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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01581

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His Discharge with Severance Pay (DWSP) be changed to a medical retirement.
2. His grade at the time of separation be changed to staff sergeant (SSgt).

APPLICANT'S CONTENTIONS

His current Department of Veterans Affairs (DVA) disability ratings warrant a change in his discharge status, and he should have been separated or retired in the higher grade of staff sergeant due to selection for promotion several months prior to separation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 16 Aug 12, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 29 Jan 13 for a period of six years.

On 27 Jan 17, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was honorably discharged with a narrative reason for separation as "Disability, Severance Pay, Non-Combat (Enhanced)."

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the applicant's request to reconsider his IDES disability rating and separation status at the time of his separation. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during DES

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processing. The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the Physical Evaluation Board (PEB) must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated.

Under the DVA system (Title 38, U.S.C.), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA based on new and/or current exams conducted after discharge from service does not warrant a change in the total compensable rating awarded at the time of a member's separation. Although the DVA service-connected several other additional medical conditions throughout the years following his separation for which he was not boarded by the PEB there is no indication these conditions were severe enough to be considered unfitting by DoD standards for DES processing.

On 27 Sep 16 a Medical Evaluation Board (MEB) found the applicant potentially unfitting for chronic back pain. The accompanying Medical Narrative Summary (NARSUM), dated 16 May 16, indicates he had an approximate two-year history of back pain without trauma with a chief complaint of mid back pain radiating to the neck which did not resolve with conservative treatment and medication. The NARSUM also indicates he had no significant pertinent medical/surgical history. As part of the IDES process, his DVA Compensation and Pension (C&P) Examinations were reviewed to ensure there were no other DVA claimed conditions that could also be considered potentially unfitting. On 20 Sep 16 a medical provider reviewed the C&P exams dated 1 Jan 16 and determined the following additional DVA claimed conditions: bilateral knee pain, bilateral shin splints, left Patellofemoral syndrome, bilateral ankle pain, tension headaches, tinnitus, Meibomian gland dysfunction, allergic conjunctivitis and dry eye syndrome were not potentially unfitting conditions. On 18 Nov 16 the Informal PEB found the applicant unfitting for chronic back pain; DVA rated as Lumbosacral Strain with Degenerative Disc Disease and recommended DWSP with a 20 percent compensable disability rating in accordance with the rating assigned by the DVA for this condition during IDES processing. The IPEB also noted consideration was given to all other medical conditions rated by the DVA as required under the IDES and found these conditions were not unfitting for duty either separately or collectively. On 28 Nov 16 the applicant accepted the IPEB's findings and waived his right to a Formal PEB hearing where he could have possibly requested adding additional medical conditions to the list of unfitting conditions during IDES processing. He was subsequently DWSP effective 27 Jan 17.

The complete advisory opinion is at Exhibit C.

AFPC/DPMSPP recommends denying the applicant's contention he should have been separated or retired in the grade of staff sergeant due to his selection for promotion. The applicant has shown no proof he accomplished all requirements for promotion. He was projected for promotion for cycle 16E5; however, the line number was automatically deleted when his record was updated to

reflect his projected separation date because of the medical board's decision to separate the applicant. Per AFI 36-2502, *Enlisted Airman Promotion and Demotion Programs*, Table 1.1, Rule 1, the applicant was ineligible for promotion due to a mandatory date of separation (DOS) approved before the first day of the month promotions are incremented in that cycle. In addition, Table 1.2, Item 10, further states to be selected for promotion to staff sergeant completion of resident Airman Leadership School (ALS) is required; however, the applicant separated as a SrA and did not meet the ALS requirement for the promotion to staff sergeant.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 7 Nov 23 for comment (Exhibit E) 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 recommendations of AFPC/DPFDD and AFPC/DPMSPP and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no error or injustice occurred during the applicant's DES processing. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to any of the medical conditions which were deemed service-connected by the DVA except for his chronic back pain. All of his other medical conditions were properly determined to not have been unfitting at the time of his discharge. A Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the total compensable rating awarded at the time of 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 and not based on post-service progression of disease or injury. Lastly, the Board notes the applicant's desire to change his grade to staff sergeant; however, finds he did not complete the requirements for this promotion prior to his separation. Therefore, the Board recommends against correcting the applicant's records. 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 and finds the application untimely.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-01581 in Executive Session on 18 Jan 24:

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Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 16 May 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, dated 8 Sep 23.
- Exhibit D: Advisory Opinion, AFPC/DPMSP, dated 5 Oct 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 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.

12/5/2024

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Board Operations Manager, AFBCMR
Signed by: USAF