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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02810

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Medical Evaluation Board (MEB) be upheld, and he be given a medical retirement.

APPLICANT'S CONTENTIONS

The MEB of 20 Jun 69 was removed from his record. It was determined his condition was medically disabling in the line of duty (ILOD) and he was eligible to retire.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) major (O-4).

On 20 May 69, AF Form 348, *Line of Duty Determination*, indicates the applicant's diagnosis of diabetes mellitus was first noted during an annual flying examination in May 69 with no previous symptoms of the disease except for excessive fluid intake. It is further noted his condition was determined ILOD.

On 5 Nov 69, AF Form 618, *Medical Board Report*, indicates the applicant was returned to duty for diabetes mellitus, juvenile onset, currently controlled with diet alone, with anticipated need for insulin in the future.

On 28 Nov 69, WHH HQ Form O-60, *Recommended Disposition of Flying Personnel*, indicates the applicant was recommended he be returned to flying status with a waiver for his diabetes mellitus, controlled by diet alone since Jul 69.

Dated 18 Mar 70, SF 513, *Clinical Record*, indicates the applicant was medically evaluated for a continued waiver which found no reason not to continue his waiver, but the applicant must be followed every three months for continued monitoring of blood sugar levels.

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

On 12 Aug 71, a Report of Aeromedical Evaluation indicates the applicant did not meet the medical standards for Flying Class II duties due to his diabetes mellitus uncontrolled by diet and it was recommended a waiver not be granted.

On 19 Oct 78, AF Form 618, indicates the applicant was referred to the Physical Evaluation Board (PEB) for juvenile onset insulin dependent diabetes and mild, chronic prostatitis.

On 29 Nov 78, a determination was made in the applicant's case which returned him to duty finding he was physically fit for the performance of active military service.

On 6 Aug 81, AF Form 422, *Physical Profile Serial Report*, indicates the applicant was not to perform any military duty and a MEB was requested by NGB/SG before approval of an extension on his medical waiver.

On 4 Oct 81, AF Form 618, indicates the applicant was referred to the PEB for diabetes mellitus, insulin dependent under the provisions of AFR 160-43, *Medical Examination and Medical Standards*, paragraph 5-23c (a two-page document to follow this form indicates several errors to include a statement of how the case has already been referred to the PEB, a finding of fit for worldwide duty is outside the purview of the board, and other errors as annotated in this document). The narrative summary (NARSUM) to follow indicates the applicant was undergoing a routine physical examination in May 69 and was hospitalized briefly where a diagnosis of juvenile onset diabetes mellitus was confirmed. He was granted a medical waiver for continued military service. It is noted he never manifested any inability to perform his duties. The MEB convened in Oct 78 and the case was presented to the PEB which returned him to duty. Because of his disability rating from the Department of Veterans Affairs (DVA), it was recommended he be evaluated for worldwide duty and continued service.

On 23 Dec 81, the NGB Air Surgeon found the applicant medically disqualified for ANG service due to being an insulin dependent diabetic for which he received a 60 percent disability rating from the DVA which demonstrated a significant change in his medical condition. It is further noted, he was found fit for duty in 1978 and was not receiving disability compensation from the DVA.

On 15 Jun 82, Special Order **Work-Product** provided by the applicant, indicates he was honorably discharged from the ANG.

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/SGPS recommends denying the application finding no evidence of an error or injustice regarding the applicant's MEB deeming him medically disqualified or his eligibility for a medical retirement. The applicant's diabetes mellitus was first noted during an annual flying examination while on active-duty orders 12 Jan 69 through 16 Jun 69 and he received an ILOD. The applicant was granted a waiver to commission, fly and continue service until his diabetes mellitus significantly progressed rendering him unfit to perform the duties of his office, rank and grade.

No additional orders and medical documentation were submitted nor found in the available electronic health record substantiating military service aggravated/exacerbated the applicant's condition beyond the natural progress.

The Disability Evaluation System (DES), 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 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 future progression of injury or illness. The DVA on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA can also conduct periodic reevaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the Veteran.

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 1 Aug 24 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request to up-hold the findings of a reported PEB from mid-1969 whereby, the record of proceedings for this reported PEB is claimed to have been removed from the applicant's medical record. It is important to note even if there was evidence of the 20 Jun 69 medical board, the board which occurred just four and a half months later 5 Nov 69 returned the applicant to duty with a waiver, indicating an ability to adequately perform his military duties and thus considered fit for duty. This Board does not have the authority to either create or update personal medical records without evidence. The ultimate burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was assessed to not support his request for granting a medical retirement pursuant to a report of proceedings that was not in evidence or available for review. The record review did not find evidence of either an applied error or a calculated injustice shown to the applicant by DoD personnel.

Although the applicant had minimal time away from duty for medical appointments, his condition of diabetes mellitus was not considered to meet the criteria threshold of being unfit for continued duty and as such, he was persistently returned to duty with or without a waiver. His personal performance reports which spanned the years of 1969 thru 1980 never revealed any summary that was rated below met standards, but rather the vast majority of evaluations noted well above meeting standards to exceptionally fine. His greater than a decade of annual evaluations that placed the applicant well above meeting all military standards only lent significant probative value in determining if an unfitting medical condition existed. The condition of diabetes mellitus,

especially juvenile onset, is known to increase in intensity and eventually will require the daily administration of insulin. This is the natural progression of the condition. Early on, even the 1969 narrative summary (NARSUM) addendum noted the anticipatory worsening of the applicant's condition by authoring, "only time will tell what and when his requirement for insulin will be."

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Aug 24 for comment (Exhibit F), 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 NGB/SGPS and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board took note of the applicant's claim his MEB from Jun 69 should be upheld; however, the Board did not find evidence of this MEB nor did the applicant submit this supposed MEB. The burden of proof is placed on the applicant to submit evidence to support his request. Regardless, an MEB conducted in Nov 69, found the applicant's medical condition of diabetes mellitus, juvenile onset, was currently being controlled by diet and returned him to duty. Even though the applicant's diabetes mellitus was determined ILOD in May 69, the mere existence of this medical determination does not automatically warrant eligibility for a medical separation or retirement. 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, which at this time, was not the case as he was returned to duty. Even though the applicant's diabetes was first diagnosed in May 69 while he was in an active-duty status, it was not determined to be unfitting until 1981. Due to the nature of the disease, the Board finds the applicant's condition was not aggravated by his continued service in the ANG beyond the natural progression of the disease and therefore, it is categorized as a non-duty-related physical disqualification and is not eligible for DoD compensation under 10 U.S.C. Chapter 61. 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, U.S.C., 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.
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 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-2023-02810 in Executive Session on 22 Aug 24 and 10 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 8 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 31 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Aug 24.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 6 Aug 24.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 9 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.

9/6/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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