

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01381

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record amended to authorize a post-separation medical evaluation board (MEB) to determine eligibility for medical retirement.

APPLICANT'S CONTENTIONS

He is requesting a post-separation medical board to see if he qualifies for a retroactive military medical retirement due to multiple in-service injuries. During the period from Aug 19 – Nov 21, he experienced a rapid decline in his physical health due to a prior in-service injury. This combined with an extremely hostile work environment during the same period led to a rapid decline of his mental and physical health. While seeking treatment for both during this same period, he never improved. Instead, his health rapidly declined to the point where he could barely walk due to his injury, and he could barely focus on a task without having an anxiety or panic attack. He asked his Primary Care Manager and his Mental Health provider about medical boards and the possibility of medical separation or retirement and was told by both they were not ready to consider that option yet. However, considering each only saw half of the story, he guesses that makes sense. Based on their decisions not to help with a medical board, he just chose to separate after 14 years of honorable service. He was awarded 100 percent permanent and total disability shortly after his final separation and surgery to correct the injury. Based on the fact that one is eligible for medical retirement at 30 percent disabled rating, he believes his case would have gone to a medical review board and he would have been recommended for medical retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve technical sergeant (E-6).

According to 18 FSS/FSMPD Memorandum, Subject: Medical Examination for Separation or Retirement, dated 25 Oct 16, the applicant completed the requirements for the Separation History and Physical Examination and was medically cleared for separation.

On 29 Dec 16, according to AF IMT 1288, *Application for Ready Reserve Assignment*, the applicant was recommended for approval of PALACE FRONT assignment with Remarks: "Member has been medically approved."

On 8 Mar 17, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge from the Regular Air Force, with Narrative Reason for Separation: Completion of Required Active Service, and credited with 9 years, 8 months, 27 days active service.

On 9 Mar 17, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the [State] Air National Guard for a period of three years.

On 9 Sep 21, according to *Department of Veterans Affairs (DVA) Rating Decision*, service-connection was established, and the applicant was awarded disability ratings for the following, from 25 Jun 21:

- 70 percent for major depressive disorder with anxious distress.
- 20 percent for right shoulder strain.
- 10 percent for lumbosacral strain.
- 10 percent for left knee strain.
- 10 percent for right knee strain.
- 10 percent for tinnitus.
- 0 percent for residuals of fracture of right long finger.
- 0 percent for residuals of fracture of right ring finger.
- 0 percent for asthma.
- 0 percent for hypertension.

On 17 Sep 21, according to *DVA Rating Decision*, an evaluation error was found and the applicant's disability percentage for residuals of fracture of the right long finger was increased to 10 percent.

On 25 Oct 17, according to *DVA Rating Decision*, the applicant's disability rating percentage for lumbosacral strain was continued at 10 percent, and service-connection for bone fracture of right shoulder was denied.

On 5 Nov 21, according to NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, the applicant was furnished an honorable discharge from [State] Air National Guard, with Authority and Reason: AFI 36-3209, paragraph 3.12.17., Miscellaneous Reasons//No MSO Applies for Transfer to ARPC//120 days+ on ETS, SPD: MND.

On 5 Nov 21, according to Special Order XXXXX, dated 3 Nov 21, the applicant was honorably discharged from the [State] Air National Guard, and transferred to the US Air Force Reserve with assignment to Headquarters, Air Reserve Personnel Center, effective 6 Nov 21.

On 22 Jun 22, according to *DVA Rating Decision*, the applicant's disability evaluation was amended, as follows:

- Lumbosacral strain with degenerative arthritis of the thoracic and lumbar spine and degenerative disc disease status post-spinal fusion increased disability rating from 10 percent to 40 percent, effective 1 Jul 22.
- Major depressive disorder with anxious distress (now with insomnia symptoms) was continued with 70 percent disability rating.

Service-connection was granted, effective 17 Feb 22, for:

- Left lower extremity radiculopathy with evaluation of 20 percent.
- Right lower extremity radiculopathy with evaluation of 20 percent.
- Bilateral plantar fasciitis with evaluation of 10 percent.

According to DVA Disability Benefits letter, dated 8 Jul 22, provided by the applicant, his combined service-connection evaluation is 100 percent, totally and permanently disabled, effective 17 Feb 22.

On 9 Jul 22, according to Reserve Order XXXXX, dated 19 Jul 22, the applicant was honorably discharged from the Air Force Reserve.

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

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for a change of his discharge to a medical retirement or to refer him for a post-separation medical board. There is insufficient evidence from a psychological perspective that the applicant was unfit for duty during his time in service or at discharge. There is evidence that indicates the applicant was able to perform the duties of his office, grade, rank, or rating.

While the applicant contends that he was subjected to an extremely hostile work environment, there is insufficient evidence of this in his military or medical records, both in-service and post-service. There is no evidence the applicant filed a complaint in his military record. His in-service mental health encounters document work stressors and difficulties with co-workers, but his difficulties with his supervisor appear to be a lack of leadership. He noted:

- I have a manager, I don't have a leader.
- [he] has "no relationship" with his supervisor.
- "personality conflicts" among [patient] and coworkers.

