Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2023-03899

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical retirement with a disability rating of 100 percent.

2. He be retroactively compensated at a date commensurate with his initial discharge.

3. In the alternative, he be referred to a Medical Evaluation Board (MEB) to evaluate his unfitting medical conditions.

APPLICANT'S CONTENTIONS

He should have been medically evaluated for a medical disability retirement prior to his separation as he was suffering from numerous unfitting medical conditions to include syringomyelia and migraines which occurred in the line of duty (ILOD). He was referred to a MEB, but multiple errors were committed during the rating process to include a determination he was fit for duty based on an erroneous procedure. The applicable Air Force Instructions (AFI), the diagnostic rating criteria, and the severity of his conditions were completely disregarded. To prepare for his deployment to Work-Product in early 2017, he was given three vaccines within 24 hours, smallpox, typhoid, and anthrax. These vaccines triggered an adverse reaction within him; however, his concerns were brushed aside. This experience marked the genesis of his subsequent medical tribulations which his endocrinologist confirms likely set the stage for his ensuing health issues. Following his assignment to Work-Pr..., his physical condition declined rapidly causing weakness in his legs, constant pain, and reoccurring migraines. On 14 Aug 17, he received a diagnosis of syringomyelia and migraines. In Mar 18, he was granted 100 percent disability rating from the Department of Veterans Affairs (DVA) for his unfitting conditions and was put into a no pay/no points status around this time. He was under the assumption he was being medically evaluated for a compensable medical separation but instead was evaluated for a non-duty related fitness determination only. Due to his no pay/no points status, he was passed over for promotion twice and was involuntarily discharged before the medical evaluation board process was complete. Due to not having email access, he did not receive the letter with the option to continue his service until after the deadline.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) captain (O-3).

On 2 Oct 14, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of captain (O-3) after serving six years and two days of active duty. He was discharged, with a narrative reason for separation of "Force Shaping – Voluntary Separation Pay (VSP)."

On 10 Apr 15, Reserve Order Work-Product indicates the applicant was appointed to the AFR in the grade of captain (O-3).

On 28 Feb 16, DD Form 214 reflects the applicant was honorably discharged after serving 4 months and 28 days of active duty for this period (inclusive dates 1 Oct 15 to 28 Feb 16). He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 26 Sep 16, DD Form 214 reflects the applicant was honorably discharged after serving 6 months and 26 days of active duty for this period (inclusive dates 29 Feb 16 to 26 Sep 16). He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 18 Feb 17, DD Form 214 reflects the applicant was honorably discharged after serving 2 months and 28 days of active duty for this period (inclusive dates 21 Nov 16 to 18 Feb 17). He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 29 Sep 17, DD Form 214 reflects the applicant was honorably discharged after serving 3 months and 29 days of active duty for this period (inclusive dates 1 Jun 17 to 29 Sep 17). He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 17 Mar 18, DD Form 214 reflects the applicant was honorably discharged after serving 3 months of active duty for this period (inclusive dates 18 Dec 17 to 17 Mar 18). He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

Dated 15 May 20, a letter provided by the applicant, indicates he was not considered for promotion for a second time for which he would be separated with a mandatory separation date of 1 Dec 20; however, he was selected for continuation on the Reserve Active Status List and if he accepted continuation his mandatory separation date would be changed to 1 Apr 23. His suspense for making this decision was 13 Jul 20 and on 30 Nov 20, he elected to accept continuation on the Reserve Active Status List.

On 17 Sep 20, Reserve Order Work-Prod... indicates the applicant was relieved from assignment and assigned to ARPC as a non-obligated, non-participating Ready Reservist.

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 no definitive evidence of either an error or an injustice was made by the DoD in the applicant's separation process. The frequently cited inconsistencies of personal historical trauma coupled with medical knowledge of disease process, provided evidence immunizations were not the cause of his cascade and fleeting symptoms and the Non-Duty Related Disability Evaluation System (NDDES) was indeed the proper routing for his complaint. His submitted evidence did not show credible and or documented evidence of an unfitting physical condition. The burden of proof is placed on the applicant to submit evidence to support their request. The evidence he and counsel did submit were assessed to not support his request to the Board.

