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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03410

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His grade of staff sergeant (E-5) be reinstated.
2. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflect a medical separation.

APPLICANT'S CONTENTIONS

He went through two to three years of physical therapy and was diagnosed with a herniated disc in his lower back (as noted in submitted medical records from 2014). His commander at the time was aware of his condition but continued with his demotion under reduction in force reasons. His DD Form 214 should be updated due to his herniated disc in his lower back.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 6 May 13, the applicant's commander recommended the applicant be demoted, under the provisions of AFI 36-2502, *Airmen Promotion/Demotion Programs*, paragraph 6.3.5 for failure to keep fit. The specific reasons for the action were:

- a. On 7 Oct 11, the applicant was issued a Letter of Reprimand (LOR) for failing to meet physical fitness standards having received an unsatisfactory composite score of 68.3.
- b. On 12 Oct 11, the applicant submitted a response stating he took full responsibility for his actions and indicated he would participate in physical training five days a week to negate failing again.
- c. On 20 Jul 12, the applicant was issued a LOR for failing to meet physical fitness standards having received an unsatisfactory composite score of 48.9.

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- d. On 23 Jul 12, the applicant submitted a rebuttal stating the reasons he failed were due to the 24-hour manning which affected his ability to workout, his new baby, and his lower back pain; however, he was in the process of rectifying these issues.
- e. On 6 May 13, the applicant was issued a LOR for failing to meet physical fitness standards having received an unsatisfactory composite score of 73.3, placing him in the unsatisfactory category for the third time within a 24-month period.
- f. On 10 May 13, the applicant submitted a rebuttal stating he was unable to obtain a passing score due to his heart rate being too high during the completion of the one mile walk because of medication which affected his heart rate and indicated he was in the process of obtaining a letter from his physician.

On 7 Jun 13, the Assistant Staff Judge Advocate found the discharge action legally sufficient noting the applicant's contention he failed his fitness assessment (FA) due to medical issues but provided no evidence to substantiate his claim medication affected his ability to pass his FA.

Dated 21 Jun 13, Special Order Work-Product indicates the applicant was demoted to the grade of senior airman (E-4), with an effective date of rank (DOR) of 12 Jun 13.

Dated 22 Jul 13, the applicant's Air Force Fitness Management Report indicates he struggled with passing his FA for several years from 2004 through 2013. His last FA on 1 May 13 indicates he was exempt from sit-ups and was required to perform the one-mile walk and push-ups and to pass the abdominal circumference.

On 27 Sep 13, the Appellate Authority Administrative Demotion Appeal Decision indicated the applicant's appeal package was reviewed; however, the wing commander concurred with the demotion action.

On 31 Dec 14, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving 13 years, 6 months, and 17 days of active duty. He was discharged, with a narrative reason for separation of "Reduction in Force."

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

AFPC/DPMSSP recommends denying the applicant's request to have his grade reinstated to staff sergeant finding no evidence of an error or injustice. The applicant was demoted to the grade of senior airman (E-4) based on three failed fitness assessments (FA) between 8 Sep 11 to 1 May 13 per AFI 36-2502, paragraph 6.3.5, for failing to maintain or demonstrate the ability and willingness to attain physical fitness standards in accordance with AFI 36-2905, *Fitness Program*.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the applicant's request for a reinstatement of his grade and a medical separation. The applicant did not have any unfitting medical condition to include the diagnosed herniated spinal disc that would be eligible for processing through the Disability Evaluation System (DES). The overall separation process was fair, appropriate, in accordance with regulatory guidance.

The applicant contends medication side effect was the key factor in computing a failed score on the one-mile FA walk. However, three weeks after his fitness failure his provider, performing his fitness for duty examination, clearly documented the applicant's single prescribed medication of Zoloft was not known to adversely affect heartrate.

As for his medical condition of lower back pain, records did reveal the applicant without any knowledge of historical acute spinal trauma, a herniated L5-S1 disc was present, verified by magnetic resonance imaging (MRI) testing. However, despite short term intervals of fitness restrictions, the applicant remained able to perform his military duties to include his Personnel Reliability Program (PRP) duties. Despite the presence of a herniated spinal disc, its degree of adverse symptomatology did not rise to the level of unfitness and therefore, was not eligible for DES processing. The determination of unfitness by the military is when a physical or mental health condition interferes with the member's ability to reasonably perform their military duties in accordance with their rank, grade, office, or rating and only then the condition may become ratable within the DES for a possible medical retirement or discharge with severance pay.

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 16 May 24 for comment (Exhibit E), 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/DPMSSP and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's contention his commander was aware of his medical condition when he demoted him; however, finds the applicant struggled with his FA for more than a decade, well before his diagnosed back issues and further finds he was not on any medication which would have affected his heart rate contributing to his failures. The applicant

was given ample opportunities to correct his performance to meet fitness standards throughout his career. Furthermore, the Board does not find the applicant's lower back pain unfitting at or near the time of his separation. Although it may have periodically impacted his FA, the applicant's military duties were not severely degraded due to his medical condition. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. 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, 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-2023-03410 in Executive Session on 17 Jul 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 13 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSPP, atchs, dated 18 Mar 24.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 13 May 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 May 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.

7/30/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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