

AUG 14 1998

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 93-00292

COUNSEL: [REDACTED]

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

His retirement disability be increased from 50% to 100%.

RESUME OF CASE:

On 7 Jul 94, the Board considered and denied applicant's 9 Nov 92 application requesting, among other things, that his disability rating be increased to 100%. After reviewing the evidence of record, the Board was not persuaded that he was treated unfairly by the Air Force Disability System. The Board was fully aware of his numerous medical conditions and thoroughly reviewed the documentation, to include the medical records from the Department of Veterans Affairs (DVA). The Board noted that the wording of the Physical Disability Appeal Board (PDAB) findings did not exactly match that of the Air Force Personnel Board (AFPB); however, the difference was not significant because it would not have resulted in a change to the overall rating. Although the BCMR Consultant believed that the applicant's case should be returned to the PDAB so that it might be reevaluated by residuals, the Board did not agree. A review of his case indicated that if the residuals were reevaluated, the disability rating assigned by the Air Force would be the same. In the applicant's case, the PDAB determined that some of his residuals were not sufficiently severe to warrant a rating, but in the aggregate of his condition, with its many residuals, warranted a rating more than the minimum of 30% for multiple sclerosis (MS). Therefore, he was awarded a rating of 50% (see Exhibit G).

In an application, dated 32 Jun 97, the applicant requests the Board reconsider his request to increase his retirement disability to 100% (see Exhibit H).

AIR FORCE EVALUATION:

The Chief Medical Consultant, SAF/PC, reviewed applicant's request and indicated that once an individual has been declared unfit, the Service Secretaries are required by law to rate the condition based upon the degree of disability at the time of permanent disposition and not upon the possibility of future events. No change in military disability ratings can occur after permanent disposition under the rules of the military disability system, even though the condition may become better or worse. However, Title 38, United States Code (USC), authorizes the DVA to increase or decrease their compensation ratings based upon the individual's condition at the time of future evaluations. The fact that the applicant has been diagnosed with neurosarcoidosis as the basis of his disabilities since his permanent disability retirement does not alter the fact that at the time of permanent disposition, his working diagnosis was MS, active sarcoidosis having been ruled out. The DVA's VASRD at that time listed the diagnostic code 8018 for MS as minimally ratable at 30%, as the applicant points out, and instructions then mandated an analogous code of 8105 for Sydenham's Chorea to determine appropriate ratings, which, in this case, was found to be 50%, indicating moderately severe disability. There is no evidence of error or irregularity in the award of this rating given the applicant's condition at that point in time.

The Consultant further states that, the purpose of the Temporary Disability Retired List (TDRL) is to determine if a newly diagnosed, recently operated, or possibly unstable medical condition will have permanent disability residuals. By using a reasonable period of observation, which may be from one year to several years, the nature of the progress of the disease can be gauged for a more accurate rating of the residual impairment. In the case of chronic conditions, this permanent rating may be assigned when the condition has reached a *relatively* stable state, which approximates the natural course of the condition, based upon general medical knowledge of this condition. The intent is that individuals will be removed from the TDRL as soon as a reasonable determination can be made of the residual disability. The disability rating is based upon the degree of impairment caused by the member's condition at the time of separation, and not upon possible future events. The 50% disability awarded at the time of permanent retirement was the best estimate of applicant's condition at that time, and was, therefore, in compliance with Title 10, USC. What has transpired since that determination lies within the realm of the DVA to evaluate and compensate as conditions have changed but is beyond the legal authority of the Military Disability Evaluation System to adjust compensation for. There is no evidence to support a higher rating at the time of permanent disposition. His case was properly evaluated, appropriately rated and received full consideration under the provisions of AFR 35-4. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law. The Medical

Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A complete copy of the Air Force evaluation is attached at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel reviewed the Air Force evaluation and provided a copy of applicant's bone density report (see Exhibit K).

THE BOARD CONCLUDES THAT:

Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We have reviewed the entire application and the additional documentation submitted, including the applicant's bone density report. However, we are not persuaded that a revision of the earlier determination in this case is warranted. We are not convinced that the applicant's contentions override the comments provided by BCMR Medical Consultant, dated 6 Nov 97, in which he states that the fact that the applicant has been diagnosed with neurosarcoidosis as the basis of his disabilities since his permanent disability retirement does not alter the fact that at the time of permanent disposition, his working diagnosis was MS, active sarcoidosis having been rulea out. The Chief states that the 50% disability awarded was the best estimate of applicant's condition at the time of permanent retirement. What has transpired since that determination lies within the realm of the DVA and is beyond the legal authority of the Military Disability Evaluation System to adjust compensation. In view of the above, and in the absence of more persuasive evidence, we again find no compelling basis to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

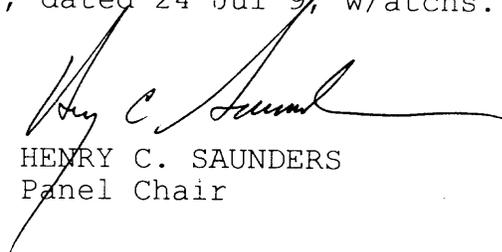
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 29 June 1998, under the provisions of Air Force Instruction 36-2603:

Mr. Henry C. Saunders, Panel Chair
Ms. Martha Maust, Member
Mr. Wayne R. Gracie, Member
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit G. Letter, AFBCMR w/ROP, dated 7 Jul 94.
- Exhibit H. DD Fm 149, dated 30 Jun 97, w/atchs.
- Exhibit I. Letter, SAF/PC, dated 6 Nov 97.
- Exhibit J. Letter, AFBCMR, dated 24 Nov 97.
- Exhibit K. Letter fr counsel, dated 24 Jul 97, w/atchs.



HENRY C. SAUNDERS
Panel Chair