

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03092

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The applicant was honorably discharged from the Air Force with disability severance pay in the grade of senior master sergeant (E-8). It was determined the applicant was unfit to continue his job, was non-deployable, and lost his flying status. He had over 12 years of active-duty service along with multiple deployments. The applicant also had over 20 years with the Air Force Reserve. He understands the severance pay will need to be recouped if his request is approved.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve senior master sergeant (E-8).

On 11 May 05, ARPC/DPPR sent the applicant the standard Notification of Eligibility for Retired Pay (20-year letter) informing him that he completed the required years under the provisions of Title 10, United States Code § 12731 (10 USC § 12731) and is entitled to retired pay upon application prior to age 60.

On 28 Jul 11, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed on mobility restrictions with code 37 (Medical Defect/Condition Requires MEB or PEB Processing in accordance with Air Force Instruction (AFI) 41-210, *TRICARE Operations and Patient Administration Functions*).

On 14 Sep 11, according to a XX AS/CC memorandum, Subject: Member Utilization Questionnaire, the applicant's commander recommended he be retired due to physical limitations and medications.

On 15 Nov 11, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with:

- Chronic Back Pain; incurred while entitled to basic pay: Yes; Existed prior to service: No
- Herniated Disc; incurred while entitled to basic pay: Yes; Existed prior to service: No

The applicant was referred to the Informal Physical Evaluation Board (IPEB).

On 27 Jun 12, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:
 - Chronic Back Pain; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 20 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5242; Combat-related determination as defined in 26 USC § 104: No

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

- Dyssomnia with Mild Obstructive Sleep Apnea; VASRD Code: 6847
- Radiculopathy, Lower Left Extremity; VASRD Code: 8720

- Category III – Conditions That Are Not Separately Unfitting And Not Compensable Or Ratable:

- Adjustment Disorder, Mixed Depression and Anxiety, Chronic

The IPEB recommended discharge with severance pay (DWSP) with a compensable percentage of 20 percent.

On 5 Jul 12, according to an AFPC/DPPDS [Disability Operations Branch] memorandum, Subject: Transfer to the Inactive Status List Reserve Section (ISLRS) for the Purpose of Retirement, in Lieu of Discharge with Severance Pay, the applicant was provided the option for DWSP or, due to his 20 years of satisfactory service, transfer to the ISLRS for the purpose of applying for a Reserve retirement.

On 12 Jul 12, 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 his case.

On 26 Jul 12, the applicant elected to be DWSP as provided under 10 USC § 1203. He acknowledged he was not entitled to retirement pay under 10 USC § 1223 nor entitled to retirement benefits, to include an identification card.

In an undated memorandum, Subject: Request to Waive Formal Physical Evaluation Board Hearing, the applicant requested he be permitted to waive his earlier election for a formal hearing, for the purpose of concurring with the IPEB's findings and recommendation.

On 27 Jul 12, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the IPEB and waived the right to a Formal PEB (FPEB) hearing.

On 30 Jul 12, according to an AFPC/DPSD [Secretary of the Air Force Personnel Council] memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be separated from active service for physical disability under the provisions of 10 USC § 1203 with severance pay computed under Section 1212 of this title.

On 22 Aug 12, according to an AFRC/A1KK memorandum, Subject: Discharge with Disability Severance Pay, [applicant], provided by the applicant, his Force Support Squadron (FSS) was notified he was determined to be physically unfit for further military service and would be discharged with severance pay. The FSS was directed to advise the applicant and arrange for out-processing.

On 27 Sep 12, according to AF IMT 100, *Request and Authorization for Separation*, Special Order Number XXXX, dated 20 Aug 12, the applicant was honorably discharged from the Air Force Reserve, with severance pay.

On 15 Oct 12, according to a XX FSS/FSMC memorandum, Subject: Notice of Decision to Remove (Non-Disciplinary), provided by the applicant, he was notified of his proposed removal (non-disciplinary) from his position as an Aircraft Loadmaster (Instructor) and separated from federal service for failure to meet the requirements of the Air Force Reserve Technician Program.

