



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03768

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His medical records be updated to reflect his treatment for an injury sustained while deployed to Kandahar, Afghanistan.

APPLICANT'S CONTENTIONS

He was treated in Sep 12 at a medical treatment facility after an injury he sustained in the deployed environment. He was treated by his Task Force Medic and was sent to the [Work-Product] and treated by a Navy lieutenant commander. This is not updated in his medical records and needs to be annotated for his Purple Heart submission. In his submission, the applicant provided a witness statement attesting to the violent struggle with a prisoner which caused his injuries. The other two documents submitted, the Medical Evaluation Board Narrative Summary (MEB NARSUM) and his commander's statement to the MEB also make mention of this incident.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air Force staff sergeant (E-5).

On 6 Mar 14, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for neck pain. As part of the MEB submission to the board, the witness statement, the MEB NARSUM, and his commander's statement are all part of this file.

Dated 9 Jul 14, Special Order [Work-Product] indicates the applicant was permanently disability retired in the grade of staff sergeant (E-5) with a compensable percentage for physical disability of 50 percent, effective 29 Oct 14. Disability received in line of duty (ILOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred ILOD during a period of war; and disability was the direct result of a combat-related injury as defined in 26 U.S.C. 104 are both marked yes.

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

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 application finding insufficient evidence to support the applicant's request to update his medical records. This Board does not have the authority to either create or update personal medical records without the actual documentation from the applicant. The ultimate burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit is already part of his medical records. The record review did not find evidence of either an applied error or a calculated injustice shown to the applicant by the DoD. Therefore, this medical advisor finds no compelling basis to recommend granting the relief sought in this application.

The applicant is essentially asking the Board to update or receive medical records that reflect him as being treated at a medical facility while in **Work-Product** after an injury. Specifically, he denoted as being seen and treated by a master sergeant medic and a Navy lieutenant commander reflecting, he was treated in Sep 12 at a deployed medical treatment facility. Although the applicant stated his treatment from the Navy lieutenant commander was not reflected in his medical records, this is incorrect. For both in-theater clinic visits on 21 and 27 Sep 12 were conducted by the Navy lieutenant commander. The applicant additionally stated, this omission in his medical records is preventing him from obtaining an earned Purple Heart, because there is no medical documentation stating he was actually treated at the time of injury. Of the three in-theater clinic visits, the first was for the onset of upper back pain from lifting weights at the gym, the second visit was to redo a second referral to physical therapy (PT) due to the first getting lost, and the third was the applicant's first encounter with PT. There was no mention within the in-theater medical records of an altercation with a violent detainee a week earlier. Further medical records indicated his denial of recent past trauma in relation to his painful symptoms.

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 30 Jul 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 the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The AFBCMR is not an investigative entity. The burden of proof is placed on the

applicant to provide evidence to support his claim. The documentary evidence the applicant provided is already part of his official military medical records. If the applicant can provide the medical documentation from his time while deployed to [REDACTED] the Board will reconsider his case. 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)*. 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-2023-03768 in Executive Session on 22 Aug 24 and 31 Aug 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 Nov 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 29 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Jul 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

[REDACTED]
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Board Operations Manager, AFBCMR
Signed by: USAF

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[REDACTED]
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