

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01145

COUNSEL: NONE

HEARING DESIRED: NO

PLS 5 1999

APPLICANT REQUESTS THAT:

Her disability rating of 40% be increased by adding brain tumor to her basic seizure disorder.

APPLICANT CONTENDS THAT:

The Medical Board Report (AF Form 618) found generalized seizures as the reason for retirement. She believes it should also list the lesion/tumor that was mentioned on the supporting document (Standard Form 502) as a cause for these seizures. The lesion has subsequently been surgically removed and has caused other deficits.

In support of her request, the applicant submits copies of medical reports from ██████████ AFE and letters from her neurologist and neurosurgeon (Exhibit A).

STATEMENT OF FACTS:

Applicant's military personnel records reflect that she enlisted in the Regular Air Force on 26 August 1986. She was released from active duty in the grade of staff sergeant (E-5) on 6 May 1996 for physical disability and her name was placed on the Temporary Disability Retirement List (TDRL), with a compensable rating of 40%, effective 7 May 1996. Subsequent to her TDRL evaluation by the IPEB on 30 September 1997, the applicant's name was removed from the TDRL on 24 November 1997, and she was permanently retired with a compensable rating of 40%. She was credited with a total of 9 years, 8 months and 11 days of active service.

The relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

Further research with the Department of Veteran's Administration reveals that the applicant was granted a 20% disability rating for a seizure disorder.

AIR FORCE EVALUATION:

The **AFBCMR Chief Medical Consultant** reviewed this application and is of the opinion that no change in the records is warranted and the application should be denied. The AFBCMR Medical Consultant stated that the applicant suffered a generalized grandmal seizure on December 15, 1995, and was evaluated, finding an area of abnormality on her brain scans/MRIs. Treatment with Dilantin was initiated, and she suffered no further seizures. Close follow-up by neurology with MRIs did not disclose changes in the brain abnormality over time, and various etiologies of the mass were considered. The decision was made to observe her further and, in the meantime, she underwent Medical Evaluation Board and Physical Evaluation Board processing and was placed on the Temporary Disability Retirement List (TDRL) on 9 May 1996 with a compensable rating of 40%. Eighteen months later, a TDRL evaluation was accomplished and permanent disability retirement was recommended and approved. During this time, her follow-up had not disclosed changes in the brain findings, however, in early 1998, an MRI disclosed some alterations that prompted neurosurgical intervention when malignancy of the mass was determined. The surgery resulted in some impairment of her vision and because of the nature of the lesion, further treatment is now underway. Because of the new findings, the applicant seeks additional compensation in her disability retirement award.

The AFBCMR Medical Consultant 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 on future events. No change in disability ratings can occur after permanent disposition, even though the condition may become better or worse. However, Title 38, USC authorizes the Department of Veterans Affairs (DVA) to increase or decrease compensation ratings based upon the individual's condition at the time of future evaluations and the applicant's recourse to this entitlement is available. The AFBCMR Medical Consultant stated the fact that the lesion that was responsible for her seizure disorder was not definitively identified earlier in the course of her disease was in keeping with proper medical principles and her stated desire to not proceed with an earlier biopsy as noted in a clinical entry, dated 15 July 1997, on one of her follow-up visits (Exhibit C).

The **Chief, Physical Disability Division, HQ AFPC/DPPD**, stated that a Medical Evaluation Board (MEB) was convened at Eglin AFB, Florida, on 30 January 1996, and referred to the Informal Physical Evaluation Board (IPEB). On 14 February 1996, the IPEB found the member unfit for continued military service for a diagnosis of "generalized seizure, etiology unknown" and recommended she be placed on the Temporary Disability Retirement List (TDRL), with a 40 percent disability rating. The applicant agreed with the findings and recommendations of the IPEB on 12 March 1996, and subsequently, officials within the Office of

the Secretary of the Air Force directed that the applicant be placed on the TDRL, with a 40% disability rating. While on the TDRL, the applicant was scheduled for periodic physical evaluation at [REDACTED]. Based on the medical evidence provided, the IPEB found her condition had stabilized and recommended that she be removed from the TDRL and permanently retired with a 40% disability rating. The applicant concurred with the findings and recommendations of the IPEB on 20 October 1997, and the applicant was removed from the TDRL and permanently retired effective 24 November 1997.

