

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02415

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to reflect a medical retirement.

APPLICANT'S CONTENTIONS

On 4 May 65, the Physical Evaluation Board (PEB) found the applicant should receive a 40 percent permanent retirement, and on 28 May 65, another review council changed the code and recommended severance pay. The applicant rebutted the offer on 8 Jun 65. He would like his case reviewed as he was not treated fairly. The applicant joined the Air Force to serve his country, and he could not help that he broke his back. He wanted to stay in the Air Force but was not allowed. He was discharged with a small amount of money, and he tried to get jobs but could not pass the physicals. The applicant has suffered with his back since 1963, and it has held him back not only for jobs but also his lifestyle.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman second class (E-3).

On 30 Apr 63, according to AF Form 348, *Line of Duty Determination*, the applicant's diagnosis of fracture with dislocations, vertebrae, D7, 8, 9, and 10, was found to be in the line of duty (ILOD).

On 19 Aug 63, according to AF Form 348, the applicant's diagnosis of fracture, vertebrae, D8-9, was found to be ILOD.

On 31 Oct 63, according to AF Form 618, *Medical Board Report*, the applicant was diagnosed with:

- Kyphosis due to trauma at site of fracture dislocation of D8-9 with incomplete and minimal subarachnoid block, moderately symptomatic and not progressive; incurred while entitled to basic pay: Yes; existed prior to service: No; permanently aggravated by service: NA.

- Scoliosis due to trauma at site of fracture dislocation of D8-9, moderately symptomatic, not progressive; incurred while entitled to basic pay: Yes; existed prior to service: No; permanently aggravated by service: NA.

The applicant was referred to the physical evaluation board (PEB).

On 8 Nov 63, according to AF Form 356, *Proceedings and Findings of Air Force Physical Evaluation Board*, the applicant was disqualified for physical disability and was diagnosed with:

- Vertebra, fracture, dislocation D8-9, with residuals – unfavorable ankylosis; neglect, misconduct, or unauthorized absence: No; entitled to receive basic pay: Yes; ILOD: Yes; may be permanent: Yes; percent disability: 30; Veterans Administration Diagnostic Code: 5285, 5288.

- Vertebral body deformity; additional 10 percent.

On that same date, according to AF Form 1180, *Recommended Findings of Physical Evaluation Board*, the PEB recommended temporary retirement with a combined compensable rating of 40 percent; disability was incurred in combat: No; disability was caused by an instrumentality of war: No. The applicant concurred with the recommended findings.

On 21 Nov 63, according to a USAF/AFPMKB3 memorandum, Subject: Retirement from Active Service for Physical Disability of [applicant], the applicant was directed to be placed on the Temporary Disability Retired List (TDRL) under the provisions of Title 10, United States Code § 1202 (10 UCS § 1202) and reexamined 15 months after placement on the TDRL.

On 27 Nov 63, according to AFHQ Form 0-943, *Retirement Orders*, Special Order (SO) Number XXXXX, on 12 Dec 63, the applicant was relieved from active duty, and was retired, effective 13 Dec 63.

On 12 Dec 63, the applicant was furnished an honorable discharge, with Reason and Authority: 10 USC § 1202 and 1372; DAF SO XXXXX, dated 27 Nov 63, and was credited with 1 year and 24 days active service.

On 24 Mar 65, according to a USAF/AFMPRA3 memorandum, Subject: Physical Reexamination, the applicant was directed to be removed from the TDRL and separated with severance pay.

On 4 May 65, according to AF Form 356, the applicant was found unfit due to disability and diagnosed with:

- Vertebra, fracture, dislocation D8-9, with residuals – unfavorable ankylosis; neglect, misconduct, or unauthorized absence: No; incurred while entitled to receive basic pay: Yes; disability is permanent: Yes; percent disability: 30; Veterans Administration Diagnostic Code: 5285, 5288; disability was the direct result of armed conflict: No; disability was caused by an instrumentality of war and incurred during a period of war: No.

- Vertebral body deformity; additional 10 percent.

