

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00373

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her official military personnel record be amended to reflect a medical retirement vice a medical discharge.

APPLICANT'S CONTENTIONS

The initial rating did not consider all of her discharge-eligible disabilities despite being officially documented on her formal Physical Evaluation Board (FPEB) findings.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force senior airman (E-4).

On 25 Aug 20, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Causalgia of Bilateral Lower Limb; Incurred while entitled to basic pay: Yes; Existed Prior to Service: No; Permanently aggravated by service: Yes; and was referred to the informal Physical Evaluation Board (IPEB).

On 18 Sep 20, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability, and diagnosed with:

- Category I – Unfitting Conditions:

- Chronic Right Lower Extremity Pain; Department of Veterans Affairs (DVA) Rated as Right Leg Shin Splints with Knee Painful Motion; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5299-5262; Combat- Related: No.

- Chronic Left Lower Extremity Pain; DVA Rated as Left Leg Shin Splints with Knee Painful Motion; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; VASRD Code: 5299-5262; Combat- Related: No.

The IPEB recommended Discharge With Severance Pay (DWSP) with a combined compensable percentage of 20 percent.

On 28 Sep 20, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing of her case.

On 9 Oct 20, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was found unfit because of physical disability, and diagnosed with:

- Category I – Unfitting Conditions:
 - Right Leg Exertional Compartment Syndrome; DVA Rated as Right Leg Shin Splints with Knee Painful Motion; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; VASRD Code: 5299-5262; Combat-Related: No.
 - Left Leg Exertional Compartment Syndrome; DVA Rated as Left Leg Shin Splints with Knee Painful Motion; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; VASRD Code: 5299-5262; Combat-Related: No.

The FPEB recommended DWSP with a combined compensable percentage of 20 percent.

On 14 Oct 20, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the FPEB and waived her rights for any further appeal. The applicant did request a one-time reconsideration of the DVA disability ratings for the conditions found unfitting by the PEB.

On 19 Oct 20, according to an Office of Disability Counsel memorandum, Subject: Request for One-Time Rating Reconsideration of Proposed Disability Evaluation System Rating Decision, the applicant requested reconsideration of the ratings given for her conditions found unfitting by the FPEB.

On 20 Oct 20, according to a DVA memorandum, Subject: Request for Reconsideration of Proposed IDES Rating Decision, no change was warranted in the prior decision of proposed evaluation for the applicant's conditions found unfitting by the FPEB.

On 19 Jan 22, according to a DVA Rating Decision, in addition to the unfitting conditions identified by the FPEB, the applicant was awarded service-connection for the following conditions:

- Left Leg Compartment Syndrome, Group XI, VASRD Code: 5331-5311; 10 percent disabling, effective 30 Jan 21
- Left Leg Compartment Syndrome, Group XII, VASRD Code: 5331-5312; 10 percent disabling, effective 30 Jan 21
- Right Leg Compartment Syndrome, Group XI, VASRD Code: 5331-5311; 10 percent disabling, effective 30 Jan 21
- Right Leg Compartment Syndrome, Group XII, VASRD Code: 5331-5312; 10 percent disabling, effective 30 Jan 21

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during Integrated Disability Evaluation System (IDES) processing. However, based on the updated DVA ratings after separation, we recommend the following conditions be added to the applicant's list of PEB determined unfitting conditions: (1) Left Leg Compartment Syndrome, Group XI rated at 10 percent; (2) Right Leg Compartment Syndrome, Group XI rated at 10

percent; (3) Right Leg Compartment Syndrome, Group XII rated at 10 percent; and (4) Left Leg Compartment Syndrome, Group XII rated at 10 percent. Had these ratings been available at the time of PEB processing, when added to the applicant's previous unfitting conditions it would have resulted in a total compensable disability rating of 50 percent and a permanent disability retirement.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [USC]), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (DWSP, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, USC), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. 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 the total compensable rating awarded at the time of the member's separation.

On 25 Aug 20, a Medical Evaluation Board (MEB) found the applicant potentially unfitting for Causalgia of Bilateral Lower Limb. The accompanying narrative summary indicates she had a three-year history of bilateral lower extremity pain located over anterior shins that did not respond to conservative treatment. Under the IDES, once a member is identified to undergo an MEB, they are scheduled for DVA Compensation and Pension (C&P) examinations to establish the disability ratings for both their MEB-referred unfitting conditions and other claimed conditions, so all ratings are accomplished prior to separation. On 24 Aug 20, the applicant's provider reviewed the results of her 21 Jul 20 C&P exams and noted the following additionally claimed conditions were reviewed but not considered unfitting in accordance with AFI 41-210, *TRICARE Operations and Patient Administration Functions* and AFI 48-123, *Medical Examinations and Standards*: bilateral knee popping; bilateral ankle condition; bilateral wrist condition; bilateral shoulder condition; skin bruises, chest; varicose veins, bilateral; pes cavus, bilateral foot; tinnitus; headaches; right great toe laceration; bilateral hand condition; left finger laceration; bilateral hip condition; lower back condition; dry skin elbows and knees; vision blurriness/night glaring; lower abdominal/pelvic pain; and hand laceration.

