

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00285  
COUNSEL: NONE  
HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

1. The Board re-evaluate his retirement to show that he was retired by reason of "physical disability" rather than "voluntary length of service."
  2. He be compensated for all unfitting injuries and disabilities he received during his 23 years of service.
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APPLICANT CONTENDS THAT:

His physicians provided an incomplete and erroneous record, omitting multiple unfitting conditions of his total disability. If all the facts and unfitting disabling conditions were justly considered, he would have been medically retired at 100 percent.

In support of his request, the applicant provides a personal statement, copies of his AF Form 618, *Medical Board Report*; AF Forms 356, *Findings and Recommended Disposition of the USAF Physical Evaluation Board*; AF Form 1180, *Action on Informal PEB Findings and Recommended Disposition*, rebuttal memorandums and various other documentation associated with his request.

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

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STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 20 Nov 86.

In Feb 06, the applicant underwent a medical cross-training evaluation because of his left sensorineural hearing loss with onset suddenly occurring while he was deployed. It was recommended that he cross-train, as he was "exposed to hazardous noise that may further damage his remaining hearing."

In May 06, the applicant was reassigned to the 31st Mission Support Squadron (31MSS) as an Airman and Family Readiness Center Noncommissioned Officer (8C000). In Mar 07, he was reassigned to the 31st Fighter Wing (31FW) as an Air Force Smart Operations 21 (AFS021) facilitator. In Sep 07, the applicant's

primary care manager (PCM) assessed his condition and determined that he was still a valuable asset to the Air Force despite his current medical condition. Furthermore, his PCM concluded that removal from his current career field (Security Forces) could greatly improve his current medical condition. The applicant's PCM recommended he be cross-trained.

In Nov 07, the applicant was seen by his PCM for chronic right shoulder pain, status-post distal clavicle resection and ligament repair. The PCM noted he was "unable to do pushups, but able to reach overhead, carry heavy loads, but not repetitive heavy pushing. The applicant's AF Form 469, *Duty Limiting Condition (DLC) Report*, block 31, (*illness or injury will be resolved within 31 to 365 days*) or block 37, (*medical defect or condition*) were left blank without a check mark to indicate his prognosis. The commander's input to the MEB indicated the applicant was "unable to withstand the rigors and deployment requirements of his Security Forces (3P071) career field and was placed into Air Force Specialty Code (AFSC) 9A000, which denotes "Airman awaiting retraining - disqualified for reason beyond control." His final recommendation was to "allow the applicant to remain on active duty at Aviano Air Base, Italy until his High Year of Tenure (HYT) date as an AFSO21 facilitator and trainer. Further, the commander stated the applicant was willing to continue in this capacity and is contributing a valuable service to the 31FW and the Air Force.

On 5 Nov 08, a new Duty Limiting Condition Report indicated the applicant had mobility restrictions. The specific limitations were recorded as "no running, no kneeling/squatting/frequent bending, no high impact activities, and no weight bearing on right shoulder." There is no discussion of a hearing impairment or gait disturbance due to disequilibrium. A check mark was placed in block 37 to indicate, medical defect/condition requires MEB or PEB processing IAW AFI 41-210, *Tricare Operations and Patient Administration Functions*.

On 4 Jan 09, a medical evaluation board (MEB) convened to consider the applicant for continued active duty. The board recommended the applicant be referred to an Informal Physical Evaluation Board (IPEB) only for osteoarthritis and bilateral knees. The applicant was informed of the findings and recommendations of the board and did not provide a letter of exception or rebuttal.

On 10 Apr 09, the IPEB reviewed the case and found the applicant unfit and recommended permanent retirement with a combined disability rating of 20 percent for osteoarthritis in both knees. The IPEB noted "you have been unable to perform Security Forces duties since 2007 due to limitations resulting from your continued bilateral knee pain."

On 14 Apr 09, the applicant non-concurred with the findings and recommended disposition of the IPEB and requested a formal

hearing with counsel. The applicant agreed with the 20 percent disability rating of the bilateral osteoarthritis of his knees and requested that his Meniere's Syndrome be rated at 100 percent and his chronic shoulder pain be rated at 10 percent for a combined disability rating of 100 percent.

On 27 May 09, based on a review of the medical evidence the Formal PEB (FPEB) recommended the applicant be returned to duty, finding neither the knee osteoarthritis, Meniere's Syndrome, nor chronic shoulder pain unfitting. The FPEB also referred to the commander's assessment indicating his conditions have not precluded him from performing as an Air Force Smart Operations 21 (AFSO21) facilitator, has missed no duty time, and continues to contribute to the wing and Air Force mission.

On 29 May 09, the applicant non-concurred with the finding and recommended disposition of the FPEB and requested his case be forwarded to the Secretary of the Air Force Personnel Council (SAFPC) for review and final decision.

On 17 Aug 09, the SAFPC considered the applicant's contention for permanent retirement with a 100 percent disability rating. Following a review of all the facts and evidence in his case, to include the testimony presented before the FPEB, the remarks by the FPEB, the remarks by the IPEB, the service medical records, and the narrative summary of the MEB, the SAFPC concurred with the disposition recommended by the FPEB to return the applicant to duty.

On 27 Oct 09, the applicant's service retirement application was approved. On 1 Mar 10, the applicant was retired in the grade of master sergeant after serving 23 years, 3 months and 11 days of active service.

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AIR FORCE EVALUATION:

HQ AFPC/DPSD recommends denial. Department of Defense Instruction (DoDI) 1332.38, *Physical Disability Evaluation* states "if the evidence establishes that the service member adequately performed his or her duties until the time the service member was referred for physical evaluation, the member may be considered fit for duty even though medical evidence indicates questionable physical ability to continue to perform duty. The applicant's ineligibility to reenlist is an administrative policy, not grounds for a disability retirement."

The complete DPSD evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

By letter dated 10 Nov 12, the applicant stated his military career was terminated prematurely by his physical disabilities and ultimately these disabilities denied him the opportunity to reach his high year of tenure (HYT) as a master sergeant or continue his military service. The Air Force ended his career prematurely from the injuries he received while deployed in support of Operations IRAQI and ENDURING FREEDOM (OIF/OEF) or while training and preparing to perform missions during war as a Security Forces member. He continues to struggle everyday with his current and unfitting conditions and disabilities.

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

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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 timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice. After a thorough review of the evidence of record and the applicant's complete submission, including his response to the Air Force evaluation, we are not convinced he has been the victim of an error or injustice. Therefore, 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. The applicant contends his physicians provided an incomplete and erroneous record omitting multiple unfitting conditions of his total disability. He also contends his military career was terminated prematurely due to his physical disabilities and ultimately these disabilities denied him further opportunity to reach his HYT as a master sergeant or continue his military service. We disagree. We note the mere presence of a medical condition does not automatically warrant an unfit finding and medical release from military service; particularly in the context of the expressed needs and desires of the Air Force. While the applicant's chronic degenerative arthritis of both knees clearly interfered with his ability to perform Security Forces duties, and presented as early as 2004, his reassignment to administrative duties allowed him to achieve length of service retirement eligibility. Had the applicant been processed through the military Disability Evaluation System (DES) in 2006 or 2007 for his knee ailments, he would have been at risk for a rating decision that would have fallen short of medical and length of service retirement eligibility if found unfit; noting that both knees were rated at only 10 percent each by the IPEB and post-service, by the DVA. In addition, we note, 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. 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. Therefore, in view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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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 AFBCMR Docket Number BC-2012-00285 in Executive Session on 11 Dec 12, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00285 was considered:

- Exhibit A. DD Form 149, dated 3 Jan 12, w/atchs.
- Exhibit B. Applicant's Military Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dated 20 Mar 12.
- Exhibit D. Letter, SAF/MRBR, dated 19 Oct 12.
- Exhibit E. Letter, Applicant, dated 10 Nov 12, w/atchs.

Panel Chair