



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01585

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical retirement.

APPLICANT'S CONTENTIONS

His service-connected disabilities due to his Iraq deployment while serving in the Army National Guard were not considered during the board proceedings. He is rated by the Department of Veterans Affairs (DVA) at 100 percent disabled for malignant neoplasm of the brain, malignant neoplasm of prostate, and seizures which have been identified as presumptive conditions under the PACT Act. He was incorrectly processed through the non-duty disability evaluation system (NDDDES). He was not made aware of the incorrect administrative procedure until the outcome of the board. Since he has line of duty/service-connected disabilities, he should have been processed for a compensable medical separation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard technical sergeant (E-6) awaiting retired pay at age 60.

On 14 Jul 11, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged after serving one year and seven months of active duty in the Army National Guard. He was discharged, with a narrative reason for separation of "Completion of Required Active Service." It is noted the applicant served in Iraq from 14 Aug 10 thru 5 Jun 11.

On 11 Apr 21, on the Statement of Selection to Separate or Enter the Non-Duty Disability Evaluation System, the applicant acknowledged he was identified as having a condition that interfered with military service and indicated he desired to be entered into the Disability Evaluation System (DES) for a fitness for duty determination only.

On 27 Sep 23, the applicant was identified with a non-duty related physical defect or condition which rendered him unfit for duty.

AFBCMR Docket Number BC-2024-01585

Work-Product

Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 27 Feb 23, the DVA proposed a disability rating, document provided by the applicant, for his service-connected medical condition of anaplastic oligodendroglioma (brain cancer) at 100 percent and prostate cancer at 0 percent.

On 1 Nov 23, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of anaplastic oligodendroglioma malignant neoplasm of the brain and seizure disorder due to a brain tumor with a recommendation of “Unfit” as his conditions were not compensable. His other condition of low-grade prostate adenocarcinoma was found as a Category II condition, a condition that can be unfitting but was not currently unfitting. The Informal Physical Evaluation Board (IPEB) found the applicant’s conditions were not ratable or compensable since there was no prior service condition or line of duty determination showing the conditions were incurred or permanently service aggravated by military service.

On 12 Dec 23, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights to any further appeal.

On 18 Dec 23, the Secretary of the Air Force directed the applicant be separated for a non-duty related physical disability.

On 6 Feb 24, Reserve Order **Work-Product** indicates the applicant was assigned to the retired Reserve and placed on the Retired Reserve List (RRL), effective 10 Feb 24.

On 9 Feb 24, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 16 years, 9 months, and 21 days of total service for retired pay. He was discharged, with a narrative reason for separation of “Physical Disqualification/Applied for Retirement/15 or more Sat Service.”

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 applicant’s request for a medical retirement finding his anaplastic oligodendroglioma malignant neoplasm of the brain, seizure disorder due to brain tumor and low-grade prostate adenocarcinoma were not incurred or aggravated/exacerbated beyond natural progression while in a qualified duty status. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice regarding the applicant’s Integrated Disability Evaluation System (IDES) processing. The applicant’s oligodendroglioma malignant neoplasm of the brain, seizure disorder due to brain tumor and low-grade prostate adenocarcinoma were not incurred while in any qualified military duty status and the applicant elected to enter the NDDES process. The IPEB found the applicant unfit to perform the duties of his office, grade, rank, or rating and the applicant agreed with the findings. No

additional medical documentation was submitted or found in the available electronic health record substantiating military service aggravated/exacerbated applicant's condition beyond natural progression.

The DES 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 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 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. The applicant has 100 percent service-connected rating by the DVA for his anaplastic oligodendroglioma.

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 10 Jan 25 for comment (Exhibit D) and the applicant replied on 6 Feb 05. In his response, the applicant contends his unit did not even discuss the possibility of a disability discharge. His discharge should not be predicated on a current or expected DVA disability rating but only on his service and what is best for him. Title 38 and Title 10 are different federal programs but how can one program declare his disability is service connected and the other program declare the disability is not service incurred. His command should have presented other options to him, and he should have been provided counsel. He is 100 percent service connected for his anaplastic oligodendroglioma and his DVA has no bearing on this matter.

The applicant's complete response is at Exhibit E.

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 NGB/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no nexus between the applicant's unfitting medical conditions and his service in the Army National Guard while he was deployed to Work... The PACT Act expands DVA healthcare and benefits when considering certain conditions as presumptive due to toxic exposure; however, this law has no bearing on the DES process as there must be clear and identifiable medical evidence showing his cancer and seizures were incurred during or were the result of his deployment or active service. The applicant claims his unit did not offer the opportunity to allow him to process through

the DES for a compensable medical separation; however, this decision is not up to the applicant nor was he eligible to be processed for this type of separation. The Board finds the applicant was properly evaluated for his medical conditions which rendered him unfit for continued military service; however, his conditions were not incurred during a period of active duty nor was evidence found substantiating his military service permanently aggravated his conditions beyond natural progression. Therefore, he was discharged from the ANG with a non-duty related fitness determination finding his illnesses did not occur in the line of duty. 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 from active service and not based on post-service progression of disease or injury. Whereas 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 active service, or the length of time transpired since the date of discharge. 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-2024-01585 in Executive Session on 19 Feb 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 24 Apr 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, NGB/SGPS, dated 6 Jan 25.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Jan 25.

Exhibit E: Applicant's Response, dated 6 Feb 25.

Work-Product

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.

2/25/2025

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-01585

Work-Product