Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2024-00211

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical retirement.

2. His grade of technical sergeant (E-6) is not accurately documented.

3. A DD Form 214, *Certificate of Release or Discharge from Active Duty*, be issued from ARPC for honorable service.

APPLICANT'S CONTENTIONS

He was deployed as an Air Force Reservist from Jul 09 thru Jun 12 at which time he was diagnosed with tachycardia and high frequency (HF) deafness. He was also prescribed heart medication at this time. Because of these medical issues, he could not complete his physical fitness run in order to be gained for future Reservist duty. His disability claim with the Department of Veterans Affairs (DVA) was approved which granted him 100 percent service connection for his disabilities based on medical findings from 2012. ARPC did not record his disability rating within their records and his grade is not accurately documented. Since he has less than 20 years of active service, a disability rating of 30 percent or higher will qualify him for retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) technical sergeant (E-6).

On 1 Jun 12, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving nine months and two days of active duty for this period. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 5 Dec 12, the applicant was issued a referral Enlisted Performance Report (EPR) for failing to maintain fitness standards.

Dated 16 Jul 13, Reserve Order Work-Product indicates the applicant was relieved from assignment with the 24th Air Force, Joint Based San Antonio and assigned to ARPC.

Dated 30 Oct 17, Reserve Order Work-Product indicates the applicant was honorably discharged from the AFR in the grade of technical sergeant, effective 25 Oct 17.

Dated 16 Dec 24, the applicant's personnel data report indicates his date of rank (DOR) to technical sergeant is 1 Sep 12.

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

ARPC/CCX recommends denying the applicant's request for a DD Form 214 from his time served honorably in the AFR. A DD Form 214 is not a comprehensive document that captures all active-duty time or is automatically issued upon retirement, separation or discharge for Guard or Reserve members. DD Form 214s are only created if Guard or Reserve members meet the criteria in accordance with AFI 36-3202, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series).* Per AFI 36-3202, Table 2, Air Reserve Component (ARC) members must serve 90 continuous calendar days or more active duty (30 continuous days or more in support of a contingency or be ordered to active duty in support of a national emergency or war, regardless of length of time) to qualify for a DD Form 214.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the application finding insufficient medical evidence, either supplied by the applicant or found in his electronic health records, to support his contention he should have been medically separated or retired. The agencies and processes evaluating the applicant's fitness for duty reached the correct decision in recommending his administrative discharge, based on the information available at the time, and now. There did not appear to be an error or injustice that would need to be remedied.

As his service treatment records (STR) showed, the applicant was indeed being evaluated and treated for hearing loss, tachycardia, and hypertension while on active-duty orders, and had apparently sought a line of duty (LOD) determination, though none could be found in his record. Nonetheless, there is compelling medical evidence of a service connection for these problems, as pointed out by the DVA. It is also clear the applicant had several periods of activity restriction in 2011 and 2012 due to his cardiac symptoms which primarily prevented him from performing the run component of the physical fitness test. Unfortunately, his AF Forms 422, *Notification of Air Force Member's Qualification Status,* or AF Forms 469, *Duty Limiting Condition Report*, were not available for review, so the nature of those restrictions could only be generally ascertained from provider's notes. However, it is also clear from the available records that none of the applicant's conditions interfered with his military duties or progressed to being potentially

unfitting for military service, since numerous entries in his STR, as recently as 2014, mention his good general health, effectiveness of antihypertensive medications, improved exercise tolerance, and no need for duty restrictions. Furthermore, it should be noted, even if the applicant had needed to remain on a limited physical fitness profile, for example restricting him from performing the run component, an Air Force member can be on fitness restrictions essentially indefinitely without necessarily precipitating the need for a Physical Evaluation Board (PEB) and a potential medical separation or retirement.