On that same date, according to AF Form 1180, the PEB recommended permanent retirement with a combined compensable rating of 40 percent. The applicant concurred with the recommended findings.

On 28 May 65, according to a Physical Review Council memorandum, the applicant's PEB findings were revised as follows:

- Compensable rating from 40 percent to 20 percent.
- Permanent retirement to separation with severance pay.

The revised finding was based on the medical report. The diagnosis was more accurately ratable under diagnostic codes 5285-5291 at 10 percent according to the Veterans Administration Schedule for Rating Disabilities. The Physical Review Counsel felt the residual of the injury was better described as limitation of motion of the spine (5291) rather than ankylosis of the lumbar spine (5288).

On 8 Jun 65, according to a memorandum from applicant's counsel, the applicant submitted a rebuttal to the Physical Disability Appeal Board.

On 24 Jun 65, according to the Record of Proceedings, Air Force Physical Disability Appeal Board, the appeal board agreed with the revised recommended findings of the Physical Review Council. The appeal board recommended the applicant be removed from the TDRL and separated with severance pay. On that same date, according to a Secretary of the Air Force Personnel Council memorandum, the appeal board's recommendation was forwarded for action.

On 6 Jul 65, according to a USAF/AFPMARA3 memorandum, Subject: Removal from the TDRL and Discharge with Severance Pay, the applicant was directed to be removed from the TDRL and discharged with severance pay, effective 20 Jul 65.

On 8 Jul 65, according to AFHQ Form 0950, *Retirement Order*, SO Number XXXXX, on 20 Jul 65, the applicant was discharged with severance pay.

On 15 Sep 75, according to an applicant letter to USAF/AFPMRA, provided by the applicant, he requested reconsideration of his discharge with severance pay vice permanent retirement.

On 31 Oct 75, according to an excerpt from a civilian provider letter, provided by the applicant, he was examined, and his condition was evaluated.

On 6 Nov 75, according to a USAF Deputy Inspector General letter, provided by the applicant, the applicant was informed his disability case was managed in strict compliance with the law and directives governing disability retirement and separations.

On 11 Sep 75, according to a Veterans Administration (VA) letter, dated 20 Feb 76, provided by the applicant, he began receiving VA benefits at a monthly rate of \$65.00.

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

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts and the PEB full review, there is no evidence of an error or injustice during the processing of his medical case.

The applicant was placed on the TDRL, effective 13 Dec 63, with a compensable percentage for physical disability of 40 percent, and removed from TDRL and discharged with severance pay with a compensable percentage for physical disability of 20 percent.

After a full review from the PEB of the TDRL reevaluation, the applicant was originally placed on TDRL for back issues with a rating of 40 percent. On his TDRL physical examination, dated 3 Mar 65, the Narrative Summary states: "Back motion is normal – patient can flex to reach the floor at present. He has tight hamstrings." The Narrative Summary also states: "he no longer gets the tingling paresthesias of his arms, hands and legs."

Based on his records, there is no documentation to warrant raising the applicant's rating for his back condition. In fact, if his case was presented to the PEB today, the applicant would receive a rating of 0 percent or 10 percent based on having full back range of motion. Additionally, the data provided does not show any evidence of unfitting radicular symptoms. Since the applicant

did not provide any new evidence to contradict the findings of the PEB, his request to be granted permanent retirement should be denied.

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 4 Feb 25 for comment (Exhibit D) but received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552 and Department of the Air Force Instruction (DAFI) 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 AFPC/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. During the applicant's TDRL reexamination, the medical provider noted sufficient improvement in the applicant's condition to reevaluate his disability rating. While the PEB recommended permanent retirement, with a 40 percent disability rating, the Physical Review Council disagreed, and it was within their authority to recommend a reduced disability rating of 20 percent and resulting discharge with severance pay. The applicant was afforded due process through the Air Force Physical Disability Appeal Board, which concurred with the Physical Review Council recommendation. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-02415 in Executive Session on 6 Jun 25:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 Jun 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 30 Jan 25.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Feb 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.

X

Board Operations Manager, AFBCMR