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

IN THE MATTER OF: DOCKET NUMBER: BC-1992-00643

COUNSEL: NONE
HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

His permanent medical retirement compensable disability rating be increased to 100 percent.

STATEMENT OF FACTS:

The applicant was honorably discharged, on 22 Sep 91, by reason of Early Separation Program – Strength Reduction. He received $9000.00 in separation pay. He was credited with 10 year, 4 months, and 3 days of active duty service.

A similar appeal was considered by the Board, on 17 Nov 92, and the applicant's record was corrected as follows:

a. On 22 September 1991, he was found unfit to perform the duties of his office, rank, grade or rating by reason of physical disability incurred while entitled to receive basic pay; that the diagnosis in his case was disc herniation at C5-6 level, severe, recurring attacks, with intermittent relief, rated at 40 percent; and that the disability may be permanent.

b. He was not discharged under the Early Separation Program – Strength Reduction, on 22 September 1991, but on that date he was relieved from active duty and, on 23 September 1991, his name was placed on the Temporary Disability Retired List (TDRL). For an accounting of the facts and circumstances surrounding the applicant's separation, and, the rationale of the earlier decisions by the Board, see the Records of Proceedings at Exhibit G.

Based on the available evidence of record, the Informal Physical Evaluation Board (IPEB) recommended the applicant be permanently retired with a compensable disability rating of 40 percent.

The applicant was initially rated by the Department of Veteran (DVA) with a compensable disability rating of 10 percent in 1991. In 1999, his compensable disability rating was increased

to 70 percent by the DVA and in 2000 he was granted individual unemployability.

Through his Member of Congress, the applicant submits a request to have his medical retirement increased to 100 percent. He contends that based on the increase of his compensable disability rating by the Department of Veterans Affairs (DVA), which increased his ratable condition to 70 percent disabled with 30 percent for individual unemployability, then his disability retirement from the Air Force should be increased as well.

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

THE BOARD CONCLUDES THAT:

After carefully reviewing this application and the evidence provided in support of the appeal, we were not persuaded that the applicant's corrected medical retirement with a compensable disability rating of 40 percent should be increased. In his most recent submissions, the applicant asserts that because the DVA increased his rating to "70 percent disabled with 30 percent for individual unemployability" warrants an increase to his rating with the Air Force; however, in our view, the evidence provided by the applicant is not sufficient to support a finding that the applicant's permanent disability rating should be increased to 100 percent. In addition, the applicant is reminded that the Military Disability Evaluation System (MDES) only offers compensation for the medical condition that is the cause for career termination; and then only to the degree of impairment present at the time of final disposition or military separation and not based on future progression of the disease. Conversely, the Department of Veterans Affairs (DVA) operates under a separate set of laws which takes into account the fact that a person can acquire physical conditions during military service that, although not unfitting at the time of separation, may later progress in severity and alter the individual's lifestyle and future employability. Thus, the two systems represent a continuum of medical care and disability compensation that starts with entry on to active duty and extends for the life of the veteran. In view of the above, we find no basis upon which to recommend favorable consideration of the applicant's request.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of 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 19 June 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit G. Record of Proceedings, dated 28 Dec 92, with Exhibits.
Exhibit H. Applicant's Letter, Member of Congress, dated 5 Aug 11, with attachments.

Panel Chair