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 the AFI 48-123, *Medical Examinations and Standards*. Additionally, a Medical Evaluation Board (MEB) submission 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 or legacy AF Form 422. As mentioned, the applicant's STR contained ample evidence of a condition, symptomatic tachycardia, that had periodically limited his ability to perform certain exercises, such as running, and other conditions, decreased hearing and hypertension, that did not seem to cause any significant limitations during his time in military service. However, no evidence was found indicating any medical condition had impaired his duty performance. On the contrary, his Enlisted Performance Reports (EPR), deployment history, et cetera, indicated he was well capable of carrying out his work responsibilities.

The applicant submitted supporting documents from the DVA indicating a service connection and disability ratings for his hearing loss and tachycardia. However, 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 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. In short, a finding by the DVA indicating the applicant's condition was service connected and compensable does not in itself constitute evidence this condition would or should have made him eligible for a medical separation or retirement under the DES. Per DoDI 1332.38, *Physical Disability Evaluation*, paragraph E3.P3.2.1, a Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation. Although the previous instruction may have since been set aside, key aspects of the policy were retained under the more recent publication, DoDI 1332.18, *Disability Evaluation System,* dated 5 Aug 14, and include two additional criteria for determining unfitness, a Service member may also be considered unfit when the evidence establishes that: (1) the Service

member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; or (2) the Service member's disability imposes unreasonable requirements on the military to maintain or protect the Service member. With respect to evidentiary standard for determining unfitness because of disability, under DoDI 1332.18, the Secretary of the Military Department concerned must cite objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture, to determine a Service member is unfit because of disability. Additionally, with the exception of presumption of fitness cases, the Secretary of the Military Department concerned will determine fitness or unfitness for military service on the basis of the preponderance of the objective evidence in the record. In this case, the preponderance of the available evidence appears to indicate the applicant was not unfit to continue military service due to his tachycardia, hypertension, or hearing deficit and was appropriately discharged in accordance with Air Force policy, rather than medically separated or retired.

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 23 Dec 24 for comment (Exhibit E) and the applicant replied on 2 Jan 25. In his response, the applicant contends the excerpt from DoDI 6130.03, Volume 1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction*, for disqualifying conditions, hearing and heart, support his request for a medical discharge.

The applicant's complete response is at Exhibit F.

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 ARPC/CCX and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant's grade is correctly annotated on his separation order, Reserve Order Work-Product and his last DD Form 214. His last DD Form 214 from his active-duty period ending on 1 Jun 12, reflects his grade of staff sergeant which is the correct grade as he was not promoted until 1 Sep 12. Additionally, unless the applicant can provide documentation of active-duty time meeting the requirements outlined in AFI 36-3202 to generate a missing DD Form 214, the Board finds no reason to grant the applicant's request for a DD Form 214 to encompass his AFR service or to encompass all of his active-duty periods into one document. Lastly, the Board finds the preponderance of evidence does not support the applicant's request for a medical retirement or an annotation of his DVA ratings on his separation documents. Specifically, the Board does not find any of the applicant's medical conditions at the time of his discharge unfitting. The mere existence of a medical diagnosis does not automatically determine

unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not severely degraded due to his medical conditions, even though his conditions may have interfered with his ability to perform his fitness test. Being on a profile to be exempt from a component of the fitness test does not warrant processing through the DES. The DoDI the applicant cited in his response, DoDI 6130.03 is not the governing regulation for DES processing. DoDI 1332.18 outlines the DES process for determining fitness for duty. Furthermore, the Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 or near the time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Nor are DVA disability ratings annotated on military separation documents. The DVA operates under Title 38, U.S.C. and may evaluate a member over the years and their ratings may be increased or decreased based on changes in the member's medical condition at the current time. However, a rating by the DVA does not equate to a military medical retirement or separation. 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 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-2024-00211 in Executive Session on 15 Jan 25:

Work-Product Panel Chair
, 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 11 Jan 24 and 25 Mar 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/CCX, atch, dated 29 Mar 24.
Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 23 Dec 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Dec 24.
Exhibit F: Applicant's Response, w/atchs, dated 2 Jan 25.

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.

1/22/2025

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF