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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2023-01763

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His removal from the Temporary Disability Retired List (TDRL) and Discharged without Benefits (DWOB) disposition be changed to Permanent Disability Retired List (PDRL) with back pay.

APPLICANT'S CONTENTIONS

He has a 100 percent disability rating from the Department of Veterans Affairs (DVA) and is now afforded a large sum of money per month in excess of the Air Force's honorable medical retirement pay, however his retirement funds were halted. He has not been paid his retirement pay since the close of 2007 when he transferred to DVA and Social Security Disability (SSD) benefits. He is owed back pay for the years he was shorted payment as he should be receiving his medical retirement pay at a 50 percent disability rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3) who entered the active duty Air Force on 13 Sep 05.

On 20 Mar 07, according to DD Form 214, *Certificate of Release or Discharge From Active Duty*, the applicant was retired and placed on the TDRL.

On 13 Sep 12, according to AFPC/DPSDD memorandum, the applicant was removed from the TDRL, and DWOB due to failure to report for periodic physical examination.

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

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2023-01763

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

HQ AFPC/DPFDC recommends denying the applicant's request. The applicant was placed on the TDRL effective 30 Mar 07 with a compensable percentage for physical disability of 50 percent. On 30 Jun 08, the Informal Physical Evaluation Board (IPEB) determined the applicant was unfit for continued service for an unfitting condition of Schizoaffective Disorder, Bipolar Type with recommended disposition to retain the applicant on the TDRL for an additional re-evaluation.

In accordance with Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, section 7, the law, 10 U.S.C. Section 1210, requires reexamination of all members on the TDRL at least once every 18 months to determine if there has been a change in the disability that resulted in their placement on the TDRL. Further, TDRL members who fail to report for periodic examinations, after having been properly notified, will have their retired pay terminated. All members on the TDRL shall advise HQ AFPC/DPPD of their current mailing address. In this way, members will receive important notices on periodic examinations, as well as other correspondence of interest. The applicant indicated he was in prison; however, does not provide the dates he was in prison. Without the applicant or his family notifying Air Force Personnel Center (AFPC) of his imprisonment, AFPC requirements could not be met.

Furthermore, per AFI 36-3212, paragraph 7.11, *TDRL Members Imprisoned or Confined by Civil Authorities*, the law requires periodic examination, regardless of the member's status or circumstances. For members imprisoned or confined by civil authorities, HQ AFPC/DPPD requests a report of examination and a copy of the commitment order, when appropriate, from the confinement institution. All requirements to notify the applicant of his next TDRL re-evaluation were completed per instructions with no response from the applicant.

Additionally, per paragraph 7.24, of the above referenced AFI, HQ AFPC/ DPPD schedules members nearing the fifth anniversary of the date placed on the TDRL for periodic examination. If these members refuse or fail to report after having been properly notified, or if HQ AFPC/DPPDS cannot locate the TDRL member, HQ AFPC/DPPDS refers the case to the IPEB, with a detailed account of all relevant circumstances. The IPEB may recommend permanent disability retirement, discharge with entitlement to disability severance pay, or removal from the TDRL and DWOB. In this instance the recommendation was DWOB, effective 29 Mar 12.

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 18 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. 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. The Board finds no reason to warrant he be placed back on the TDRL to be medically evaluated or his status be changed to reflect a permanent disability retirement. As a requirement of the TDRL process, he did not report for the periodic examinations and his pay was terminated. It is the applicant's responsibility to ensure his address is updated within the military system. AFPC/DPPD has a process for members imprisoned or confined by civil authorities and requests a report of examination and a copy of the commitment order from the confinement institution; however, the appropriate offices were not notified of his confinement. 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.

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-2023-01763 in Executive Session on 6 Mar 24:

Work-Product Panel Chair

Work-Product Panel Member

Work-Product Panel Member

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

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

Exhibit B: Documentary evidence, including relevant excerpts from official records.

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

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Oct 23.

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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.

10/1/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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