



**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02273

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be given a medical retirement.

APPLICANT'S CONTENTIONS

The Department of Veterans Affairs (DVA) rated him 80 percent disabled, effective 1 Nov 11 and 100 percent disabled, effective 18 Oct 11 which was the day after his discharge. These ratings indicate he should have been medical retired instead of being administratively discharged as the ratings show he has been unemployable since his discharge. The reason for his discharge, failing to meet fitness standards, does not accurately reflect the severity of his service-connected disabilities. He should be granted a medical retirement which would align his discharge status with his disability ratings, entitling him to the appropriate benefits and recognition for his service.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 23 May 11, AF Form 422, *Notification of Air Force Member's Qualification Status*, indicates the applicant was on a fitness exemption profile from 6 May 11 through 5 Jul 11 exempting him from all components of the fitness test except for the abdominal circumference measurement.

On 22 Jun 11, his fitness exemption profile was extended through 3 Sep 11.

On 21 Sep 11, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.26.6 for failure to meet minimum fitness standards. The specific reasons for the action were:

- a. On 10 May 07, a Letter of Counseling (LOC) advised the applicant he needed to take immediate steps to improve his level of physical fitness. It was noted, after he entered into

AFBCMR Docket Number BC-2024-02273

Work-Product

the Fitness Improvement Program on 12 Oct 06, he scored a 56.5 on his annual fitness assessment which placed him into the poor category where he remained until 23 Jan 07 when he scored a 70.15, placing him in the marginal category. Then on 8 May 07, he scored a 57.7 which placed him back into the poor category which resulted in two failures within an eight-month period.

b. On 4 Nov 10, a memorandum for record (MFR) indicates the applicant was counseled for his continued fitness failures. It was noted on 28 Sep 10, he scored a 63.8 on his fitness assessment and his waist measurement was over the 39-inch allowable maximum.

c. On 5 Jan 11, a LOC was issued for his second fitness assessment failure. It was noted on 30 Dec 10, he scored a 69.6 on his semiannual fitness assessment.

d. On 19 Apr 11, a Letter of Reprimand (LOR) was issued for his third consecutive fitness failure. It was noted on 28 Mar 11, he scored a 46.2 on his fitness assessment and his waist measurement was over the 39-inch allowable maximum. It was further noted if the applicant could not conform to the fitness standards, a fourth failure would be automatic grounds for discharge.

On 11 Oct 11, the Acting Staff Judge Advocate found the discharge action legally sufficient noting the applicant failed four fitness assessments within 24 months and did not seem to make any substantial progress towards the ultimate goal of a healthy lifestyle. It was noted the applicant did not have any physical deficiencies or prior medical history and he was given ample opportunities to succeed in his fitness test from his supervisor and leadership.

On 17 Oct 11, 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 years, nine months, and eight days of active duty. He was discharged, with a narrative reason for separation of "Physical Standards."

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

AIR FORCE EVALUATION

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 for failure to meet fitness standards, 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.

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, *Duty Limitation Report*, or legacy AF Form 422, *Physical Profile Serial Report*. The applicant's service treatment records (STR) contained ample evidence of a condition, periodically exacerbated chronic back pain, which had occasionally placed him in a duties not including flying (DNIF) status, as well as more discrete conditions, for example, ankle and shoulder pain, which, for a time restricted him from most components of the physical fitness test (PFT). However, no evidence was found indicating any medical condition had impaired his long-term 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.

At the time the applicant was administratively discharged for repetitive PFT failures, he was in DNIF status and there appeared to be two conditions that were still pending full evaluation and treatment, left ankle and right shoulder pain. There was no clear indication in the available records of how these issues evolved in the months following the applicant's discharge. However, medical provider notes of 13 and 19 Oct 11 specifically mentioned he was screened for MEB consideration but did not meet the criteria, and he was returned to duty following Fast Track review of his obstructive sleep apnea (OSA). This was consistent with the conclusions presented in the Legal Review of Involuntary Discharge which indicated the applicant had no medical conditions which prevented him from attaining passing PFT scores. In fact, the applicant was medically exempt from any testing component only during his final PFT in Jun 11. Even then, if his ongoing ankle and shoulder pain led to prolonged PFT restrictions, this in itself would not have necessitated an MEB, as one can remain exempt from all PFT components except abdominal circumference measurement essentially indefinitely.

It should be noted the applicant submitted supporting documents from the DVA indicating a service connection and disability ratings for his intermittent chronic back pain, OSA, and other conditions. 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 the applicant's conditions were service connected and compensable does not in itself constitute evidence these conditions would or should have made him eligible for a medical separation or retirement under the DES.

DoDI 1332.38, *Physical Disability Evaluation*, Enclosure 3, Part 3, *Standards For Determining Unfitness Due To Physical Disability Or Medical Disqualification*, paragraph E3.P3.2.1, states 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 his 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 (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 any of his medical conditions noted at the time of separation and was appropriately discharged for failure to meet fitness standards in accordance with Air Force policy, rather than medically separated or retired. It should be emphasized the applicant was able to achieve good results on his PFT several times during his military career despite his chronic back pain and other issues, and in fact could have still passed the tests while on activity restrictions that excused him from those components which he could not perform.

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 Mar 25 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. 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 Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.
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 the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion as the applicant did not have a medical condition which was eligible for DES processing. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. Although his conditions may have impacted his ability to perform his fitness test and he may have been on a profile because of this, overall, his military duties were not significantly degraded due to his medical conditions. Being exempt from fitness components does not render a member eligible for a medical separation and the Board finds the applicant was given ample opportunities to improve his fitness. A service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a rating by the DVA, does not warrant a change in the member's separation. 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. However, the DVA can offer compensation for any medical condition which has a nexus to 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. Therefore, the Board recommends against correcting the applicant'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-2024-02273 in Executive Session on 16 Apr 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 24 Jun 24.

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

AFBCMR Docket Number BC-2024-02273

Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 9 Mar 25.

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

4/29/2025

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-02273