Although counsel's brief noted numerous unfitting medical conditions, initially, the only condition or symptomatic finding specifically addressed by counsel were syringomyelia and migraine headaches further detailing they were a direct result of his military service. Later, under counsel's heading of Discussion, other conditions/symptoms of spine and sacroiliac joint conditions, and musculoskeletal conditions, as well as visual disturbances, and radicular pain down his arms, into his hands, fingers and lower extremities were cited by counsel as part of the applicant's numerous unfitting medical conditions and went on to say these listed conditions/symptoms were not stable in nature, as evidenced by the fact the applicant described himself as feeling like he was in a car wreck, prompting multiple doctor's visits and medical procedures in search of relief from the global pain he was experiencing. He was also rated and determined to be 100 percent totally and permanently disabled by the DVA. The submitted documents contained a plethora of civilian medical documents/forms (most of which were not filled out) that were part of an initial traumatic brain injury (TBI) evaluation. Two of the forms filled out stated the applicant noticed his migraines have decreased significantly, on the order of about 75 percent and overall, was feeling better. Other components were various reported laboratory tests.

In counsel's brief, it is stated the applicant, due to his diagnoses of syringomyelia as well as migraine headaches, would rate him a 100 percent Veterans Affairs Scheduling for Rating Disabilities (VASRD) disability impairment rating but does not further breakdown individual rating components nor how the 100 percent rating was achieved. Counsel states in the early months of 2017, the applicant's unexpected assignment to Work-Product led the Air Force to administer three distinct vaccines to the applicant within a span of 24 hours - Smallpox, Typhoid, and Anthrax. It was the Anthrax vaccine, however, that triggered an adverse reaction within him, manifesting as a disconcerting dizziness and a burning sensation and the applicant strongly believes this unsettling experience marked the genesis of his subsequent medical tribulations. His conviction is shared by his endocrinologist, who opines this unfortunate event likely set the stage for his ensuing health challenges. Counsel made a direct emphasis in noting the applicant was not operating under Reserve orders during this Work-Product period, but rather the applicant was fulfilling his responsibilities as a member of the active military service at the time the vaccine was administered. First, counsel's citing of the applicant receiving three separate immunizations

within a 24-hour period was not in evidence within the record review. On 7 Mar 17, the applicant received a single immunization of smallpox only. There was no shown evidence of the applicant ever receiving either typhoid or anthrax during this time. However, if he did receive them, typhoid is a single shot whereas anthrax is a set of multiple injections over a short period of time. Having counsel use the verbiage of it was the Anthrax vaccine, however, that triggered an adverse reaction within him, manifesting as a disconcerting dizziness and a burning sensation coupled with the applicant voicing a strong belief this unsettling experience (post-immunization dizziness and local burning sensation) marked the genesis of his subsequent medical tribulations. Such direct claims are mere speculation and personal belief of the applicant. There was no factual evidence submitted that backs-up such a claim. Additionally, counsel's reference to Enclosure 3 in citing an agreement to the applicant's belief is shared by an endocrinologist is not factual evidence, but rather a self-reported statement by the applicant as, "I'm not sure if this was the catalyst that caused my medical issues, but have spoken with my endocrinologist and he said that it is likely that this [belief of so-called adverse reaction] caused my medical issues."

According to the Centers for Disease Control (CDC), typical and known side effects in receiving the anthrax immunization are or can be tenderness, redness, itching, or a lump or bruise where the shot is given, muscle aches or short-term trouble moving your arm, and possibly headaches or fatigue. The typhoid immunization also could cause pain from the shot, redness, or swelling at the site of the injection, fever, headache, and general discomfort can possibly occur. The CDC lists the following as known mild reactions to the smallpox vaccine: soreness and redness at the injection site, swollen and sore lymph nodes in the armpits, low fever, decreased ability to exercise, flushing or redness of the skin, general feeling of discomfort or illness, itching, pain, redness, or swelling at the vaccine site, muscle aching or cramping, nausea, rash, swollen joints, and unusually warm skin. Lastly, in summary of the CDC, they state the most common side effects after receiving any injectable vaccine includes pain, swelling, or local redness, mild fever, chills, feeling tired, headache, muscle and or joint aches. The Medical Advisor cannot find definitive evidence to support a belief an injectable vaccine of any flavor played an etiologic role in the applicant's physical complaints or conditions.

Syringomyelia is the development of a fluid-filled cyst within the spinal cord and its canal. The cyst, which is sometimes called a syrinx, and frequently only discovered incidentally on radiographic imaging, can grow larger over time. When it develops, the cerebrospinal fluid (CSF) that surrounds, cushions and protects the brain and spinal cord collects within the spinal cord itself. If it collects and forms a fluid-filled cyst, it is called a syrinx. Syringomyelia has several possible causes. Many cases are associated with a Chiari malformation (a condition in which brain tissue pushes into the spinal canal)… congenital syringomyelia. If no Chiari malformation… acquired syringomyelia. Other causes of syringomyelia include spinal cord tumors, spinal cord injuries which can cause symptoms years later and damage caused by swelling around the spinal cord. Syringomyelia symptoms usually develop slowly over time, as the fluid-filled cyst grows, and could possibly affect the spinal column and all extremities. In severe disability, surgical drainage of the cyst is the only way to shrink its size. At first glance, it appears a likely setting of an individual complaining of possible syrinx-related physical symptoms where upon image testing, two separate syrinxes were identified. It is imperative to note, just the mere presence of a syrinx does not at all equate to having physical symptoms. Often, syrinx, when present but not yet known,

are without symptoms. Syringomyelia can also be a complication of spinal trauma, infection, or tumor. In these cases, the syrinx develops in a damaged segment of the spinal cord and then expands. As the syrinx grows, it can press on nerves, causing relentless pain, weakness, and stiffness. The Medical Advisor acknowledges the fact the applicant did experience some physical symptoms that could be contributed to an expanding syringomyelia for which the applicant had two; cervical and thoracic. However, questions remain; was the syringomyelia the actual cause of his array of physical symptoms, the timing of disease onset, and was his medical condition at a level whereby the applicant would have been found unfitting for continued service. The Medical Advisor, based upon the known progression of a syringomyelia, opines there exists no nexus as to his overall symptom complex as originating from his syringomyelia. Enhancing this opinion is the fact of frequent intervals whereby the applicant was completely asymptomatic without the use of medication (overseas clearance, Physical Health Assessments (PHA) and deployments). As previously noted, reduction of a syringomyelia only occurs with surgical drainage. Therefore, once the syringomyelia has grown to initiate painful symptoms, it does not shrink on its own and therefore frequent periods of complete resolution of symptoms would not occur.

In addressing when did the condition occur or did the condition first occur while the applicant was in duty status; despite the incidental radiographic findings of the syringomyelia in Aug 17, the applicant's inconsistent reporting of historical duration of symptoms as being intermittently present for five years, as well as 10 and also 11 years coupled with the reported history of multiple motor vehicle accidents (MVA), noting 12 of them, as well as severe falls from rock climbing to include a fall resulting in unconsciousness while in college tends to complicate the determination of when did his condition first occur. Since we know the nidus of a syringomyelia is often a complication of spinal trauma, the applicant's reported significant history of trauma may well be considered to have existed prior to service (EPTS) whereby such historical trauma started the formation of the cyst which would coincide of when the specific syringomyelia was first incurred. The applicant's personal history depicts a high degree of medical plausibility in the formation timing of the syringomyelia. The syringomyelia develops in a damaged segment/level of the spine and the applicant's reported past multiple traumatic events easily could denote the incurrence prior to service. In opining EPTS, there was no evidence any of his symptoms/conditions were permanently aggravated by military service beyond the natural progression of said conditions.

Lastly, counsel cited AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 1.8, which explicitly states an illness, injury, disease or death sustained by a member in any duty status is presumed to be in line of duty. However, the next line in that instruction goes on to state such a presumption may be rebutted when evidence shows the member was not in the line of duty. Although not specifically written within the reviewed documents, the applicant stated he thought he was going through the process of a medical evaluation board but came to find out that it was only something called a fit for duty evaluation. Such an evaluation is utilized within the NDDES which only can determine duty fitness or not. Apparently, the service considered his symptoms/condition to possibly be unfitting, but also was incurred when not in a duty status and therefore the NDDES to determine fitness was correct. Counsel also cited a non-all-inclusive list of unfitting/disqualifying medical conditions is contained in AFI 48-123, *Medical Examinations and Standards*. Per that instruction, the following conditions, at a minimum, require referral to and evaluation by the appropriate medical board:

migraines, spine and sacroiliac joint conditions, and musculoskeletal conditions. However, under section 5.3.11.8, migraines are disqualifying for service retention if the headaches are manifested by disabling attacks requiring frequent absences from duty and are unrelieved by treatment. Such criteria did not exist in this case. In addition, under section 5.3.14 sacroiliac joint is only noted under the title of that specific section and not further listed as a disqualifying diagnosis.

