



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03970

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical separation.

APPLICANT'S CONTENTIONS

He was discharged from the service for a disability that has now been service-connected by the Department of Veterans Affairs (DVA) as of 8 Mar 16 and updated on 10 Jan 22. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects he was discharged because of a condition (not physical disability) interfering with performance of duty. His conditions of right and left sciatic nerve radiculopathy and lumbar strain (inter-vertebral disc syndrome), rated by the DVA were pre-existing from his active-duty time and interfered with his ability to perform his duties. These conditions are chronic and have been continuous since his active-duty service.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) senior airman (E-4).

On 9 Dec 07, his DD Form 214 reflects the applicant was honorably discharged from the United States Navy (USN) after serving five years of active duty and was transferred to the Navy Reserve. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 19 Nov 12, Special Order Work-Prod... indicates the applicant enlisted in the ANG.

On 18 Oct 14, the Statement of Selection letter indicates the applicant desired to enter the Disability Evaluation System (DES) for a non-duty related fitness determination only.

Dated 19 Oct 14, the applicant's points summary indicates he was in a non-participating status from 10 Dec 07 to 18 Nov 12.

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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 9 Jul 15, a request for a non-duty related Disability Evaluation System (NDDes) fitness determination indicates the applicant was identified with a non-duty related physical defect or condition that rendered him unfit for duty.

Dated 24 Jul 15, a fitness determination was made for the applicant which indicated the Informal Physical Evaluation Board (IPEB) found him unfit to perform the duties of his office, grade, rank, or rating due to his degenerative arthritis of the spine, Intervertebral Disc Syndrome. It is further noted the applicant was unable to attend technical school as his medical restrictions went into effect soon after he enlisted in the ANG in 2012 and he had a history of multilevel degenerative disc disease of the back, which began in May 13. He underwent conservative management and surgical intervention but continued to have pain and is maintained on chronic narcotics as needed. He also developed neck and shoulder pain and has had cervical anterior discectomy at C5-6.

On 18 Aug 15, the Selection of Rights-Non-Duty Related Fitness Determination letter indicates the applicant did not elect to have his case referred to the Formal Physical Evaluation Board (FPEB) and acknowledged he understood discharge proceedings would be initiated.

On 15 Oct 15, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 2 years, 10 months, and 27 days of service for this period. He was discharged, with a narrative reason for separation of "Medically Unqualified for Further Military Service-Resign in Lieu."

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

AIR FORCE EVALUATION

NGB/SGPS recommends denying the application finding no evidence of an error or injustice regarding the applicant's discharge. The applicant incurred a back injury in Oct 12 prior to his enlistment into the ANG and was not in any military service or duty status. The applicant had a history of multi-level degenerative disc disease of the back, which began in May 13 and progressively worsened despite undergoing conservative management and surgical intervention. He elected to enter the NDDes process and the IPEB found him unfit to perform the duties of his office, grade, rank, or rating for the diagnosis of degenerative arthritis of the spine; intervertebral disc syndrome to which he agreed. No additional medical documentation was submitted or found in the available electronic health record substantiating military service aggravated/exacerbated the applicant's condition beyond natural progression.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request for a medical separation or retirement in lieu of medical disqualification. For an individual to go through the fitness-for-duty process, there must first be a medical condition that is disqualifying for military service, in accordance with AFI 48-123, *Medical Examinations and Standards*. Additionally, a Physical Evaluation Board (PEB) action

may be justified when there has been a failure of improvement or resolution of a condition after receiving optimum medical treatment or it has required duty and/or mobility restrictions for 365 days or more, as would be depicted on an AF Form 469, *Duty Limitation Report*, or legacy AF Form 422, *Physical Profile Serial Report*. The applicant's record contained ample evidence of such a condition, highly symptomatic multi-segmental degenerative disc disease, that had significantly impaired his duty performance, prevented him from training into his assigned Air Force Specialty Code (AFSC), and resulted in medical disqualification. However, as stated in the NGB/SGPS advisory, the applicant incurred a back injury in Oct 12 prior to his enlistment into the ANG and was not in any military service or duty status and he had a history of multi-level degenerative disc disease of the back, which progressively worsened despite undergoing conservative management and surgical intervention. The applicant raised the issue of a possible nexus between his in line of duty (ILOD) lower back injury that occurred during his Naval service, and his recurrent injury sustained in civilian status shortly before entering the ANG.