Following a thorough review of the AFBCMR case file, DPPD finds no error or injustice that would merit a change to the applicant's record. DPPD stated that the applicant has not submitted any material or documentation to show that she was inappropriately rated or processed under the provisions of disability law and departmental policy at the time of her disability retirement. DPPD recommended the applicant's request be denied (Exhibit D).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and indicated that upon her retirement, she continued to see the neurologist and the neurosurgeons at [REDACTED]. She was informed that because of the depth and location of the lesion it was too risky to perform a biopsy unless there was a change. On 20 November 1997, she had an MRI at a civilian facility and, on 21 November 1997, her civilian neurologist recommended surgery immediately. On 25 November 1997, she saw the neurosurgeon at [REDACTED] and he informed her that they would go in with the intent to remove as much as possible and not solely a biopsy. He asked for one more MRI in February 1998 and surgery was scheduled for 6 April 1998. A Grade II Astrocytoma was resected as a result of this surgery and she has been left with a right visual field deficit. On 21 July 1998, she completed six weeks of radiation therapy at Keesler AFB.

She was removed from TDRL on 24 November 1997, just three days after her civilian doctor discovered the change. There was not enough time for the board to see the details in her case. But the lesion was seen prior to her being permanently retired and not considered a cause of the seizure. The change from lesion to tumor occurred between July 1997 and November 1997, while she was still on TDRL. The neurosurgeon at [REDACTED] AFB felt surgery was important but it had to wait until both neurosurgeons would be present - April 6 was the first, date available.

She requested a disability rating for the lesion itself, since the doctors had informed her that it was a problem not related to the seizure that she had (reference visit with Dr. [REDACTED] Chief, Neurology, on 16 January 1996, which occurred while still on active duty). She is requesting it be looked at from the point of being a Grade II Astrocytoma unrelated to the seizure.

A complete copy of this response is appended at Exhibit F.

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. In this regard, we reviewed the applicant's complete submission and the evidence of record in judging the merits of this case. In our opinion, the applicant's disability case was properly evaluated, appropriately rated and received full consideration under the appropriate regulations. All levels of review considered the entire medical record in determining her unfitting medical condition. 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 on future events. We are unpersuaded by the evidence presented that, at the time permanent disposition was made, the applicant's medical condition was misdiagnosed by Air Force medical personnel or that her case was not processed properly. We therefore agree with the opinions and recommendations of the respective Air Force offices and adopt their rationale as the basis for concluding that the applicant has not been the victim of an error or injustice. Accordingly, we find no compelling basis to recommend favorable action on her request.
-

THE BOARD DETERMINES THAT:

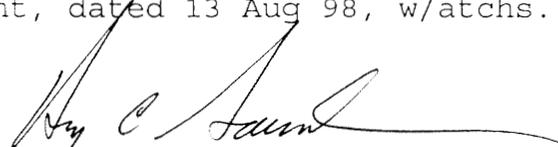
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence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

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

Mr. Henry C. Saunders, Panel Chair
Ms. Ann L. Heidig, Member
Ms. Sophie A. Clark, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Apr 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFBCMR Medical Consultant, dated 18 Jun 98.
- Exhibit D. Letter, HQ AFPC/DPPD, dated 13 Jul 98.
- Exhibit E. Letter, SAF/MIBR, dated 3 Aug 98.
- Exhibit F. Letter from applicant, dated 13 Aug 98, w/atchs.



HENRY C. SAUNDERS
Panel Chair