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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02321

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

1. He be given a medical retirement.
2. He be given a promotion to major.

### APPLICANT'S CONTENTIONS

He was medically disqualified from the service due to his Traumatic Brain Injury (TBI) while he was in the [REDACTED] Work-Product He has an honorary doctorate, a Master of Business Administration degree, and a Bachelor of Science Business degree (dated between 2016 and 2021) which qualifies for a promotion to major. A closed head injury or TBI is caused by an external force strong enough to move the brain within the skull and can be caused by falls, motor vehicle crashes, sport injuries, blast injuries, or being struck by an object according to the National Institutes of Health. He did not realize he could request a medical retirement until after he received 100 percent disability from the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) sergeant (E-4).

On 12 Feb 95, the applicant received a Neuropsychological Evaluation which noted a TBI, secondary to cognitive and memory problems and a brace on his right leg due to injuries sustained when he was riding his bicycle when he was hit by a drunk driver on 5 Feb 94. It was noted at the time of the accident, he was working as a fulltime waiter, and was in the National Guard. The conclusion determined the applicant's overall picture was marginal or slightly below in regards to both employment and academic effort and since his injury was still fairly new and contained concussive elements, some further improvement may occur. Overall prognosis is fair but somewhat less than good.

**AFBCMR Docket Number BC-2023-02321**

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

On 25 Feb 95, AF Form 618, *Medical Board Report*, indicates the applicant's closed head injury, left temporal, parietal, occipital contusion with subarachnoid hemorrhage, and basilar skull fracture incurred while he was not entitled to basic pay; therefore, he was not eligible for disability processing per AFR 35-4, *Physical Evaluation for Retention, Retirement, and Separation* and referred his case to the Surgeon General of the National Guard Bureau (NGB/SG). It was noted in the narrative summary (NARSUM) he was released to attend Unit Training Assemblies (UTA); however, it was determined he was not medically qualified for worldwide duty and consideration should be given to retraining him into a non-mobility and less hazardous position but overall, the applicant was recommended for discharge from the ANG.

On 8 Aug 95, AF Form 422, *Physical Profile Serial Report*, indicates the applicant was found medically disqualified for ANG service by NGB/SG and should be discharged within 45 days.

On 10 Oct 95, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, provided by the applicant, reflects he was honorably discharged from the Air National Guard after serving nine years, eight months, and two days of total service for pay. He was discharged, with a narrative reason for separation "Medically Disqualified."

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

#### **AIR FORCE EVALUATION**

NGB/A1PO recommends denying the applicant's request for a promotion to major. At no time was the applicant a commissioned officer in the ANG. The applicant is requesting a promotion to major without ever having been an appointed officer in the ANG. The applicant feels they should be awarded this promotion due to their military service being cut short due to injury, which was outside of their control. Per AFI 36-2504, 3.2, for eligibility for promotion to captain through colonel, officers on the Reserve Active Status List (RASL) are eligible for promotion if the officers meet the criteria established by the Secretary of the Air Force (SAF) per 10 U.S.C., Chapter 1401. For a member to be promoted within the ANG officer ranks, they must be currently serving and a fully appointed and federally recognized officer. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence to support a promotion to major.

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.

#### **ADDITIONAL AIR FORCE EVALUATION**

NGB/SGPS recommends denying the applicant's request for a medical retirement finding no evidence of an error or injustice regarding the applicant's medical disqualification discharge. The

applicant rode a bicycle home at night from his civilian place of employment and was not wearing a bicycle helmet per the medical documentation from G----- B----- Hospital and M----- Rehabilitation Group. The applicant was not in a qualified duty status when the closed head injury occurred and therefore, was entered into the Non-Duty Disability Evaluation System (NDDDES) on 12 Feb 95 for evaluation of fitness for continued service. The applicant signed the AF Form 618 acknowledging he had been informed of the findings and recommendation of the medical board which found his injury was not incurred while entitled to basic pay. The [Wor...] Medical Squadron drafted a memorandum to ANGRC/SGPS stating the applicant's Medical Evaluation Board (MEB) package was being returned without requested action as the applicant had moved to Iowa and did not plan on returning to [Work-Product]. The memorandum also stated the applicant did not have medical insurance to seek the requested evaluation and was not coming back to [Work-Product] to see his primary medical doctor. The ANGRC/SG medically disqualified the applicant for continued ANG service on 12 Jul 95.

The complete advisory opinion is at Exhibit E.

#### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 1 May 24 for comment (Exhibit F), 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 recommendations of NGB/A1PO and NGB/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant was properly evaluated for his medical condition which rendered him unfit for continued military service; however, his injuries were not incurred during a period of active duty; therefore, he is not eligible for a compensable medical separation. Furthermore, the Board noted the applicant's DVA disability ratings; however, a higher rating by the DVA, based on new and/or current examinations conducted after discharge from service, does not warrant a change in a member's separation. The DVA 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 of time transpired since the date of discharge. Lastly, as to the applicant's request for promotion to major, the Board finds the applicant was never fully appointed or was ever federally recognized as an officer. 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-2023-02321 in Executive Session on 23 May 24 and 30 May 24:

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Panel Chair

, 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/atchs, dated 17 Jun 23.

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

Exhibit C: Advisory Opinion, NGB/AIPO, dated 6 Mar 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 24.

Exhibit E: Advisory Opinion, NGB/SGPS, dated 1 May 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 1 May 24.

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.

6/11/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF