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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02311

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her deceased spouse's records be posthumously corrected to reflect he was medically retired.

APPLICANT'S CONTENTIONS

Her deceased spouse was seeking a medical retirement approval for his line of duty injury to his lower back sustained on 19 Mar 15 while in training to compensate for his service-connected disability. While he did not follow through with all of the protocols to follow up with care or a treatment plan, he was not one to complain, but he was one to "suck it up" when needed. He was very upset to learn his line of duty was removed from his profile. He suffered from chronic lower back pain, no matter the therapy he received, there was no relief. The applicant would have applied on behalf of her deceased spouse earlier had it not been such a struggle working through each obstacle.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The deceased service member is a retired Air National Guard (ANG) master sergeant (E-7).

On 14 Sep 17, according to DD Form 261, *Report of Investigation Line of Duty and Misconduct Status*, provided by the applicant, the service member's claimed duty related aggravation in 2015 of a non-duty related back injury in 2014 was determined in line of duty (ILOD).

On 15 Jul 20, according to Reserve Order **Work-Product** dated 19 Nov 20, the service member passed away.

According to NGB 22, *Report of Separation and Record of Service*, the service member was transferred to the Reserve Retired List effective 21 Sep 20 and credited with 25 years total service for retired pay.

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

AIR FORCE EVALUATION

NGB/SGPS recommends denying the application. The service member's initial back injury occurred 17 Jul 14 due to a fall off a ladder at home and aggravated while in a duty status during

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annual training 7 - 21 Mar 15. The service member was placed on annual tour orders even though he had an unresolved back injury as indicated by the AF Form 469, *Duty Limiting Condition Report*, dated 11 Jan 15, he had duty, fitness, and mobility restrictions. The service member aggravated his back injury during annual training, declined medical treatment when recommended by his commander and sought treatment after annual training. He initially elected to enter the Non-Duty Disability Evaluation System (NDDDES) process for his non-duty related back injury and selected the following option on the Statement of Selection; "I desire to enter into the Disability Evaluation System (DES). I understand that my case is non-duty related and that it will be for a Fitness determination only. If returned to duty by NGB/SG or the Air Force DES as fit, NGB/SG will review the case to determine if an Assignment Limitation Code (ALC) stratification needs to be placed in the Personnel Data System (PDS)". A Formal LOD (DD Form 261) was subsequently determined as ILOD for aggravation of previous back injury. The duty DES process was initiated 28 Jun 18 through the Physical Evaluation Board Liaison Office (PEBLO) but was discontinued after the Deployment Availability Working Group (DAWG) formally reviewed the service member's medical records and deemed there was no Medical Standard Directory (MSD) criteria met to warrant a Medical Evaluation Board (MEB). Additionally, the LOD for the service member's aggravated back injury remains in his medical records and was not removed.

The DES can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. The DVA on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and 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 DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice regarding the service member's LOD for his back injury and medical retirement.

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 31 Jan 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 service member is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGP/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the service member's lower back injury, determined ILOD for aggravation of a previous NILOD back injury, did not meet the MSD criteria for referral to a MEB. Therefore, the Board recommends against correcting the service member'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-2023-02311 in Executive Session on 17 Apr 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 10 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGP/SGPS, dated 16 Jan 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Feb 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.

2/21/2025

X

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Board Operations Manager, AFBCMR
Signed by: USAF