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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02372

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His medical evaluation case be reopened so a medical separation determination can be made.

APPLICANT'S CONTENTIONS

He was misled by the Physical Evaluation Board Liaison Office (PEBLO) thinking he had to reenlist for several years to receive a medical board decision deploying away from his family for an extended period in the course of his duties despite his medical conditions. He was not in the right frame of mind or counseled correctly to make an informed decision. He was told the process takes two to three years in which he was going to have to deploy for two years to **Work-Pr...** without his family, to perform his duties and was told he should not pursue a medical retirement, because filing for Department of Veterans Affairs (DVA) benefits would be better in all respects. He explored other options that would allow him to stay stateside, but the PEBLO officer and squadron leadership said this would not be possible. The PEBLO personnel who counselled him to avoid a medical retirement board assisted him in separating. A medical code "K" was given on the separation paperwork which he was told would indicate his separation was due to medical reasons. Since separation, the DVA has been very inattentive in their response toward his medical issues. They have done very well in keeping up with cancer surveillance, but very poor in the other aspects regarding his mental health and other medical side-effects from his cancer and back injuries.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 18 Jan 13, the copy of the Medical Evaluation Return Without Action instructions, provided by the applicant, indicates the military disability processing was waived and he was to be kept on a code 37 through his separation to indicate he was separated while pending MEB processing.

On 21 Jan 13, the applicant's medical and dental out-processing form indicates it was determined a Medical Evaluation Board/Physical Evaluation Board (MEB/PEB) was not required, waived.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

Dated 13 Feb 13, AF IMT 1887, *Aeronautical Order (PA) Aviation Service*, indicates the applicant was medically disqualified from aviation service per AF Form 1042, *Medical Recommendations for Flying or Special Operational Duty*; the original date of incapacitation was 29 Mar 12.

On 16 Apr 13, 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 six years of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

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

APPLICABLE AUTHORITY/GUIDANCE

Per AFI 36-2110, *Assignments*, dated 22 Sep 09, paragraph 2.17.2, *Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) Deferment*, Military Treatment Facilities (MTF) submit an AF Form 469, *Duty Limiting Condition Report*, on airmen with physical limitations not of a temporary nature, that interfere with worldwide assignability, to indicate an MEB (which could result in a disability retirement or separation) is being processed. The automatic Military Personnel Delivery System (MilPDS) interface updates an Assignment Availability Code (AAC) 37. If the airman's personnel record reflects an AAC 31, Medical Deferment, the AAC will automatically be removed and replaced with AAC 37, MEB or PEB.

Per AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separations*, an airman pending an MEB or PEB may not be reassigned, permanent change of station (PCS) or temporary duty (TDY), or granted leave outside the local area, separated, or retired until the MTF determines the medical disposition.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request to reopen his MEB or to change his discharge to a medical retirement from a psychological perspective. There is no evidence the applicant had an MEB initiated from a mental health perspective. A mental health encounter dated 27 Jul 12 indicated he was in the process of an MEB based on physical causes. This was stopped after he elected to waive his MEB proceedings.

There is insufficient evidence to support the applicant was unfit for duty during service or at discharge from a psychological perspective. While the applicant was seen by mental health and was diagnosed with adjustment disorder, records indicate within a few sessions, his adjustment disorder resolved, and he no longer had any diagnosed mental health condition. Even while in treatment for mental health reasons, he was continually cleared from a mental health perspective, determined to be worldwide qualified (WWQ), was cleared to fly, had no duty-limiting conditions

(DLC), and was released without limitations. There is reasonable evidence to support he was fit for duty from a psychological perspective.

Additionally, throughout the applicant's career, he earned exemplary overall ratings on his performance evaluations (5 out of 5). He also earned five Air Medals and one Air Force Achievement Medal demonstrating his fitness for duty. There is insufficient evidence to support the applicant's mental health condition had an impact on his ability to perform the duties of his office, grade, rank, and rating. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition as unfitting. More information is required to determine unfitness such as being placed on a permanent DLC profile for a mental health condition, being deemed not WWQ due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. These designations were absent from his records.

While the applicant was service-connected for chronic adjustment disorder, there is insufficient evidence this was unfitting while he was in the military or at discharge. The military's Disability Evaluation System (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 the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., 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 time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request to reopen his MEB or to change his discharge to a medical retirement. Based on the submitted documentation, it appears the discharge processing in light of the applicant's choice to waive his initial DES process was appropriate and accomplished in accordance with Air Force policy. The AFPC Medical Standards Branch was also in compliance with guidance in returning the Initial Review in Lieu Of (IRILO) back to the local MTF without further action.

Of all records reviewed, there was no evidence found to substantiate such misleading comments by the PEBLO or command leadership as claimed by the applicant. The Medical Advisor is not of the opinion such conversations between the applicant and PEBLO/leadership did not occur as written in the applicant's personal statement but rather, there is simply no documented evidence of such comments.

According to AFI 36-3212, paragraph 1.12, subject to certain limitations, medical hold is a method of retaining a service member beyond an established date of separation, an approved retirement or separation date, or established high year of tenure for disability processing purposes. AFPC/DP2NP is the only Air Force entity authorized to place a regular Air Force member on medical hold. If an enlisted service member does not consent to medical hold, the service member must waive referral into the DES in writing. Such waiver must attest the service member has received counseling from the PEBLO, or from legal counsel or representative concerning the DES, their rights to a medical and PEB, and the potential benefits of remaining in the service to complete the DES or non-duty related fitness determination process.

This review did contain evidence the applicant did receive proper counseling in all that was encompassed in both the service separation process as well as the DES process and given the applicant volunteered for separation, AFPC's return of the IRILO without action was appropriate and in line with regulatory guidance. If the situation was that the applicant did not waive his DES, then he would have been placed in medical hold (without deploying or PCS) until his MEB (IRILO) was complete. In this scenario of remaining in medical hold, the Pre-DES processing of the IRILO to AFPC/DP2NP would have continued until a decision to either return the service member back to duty with an assignment limitation code (ALC) or to proceed to a full-blown MEB disposition. The Medical Advisor opines, given the applicant only had one week of lower back pain in 2009 that resolved and was essentially free of such symptoms until early 2012, his ability to perform his duties were not adversely affected. Therefore, the likelihood of the pre-DES outcome of forwarding to a full MEB, in the Medical Advisor's opinion, would not have occurred.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Aug 24 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 the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence to suggest the applicant was misinformed by the PEBLO or his leadership that he would have had to PCS away from his family while undergoing a MEB. The applicant waived his rights to be processed through the DES and was to be kept on a code 37 until he was separated. If he would have chosen to be processed through the DES, he would not have been reassigned, granted leave outside the local area, separated, or retired until his MTF determined the medical disposition. Even though

the applicant waived his rights to be evaluated under the DES, the Board did consider whether the applicant would have been found unfit and medically separated. However, the Board did not find the applicant had any mental health condition during his time in the Air Force that would have rendered him unfit for continued service. Furthermore, the Board did not find his lower back condition rendered him unfit and unable to reasonably perform his duties. The mere existence of a medical or mental health 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 his conditions. 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 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. 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 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-2023-02372 in Executive Session on 12 Sep 24 and 13 Sep 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 9 Nov 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 14 May 24.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 9 Aug 24.

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Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Aug 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.

9/19/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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