

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-02638

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

Her official military personnel record be amended to reflect an increase of her disability rating from 10 percent to 50 percent.

### **APPLICANT'S CONTENTIONS**

She believes her disability rating from the military should match the Department of Veterans Affairs (DVA) rating of 50 percent. Her wrist condition was not considered. The panel decided on 10 percent without reviewing all the evidence. The DVA changed her rating to 50 percent based on Post-Traumatic Stress Disorder (PTSD) and trauma that occurred during service, and during various evaluations and events in 2005-2009. Her wrist injury was part of military service and was not considered by the medical board during discharge.

The delay was due to paperwork not including a method of dispute when rejected. Alternate research was conducted and delayed due to COVID-19 closures.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is an honorably discharged Air Force senior airman (E-4).

On 5 Mar 09, according to AF IMT 618, *Medical Board Report*, the applicant's medical records were reviewed for Anxiety Disorder Not Otherwise Specified (NOS) and Major Depressive Disorder, recurrent (in partial remission) to determine her fitness for continued military service, and she was referred to an informal Physical Evaluation Board (IPEB).

On 28 May 09, according to the applicant's AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, he was found unfit due to physical disability, and recommended for Discharge with Severance Pay (DWSP) with a 10 percent compensable percentage for the following diagnosis:

- Major Depressive Disorder, Recurrent, in Partial Remission, associated with Anxiety Disorder NOS; under the Veterans Affairs Schedule for Rating Disabilities (VASRD) Code 9434; Disability was the Direct Result of a Combat Related Injury: No.

On 22 Jul 09, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived her right to a formal hearing of her case.

On 26 Oct 09, the applicant was furnished with an honorable discharge, with Narrative Reason for Separation of Disability, Severance Pay, Separation Code of JFL [Disability, Severance Pay, LDES], and credited with five years, two months, and three days active service.

On 4 Apr 16, the applicant submitted a request to the Department of Defense (DoD) Physical Disability Board of Review (PDBR) to review her compensable disability percentage.

On 19 Jun 19, the DoD PDBR determined the rating assigned at the time of final disposition of the applicant's DES processing was appropriate and found re-characterization or modification of her separation was not warranted.

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

## **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the Disability Evaluation System (DES) processing.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C.), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, 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 total compensable rating awarded at the time of the member's separation.

On 5 Mar 09, an MEB found the applicant potentially unfitting for (1) Anxiety Disorder NOS, and (2) Major Depressive Disorder Recurrent (in partial remission). There is no mention of a potentially unfitting wrist condition, and the accompanying narrative summary (NARSUM) also did not contain information concerning a wrist condition. Additionally, in a 17 Feb 09 memorandum addressed to the MEB, the applicant described how her mental health condition negatively impacted her ability to perform her duties. Once again, there is no mention of a wrist condition or that it should be found potentially unfitting.

On 28 May 09, the IPEB found the applicant unfit for Major Depressive Disorder, Recurrent, in Partial Remission, associated with Anxiety Disorder NOS, and recommended DWSP with a 10 percent compensable disability rating. The IPEB based this decision on information contained in the NARSUM which indicated her depressive symptoms had largely resolved to a functional level with treatment. Her anxiety symptoms were improved, but these improvements had diminished due to the cessation of Prozac due to pregnancy. On 22 Jul 09, she agreed with the IPEB findings and did not appeal to the Formal PEB to find any other conditions potentially unfitting. She was subsequently DWSP on 26 Oct 09.

It is also noted the applicant's case was processed under the older legacy DES. Under this system, the PEB and DVA made independent assessments of the member's condition based on available documentation/examinations which could result in the PEB and DVA assigning different ratings for the same condition(s). The PEB did not receive or utilize the DVA's rating decisions as in the current Integrated DES and, as such, was not bound to change its ratings based off the DVA's ratings which were assigned after separation. Additionally, a review of the applicant's DVA records indicates on 20 Apr 10, the DVA initially assigned a 30 percent rating

for Major Depressive Disorder, Mild, and Anxiety Disorder, NOS. As previously mentioned, the DVA's rating decision had no bearing on the PEB rating decision at the time of DES processing. Additionally, it is noted the applicant also previously applied for a correction of this rating through the DoD Physical Disability Board of Review which was denied because it was determined the PEB properly applied the VASRD. This DVA rating decision also reflects that although the DVA service-connected DeQuervain's Tenosynovitis, Bilateral Wrists, a 0 percent rating was assigned due to no objective evidence of painful or limited motion of a major joint. This decision would also support the MEB's decision not to refer her wrist condition to the IPEB for consideration as a potentially unfitting condition.

The applicant submitted several appeals/supplements to her DVA ratings throughout the years and, on 14 Feb 17, the DVA increased her rating for Major Depressive Disorder, Mild, and Anxiety Disorder, NOS from 30 percent to 50 percent. Her wrist condition was also upgraded from 0 percent to 10 percent. Both increases were retroactive to the date after her separation from the Air Force, but again, have no bearing on the IPEB's rating decisions. The record shows the IPEB correctly applied the VASRD by assigning a 10 percent rating for her unfitting mental health condition during DES processing. There is no evidence her DVA service-connected wrist condition rose to the level of being considered unfitting for DES purposes at the time of disability processing.

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 23 Feb 24 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/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. According to the information contained in the NARSUM, used by the IPEB in their adjudication, the applicant's depressive symptoms had largely resolved to a functional level with treatment, resulting in the lower compensable disability rating. The applicant's IPEB was conducted in accordance with the legacy DES guidance under which the Air Force and DVA provided individual disability percentage ratings. Under this system, the DVA rating had no bearing on the final disposition of the IPEB. Further, changes in DVA ratings post-service, under Title 38, U.S.C., do not warrant a change in the compensable rating awarded by the IPEB at the time of the applicant's separation.

Additionally, there is no evidence the applicant's wrist condition was found to be unfitting. In fact, while the DVA found her wrist condition to be service-connected, the condition was initially awarded a zero percent compensable rating. The applicant had at least two opportunities to raise her concerns regarding her wrist injury with the MEB/PEB, first in her memorandum to the MEB, dated 17 Feb 09, and second, when she completed the AF Form 1180, dated 22 Jul 09, accepting the IPEB findings; however, chose not to do so. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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-2023-02638 in Executive Session on 14 May 24:

, 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 27 Jul 23.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 22 Feb 24.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Feb 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.

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Board Operations Manager, AFBCMR