



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01645

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His medical retirement be reinstated.

### APPLICANT'S CONTENTIONS

He had an appointment to be reevaluated for a disability rating, but his car broke down. He tried to contact someone to reschedule the appointment but was unsuccessful. After a couple of months his military retirement benefits stopped.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

On 9 Jun 77, the applicant was discharged from the Air Force after serving 3 years, 9 months, and 5 days of active duty. On 10 Jun 77, the applicant reenlisted in the Air Force for a period of two years in the grade of sergeant (E-4).

On 4 Feb 80, the Informal Physical Evaluation Board (IPEB) found the applicant unfit for the condition Guillain-Barre syndrome with cardiac arrest. The IPEB recommended a temporary retirement with an 80 percent disability.

On 13 Feb 80, the Secretary of the Air Force directed the applicant be retired under the provisions of 10 USC, 1202 effective 5 Mar 80.

On 5 Mar 80, according to Special Order **Work-Product**, dated 13 Feb 80, the applicant was placed on the Temporary Disability Retired List (TDRL) with an 80 percent compensable physical disability.

On 25 Jun 81, according to an AFMPC/MPCARA letter, the applicant was informed that he was physically fit for the performance of active duty and effective 6 Aug 91, he would be removed from the TDRL and separated without disability benefits under 10 USC 1210.

On 6 Aug 81, according to Special Order Number **Work-Product** dated 7 Jul 81, the applicant was removed from the TDRL.

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

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## AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. There is no evidence of an error or injustice. The applicant was placed on the TDRL effective 5 Mar 80 with a compensable percentage for physical disability of 80% for Guillain-Barre syndrome with cardiac arrest. By law, all members on the TDRL must be examined at least once every 18 months, to determine if the condition for which they were temporary retired has changed. These examinations continue until final disposition is made or until the maximum 5-year period expires (whichever is earlier). The applicant admits he missed an appointment because of a broken-down car. The applicant says he called someone to reschedule his appointment, but never had it rescheduled. There is no evidence that an evaluation was completed within the timeframe. The applicant was removed from the TDRL and discharged without benefits.

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 10 Oct 23 for comment (Exhibit D) 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. As noted in the AFMPC/MPCARA letter dated 25 Jun 81, the applicant was informed that he was physically fit for duty and on 6 Aug 91, he would be removed from the TDRL and separated without disability benefits under 10 U.S.C. 1210. Therefore, the Board concurs with the rationale and recommendation of AFPC/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. Accordingly, 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.
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 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-2023-01645 in Executive Session on 9 May 24:

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, Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atch, dated 23 May 23.

Exhibit B: Military Human Resource Record excerpts.

Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 7 Sep 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Oct 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.

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