

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

OCT 28 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-03556

COUNSEL: [REDACTED]

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

His involuntary discharge be changed to a medical retirement.

APPLICANT CONTENDS THAT:

At the time of his discharge, sufficient service-connected impairment existed to fully support medical retirement. Most of these impairments were wrongfully disregarded resulting in his discharge.

In support of the appeal, applicant submits the Department of Veterans Affairs' (DVA) Rating decision, DD Form 214, Request and Authorization for Separation (AF Form 100).

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 2 March 1987 in the grade of airman basic for a period of 4 years. On 31 October 1990 he reenlisted for a period of 6 years.

On 15 September 1994, the applicant was involved in a motorcycle accident in which he sustained a closed head injury, right arm abrasion, injuries to his cervical and thoracic spine, and a right foot injury.

In August 1995, because of continuing need for profiles regarding the foot problem, he was presented to a Medical Evaluation Board (MEB) who referred him to an Informal Physical Evaluation Board (IPEB) on 14 September 1995.

On 13 October 1995, the IPEB returned the MEB to the medical treatment facility for completion of a Line of Duty (LOD) determination and an evaluation by a neurologist for a closed head injury.

The record contains no further report from the IPEB, although the applicant remained on active duty.

In April 1996, applicant underwent surgery for the foot problem which eliminated all the pre-operative symptoms which later returned in diminished intensity after he resumed athletic activities.

In May 1996, a serial profile report is noted to have returned the applicant to duty with "removal of all restrictions and holds by officials at HQ AFMPC," this determination having been made in their deliberations on 16 April 1996.

Applicant was honorably discharged on 30 October 1996, in the grade of staff sergeant, for non-promotion at high year of tenure, under the provisions of AFI 36-3208 (Reduction in Force). He had completed 9 years, 7 months, and 29 days of total active military service and received \$12,422.64 in separation pay. Applicant declined to have a separation physical examination performed.

On 24 September 1997, the DVA evaluated applicant's disabilities, effective 31 October 1996, at a combined evaluation of 80 percent.

Service connected Temporomandibular joint dysfunction - 40 percent.

Service connected residuals of injury to lumbar spine with spondylosis of L2-L3 with spur formation - 40 percent.

Service connected residuals of injury of the thoracic spine with compression fracture of the lumbar spine - 20 percent.

Service connected residuals of lateral meniscus tear and anterior medical tear, status post menesectomy, and partial anterior cruciate ligament tear - 10 percent.

Service connected bursitis of the right shoulder (major) - 10 percent.

Service connected migraine headaches - 10 percent.

Service connected residuals of Les Franc sprain of the right foot and ankle - 10 percent.

Service connected duodenal ulcer and with Brunner's gland hyperplasia of the duodenal bulb and gastroesophageal reflux disease - 0 percent.

Service connected flat feet - 0 percent.

Service connected superficial peroneal nerve neuroma - 0 percent.

AIR FORCE EVALUATION:

The Chief Medical Consultant, AFBCMR, reviewed this application and states that evidence of record and medical examinations prior to separation indicate the applicant was fit and medically qualified for continued military service or appropriate separation and did not have any physical or mental condition which would have warranted consideration under the provisions of AFI 36-3212. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law. The reason why the applicant could be declared fit for duty by the Air Force and later be granted 80 percent service-connected disability by the Department of Veterans' Affairs (DVA) lies in understanding the differences between Title 10, USC and Title 38, USC. Title 10, USC, Chapter 61 is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be considered unfit for military service, there must be a medical condition so severe that it prevents performance of any work commensurate with rank and experience. This, obviously, did not apply to the applicant, as he had been found fit to return to duty and his performance reports continued to show his excellent job performance including the last one that closed out in November 1995 while he was having the most problem with his foot. Congress, very wisely, recognized that a person can acquire physical conditions which, although not unfitting at the time of separation, may later progress in severity and alter the individual's lifestyle and future employability. With this in mind, Title 38, USC which governs the DVA compensation system was written to allow awarding compensation ratings for conditions that are not unfitting for military service. This is the reason why an individual can be considered fit for military duty up to the day of separation or

retirement, and yet, soon thereafter, receive a compensation rating from the DVA for service-connected, but militarily non-unfitting conditions. Evidence of record establishes beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for his separation was proper, and that no error or injustice occurred in this case. The Medical Consultant recommends that the application be denied.

A complete copy of the evaluation is attached at Exhibit C.

The Chief, Physical Disability Division, AFPC/DPPD, also reviewed this application and states that a review of the applicant's case file revealed no mental or physical defects to show he was unfit for continued military service due to a physical disability at the time of his involuntary discharge. The medical aspects of this case are fully explained by the Medical Consultant and they fully agree with his advisory. The applicant has not submitted any material or documentation to show that he was unfit due to a physical disability under the provisions of Title 10 USC at the time of his involuntary administrative discharge from active duty. Therefore, they recommend denial of the applicant's request.

A complete copy of their evaluation is attached at Exhibit D.

ADDITIONAL AIR FORCE EVALUATION:

The Chief Medical Consultant, AFBCMR, reviewed this application and states that the mere existence of certain conditions does not equate during active duty service to being unfitting, that is, conditions that preclude performance of any and all duties commensurate with rank, station or rating. In the DVA system, however, any condition that is found to have arisen or to have been aggravated by a member's military service can be compensated as has occurred with this individual's various conditions. These ratings may vary from time to time as provided by law per Title 38, USC. They do not, however, mean that an error occurred in an individual's disability rating given at the time of his final disposition from military service or even that disability consideration should have been entertained. There is no evidence that the applicant was eligible for disability consideration at the time of his separation from the military. The BCMR Medical Consultant is of the opinion that no change in the previously rendered recommendations be made.

A complete copy of their evaluation is attached at Exhibit E.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Complete copies of the Air Force evaluations were forwarded to the applicant on 9 February 1998 and 28 April 1998, for review and response. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was timely filed.
 3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The Board notes that the applicant was returned to duty and his performance reports continued to show his excellent; job performance. Title 10, USC, Chapter 61 is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be considered unfit for military service, there must be a medical condition so severe that it prevents performance of any work commensurate with rank and experience. This, obviously, did not apply to the applicant. Therefore, we are in agreement with the detailed comments of the BCMR Medical Consultant and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.
 4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.
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THE BOARD DETERMINES THAT:

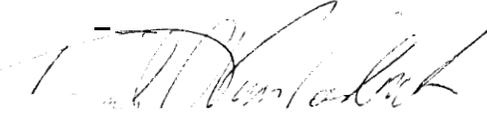
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence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

The following members of the Board considered this application in Executive Session on 10 August 1998, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chair
Dr. Gerald B. Kauvar, Member
Ms. Rita J. Maldonado, Member
Ms. Gloria J. Williams, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 November 1997, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 14 January 1998.
- Exhibit D. Letter, AFPC/DPPD, dated 29 January 1998.
- Exhibit E. Letter, BCMR Medical Consultant, dated 20 April 1998.
- Exhibit F. Letters, AFBCMR, dated 9 February 1998 and 28 April 1998.



DAVID C. VAN GASBECK
Panel Chair