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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03235

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His discharge with severance pay (DWSP) be changed to a disability retirement with a compensable rating of 80 percent.

APPLICANT'S CONTENTIONS

He was placed on the temporary disability retired list (TDRL) with a disability rating of 80 percent for his Excessive Daytime Somnolence. Per the Veterans Affairs Schedule for Rating Disabilities (VASRD), Diagnostic Code 8911, the correct rating for 10 or more sleep attack episodes per week is 80 percent. He meets the 80 percent criteria as outlined in the VASRD, which is supported by his provider's assessment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Space Force captain (O-3).

On 14 May 20, the applicant was approved for an interservice transfer from the Air Force to the Space Force.

On 31 Jul 21, the applicant was discharged in the grade of O-3 and placed on the TDRL, effective 1 Aug 21, with a rating of 80 percent for his unfitting condition of Excessive Daytime Somnolence; previously Department of Veterans Affairs (DVA) rated as Narcolepsy.

The DVA statement of service connected disabilities dated 23 May 22 reflects the applicant's rating of 100 percent for his condition of Narcolepsy with Comorbid Major Depressive Disorder (MDD) and Panic Disorder.

In response to the notification of the required TDRL re-evaluation, the applicant on 9 Aug 22 elected to submit medical documents from his civilian or DVA provider, to include a re-evaluation of the condition for which he was placed on the TDRL.

On 27 Dec 22, the informal physical evaluation board (IPEB) re-assessed the applicant's condition of Excessive Daytime Somnolence; previously DVA rated as Narcolepsy for which he was placed on the TDRL. The IPEB determined the applicant's condition improved and essentially stabilized. The applicant reported at his TDRL assessment that Ritalin was working well and that he sleeps about seven and a half to eight hours per night (without frequent nighttime awakenings) and that

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he wakes up feeling well rested around 0630 to 0700 hours. He also reported no recent episodes of excessive daytime somnolence. Based on the information provided, the IPEB found the applicant remained unfit for military service and recommended DWSP with a disability rating of 10 percent in accordance with the VASRD.

On 15 Feb 23, the applicant disagreed with the findings and recommendations of the IPEB and requested a formal hearing of his case.

On 22 Mar 23, the formal physical evaluation board (FPEB) found the applicant unfit for his condition of Excessive Daytime Somnolence; previously DVA rated as Narcolepsy with a compensable disability rating of 20 percent and recommended he be removed from the TDRL and DWSP. The FPEB noted the applicant conceded his condition remained unfitting for military service; however, he should be permanently retired with a disability rating of 80 percent. The FPEB considered the entirety of the information from the new clinical records as well as the applicant's testimony and previously available medical records and exhibits. The FPEB found the applicant's condition remained unfitting for military service. The FPEB found his condition essentially improved and was stable since he was placed on the TDRL. While he had experienced a recent exacerbation of his symptoms, clinical records indicated he was quickly returned to his prior baseline with an adjustment to his dose of Ritalin. The applicant no longer reported at least five to eight minor seizures weekly but experienced more than two minor seizures in the last six months. The Board determined this was consistent with a disability rating of 20 percent in accordance with the VASRD.

On 30 Mar 23, the applicant disagreed with the FPEB's findings and recommendations and requested his case be forwarded to the Secretary of the Air Force Personnel Council (SAFPC) for review and decision. On behalf of the applicant, the Office of Disability Counsel (ODC) in a letter dated 31 Mar 23 noted the DVA on 23 May 22 increased his rating from 80 percent to 100 percent for his excessive daytime somnolence and not lowered it as the FPEB had done. The VASRD provided no specific rating for excessive daytime somnolence; however, it rates the condition analogously to narcolepsy. The applicant provided evidence supporting his requested rating via a letter from his pulmonologist, current VASRD ratings and his testimony; however, the FPEB ignored the evidence and denied the applicant the benefit of the doubt in accordance with 38 Code of Federal Regulation § 4.3. If there remains any reasonable doubt about the severity or degree of the applicant's excessive daytime somnolence, the doubt must be resolved in his favor. Despite practicing a healthy sleep hygiene, the applicant continues to experience excessive daytime somnolence symptoms, including sleep attacks, sleep paralysis and sleep onset/offset hallucinations on average of 35 times per month. According to his sleep doctor, his sleep attacks average 20 per week. These evaluations result in a rating of 80 percent. As a result, the higher evaluation of 80 percent is warranted.

