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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02441

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His back injury be found in the line of duty (ILOD).

### APPLICANT'S CONTENTIONS

He sustained a back injury which occurred in Jun 16. He was performing military duties on 4 to 5 Jun 16 while in an Inactive Duty for Training (IADT) status and on 6 to 10 Jun 16, 13 to 17 Jun 16, 20 to 24 Jun 16, and 27 to 30 Jun 16 while in an Active Duty for Training (ADT) status. His injury occurred while moving office furniture, equipment, and boxes during a squadron move to a new location. He had zero physical ailments prior to the move and had continuous physical restriction and waivers until he retired in Oct 18. He needs the ILOD determination made so he can claim Department of Veterans Affairs (DVA) disability benefits for this injury to which the DVA has denied as service connected.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air National Guard (ANG) major (O-4) awaiting retired pay at age 60.

Dated 19 Sep 18, Reserve Order **Work-Product** indicates the applicant was assigned to the retired Reserve effective 3 Oct 18.

On 2 Oct 18, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 25 years, 5 months, and 12 days of total service for pay. He was discharged, with a narrative reason for separation "Transfer to the USAF Reserve Retired List."

On 7 Jan 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him he has completed the required years under the provisions of Title 10 U.S.C, Section 12731 and is entitled to retired pay upon application prior to age 60.

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

## **AIR FORCE EVALUATION**

NGB/SGPS recommends denying the applicant's request to have his back spasm found ILOD, as he did not provide any supporting medical documentation to his servicing Medical Group (MDG) pertaining to a back injury nor does it appear he incurred an injury while in a duty status.

There is no medical documentation submitted to his servicing MDG nor located in the applicant's electronic health record (EHR) indicating a back injury occurred during the various duty periods in Jun 16. The applicant was seen by M----- Medical Center on 28 Jun 16 for back pain, blood pressure check and medication. The 28 Jun 16 medical note states the applicant has been going between **Work-Product** and his blood pressure has gone down for three months. He is not exercising as much as he has in the past and slipped on his diet and is getting back to a better diet. It is also noted the applicant stated he was having back spasms about two to four inches above his belt line occurring sporadically with an onset two weekends ago which has worsened, and he was trying to use heat, braced, not lifting which helped for the last couple of days. He has to run and do sit ups for a military test and needed a note to hold off on the test. Note that 28 Jun 16 was a Tuesday, and the applicant was not in a duty status two weekends prior. On the vital signs assessment, the pain scale for low back pain was "1" and the applicant's civilian provider referred him to physical therapy for treatment three times a week for four weeks for his back muscle spasm. The initial physical therapy examination occurred on 10 Jan 17 at B----- Physical Therapy and the initial assessment physical note indicated the applicant's back muscle spasms began early Jun 16 with an unknown mechanism; although he eventually recalled at that time, he was training for a military fitness test and moved office furniture which involved lifting and carrying. The physical therapy plan was for two times a week for six weeks; however, no discharge information from physical therapy was submitted nor found in the applicant's EHR. The applicant's 3 Nov 17 Periodic Health Assessment Questionnaire (PHAQ) provider comments stated the applicant reported low back pain during the past year, but is no longer under care for this issue, was not on profile, and reported no current pain.

The complete advisory opinion is at Exhibit C.

NGB/AIPS recommends denying the application and concurs with the recommendation from NGB/SGPS finding the applicant did not provide any supporting medical documentation to his servicing MDG pertaining to a back injury nor does it appear he incurred an injury while in a duty status.

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 27 Mar 24 for comment (Exhibit E), and the applicant replied on 26 Apr 24. In his response, the applicant contends his back injury

was due to the heavy lifting for an office relocation and preparation for a fitness test. He does not have discharge paperwork from B----- Physical Therapy because his employer health insurance was not accepted so his treatment and subsequent visits were cancelled. He was assigned to a geographically separated unit at the time which does not have its own medical unit; therefore, he consistently had challenges in regards to the keeping of his medical records. He provided the necessary records from his primary care physician to his unit fitness monitor and his commanders and was exempt on his next fitness test. He was in continuous contact with the [Work-P...] Medical Group staff regarding the ongoing issues with his back.

The applicant's complete response is at Exhibit F.

## 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 NGB/SGPS and NGB/AIPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's contention his back injury was due to heavy lifting of furniture while in a duty status; however, the preponderance of medical documentation does not indicate a back injury occurred during the various duty periods in Jun 16. Per Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, applicants have the burden of proof for providing evidence in support of their claim. The applicant retains the right to request reconsideration of this decision, if the applicant has medical documentation to support his claim, the Board will reconsider his request. Therefore, the Board recommends against correcting the applicant's record. 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 DAFI 36-2603. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-02441 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 27 Jun 23.

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

Exhibit C: Advisory Opinion, NGB/SGPS, dated 4 Mar 24.

Exhibit D: Advisory Opinion, NGB/A1PS, dated 22 Mar 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Mar 24.

Exhibit F: Applicant's Response, w/atchs, dated 26 Apr 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.

6/6/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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