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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: BC-2024-00263

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be given a medical retirement.

APPLICANT'S CONTENTIONS

Even though he had a line of duty (LOD), he was denied a medical retirement. While he was on active duty, a ceiling collapsed on his head which caused a concussion and led to his slip disc injury which was not determined until later. His leadership failed to provide the proper guidance during this incident which caused him to suffer financial losses. A year after his surgery, he was determined to be unfit for duty and was not medically retired but was forced to retire for medical reasons without immediate retirement pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) master sergeant (E-7) awaiting retired pay at age 60.

On 27 Jul 08, AFRC IMT 348, *Informal Line of Duty Determination*, indicates the applicant's injury he sustained due to a ceiling tile striking him on the head was determined as existed prior to service-service aggravated (EPTS-SA) by the appointing authority. It is noted the incident re-aggravated a previous injury which occurred while he was in the Army.

On 6 Aug 17, the applicant acknowledged he had a medical condition which was determined to be disqualifying for worldwide duty (WWD) and he indicated he desired to have his non-duty related medical disqualification case referred to the Informal Physical Evaluation Board (IPEB) solely for a fitness determination.

On 8 Aug 19, the applicant was found to have a medical condition which did not meet medical standards and he was placed on an assignment availability code (AAC) of 37 and was restricted from Reserve participation for pay and points.

On 5 Feb 20, ARPC/DPTTS reviewed the applicant's case and determined he was disqualified for continued military duty due to his diagnosis of cervicalgia, unspecified anxiety disorder, and chronically elevated liver function tests (LFT). It is further noted the applicant was a traditional Reservist with 17 years of satisfactory service.

On 10 Feb 20, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, reflects the applicant was found unfit due to his medical condition of cervicalgia, secondary to chronic degenerative disc disease, rated as intervertebral disc syndrome; however, his condition was found not to have incurred while entitled to basic pay or in the line of duty (ILOD) with a recommendation of "Unfit." His other conditions of unspecified anxiety disorder and chronic elevation of LTFs, rated as chronic liver disease without cirrhosis, non-symptomatic were found as Category II conditions that can be unfitting but were not currently unfitting. It was noted the applicant's unfitting condition, cervicalgia, was unrelated to the incident in 2007 for which he received a LOD determination and did not apply to the previously documented chronic disc disease he was evaluated for in Oct 06.

On 6 Mar 20, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant disagreed with the findings and recommended disposition of the Physical Evaluation Board (PEB) and requested a formal hearing. In the contention slip, the applicant contended his cervicalgia, secondary to chronic degenerative disc disease was a prior service condition (PSC) and was incurred and/or aggravated during a period of active service or authorized training, caused him to be unfit, and was not due to any misconduct or progression to unfitness as the result of intervening events when he was not in duty status. Moreover, his condition was permanently aggravated by his military service.

On 21 Apr 20, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of cervicalgia, secondary to chronic degenerative disc disease, rated as intervertebral disc syndrome; however, his condition was found not to have incurred while entitled to basic pay or ILOD with a recommendation of "Unfit." It was noted the applicant had a long history of chronic neck pain culminating with an anterior cervical artificial disc replacement in May 08, without complications. He testified, following this surgery his condition improved, and he was able to resume his normal activities including excelling at Air Force Fitness testing, completing two back-to-back deployments, and later completing a third deployment in 2012. He further testified his post-surgery neck issues eventually resurfaced around the 2016 time period when he kept injuring and reinjuring himself while working out in the gym, but he could not recall without looking at his service history in MyPers, if he was on orders after 2016, but added he knows he performed one drill weekend during this period.

On 1 May 20, AF Form 1180 indicates the applicant disagreed with the findings and recommended disposition of the Formal Physical Evaluation Board (FPEB) and he requested his case be referred to the Secretary of the Air Force Personnel Counsel (SAFPC) for review and a final decision.

On 19 May 20, in his appeal, the applicant contended his unfit medical condition was a PSC and should be found ILOD for proper Integrated Disability Evaluation System (IDES) processing.

On 4 Nov 20, the SAF Air Force Personnel Board (AFPB) found the applicant's unfit medical condition of cervicalgia, secondary to chronic degenerative disc disease not ILOD noting he was found fit for duty and he was permitted to deploy shortly after his surgery in 2008 and it was not until 2012 his neck pain returned due to his gym activity with no evidence he was in a duty status at this time. He contends his neck injury was permanently aggravated but the board noted improvement of his condition after surgery and found his current diagnosis of cervicalgia, secondary to chronic degenerative disc disease was a normal progression of his previous neck injuries and surgery and not due to service aggravation.

On 6 Nov 20, the SAF directed the applicant be separated for a non-duty related physical disability.

Dated 4 May 21, Reserve Order [redacted] indicates the applicant was assigned to the Retired Reserve Section and placed on the Retired Reserve List (RRL), effective 18 Jan 21 under the authority of 10 U.S.C. 12731b due to his medical disqualification and his satisfactory years of service greater than 15 years.

