

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

IN THE MATTER OF:

DOCKET NUMBER: BC-2003-00371-3
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His original disability rating for sleep apnea be reinstated to 30 percent and that his retired status be restored.

STATEMENT OF FACTS:

On 25 Sep 03 and 19 Nov 08, the Board considered and denied similar appeals, in which he requested his original disability rating for sleep apnea be reinstated to 30 percent and that his retired status be restored. He also asked to be medically retired with a 100 percent disability rating effective 25 Aug 02. For an accounting of the facts and circumstances surrounding the applicant's request, and the rationale of the earlier decisions of the Board, see the Addendum to the Record of Proceedings, with attachments, at Exhibit L.

By application, dated 12 Nov 10, the applicant requests reconsideration of his request, contending he was contacted by the BCMR Medical Consultant advising him to resubmit his application based on a change in the law.

In support of the appeal, the applicant submits copies of e-mails and a letter, dated 9 Nov 10.

The applicant's complete submission, with attachments, is at Exhibit M.

AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends granting relief by changing the record to reflect the applicant was permanently retired with a combined disability rating of 60 percent, for Obstructive Sleep Apnea and Degenerative Disc Disease, Cervical Spine, effective the previously established date of his removal from the Temporary Disability Retired List and separation.

The BCMR Medical Consultant states that while conducting a quality review of cases based upon the changes in the law, he noted a probable error and injustice in the previous decisions

rendered on the applicant's case. Specifically, the National Defense Authorization Act of 2008 determined Military Departments will adhere to the Department of Veterans Affairs (DVA) Veterans Administration Schedule of Rating Disabilities (VASRD), or mutually (Department of Defense/DVA) agreed upon policies when determining disability ratings.

The complete BCMR Medical Consultant's evaluation is at Exhibit N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

He concurs with the opinion and recommendation of the BCMR Medical Consultant.

The applicant's complete response is at Exhibit P.

THE BOARD CONCLUDES THAT:

Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice to warrant changing the applicant's discharge to a disability retirement. Having carefully reviewed this application, we agree with the recommendation of the BCMR Medical Consultant and adopt his rationale as the basis of our decision the applicant has been the victim of an error and injustice and should be retired by reason of physical disability, with a 60 percent combined disability rating. Accordingly, we recommend the applicant's records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. On 24 August 2002, he was found unfit to perform the duties of his office, rank, grade or rating by reason of physical disability, incurred while he was entitled to receive basic pay; that the diagnoses in his case were Obstructive Sleep Apnea, VASRD Code 6847, rated at 50 percent and Degenerative Disc Disease, Cervical Spine, VASRD Code 5242, rated at 10 percent; that the total combined compensable percentage was 60 percent; that the degree of impairment was permanent; that the disability was not due to intentional misconduct or willful neglect; that the disability was not incurred during a period of unauthorized absence; and that the disability was not received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war.

b. He was not discharged by reason of a physical disability with entitlement to severance pay on 25 August 2002, but on that date his name was removed from the Temporary Disability Retired List and he was permanently retired by reason of a physical disability, with a 60 percent compensable disability rating.

The following members of the Board considered Docket Number BC-2003-00371 in Executive Session on 17 March 2011, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit L. Addendum to Record of Proceedings, dated 15 Jan 09, w/atchs.
- Exhibit M. Letter, Applicant, dated 12 Nov 10, w/atchs.
- Exhibit N. Letter, BCMR Medical Consultant, dated 3 Feb 11.
- Exhibit O. Letter, SAF/MRBR, dated 11 Feb 11.
- Exhibit P. Letter, Applicant, dated 11 Feb 11.

Panel Chair