Under the IDES, the PEBs must utilize the disability ratings assigned by the DVA. On 18 Sep 20, the IPEB found the applicant unfit for bilateral Chronic Lower Extremity Pain; DVA rated as Shin Splints with Knee Painful Motion and recommended DWSP with a 20 percent compensable disability rating. The applicant disagreed with the IPEB's findings and submitted an appeal to the FPEB contending her recent diagnosis of bilateral leg exertional compartment syndrome should be added as an unfitting condition. On 9 Oct 20, the FPEB agreed with this request and changed her unfitting conditions to bilateral Leg Exertional Compartment Syndrome; DVA rated as Shin Splints with Knee Painful Motion and directed the applicant be DWSP with a 20 percent disability rating as originally proposed by the IPEB since there was no change to the original DVA diagnosis or ratings for these conditions.

Additionally, under the IDES, members are entitled to request a one-time DVA rating reconsideration of their proposed disability ratings. On 19 Oct 20, her disability counsel requested the DVA reconsider its ratings for bilateral shin splints with knee painful motion and instead rate her bilateral leg exertional compartment syndrome and bilateral shin splints with knee painful motion as two separately diagnosed conditions. On 20 Oct 20, the DVA denied this request citing the conditions are rated with the same diagnostic code and so they must be rated together. Based on this DVA decision, the applicant was DWSP, effective 29 Jan 21.

In preparation for this advisory opinion, a review of the applicant's DVA records was conducted which disclosed that while the DVA initially only assigned a 10 percent rating each for her bilateral shin splints, on 19 Jan 22, the DVA awarded additional separate ratings for: (1) Left Leg Compartment Syndrome, Group XI; (2) Right Leg Compartment Syndrome, Group XI; (3) Right Leg Compartment Syndrome, Group XII; and (4) Left Leg Compartment Syndrome, Group XII. These conditions were rated at 10 percent each retroactive to the day after separation. This decision closely matches the applicant's disability counsel's request during the 19 Oct 20 DVA rating reconsideration request. The PEB medical reviewer noted these updated ratings more accurately reflect the applicant's previous PEB determined unfitting conditions.

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 11 Jul 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 applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided evidence the DVA granted service-connection for the applicant's condition of bilateral leg exertional compartment syndrome, effective the day after separation. AFPC/DPFDD confirmed this information and determined it closely matched the applicant's disability counsel's earlier request to rate her diagnosed unfitting conditions separately, which is sufficient to justify granting the applicant's request to re-evaluate her combined compensable disability percentage. Had this information been available at the time of PEB processing, it would have resulted in a total compensable disability rating of 50 percent and a permanent disability retirement. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. On 9 Oct 20, she was found unfit to perform the duties of her office, rank, grade, or rating by reason of physical disability, incurred while she was entitled to receive basic pay; the diagnosis in her case was: (1) Right Leg Shin Splints with Knee Painful Motion; VASRD Code: 5262; Disability Rating: 10 percent; (2) Left Leg Shin Splints with Knee Painful Motion; VASRD Code: 5262; Disability Rating: 10 percent; (3) Left Leg Compartment Syndrome, Group XI; VASRD Code: 5331-5311; Disability Rating: 10 percent; (4) Right Leg

Compartment Syndrome, Group XI; VASRD Code: 5331-5311; Disability Rating: 10 percent; (5) Left Leg Compartment Syndrome, Group XII; VASRD Code: 5331-5312; Disability Rating: 10 percent; and (6) Right Leg Compartment Syndrome, Group XII; VASRD Code: 5331-5312; Disability Rating: 10 percent; for a total compensable percentage of 50 percent.

The degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 29 Jan 21, she was discharged from active duty and, on 30 Jan 21, she was permanently retired with a compensable percentage for physical disability of 50 percent.

c. Her election of the Survivor Benefit Plan option will be corrected in accordance with her expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2024-00373 in Executive Session on 20 Nov 24:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 27 Jan 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DPFDD, atchs, dated 25 Jun 24.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 11 Jul 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.

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Board Operations Manager, AFBCMR