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1332.18, *Disability Evaluation System (DES),* Appendix 1 to Enclosure 3, *DES Referral*, Section 2, for referral of service members into the DES, a member must have one or more medical conditions that may, individually or collectively, prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating including those duties remaining on a Reserve obligation for more than one year after diagnosis; have a medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members; or have a medical condition that imposes unreasonable requirements on the military to maintain or protect the Service member. Per Section 3, in order to be processed through the DES, eligibility for referral for a duty-related determination, the member must have incurred or aggravated the medical condition during a qualified period of service as described in paragraph 3a. If the member does not qualify under paragraph 3a, the member is processed through the Non-Duty Disability Evaluation System (NDDES) for a fitness determination only if they meet the criteria in Section 2.

Appendix 3 to Enclosure 3, paragraph e, a PSC is 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 Service member to be unfit, 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.

Service aggravation is defined as the permanent worsening of a pre-service medical condition over and above the natural progression of the condition.

AIR FORCE EVALUATION

AFRC/SGO recommends denying the application finding no evidence of an error or injustice. The applicant was offered and completed a fair and complete appeal process. The IPEB believed the applicant was unfit but states the disqualifying condition was not the condition for which the applicant had a LOD. The FPEB agreed and determined SAF could complete an appropriate LOD. The applicant was then evaluated by SAF, and the finding was the applicant was unfit, but his condition was not in the LOD, and he was processed through NDDES. The applicant was not eligible for IDES despite the ILOD finding which was concurred with by AFRC/SG, the IPEB and SAF. The ILOD diagnosis must be the same as the condition for which the applicant is being disqualified.

The applicant suffered a neck strain while in status and has an ILOD finding. This condition was considered existing prior to service as the applicant had a documented herniated disc and was offered surgery, but felt the strain was service aggravated. The alleged trauma showed no change in imaging findings compared to imaging prior to the event. Furthermore, there is no evidence of a documented neck injury due to a motor vehicle accident in the electronic health record during his time in the Army. However, the Narrative Summary (NARSUM) for the WWD case mentions a motor vehicle accident 2001/2002 resulting in a mild herniation, in 2002 or 2004 he fell out of a high mobility multipurpose wheeled vehicle (HMMWV), in 2006 was bench pressing and suffered a herniated disc, and then the hotel injury occurring in Sept 2007, when he was given a diagnosis of neck strain.

The complete advisory opinion is at Exhibit C.

SAF/MRBP recommends denying the applicant's request for a medical retirement. Even though the evidence indicates his unfitting condition should have been found compensable under the PSC rule, the evidence indicates this condition would have only garnered a10 percent disability rating with entitlement to separation pay, not disability retirement as the applicant is requesting. This recommendation does not preclude the applicant from arguing, in response to this advisory, his unfitting condition should have been rated at 30 percent or more at the time of his transfer to the retired Reserve, provided he submits additional medical documentation for consideration.

Available evidence clearly substantiates a Sep 07 aggravation to the applicant's known cervical degeneration and herniated disc at the C5-6 level. This is affirmed via the medical record and by the AF Form 348, signed in Jul 08. SAF/MRBP does not agree with the semantic argument the AF Form 348 condition of injury-other and specified, somehow mitigates the condition to which

the LOD finding applies. Given the strong clinical establishment of cervicalgia secondary to chronic degenerative disc disease pre-2007, the EPTS-SA determination on the AF Form 348 is clearly in reference to that condition. The second threshold question of progression to unfitness has, obviously, been answered in the affirmative. Analysis of the applicant's contention, therefore, hinges on the progression to unfitness and its possible root in misconduct, neglect, or intervening events.

PSC policy does not necessitate a condition remains static post-service aggravation to warrant a favorable adjudication. Instead, it allows for the natural progression of previously incurred or aggravated conditions, recognizing such conditions may eventually become unfitting despite periods of clinical stability. The applicant's cervical spine condition, initially stabilized via surgical intervention, predictably progressed to an unfitting state. Artificial disc replacement has known potential side effects and sequelae. In overt medical terms, hypertrophic ossification and adjacent segment disease frequently occur in the months or years post-surgery. Persistent or recurrent pain, with associated functional limitations, are sufficiently probabilistic to explain the applicant's 2012 re-emergence of cervical spine pathology. Previous adjudication authorities seemingly required there be another moment of aggravation after surgical stabilization, in order to generate a favorable PSC/LOD finding. SAF/MRBP does not see the requirement for additional aggravation as consistent with DoDI 1332.18, Section 7(e). A single occurrence of incursion or aggravation is seemingly sufficient to prompt application of PSC review. Furthermore, the related rationale of natural progression as a means to deny the compensability of a condition under the PSC rule is seemingly inconsistent with the same policy reference. Rather, there would need to be identification of neglect, misconduct, or intervening events to appropriately rationalize the continued non-compensability of a previously aggravated medical condition which has progressed to unfitness.

With regard to intervening events, the available evidence does not support the presence of such. Specious references in the available record to recurrent pain stemming from physical activity while not in a qualified duty status is insufficient to substantiate an intervening event. Knowledge of the applicant's civilian job in a manufacturing plant, without evidence to his specified duties therein, is also insufficient to determine the progression of cervicalgia secondary to chronic degenerative disc disease was predominantly related to this factor. Lastly, there is no evidence in the available record to identify neglect or misconduct on the part of the applicant which prompted the progression of his axial skeleton pathology. Therefore, based on a holistic review of the applicant's medical history, service record, and relevant policy frameworks, SAF/MRBP advises the applicant's cervicalgia secondary to chronic degenerative disc disease was incurred or aggravated by military service, progressed to an unfitting condition, and this progression was not the result of intervening events. The initial aggravation and subsequent deterioration are consistent with the natural history of the disease, and PSC policy provides for such progression without precluding a favorable disability adjudication.

Therefore, in view of the above, SAF/MRBP believes the applicant's condition should have been found compensable under the PSC rule and believe it appropriate to recommend the applicant's records be corrected to reflect such a finding was made by SAFPC when it considered his appeal

on this issue in 2020. Should the AFBCMR agree with this recommendation, further corrections to the applicant's record will be required. In this respect, SAF/MRBP notes if the condition was found to be a PSC, the applicant's case would been referred into the IDES where the PEB would have determined whether the applicant was unfit for continued military service and, if found unfit, what disability rating to assign to the member's condition. After a thorough review of the evidence available at the time of the events under review, SAF/MRBP believes a preponderance of the evidence indicates, if referred into the IDES, the PEB would have found the applicant unfit for continued military service and assigned a combined compensable disability rating of 10 percent to the applicant's condition. The basis of this assessment on the following facts and analysis is as follows:

While direct visualization of a DVA Compensation & Pension (C&P) examination is unrealized, a 2012 psychology encounter notes a ten percent service-connected rating for spine arthritis. This represents strong evidence to a DVA assigned rating, which is the usual mechanism by which ratings are assigned during the IDES process. Furthermore, in a Mar 18, a chiropractor encounter notes the applicant's total cervical spine range of motion (ROM) is measured at 310 degrees. When juxtaposed to the Veteran Affairs Schedule for Rating Disabilities (VASRD), this total ROM measurement correlates to a 10 percent rating. Lastly, tenderness and spasm of the neck musculature is documented on several physical exams. These findings are incorporated to VASRD ratings of spinal conditions and, again, consistent with a ten percent rating in applicant's case. SAF/MRBP noted the applicant seeks correction to his record to reflect he was retired for physical disability. However, in view of the fact he would have been assigned a disability rating of only 10 percent, he would not have been eligible for disability retirement, which requires a disability rating of at least 30 percent to trigger the entitlement for disability retirement. Instead, he would have been entitled to disability severance pay. Therefore, while there is a basis to correct his records to reflect an affirmative PSC finding and subsequent referral into the IDES, SAF/MRBP recommends these corrections not be made because correcting the record in this manner will negate the applicant's entitlement to retired pay at age 60. In this respect, SAF/MRBP notes when a member of the Guard or Reserve, who is entitled to a non-regular Reserve retirement for length of service, is found unfit and entitled to disability severance pay, such a member is given the option of accepting disability severance pay in lieu of transfer to the retired reserve, or transfer to the retired reserve to await retired pay at age 60. As the applicant attained more than 17 years of satisfactory reserve service at the time of his disqualification, he was eligible for early qualification for retired pay at age 60. According to his military personnel records, he was transferred to the retired reserve to await retired pay at age 60.

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 25 Jan 25 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 recommendation of AFRC/SGO and SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board agrees with the assessment from AFRC/SGO, the applicant was correctly processed through the NDDES and agrees with SAF/MRBP's assessment, the applicant's medical condition did not qualify for a medical retirement. However, the Board disagrees with SAF/MRBP's assessment the applicant's condition should have been found compensable under the PSC rule, and recommendation the applicant's records should be corrected to reflect such a finding was made by SAFPC when it considered his appeal on this issue in 2020. SAF/MRBP states the initial aggravation and subsequent deterioration are consistent with the natural history of the disease, and PSC policy provides for such progression without precluding a favorable disability adjudication. However, per DoDI 1332.18, service aggravation is defined as the permanent worsening of a pre-Service medical condition over and above the natural progression of the condition and further defines the criteria to be processed through the DES whereas the applicant had to be in a qualified duty status when the condition became unfit. The Board finds no indication the applicant's cervicalgia, secondary to chronic degenerative disc disease became permanently worsened due to service aggravation. After the applicant's incident in 2007 which led to surgery in 2008, he was returned to duty and deemed WWQ. It was not until 2016 when his condition was determined to be unfit. There is no evidence to suggest he was in a qualified duty status at the time his condition became unfit or became permanently aggravated beyond nature progression due to his military duties. 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-2024-00263 in Executive Session on 6 Jun 25:

[redacted], Panel Chair

[redacted], Panel Member
[redacted], Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 18 Jan 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRC/SGO, dated 6 Jun 24.
Exhibit D: Advisory Opinion, SAF/MRBP, dated 24 Jan 25.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 24 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.

7/1/2025

[redacted]

Board Operations Manager, AFBCMR
Signed by: USAF