 11, the applicant was found medically disqualified for worldwide duty (WWD).

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Controlled by: SAF/MRB CUI Categories: SP-MIL/SP-PRVCY Limited Dissemination Control: N/A POC: <a href="mailto:SAF.MRBC.Workflow@us.af.mil">SAF.MRBC.Workflow@us.af.mil</a>
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**CUI//SP-MIL/SP-PRVCY**

On 5 Apr 11, a letter, provided by the applicant, was sent to him informing him it was determined he was medically disqualified for WWD with a recommendation of discharge from the ANG. The letter further states he has a right to appeal this decision through the DES.

On 25 Apr 11, the Statement of Selection, provided by the applicant, indicates he elected to have his case referred to the DES solely for a fitness determination.

On 15 Aug 11, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the Air National Guard after serving 10 years, 4 months, and 23 days of total service for pay. He was discharged, with a separation code of "JFT" which denotes "Physical Standards" a Service initiated discharge directed by established directive when a member fails to meet established physical readiness standards in accordance with prescribed Service regulations.

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

**APPLICABLE AUTHORITY/GUIDANCE**

AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, paragraph 8.1. states this chapter provides the guidelines for processing through the disability system certain Air Reserve Component (ARC) members who meet eligibility requirements in paragraph 8.2 Paragraph 8.3 gives an ineligibility guideline. The Air Force disability system will evaluate ARC members who meet the basic requirements for disability benefits under 10 U.S.C., chapter 61. Further, Ready Reserve members who are pending separation for a non-duty related impairment and Reserve members who are not on a call to active duty of more than 30 days and who are medically disqualified for impairments unrelated to the member's military status and performance of duty shall be afforded the opportunity to enter the disability system for a determination of fitness only but shall not be afforded disability benefits. Eligibility for Disability Processing is for ARC members who have impairments which were incurred or aggravated in the line of duty are eligible for disability processing when (1) on active duty for 31 days or more while the member was entitled to basic pay; (2) after 23 Sep 96, on active duty for 31 days or more but not entitled to basic pay under 37 U.S.C. 502(B) due to authorized absence to participate in an educational program, or for an emergency purpose, as determined by the SAF or designated representative; (3) on active duty for 30 days or less or on call to Inactive Duty Training (IDT); (4) while traveling directly to or from the place at which such duty is performed; and/or (5) after 23 Sep 96, any injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods of IDT, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence.

Per paragraph 8.19, any member of the Ready Reserve who is pending separation for a non-duty related impairment shall be afforded the opportunity to enter the DES for a determination of fitness. If determined fit, the member is deemed medically qualified for retention in the Ready Reserve in the same specialty for which he or she was found fit. Members of the Reserve components who are not on a call to active duty for more than 30 days and who are medically disqualified for

impairments unrelated to the member's military status and performance of duty shall be referred into the DES solely for a fitness determination upon the request of the member or when directed by the Secretary concerned.

### **AIR FORCE EVALUATION**

NGB/SGPS recommends denying the application finding no evidence of an error or injustice regarding DES processing. The applicant had medical conditions which warranted NGB/SGPA to render a disposition of “medically disqualified for worldwide duty.” The applicant selected to have his case referred to the DES solely for a fitness determination which indicates his medical conditions were non-duty related. There is insufficient medical documentation submitted as well as in the applicant’s electronic health record to determine which medical conditions rendered the applicant medically disqualified for worldwide duty in 2011.

No additional documentation was submitted or located in the applicant’s electronic health record substantiating he was injured from a fall from a military airplane nor indicating his left shoulder pain rendered him unfit. In a 26 Apr 10 neurology consult, the applicant denied any preceding head trauma or head injury for the headaches he experienced over a six-to-seven-year period and his condition was diagnosed as migraines. The Sep 11 DVA Compensation and Pension (C&P) examination for migraines has no mention of a traumatic brain injury (TBI) or fall from a military airplane with the mental health portion specifically stating no diagnosis of TBI.

The email documentation submitted by the applicant indicates he was in some type of appeal process as it relates to separation; however, there is some disparity in the email documentation as it appears some information was omitted.

The complete advisory opinion is at Exhibit C.

NGB/A1PS recommends denying the application finding no evidence of an error or injustice. According to NGB/SG’s advisory, it is unclear what medical conditions were the reason for the “medically disqualified for worldwide duty” disposition. There is no supporting medical documentation submitted by the applicant. The applicant continues to receive care through the DVA with 50 percent service connection for OSA and 30 percent for migraine headaches.

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 19 Dec 23 for comment (Exhibit E), and the applicant replied on 24 Jan 24. In his response, the applicant contends he disagrees with the advisory opinions. He became aware of the possible correction to his records almost three years ago during his visit to the DVA. He was not aware of the correspondence between Lieutenant Colonel Attorney-Cl... and Chief Master Sergeant Attorney-C... on 14 Jul 11 which suggests potential omission of information from him; however, this is not true. Additionally, despite the limited available records specifying a particular diagnosis or a comprehensive MEB review which led to the

disposition of “Medically Disqualified for WWD” status, he seeks further clarification on the specific grounds and medical conditions that prompted this designation and grant him a medical retirement. There seems to be a discrepancy as to what medical conditions he was discharged for and has asked for a comprehensive review considering his specific service-connected disabilities that led to his unfit status and career termination. His service-connected disability ratings exceed the minimum standards for a medical retirement. He was not properly processed through the DES nor was he assigned a Physical Evaluation Board Liaison Officer (PEBLO) and is a direct violation of his fundamental due process rights.

Applicant’s complete response is at Exhibit F.

### **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/SGPS and NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Specifically, the Board determined his medically disqualified for worldwide duty disposition was unclear as to what medical conditions this applied to as the applicant gave no explanation nor provided documentation to explain this. He stated he was injured while in an active status while performing his duties on a military aircraft; however, no medical documentation was found to substantiate he was injured from a fall from a military airplane or that his left shoulder pain rendered him unfit for continued military service. The applicant was found unfit for continued service due to a non-duty related medical condition which is non-compensable. Per DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.10.5, applicants have the burden of proof for providing evidence in support of their claim. The Board further notes the applicant is receiving care through the DVA for his service-connected OSA and migraine headaches; however, a rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the member’s separation. 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; and then only for the degree of impairment present at or near the time of separation from active duty and not based on post-service progression of disease or injury. 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, U.S.C., and DAFI 36-2603. 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 requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant’s records.

**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-2023-01227 in Executive Session on 18 Jan 24 and 18 Mar 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 11 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 30 Oct 23.
- Exhibit D: Advisory Opinion, NGB/A1PS, dated 13 Dec 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Dec 23.
- Exhibit F: Applicant's Response, dated 24 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.

3/18/2024
<i>Work-Product</i>
Board Operations Manager, AFBCMR Signed by: USAF