On 12 May 23, the SAFPC reviewed the applicant's appeal and determined the applicant provided no new evidence to indicate that the FPEB ignored or improperly weighed evidence. While he may not agree with the outcome, his disagreement was not evidence of a failure by the FPEB to properly consider evidence. The applicant argued his provider failed to report information regarding his sleep attacks, hallucinations and cataplexy and did not understand the importance of recording/reporting this information until presented with the DVA Disability Benefits Questionnaire. Although his provider did not ask the exact nature of his symptoms, the record indicates the applicant discussed these topics during his initial visit. Further, the applicant in his sworn statement during the FPEB hearing indicated complete control of his sleep attacks. After a thorough review, SAFPC did not find the applicant's arguments sufficient to conclude the FPEB arrived at an erroneous rating for the applicant's unfitting condition and find it was appropriately rated at 20 percent.

On 12 Jun 23, the SAFPC directed the applicant be removed from the TDRL and DWSP, with a compensable percentage for physical disability of 20 percent.

Per Special Order [REDACTED] dated 30 Jul 23, the applicant was removed from the TDRL and DWSP in the grade of O-3 for physical disability, effective 19 Aug 23. He was credited with 4 years, 4 months and 3 days of active duty service and 6 years, 4 months and 23 days for severance pay.

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1332.18, *Disability Evaluation System*, paragraph 9.2., The TDRL will be managed to meet the requirements for periodic disability examination, suspension of retired pay and prompt removal from the TDRL per Chapter 61 of Title 10 U.S.C., including re-examining temporary retirees at least once every 18 months to determine whether there has been a change in the disability for which the member was temporarily retired. Paragraph 9.2g(1)) The Secretary of the Military Department concerned will determine whether the conditions for which the service member was placed on the TDRL are unfitting and compensable.

AIR FORCE EVALUATION

AFPC/DPFDF recommends denial. There is no evidence an error or injustice occurred in his disability evaluation system (DES) processing and appeal to SAFPC. Based on objective review of the applicant's medical records, a disability rating of 20 percent is appropriate for the applicant's unfitting condition. The applicant's AFBCMR application includes no additional evidence that was not available to SAFPC. The applicant provides a memorandum from the DVA that lists a 100 percent rating for Narcolepsy with Comorbid MDD and Panic Disorder; however, there is no documentation that appropriately separates the unfitting diagnosis of narcolepsy for DES purposes from the other associated conditions. This DVA memorandum was also available to SAFPC.

The applicant was placed on the TDRL for the diagnosis of Excessive Daytime Somnolence; previously rated by the DVA as Narcolepsy. In May 18, at the time he entered the Integrated DES (IDES), the applicant reported a three to four week history of falling asleep at work and during briefings. In Apr 21, he was placed on the TDRL. Upon the TDRL re-evaluation as outlined in DoDI 1332.8, his rating was decreased to 10 percent by the IPEB with an associated disposition of DWSP. After reviewing his appeal of the IPEB determination, the FPEB on 22 Mar 23 changed the disability rating to 20 percent.

The applicant contended in his appeal of the FPEB decision, the previous boards ignored evidence and failed to properly weigh his testimony. However, other than argument and conjecture, the applicant presented no evidence to indicate the FPEB ignored or improperly weighed evidence. Based on the information provided to the FPEB through medical records, memorandums and testimony, the 20 percent determination for the unfitting condition of "Excessive Daytime Somnolence; Previously DVA rated as Narcolepsy" is appropriate, and the decision was upheld on appeal by SAFPC.

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 2 Apr 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 AFPC/DPFDF and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds there is no evidence an error or injustice occurred through his DES processing and appeal to SAF/MRBP. Further, no additional evidence was provided with his AFBCMR application to call the previous decisions into question. While the applicant provides a memorandum from the DVA that lists a 100 percent disability rating for Narcolepsy with Comorbid MDD and Panic Disorder; there is no documentation that appropriately separates the unfitting diagnosis of Narcolepsy for DES purposes from the other associated conditions. Based on an objective review of the applicant's medical records, a disability rating of 20 percent is appropriate for the applicant's unfitting medical condition. Accordingly, the Board finds no error or injustice in the applicant's DWSP for his physical disability. Therefore, the Board recommends against correcting the applicant's records.

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-2023-03235 in Executive Session on 17 Jul 24:

Work-Product	Panel Chair
Work-Product	, Panel Member
Work-Product	Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 28 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Apr 24.

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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.

7/22/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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