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

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### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03026

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COUNSEL: NONE

HEARING REQUESTED: YES

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### APPLICANT'S REQUEST

He be given a medical retirement.

### APPLICANT'S CONTENTIONS

Since his Medical Review Board, he discovered new evidence which proved his disqualifying condition, vertebral compression fracture of T7 occurred during his service in the Navy. He submitted his new evidence to the Department of Veterans Affairs (DVA) and they service-connected his injury in Mar 23. He provided x-ray images taken on 19 Sep 11 by the Navy Medical Center, S----- P-----, which shows the compression fracture was present before he was discharged from the Navy.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) master sergeant (E-7) awaiting retired pay at age 60.

On 14 Sep 12, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged from the Navy after serving nine years and two months of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 5 May 20, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for intercostal pain and cervicalgia.

On 16 Jun 20, the DVA found his unfitting medical conditions of cervicalgia and compression fracture not service connected, not incurred, or caused by the service.

On 26 Jun 20, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical conditions of

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cervicalgia and intercostal pain with vertebral compression fracture of T7 with a recommendation of “Discharge Under Other Than Chapter 61, Title 10 U.S.C. Existed Prior to Service (EPTS).” His medical condition, history of costochondritis, was found to be a condition that can be unfitting but was not currently unfitting. It was noted his conditions were found unfit but were not found to be in the line of duty (ILOD). An X-ray of the chest on 19 Sep 11, done as part of a routine occupational examination, showed unremarkable bony and soft tissue structures and a review of his electronic health records (AHLTA) did not reflect any clinic visits for his neck, back, or intercostal pain while the applicant was on active duty from 2003 to 2012.

On 7 Jul 20, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings and recommended disposition of the board and requested a formal hearing.

On 21 Jul 20, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical conditions of cervicalgia and intercostal pain with vertebral compression fracture of T7 with a recommendation of “Discharge Under Other Than Chapter 61, Title 10 U.S.C. EPTS.” His medical condition, history of costochondritis, was found to be a condition that can be unfitting but was not currently unfitting. It is noted the applicant contended his medical conditions of cervicalgia, intercostal pain with vertebral compression fracture of T7, and costochondritis are unfitting for military service and his intercostal pain with vertebral compression fracture of T7 is a prior service condition (PSC) and was permanently aggravated by his military service, both while active duty and while in a drill status with the ANG. The board concluded the applicant’s cervicalgia and intercostal pain with vertebral compression fracture of T7 were not found ILOD, were not service connected by the DVA, were not PSC, and were not permanently aggravated by military service. These conditions prevented him from reasonably performing the duties of his office, grade, rank, or rating and were considered to have EPTS.

On 3 Aug 20, AF Form 1180, indicates the applicant disagreed with the findings and recommended disposition of the board and requested his case be referred to the Secretary of the Air Force Personnel Counsel (SAFPC) for a review and final decision. In his appeal, he contended his vertebral compression fracture of T7 occurred while he was in the Navy on active duty and the X-rays performed by the Navy on 19 Sep 11, clearly identified the presence of a compression fracture as noted by two doctors from his base medical unit.

On 21 Aug 20, the applicant filed a request to withdraw and waive his rights to a SAFPC appeal which was approved on 2 Sep 20. AFPC/DPFDD (Disabilities Office) was directed to proceed with the actions determined by the Formal Physical Evaluation Board (FPEB).

On 3 Sep 20, the Secretary of the Air Force (SAF) directed the applicant be separated for a physical disability that EPTS and not be entitled to any benefits under the provisions of Chapter 61, Title 10 U.S.C.

On 30 Sep 20, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 17 years, 2 months,

and 16 days of total service for pay. He was discharged, with a narrative reason for separation of "Physical Disqualification."

On 7 Jan 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay 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.

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

## **AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends denying the applicant's request finding insufficient evidence to change his discharge outcome to reflect a medical retirement. A post-service DVA rating is not synonymous or equivalent to the military's disability evaluation at the time-of-service discharge. The 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 a finding of or granting a medical retirement.

