

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-04143
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His 30 percent medical retirement rating for physical disability be changed to a 100 percent rating.

APPLICANT CONTENDS THAT:

In Mar 1992, he was released from active duty because of his diagnosis of ulcerative colitis.

After 20 years of faithful service to his country the Air Force classified him as being physically unfit for duty. Consequently, the Air Force cut his dreams short.

In support of his request, the applicant provides copies of his DD Form 214, *Certificate of Release or Discharge from Active Duty*; AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, and various other documents in support of his request.

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

STATEMENT OF FACTS:

On 15 Jul 1991, the Informal Physical Evaluation Board (IPEB) recommended the applicant be placed on the Temporary Disability Retired List (TDRL) with a 30 percent disability rating for ulcerative colitis. The applicant non-concurred with the findings of the IPEB and requested a formal hearing with counsel.

On 23 Aug 1991 the Formal Physical Evaluation Board (FPEB) reviewed the case and recommended he be returned to duty. On 3 Oct 1991, the Physical Review Council reviewed the findings of the FPEB and recommended he be found unfit and placed on the TDRL with a disability rating of 30 percent. As a result, the applicant's case was forwarded to the Secretary of the Air Force Personnel Council (SAFPC) for final adjudication.

On 11 Oct 1991, SAFPC concurred the applicant was unfit and placed him on the TDRL with a disability rating of 30 percent.

On 19 Aug 1993, he was reevaluated by the IPEB and they recommended the applicant be permanently retired with a disability rating of 30 percent.

On 20 Aug 1993, the applicant concurred with the findings of the IPEB.

On 24 Sep 1993, he was permanently retired in the grade of master sergeant (MSGT, E-7) via Special Order ACD-2716 with an effective date of 4 Oct 1993. He served 20 years, 9 months, and 9 days of active service.

AIR FORCE EVALUATION:

HQ AFPC/DPSD recommends denial. DPSD states the preponderance of evidence reflects that no error or injustice occurred during the disability process with the rating applied at the time of the evaluation boards.

The complete DPSD evaluation is at Exhibit C.

The BCMR Medical Consultant recommends denial. The Medical Consultant states the applicant's request for a change from a 30 percent to a 100 percent disability rating with medical retirement must be considered in view of the medical evidence available at the time of separation from active duty service and release from the TDRL. Simply stated, the burden of proof to demonstrate a material error or injustice must be objectively supported by clinical findings and medical documentation sufficient to warrant a retroactive adjustment in the disability rating.

The narrative summary of the Medical Evaluation Board (MEB) conducted in Jun 1990 and other clinical notes contain information which documents significant improvements after the start of medical therapy. There was no evidence of malnutrition, anemia or the presence of frequent bowel movements following the diagnosis. However, due to the associated health and mission risks attendant with a diagnosis of ulcerative colitis, and the requirement for ongoing treatment, the IPEB determined that the applicant's physical disability rendered him unfit for duty and recommended a 30 percent disability rating with placement on TDRL for further treatment. Utilizing Veteran Affairs Diagnostic Code 7323, a 30 percent disability rating is assigned for a moderately severe disease with frequent exacerbations. Conversely, a 100 percent rating is assigned when there is pronounced disease resulting in marked malnutrition, anemia and general debility, or with serious complications such as liver abscess. The Medical Consultant's review of all available medical documentation did not reveal any findings consistent with the 100 percent disability rating criteria. Review of laboratory results and physical findings fail to indicate any indication of marked malnutrition, anemia

or general debilitation. Supervisor and co-worker letters of support following the period of initial diagnosis through placement on TDRL clearly demonstrated that the applicant maintained a sufficient level of work performance which would not have been attainable given the level of physical impairment associated with a 100 percent disability rating.

The Medical Consultant notes that the 30 percent disability rating assigned by the DVA has been sustained upon multiple appeals by the applicant dating back to the period of separation from active duty service. A comprehensive review of DVA medical documentation fails to document any clinical or symptomatic findings consistent with a 100 percent disability rating either immediately after separation or any subsequent time period. Hence, the Medical Consultant identifies no medical basis for the recommendation to retroactively assign a 100 percent disability rating for the applicant's ulcerative colitis. Given the absence of clinically significant disease progression or a change in the DVA's rating decision since the period of initial rating determination, the Medical Consultant concludes that a 100 percent disability rating is not appropriate and that no error or injustice occurred in determining the percentage of physical disability.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

He enlisted in the Air Force during the Vietnam era because he wanted to elevate himself above his social status and truly believed in the American way of life. He served his country for 20 years and the awards he received during that time attest to the fact that he performed his duties in more than a professional manner. He acquired various ailments while in the military and some of these ailments will cause him serious problems as he ages. He did not ask to be retired from the military, but was told he was unfit for military service. He asserts that he gave the Air Force 20 years of his life had it not been for his present condition (ulcerative colitis) he would have served 10 more years. He feels that his condition should have warranted a 100 percent disability rating.

His complete response, with attachments, is at Exhibit G.

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. After thoroughly reviewing the evidence of record and noting the applicant's contentions and response to the Air Force evaluations, we are not persuaded that his disability rating should be changed to 100 percent. We find that no evidence has been presented to show that he was not properly rated under established guidelines based on the medical evidence provided or that he was not afforded a full and fair hearing required under disability laws and policy. Therefore we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. 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.

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 2 Aug 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in AFBCMR BC-2011-04143:

- Exhibit A. DD Form 149, dated 14 Oct 2011, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPSD, dated 30 Jan 2012.
- Exhibit D. Letter, BCMR Medical Consultant, dated 20 Jun 2012.
- Exhibit E. Letter, SAF/MRBC, dated 22 Jun 2012.
- Exhibit F. Email Communiqué, SAF/MRBC, dated 2 Jul 2012.
- Exhibit G. Letter, applicant, dated 25 Jul 2012.

Panel Chair