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 denying the application. Based on documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time of disability processing. The applicant did not meet the basic eligibility requirements to qualify for a disability retirement at the time of DES processing and elected disability DWSP versus transfer to the Inactive Status List to await Reserve retirement at age 60.

In accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, dated 2 Feb 06 (in effect at the time of the applicant's disability processing), paragraph 8.18., Air Reserve Component members approved for disability discharge under 10 USC § 1203 or 1206 and who have 20 or more years of satisfactory federal service computed under 10 USC § 12732 may elect either disability discharge with severance pay, or transfer to the Inactive Status List with retirement at age 60 under 10 USC § 12732. Per 10 USC § 12731(d), Selected Reserve members who have 15, but less than 20 years satisfactory service, the last 6 years of which was Reserve duty, may apply for early qualification for retired pay at age 60.

On 15 Nov 11, a Medical Evaluation Board (MEB) was held which found the applicant potentially unfitting for (1) Chronic Back Pain, and (2) Herniated Disc. The accompanying medical Narrative Summary indicates he had an 11-year history of back pain dating back to an injury sustained in May 00 while participating in a local flying training mission. The applicant's provider indicated his back conditions were not disqualifying for ongoing military duty; however, they impacted his ability to perform his job as a Loadmaster, and therefore, were disqualifying from flying duties.

On 27 Jun 12, the IPEB found the applicant unfit for Chronic Back Pain and recommended DWSP with a 20 percent compensable disability rating as assigned by the Department of Veterans Affairs (DVA). During disability processing, the PEB must screen the medical records to determine if a member has any other potentially unfitting conditions not referred by the MEB. The IPEB placed his (1) Dyssomnia with Mild Obstructive Sleep Apnea, and (2) Radiculopathy, Left Lower Extremity under Category II - Conditions That Can Be Unfitting But Are Not Currently Compensable or Ratable. Additionally, Adjustment Disorder, Mixed Depression and Anxiety, Chronic was placed in Category III - Conditions That Are Not Separately Unfitting And Not Compensable Or Ratable. The IPEB noted the conditions in Category II did not appear to affect the applicant's ability to perform his duties and therefore, were not unfitting for duty. According to the medical Narrative Summary, the applicant's occasional insomnia was associated with situational anxiety due to his probable job loss for the medical disqualification and was expected to fully resolve. The provider also indicated the applicant's adjustment disorder did not pose an increased risk to his activities of daily living or his work-related duties. On 27 Jul 12, the applicant waived his request for an FPEB hearing in which he could have requested his Category II or III conditions be moved to Category I.

Under the Integrated Disability Evaluation System (IDES), the PEB must utilize the DVA-assigned disability rating for the unfitting condition. The AF Form 356 also indicates at the time

of disability processing, the applicant had 16.29 years of creditable service as computed under 10 USC § 1208. In accordance with Department of Defense Instruction (DoDI) 1332.18, *Disability Evaluation System*, Appendix 3 to Enclosure 3, a service member will be disability retired if they have a disability rating of at least 30 percent or at least 20 years of service computed under 10 USC § 1208. Service members who do not have at least a 30 percent disability rating and their service computed under 10 USC § 1208 is less than 20 years, will be disability separated. However, if the service member is eligible for transfer to the inactive status list and chooses to, they may be transferred to that list instead of being separated. On 26 Jul 12, the applicant elected to be DWSP and waived his right to a Reserve retirement at age 60. The applicant was subsequently DWSP, effective 27 Sep 12, per his election.

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 19 Mar 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence.

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/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant was entitled to a formal hearing of his case but waived his right to an FPEB. Additionally, he was provided the opportunity to transfer to the ISLRS and await retired pay at age 60. The applicant instead elected to receive DWSP. The applicant did not meet the requirements of DoDI 1332.18 for an immediate disability retirement. The applicant was afforded all of his due process rights throughout the DES process and elected to receive DWSP. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-03092 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 8 Aug 24.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 4 Feb 25.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 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.

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Board Operations Manager, AFBCMR