During some post-service mental health encounters, the applicant mentions that he thinks he has Post-Traumatic Stress Disorder (PTSD) from his sergeant. The applicant still does not appear to mention a hostile work environment as the cause, but rather that he did not pay enough attention to him, not being a good leader, and that he did not like him. He noted:

- he thinks he has PTSD from his sergeant not paying enough attention to him and not being a good leader.
- still struggling with the idea that his previous commander "did not like me."
- he feels abandoned by his guard leadership and does not feel supported.

While the applicant reported he felt that his mental health symptoms "reportedly affected" his occupational functioning, there is no evidence of this. He consistently met expectations throughout his career and his enlisted performance reports are void of derogatory/critical comments.

The applicant was diagnosed with mental health conditions during his service including stress not otherwise classified, adjustment disorder, and major depressive disorder. There is no indication that his mental health conditions made him unfit for duty. He was temporarily placed on a mental health profile when he was first placed on medication for three months, to ensure he successfully titrated to his medication. He was taken off the temporary profile after three months and there is no indication that he was ever placed on another profile for mental health reasons. Besides this temporary profile, his mental health encounters document he was consistently released without any limitations, he had no duty restrictions, he was determined to be psychologically fit for full duty, he had no profile, Duty Limiting Condition (DLC), or limited duty, he was able to deploy, and was not referred for an MEB.

Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition unfitting. More information is required to determine unfitness such as being placed on a permanent DLC profile for his mental health condition, being deemed not world-wide qualified due to his mental health condition, and impact or interference of the

condition on his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. These designations were absent from his records as noted above.

The applicant contends that his DVA rating is equivalent to an MEB determination. The military's Disability Evaluation System (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 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.

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

The complete advisory opinion is at Exhibit C.

BCMR Medical Advisor recommends denying the applicant's request for post-service MEB and retroactive medical retirement.

Addressing the applicant's expressed desire for consideration of a post-service MEB and a medical separation or retirement, the military 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 future progression of injury or disease. Specifically, Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, paragraph 6.2, *General Criteria for Making Unfitness Determinations*, reads: "A Service member shall be considered unfit when:

(a) The evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating to include duties during a remaining period of Reserve obligation."

(b) The evidence establishes that their disability:

(1) Represents a decided medical risk to their health or to the welfare or safety of other members; or:

(2) Imposes unreasonable requirements on the military to maintain or protect the Service member.

In the case under review, although the applicant has been given service-connection and compensation for several medical conditions, the Medical Advisor found no objective service evidence to indicate that either of these prevented him from reasonably performing the duties of his office, grade, rank, or rating. Moreover, there is no AF Form 469, *Duty Limiting Condition Report*, coded "37," established for a low back condition, a mental health condition, or any other medical condition, that restricted duty or mobility of sufficient duration [up to 365 days], or sooner with a documented lack of expected resolution or improvement after receiving optimal care, to warrant initiation of the Deployment Availability Working Group review, review by Headquarters, Air Force Personnel Center, Medical Retention Standards Division, an MEB, and referral to a Physical Evaluation Board.

The Medical Advisor concedes that it appears counterintuitive for a former service member to be granted significant compensation by the DVA, for service-connected medical conditions, made effective the day after date of discharge, but did not warrant or trigger an MEB. However, the applicant is advised that, operating under a different set of laws, Title 38, Code of Federal Regulations (C.F.R.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service-incurred, without regard to [and independent of] its demonstrated or proven impact upon a service member's retainability, fitness to serve, and the narrative reason for separation. This is the reason why an individual can be released from service for one reason and yet sometime thereafter still receive a compensation rating from the DVA for one or more medical conditions that were determined service-connected but were not determined militarily unfitting at the time of release from military service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service-connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 27 Dec 23 for comment (Exhibit E) 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 of the AFRBA Psychological Advisor and rationale and recommendation of the BCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant was diagnosed with mental health conditions during his service, there is no evidence his mental health conditions made him unfit for duty. He was temporarily placed on medical profile for a period of three months when prescribed medication to ensure successful titration; however, after expiration of the three-month profile, there is no indication the applicant was ever placed on another medical profile for mental health reasons. His mental health encounters document he was consistently released without limitations or duty restrictions. He was determined to be psychologically fit for full duty, was able to deploy, and was not referred for an MEB. Similarly, while the applicant has been granted service-connection and compensation for several medical conditions by the DVA, there is no objective evidence to indicate these medical conditions prevented him from performing the duties of his office, grade, rank, or rating, as required by DoDI 1332.18, for a determination of unfitness. In fact, there is no documented mental health or medical condition that warranted initiation of the military DES for a fitness determination. 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-2023-01381 in Executive Session on 21 Feb 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 22 Apr 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Sep 23.
Exhibit D: Advisory Opinion, BCMR Medical Advisor, dated 6 Dec 23.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Dec 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