

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00238

COUNSEL:

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1. He be medically retired and placed on the Permanent Disability Retirement List (PDRL) with a disability rating of at least 30% based on his diagnosed Schwannoma, Somatoform Disorder associated with anxiety disorder, and Post Traumatic Stress Disorder (PTSD).
2. He receive any back disability pay.

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APPLICANT CONTENDS THAT:

He was removed from the Temporary Disability Retirement List (TDRL) on account of conditions that the Physical Evaluation Board (PEB) claimed were resolved, although he continues to receive treatment.

His most recent period of active duty service was from 22 March 1999 until 22 November 2002. Prior to that, he had nearly five years of honorable service. On 21 August 2002, the Air Force Physical Evaluation Board published its formal findings. On 23 November 2002 he was placed on the TDRL with a compensable physical disability rating of 40%. On 17 November 2004 he was notified that the PEB had recommended that his Schwannoma (benign nerve sheath tumor) had resolved. The board also added a vertigo diagnosis. Finally, the board recommended a compensable percentage of 10% for Somatoform Disorder associated with anxiety.

His hearing was held in February 2005, with findings published on 25 February 2005. On 26 July 2005 he was notified that he would be removed from the TDRL and discharged with entitlement to disability severance pay and a disability rating of 20%. On 15 August 2005 he was discharged with an honorable characterization of service. The findings of the PEB were deficient as his civilian employer had released him from duty due to blackouts, seizures, vertigo attacks, short term memory loss and other medical issues.

He was under the care of his doctor as early as 2003. His doctor's impression was that he suffered from a number of issues including Lumbar Schwannoma and PTSD. He was unable to drive because of automobile accidents related to the "gray-outs." The doctor specifically noted the one clear diagnosis is Post Traumatic Stress Disorder.

In November 2004 the suggestion that the Schwannoma had resolved prompted, in part, his removal from the TDRL. In 2005 he was still receiving the diagnosis related to the Schwannoma from his doctor. In April 2006, the Department of Veterans Affairs (DVA) noted that he suffered from severe PTSD. In March 2007 the DVA rated him at 100% disability.

He was prematurely removed from the TDRL though he was receiving treatment for the conditions that the PEB claimed had been resolved. He continues to suffer from both the Schwannoma and severe PTSD. He should be placed on the PDRL on account of his Somatoform Disorder, Schwannoma, and severe PTSD.

In support of his request, the applicant provides his counsel's brief with attachments.

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

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STATEMENT OF FACTS:

According to a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant enlisted in this period of active duty on 22 March 1999. On 22 November 2002 he was released with an honorable characterization of service and a narrative reason for separation of "mandatory retirement - required by law due to temporary physical disability." He was credited with 3 years, 8 months and 1 day of active duty service. His grade at the time of discharge was technical sergeant (TSgt), E-6, with an effective date of pay grade of 01 November 1998.

The applicant was placed on the TDRL on 23 November 2002. On 9 November 2004, the Informal Physical Evaluation Board (IPEB) reevaluated the applicant's case and recommended discharge with severance pay with a rating of 10%. The applicant appealed to the Formal Physical Evaluation Board (FPEB) and Secretary of the Air Force Personnel Council (SAFPC). The FPEB and SAFPC concurred with the recommendation for discharge with severance pay. The final finding was a 10% rating for Somatoform Disorder Associated with Anxiety Disorder as well as a 10% rating for residual left leg weakness, status post excision of Schwannoma (Exhibit B).

The applicant was removed from the TDRL on 26 August 2005 and discharged with severance pay effective 15 August 2005.

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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 or in the ratings applied during the processing of the applicant's case.

An MEB was submitted on the applicant for Status Post Schwannoma Resection with Persistent Lower Extremity Weakness; Somatoform Disorder and Anxiety Disorder. The IPEB adjudicated the applicant's case on 26 June 2002. He was found unfit for Somatoform Disorder Associated with Anxiety Disorder. He was rated at 30% for this condition. He was also found unfit for Schwannoma, Status Post Surgical Removal and Residual Weakness, Left Leg, and was rated at 10% for the condition. His overall rating from the IPEB was 40% for these conditions. The IPEB recommended a finding of temporary retirement. On 11 July 2002, the applicant non-concurred with the finding and requested a formal hearing with counsel. The applicant contended to the FPEB that he should be permanently retired with a rating of 40% for the unfitting conditions. The FPEB adjudicated the applicant's case on 21 August 2002 and concurred with the IPEB findings and recommended temporary retirement with a rating of 40%. On 9 September 2002, the applicant, per advice of counsel, expressed that he did not wish to contend the findings of the FPEB and concurred with their findings. The applicant could have appealed the FPEB findings to the SAFPC for further adjudication but did not exercise his right to appeal.

The applicant was placed on the TDRL on 23 November 2002. On 9 November 2004, the IPEB reviewed the applicant's case as part of the TDRL reevaluation process. During the review they found Somatoform Disorder Associated with Anxiety Disorder to be the applicant's only unfitting condition. They recommended discharge with severance pay with a rating of 10%. The applicant non-concurred with the findings and, once again, appealed to the FPEB. On 25 February 2005, the FPEB concurred with IPEB findings. On 28 March 2005, the applicant non-concurred with the FPEB and appealed to SAFPC contending that he should be permanently retired with a disability rating of at least 30%. After reviewing the case, SAFPC determined the applicant to be unfit and that he be discharged with severance pay with an overall rating of 20%. He was granted a 10% rating for Somatoform Disorder Associated with Anxiety Disorder as well as a 10% rating for residual left leg weakness, status post excision of Schwannoma. This rating was considered final.

There is no documentation to indicate the applicant's case was improperly processed at any level of the Disability Evaluation

Process. Therefore, there is no basis for the applicant's rating to be changed. Any future rating changes for the applicant's conditions are now under the purview of the DVA.

The complete AFPC/DPSD evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation (Exhibit D) was forwarded to the applicant on 27 March 2012 for review and comment within 30 days. To date, this office has not received a response.

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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 Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, 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 issues involved. Therefore, the request for a hearing is not favorably considered.
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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.

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The following members of the Board considered this application BC-2012-00238 in Executive Session on 21 August 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 18 January 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dated 28 February 2012.
- Exhibit D. Letter, SAF/MRBR, dated 27 March 2012

Panel Chair