

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02581

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record amended to reflect his discharge date from active duty is 28 Jan 13 vice 30 Sep 12, with retroactive pay, allowances, and benefits.

APPLICANT'S CONTENTIONS

His active duty orders expired while he was processing through a Medical Evaluation Board (MEB). Despite a line of duty (LOD) that determined his condition "in the line of duty" (ILOD) while on unit-funded orders and futile efforts to correct an admitted error for over a month, disagreements on the funding source resulted in a situation that not only further aggravated his unfitting medical condition but resulted in a substantial out-of-pocket financial hardship that drained the applicant's savings until he was medically retired on 29 Jan 13.

The applicant was undergoing an MEB for a combat-related injury/illness. Despite clear Air Force and Department of Defense guidance, his wing and unit leadership made the decision to stop his medical continuation orders. Although they were aware of the guidance, their decision was based on lack of funds and budget cuts for the upcoming fiscal year.

The timeline follows: Active duty orders 11 Jul 10 – 6 Mar 11; Post-Traumatic Stress Disorder (PTSD) diagnosis and grounded from flight duties Nov 10; Medical Hold orders started 7 Mar 11; Referred to an MEB 12 Mar 12; Narrative Summary dated 18 Jun 12; Medical Hold orders ended (illegally) 30 Sep 12; Final disposition of MEB 6 Dec 12; Relieved from active duty on 28 Jan 13; Placed on Temporary Disability Retirement List (TDRL) on 29 Jan 13.

Although the applicant's Air Force Wounded Warrior Program case manager suggested taking this case up to the Air Force Board for Correction of Military Records (AFBCMR), at the time, the applicant felt defeated, betrayed, depressed, and overwhelmed with PTSD symptoms, including the effects of numerous medications. He was also in financial distress at the time from suddenly being removed from active duty orders. The applicant did not have the will to keep the fight going. Only until approximately two months ago, was he well enough from his PTSD symptoms and was advised by his colleagues and the Department of Veterans Affairs (DVA) counselors to continue to right this injustice. The applicant respectfully asks the AFBCMR to excuse his failure to file within three years of discovery in the interest of correcting an injustice and clear violation of the rules.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 28 Jul 11, according to AFRC IMT 348, *Informal Line of Duty Determination*, the applicant was diagnosed with PTSD and the condition was found to be ILOD.

On 7 Oct 11, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed in a no duty status pending MEB determination.

On 29 Jun 12, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with PTSD; Incurred while entitled to basic pay: Yes; Existed prior to service: No; Permanently aggravated by service: Yes; and was referred to an informal Physical Evaluation Board (IPEB).

On 30 Sep 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged with narrative reason for separation of Completion of Required Active Service.

On 3 Oct 12, 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 Which Are Compensable And Ratable:
 - PTSD (Combat-Related); Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 70 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 9411; Combat-related determination as defined in Title 26, United States Code § 104 (26 USC § 104): A [direct result of armed combat].

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:

- Degenerative Disc Disease; VASRD Code: 5242

The IPEB recommended temporary retirement with a compensable percentage of 70 percent.

On 4 Dec 12, according to AF Form 356, the previous findings and recommendation from the IPEB convened on 3 Oct 12 were confirmed.

On 28 Jan 13, according to Special Order Number XXXXX, dated 3 Jan 13, the applicant was relieved from active duty, organization and station of assignment. Effective 29 Jan 13, he was placed on the TDRL with a compensable percentage for physical disability of 70 percent.

On 30 Apr 17, according to Special Order Number XXXXX, dated 10 Apr 17, the applicant was removed from the TDRL and retired with a compensable percentage of 100 percent for physical disability.

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

AIR FORCE EVALUATION

AFRC/A1KK recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant should have been retained on orders for which he would have been entitled to full pay, allowances, and benefits from 1 Oct 12 to 28 Jan 13.

The applicant was reportedly injured ILOD and was placed on Medical Hold orders from 7 Mar 11 through 30 Sep 12. During that time, he was entered into the Disability Evaluation System (DES). The applicant's orders were then allowed to end on 30 Sep 12, just days before

the IPEB found his combat-related condition unfitting and 70 percent ratable. The applicant was placed on the TDRL with a 28 Jan 13 date of separation.

In accordance with the policy in place at the time of the alleged error or injustice, Air Force Reserve Command Instruction (AFRCI) 36-3004, *Incapacitation Pay and Management of Reservist Continued on Active Duty Orders*, paragraph 4.1., the applicant should not have been involuntarily released from his orders. The applicant's orders should have been extended for a minimum of 60 days (or no less than 120 days for members undergoing MEB) or until the medical condition was resolved or could no longer be materially improved by further hospitalization or treatment, and the case was processed and finalized through the DES, or the medical condition had been determined not in the line of duty.

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

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 AFRC/A1KK and finds a preponderance of the evidence substantiates the applicant's contentions. In accordance with AFRCI 36-3004, the applicant should not have been involuntarily released from active duty orders while processing through the DES. The applicant's case was not finalized through the DES until he was relieved from active duty, effective 28 Jan 13, and placed on the TDRL on 29 Jan 13. 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 he was continued on active duty, for the purposes of medical continuation in accordance with 10 USC §12301(h), for the period 1 Oct 12 through 28 Jan 13, with full pay, allowances, and benefits.

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-2024-02581 in Executive Session on 16 Apr 25:

- , 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 22 Jan 24.

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

Exhibit C: Advisory opinion, AFRC/A1KK, dated 21 Feb 25.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 21 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