Per AFI 36-2910, *Line of Duty (Misconduct) Determination*, which was in effect at the time of the applicant's medical disqualification, did not specifically address the issue of a Prior Service Condition (PSC), which is what his back injury may have constituted. However, a PSC was addressed by later versions of the AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, Section 1.12 which defines a PSC as any medical condition incurred or aggravated during one period of active service or authorized training in any of the Military Services that recurs, is aggravated, or otherwise causes the member to be unfit. It further states a PSC should be considered incurred in the LOD, provided the origin of such condition or its current state is not due to the service member's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the service member was not in a duty status. Intervening events can be a car accident that worsened the existing condition, a civilian job that aggravates the condition, or the member's willful neglect or misconduct. Although the applicant's record does show he continued to have intermittent back complaints throughout much of his military career, this condition did not appear to become unfitting until it was aggravated by the injury that occurred while he was in a civilian status, prior to entry into the ANG. Furthermore, the applicant was found unfit primarily due to his neck issues, as per the narrative summary (NARSUM) diagnosis and there is no evidence at all of a service connection for this condition, as underscored by the DVA Compensation and Pension (C&P) exam.

It is outside the scope of this medical advisory to determine whether the applicant's back condition, incurred in the line of duty and apparently aggravated many years later in civilian status, would have been considered PSC. According to Section 1.12.2 of the AFI 36-2910, a PSC determination will be accomplished to ascertain eligibility for entrance into the applicable DES only. A PSC would entitle a member to have a Medical Evaluation Board (MEB) evaluation and be referred into the DES. If an illness, injury, or disease is not considered a PSC, then refer into NDDES. PSC determinations for ANG members will go to the National Guard Bureau, Surgeon General (NGB/SG) for review. The NGB/SGPS advisory opinion, which could be considered as a PSC determination, recommends a denial of the applicant's petition. This would seem reasonable given the available evidence does not support a nexus between the ILOD back strain sustained during

his prior Naval service and the unfitting multi-segmental degenerative disc disease that resulted in his discharge from the ANG before he was even able to begin initial training.

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 and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., 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 time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran, as happened in this case. In short, a finding by the DVA indicating the applicant's spine condition may have warranted a particular disability rating at some point following his discharge, even if very proximal to it, would not in itself constitute evidence this condition would have made him eligible for a medical separation or retirement under the DES.

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 15 Oct 24 for comment (Exhibit E) 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 recommendations of NGB/SGPS and 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 entered into the NDDDES which found his degenerative arthritis of the spine, intervertebral disc syndrome unfitting. The applicant had a history of multi-level degenerative disc disease of the back prior to his enlistment into the ANG, which progressively worsened despite undergoing conservative management and surgical intervention. Furthermore, the Board finds the applicant's condition is not considered a PSC as his back condition was aggravated by the injury that occurred while he was in a civilian status, prior to entry into the ANG and progressed to unfitness as the result of this intervening event when he was not in a duty status nor was his condition aggravated beyond the natural progression of the disease due to his military service. Lastly, the Board notes the applicant's DVA ratings 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 a member's reason for discharge nor does it warrant a medical separation. 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. 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-2023-03970 in Executive Session on 12 Sep 24 and 18 Dec 24:

Work-Product	Panel Chair
	, Panel Member
	Panel Member
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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 Nov 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 25 Sep 24.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 28 Sep 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Oct 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.

12/31/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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