RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2011-03498

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be considered for disability retirement by a Medical Evaluation Board (MEB).

APPLICANT CONTENDS THAT:

His early retirement just four months prior to reaching 20 years of service, was expedited to avoid either a mistake by the 125th Fighter Wing or to prevent him from receiving benefits or a disability rating.

He was never afforded an opportunity to meet an MEB to determine whether he was eligible for a disability rating or immediate retirement based on 20-years of service. Although he had been approved for 20-year retirement, his unit command demanded that he take the Worldwide Duty Evaluation, based on a Line of Duty (LOD) determination for exercise-induced asthma, establishing a an earlier retirement date of 30 April 2008.

The Department of Veterans Affairs (DVA) has since rated his conditions, which were incurred in the line of duty, at 40 percent.

In support of the appeal, the applicant submits his personal statement, extracts from his personnel records, one page of the DVA rating decision, and correspondence concerning the inquiry from his member of Congress, and the responses.

Applicant's complete submission, with attachment, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former member of the Florida Air National Guard. During the periods 14 October 1988 through 16 March 1989 and 12 August 1996 through 29 April 1996, he served on active duty. He last entered active duty on 1 October 1998.

An 18 March 2005, Line of Duty determination found the applicant's anxiety and depression to have been incurred in the line of duty.

On 3 February 2007, he was released from active duty.

The ANG Surgeon General's Office, received a Worldwide Duty Evaluation (WWDE) on 27 February 2008, recommending the applicant be found medically disqualified for military duty due to his inability to discontinue the use of his anti-depressants due to the possibility of decompensation, his inability to deploy to a hostile, austere environment, and his inability to deploy to an area that might contain limited access to medical care.

On 28 February 2008, he was assigned to the Retired Reserve Section effective 10 August 2008; however, on 19 June 2008, this action was revoked because the processing of a voluntary retirement is prohibited when a member is undergoing disability evaluation.

On 5 March 2008, he was advised that a Medical Evaluation Board (MEB_ determined that he was medically disqualified for worldwide and that he could appeal the determination through the Disability Evaluation System (DES).

On 23 October 2008, he was assigned to the Retired Reserve Section effective 30 April 2008 and advised of his entitlement to retired pay at age 60 (26 November 2029).

On 27 February 2009, he underwent a WWDE and was found medically disqualified for worldwide duty due to exercise-induced asthma and depression.

The DVA has awarded him a combined compensable disability rating of 40 percent for major depressive disorder/anxiety disorder, rated at 30 percent; exercise induced asthma, rated at 10 percent and hypertension, rated at zero percent.

AIR FORCE EVALUATION:

The AFBCMR Senior Medical Advisor, recommends denial and states, in part, that at the time of the MEB the applicant did not meet qualifying requirements for processing through the Disability Evaluation System (DES), i.e., 20 years of service computed

under 10 USC 1208 and an unfitting disability of at least 30 percent that was incurred in the line of duty. In addition, the MEB determined that although the condition was determined to have been in the line of duty, it was not unfitting, and he was approved for a continued service waiver. However, there is no evidence of a new LOD being completed addressing whether his condition was considered to have existed prior to service (EPTS) LOD not applicable when the February 2008 WWDE was conducted, which is the key determinant of his eligibility for a second MEB and further processing through the DES. Any medical condition incurred or aggravated during one period of service or authorized training that recurs or is aggravated during later service or authorized training, regardless of the time between, should normally be considered incurred in the line of duty provided the condition or subsequent aggravation was not the result of the member's misconduct or willful negligence. In the applicant's case, he provides no evidence to indicate the circumstances leading to his final disqualification was the result of permanent aggravation of the condition beyond its expected natural progression as a result of his military service. There is also no evidence to reflect his medical conditions were permanently aggravated during the likely non-active period in which he was disqualified; even though it was previously considered in the line of duty during an active period of military service. Under the "eight-year rule" there is a presumption that a disabling condition was incurred in the line of duty, if the member has at least eight years of service and the condition was determined to be unfitting while the member was on active duty orders for 30-days or more. However, this does not apply to the applicant, as there is no evidence he was orders for 30-days or more when his condition prompted the WWDE. With respect to the combined rating he received from the DVA, it should be noted the DVA rates for all conditions that are service-connected, without regard to its impact upon a member's retainability, fitness to serve, or the narrative reason for release from a final period of service.

The AFBCMR Senior Medical Advisor's evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Although the applicant provides no rebuttal comments, he provides additional evidence in support of his request, which is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the AFBCMR Senior Medical Advisor and adopt his rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

The following members of the Board considered AFBCMR Docket Number BC-2011-03498 in Executive Session on 26 June 2012, under the provisions of AFI 36-2603:

XXXX, III, Panel Chair
XXXX, Member
XXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 1 Sep 11, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Memorandum, AFBCMR Senior Medical Advisor, dated 20 Apr 12.
Exhibit D. Letter, SAF/MRBC, dated 2 May 12.
Exhibit E. Letter, Applicant, 21 May 12, w/atchs.

XXXX
Panel Chair