First, considering the condition the FPEB determined not to be unfitting, costochondritis. Costochondritis is a benign cause of chest wall pain that results from inflammation of the costal cartilage, the cartilage which connect the ribs to the breastbone. Individuals often present with chest pain; therefore, other causes of chest pain such as heart disease, lung disease, gastrointestinal problems and osteoarthritis must be excluded with a medical history and thorough physical examination. There are no laboratory or radiologic imaging tests nor dates of the same that were not available to the Medical Advisor. However, what was available were the applicant's electronic medical records which were few in number but did reveal a few follow-up encounters from when he was apparently seen, evaluated, diagnosed, and treated at the civilian S----- facility with a reported diagnosis of costochondritis. Additionally, the encounter from S----- was also not available for review nor in submitted evidence. No where in the electronic medical record was any sort of mechanism of injury (MOI) described as was told at the FPEB in losing his grip in carrying a helicopter blade. Clearly, there was resolution of his initial diagnosis of costochondritis (a diagnosis of exclusion) just five days after his initial complaint as evidenced by being physically qualified for Auxiliary Security Force (ASF) duty while reporting no medical history on 8 May 09 as well as reporting no medical history again on the Aug 09 Physical Health Assessment (PHA).

There appeared inconsistencies in the reported timeframe and severity of his physical symptoms ranging from near resolution to severe and daily with regards to chest pain and back pain. The finding of a compression fracture of T-7 (mid-back) nine years after an incident at one time was described as a back strain with no documented proof of the reported event, lends minimal probative value of a known causative etiology. The applicant stated since his MRB, he has discovered new evidence that proved his disqualifying injury of vertebral compression fracture T-7 did take place during his Naval service and the DVA service connected this injury in Mar 23; hence, his submission to this board. His civilian treatment records were nearly non-existent despite referenced requests to bring such records into the service clinic. It was reported in the FPEB in

2018 and 2019, two physicians (primary care and orthopedics) attributed the applicant's neck, chest wall, and back (often referred to low back pain) to the newly identified T-7 compression fracture that was further identified and described as age indetermined... meaning the timing of the vertebral compression occurrence was unknown.

According to the National Institute of Health, National Library of Medicine, under evaluation and management of vertebral compression fractures, the most likely cause of a spinal compression fracture in those without osteoporosis is severe trauma, such as an automobile accident or a fall from a great height. Specifically, the applicant stated, he provided the new evidence to the DVA that led to the early determination of his disqualifying injury, vertebral compression fracture of T-7, or severe was service connected. The evidence was X-ray images taken on 19 Sep 11 by Navy Medical Center S----- P----- that showed the compression fracture was present before he was discharged from the United States Navy. That statement, in and of itself appears to be incorrect for the data base record on 19 Sep 11, revealed a single chest x-ray view from the back/front, and a side view was performed and reported as normal, to include the bony and soft tissue structures. Additionally, there was no documentation of a vertebral fracture as of his separation from Navy physical examination in Jul 12. The definitive identification of the T-7 compression fracture was found on a computed tomography (CT) scan and magnetic resonance imaging (MRI) which was completed in 2018. The applicant did not submit evidence to prove his T-7 compression fracture occurred while he was in a duty status. Despite the DVA's service-connecting for vertebral dislocation (claimed as compression fracture), such an impairment has no bearing or connection to the DoD's disability evaluation system (DES) in determining a disability impairment.

It remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, 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 near the time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA 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. Therefore, in summary, the DVA disability impairment criteria are not the same as DoD's disability impairment criteria... different guidelines, different lawful codes. Lastly, although considered, the Medical Advisor finds the reported two medical providers (as stated by the applicant) attributing the applicant's complete array of painful symptoms to an apparent age indeterminant x-ray finding at a specific spinal level which was not anatomically correlated with his symptoms (e.g. T-7 anatomically cause low back and or neck pain) to a non-direct trauma incident a decade earlier is without any solid basis as causative. Correlation is not equivalent to causation.

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 May 24 for comment (Exhibit D) 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 recommendation of the AFBCMR Medical Advisor 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 conditions which rendered him unfit for continued military service; however, his injuries were not incurred during a period of active duty. Therefore, he was discharged from the ANG with a non-duty related fitness determination finding his injuries EPTS and were not incurred ILOD, were not service-aggravated, and were not a PSC. The Board noted the applicant's vertebral compression fracture was service-connected by the DVA as the applicant states the new evidence he submitted, his x-ray images taken on 19 Sep 11 while he was in the Navy, prompted this change. However, the Board noted his x-ray image was reported as normal and there was no documentation of a vertebral fracture annotated on his Navy physical separation examination. Applicants have the burden of proof for providing evidence in support of their claim. Furthermore, the DVA (Title 38, U.S.C.) may evaluate a member 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 separation or a medical retirement. 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. 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-2023-03026 in Executive Session on 18 Jun 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 15 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 24 Apr 24.
- Exhibit D: 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.

7/19/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF