



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02141

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical retirement.

APPLICANT'S CONTENTIONS

He should be retired under disability provisions in accordance with DoDI 1332.18, *Disability Evaluation System*, paragraph 6.6 and 7.2. Prior to his separation, his primary care physician (PCP) and his commander denied his request to have his medical records reviewed for early military medical retirement. At that time, he was deemed not fit for duty due to his diagnosis of severe sleep apnea and mild narcolepsy which caused him to be on a profile between 12-24 months continuously (not only contingent upon these listed conditions). Since his separation from the military, he has been denied reentry into the Reserve and Guard because he is unfit for duty due to medical issues, and he is receiving 100 percent disability pay through the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 30 Apr 13, Reserve Order **Work-Product** indicates the applicant was honorably discharged from the Air Force Reserve (AFR), effective 24 Apr 13.

On 22 Dec 16, AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for failure to go. He received a reduction in grade to airman first class (E-3), suspended until 21 Jun 17.

On 31 Mar 17, the applicant received a referral Enlisted Performance Report (EPR) for his NJP for his failure to go.

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

On 5 Apr 17, the applicant submitted a rebuttal to his referral EPR stating he admitted to having a track record of showing up late for work but felt his squadron let him down because his wife's medical issues were causing his tardiness, and he was trying to balance his home and work life.

On 17 Mar 20, AF Form 418, *Selective Reenlistment Program (SRP) Consideration for Airmen*, indicates the applicant was not selected for reenlistment due to his four Letters of Reprimand (LOR) for failure to show to work on time and failure to perform required duties; his three Letters of Counseling (LOC) for failure to show to work and scheduled appointment; and his referral EPR.

On 21 May 20, Attachment 9, *Medical Examination for Voluntary Retirement or Separation*, indicates the applicant completed the requirements for the Separation Health Physical Examination (SHPE) and was medically cleared for separation/retirement.

On 24 May 20, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving seven years and one month of active duty. He was discharged, with a narrative reason for separation "Completion of Required Active Service."

On 16 Nov 21, Reserve Order Work-Product indicates the applicant was honorably discharged from the AFR, effective 24 Apr 21.

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

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding no definitive evidence of a material error, injustice, impropriety, or inequity in the process leading up to the applicant's separation. The Disability Evaluation System (DES) is not a direct option for any individual, but rather is sought forth when there exist a potentially unfitting condition and one's fitness and ability to continue serving remains at bay. Although there were intermittent and temporary profiles, his ability to maintain duty function remained complete.

According to the chronological clinical events, apparently there was a sleep study performed sometime between 20 Dec 18 and 7 Mar 19 where the encounter was identified as a follow-up for a sleep study test. Although the test was essentially normal, the diagnoses included snoring and excessive daytime sleepiness. The repeat sleep study performed in late Sep 19 revealed no evidence of Obstructive Sleep Apnea (OSA) and only a very minimal degree of clinical hypersomnolence. Despite such findings, an off-base provider prescribed prescription medication for other hypersomnia. During the same period of time, the records revealed incorrect and conflicting statements regarding the applicant's diagnoses. It noted the applicant was diagnosed with narcolepsy and OSA on 25 Sep 19 whereas the actual encounter of that day revealed no evidence of OSA and an almost positive test for hypersomnia. Therefore, essentially, from a testing standpoint, the almost positive comment would indicate excessive daytime sleepiness and or narcolepsy was not present. Nonetheless, and therefore, the precursor of idiopathic

hypersomnolence was considered diagnostic. In this case, the applicant's request for multiple second opinions from both on-base and off-base providers gave rise to various degrees and opinions of adverse sleep conditions and diagnoses. Often, the records revealed the applicant simply reported having been diagnosed with OSA and Narcolepsy when clinical testing showed otherwise. It was not until three months prior to separation, when the applicant was once again seen by an off-base provider and had another sleep study performed on 18 Mar 20. His diagnosis was mild OSA syndrome with mild oxygen desaturations which responded well to continuous positive airway pressure (CPAP) therapy. Despite being on occasional profiles, mainly for an orthopedic problem, evidence to show the applicant was unable to perform the duties of his office grade, rank, or rating were absent from the records. Specifically in mid-Dec 19 (five months prior to separation), the applicant had no decrease in functioning ability. Further testing did not reveal OSA, and hypersomnia was equivocal.

According to AFI 48-123V2, *Medical Examinations and Standards*, dated Jun 06, under section 3.1.1, Attachment 2, establishes medical conditions and defects that may preclude continued military service and require MEB processing. It incorporates guidelines in DoD Directive 1332.18, under attachment 2.12.12, Narcolepsy, when not controlled by non-schedule 2 medications is disqualifying for service retention; however, that is not the case with this applicant. OSA under section A2.3.1.4 is a disqualifying condition when it requires a CPAP device. Therefore, the disqualifying condition of OSA may be seriously considered for DES processing if the disqualifying condition is also found to be unfitting as to preclude the individual from performing their military duties. Despite ongoing and fleeting subjective fatigue symptoms, the applicant continued to perform his Air Force Specialty Code (AFSC) duties and therefore, DES processing was not appropriate. His mild condition of any sleep concern did not rise to the level of being unfit.

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 14 Mar 24 for comment (Exhibit D), 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 and recommendation of the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board does not find the applicant's medical condition at the time of his discharge unfitting. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. Processing through the DES is not an option unless there exists a potentially unfitting condition and a member's fitness to

serve is in question. The Board finds the applicant's military duties were not severely degraded due to his mild sleep condition and testing did not equivocally reveal he had OSA and hypersomnia. The Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 to which the DVA can offer compensation. Therefore, the Board recommends against correcting the applicant's records.

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 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-2023-02141 in Executive Session on 17 Apr 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, w/atchs, dated 22 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 11 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 24.

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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.

5/13/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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