Via various PHAs and overseas clearance evaluations, the records revealed the applicant was cleared to perform his duties into the middle portion of 2014 when he then complained of neck and back pain since college and approximately 10 years ago with further reporting multiple prior MVAs as well as rock-climbing falls. One fall that he described as hitting his head and neck resulting in a concussion while he was in college. His complaint was pain in the entire back with downward radiation. However, despite such long-term symptom, it was only 10 days later when he was found to be pain free with no medical issues or concerns and thus determined to be worldwide qualified (WWQ). For the following two-year period (2014-2016) he was seen for minor issues with a brief period of profiling due to transient foot pain. Prior to the end of 2016, he again complained of back/neck pain with extension, but within a two-week period, he reported differing historical aspects of having such pain for the previous 11 years and another report of symptoms for a history of five years. Within a three-week period in Jul 17, the applicant went from denying any upper extremity symptoms of pain or weakness to reporting neck pain extending into both arms and into his hands/fingers described as pins and needles. A magnetic resonance imaging (MRI) scan performed incidentally revealed the Syringomyelia which was identified, but no further neurological concern was placed on such a finding for no organic basis would fully explain his symptoms. Additionally, pain management went on to initially associate the applicant's symptoms to the incidental MRI findings, but within two months and a normal examination, they determined the findings of syringomyelia on MRI was less likely the cause of his symptoms. He still received a no physical testing on the 1.5 mile run or the 2 kilometer walk until 31 Jul 18. a date greater than two years prior to his separation.

Lastly, although the applicant reported a 100 percent DVA disability impairment rating, it remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, the military's Disability Evaluation System (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 service 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.

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 23 Aug 24 for comment (Exhibit D), and the applicant replied on 21 Sep 24. In his response, the applicant contends, through counsel, the advisory opinion fails to recognize his multiple medically unfit conditions and attempts to explain away medical conditions based on irrational arguments such as the location and order the conditions which were outlined in the application stating repeatedly, there is no factual evidence to support the allegations. There is substantial evidence and his own subjective complaints as well as DVA rating him totally and permanently disabled to support his request. Instead of answering the question of whether he should have been referred for medical evaluation, the advisory focuses on whether he would have been found unfit which is completely inappropriate and beyond the scope.

The advisory confirms he had unfitting conditions while on active duty and he presents evidence he had three vaccines, Smallpox, Typhoid, and Anthrax within a 24-hour period which prompted an exacerbation of pain and related symptoms. His own assertion is evidence he immediately felt symptoms and can identify the specific vaccine as the cause of his symptoms.

The advisory goes on to outline minor pain and injuries as they are somehow relevant. All medical conditions that are aggravated or incurred while on active duty are presumed to have been caused by that active-duty service. Minor pain does not prohibit a service member from having unfit conditions evaluated after that condition was aggravated to the point it becomes unfitting. Pain does not bar an individual from future injury as an individual can become medically unfit based on a new condition or the aggravation of a preexisting condition.

Lastly, the advisory opinion states he did not provide a further breakdown of his DVA rating components; however, he is already 100 percent service connected and is totally and permanently disabled. The breakdown of the conditions and ratings have already been done. He should have been referred for a medical evaluation regardless of whether he was released from active duty. He requests the Board grant the requested medical disability retirement/or the conditions and ratings that have already been determined by the DVA to be totally and permanently disabled.

The applicant's complete submission is at Exhibit E.

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 AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The submitted evidence did not show credible and/or documented evidence of an unfitting medical condition. Except for the applicant's own admission, the evidence did not convince the Board his three immunizations given within a

24-hour period were the cause of his ongoing symptoms leading to unfit conditions and further finds his medical condition of syringomyelia EPTS due to his reported history of trauma. Additionally, there was no evidence any of his symptoms/conditions were permanently aggravated by military service beyond the natural progression of any of his medical conditions. The Board took note of the applicant's DVA ratings; however, 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 at the time of separation from active service and not based on post-service progression of disease or injury. 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. The Board finds the applicant's medical case was properly routed to the NDDES because his injuries were not incurred during a period of active duty. 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.

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-2023-03899 in Executive Session on 12 Sep 24 and 22 Oct 24:

Work-Product

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 1 Nov 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFBMCR Medical Advisor, dated 14 Aug 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Aug 24.
Exhibit E: Applicant's Response, w/atch, dated 21 Sep 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.

10/25/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF