

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00287  
COUNSEL: NONE  
HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

His reason for discharge be changed from "Completion of Required Active Service" to "Medical Retirement."

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APPLICANT CONTENDS THAT:

He should have received a Medical Evaluation Board (MEB) and been medically retired.

He was sick for over one year prior to his discharge from the Air Force and has been rated 100 percent disabled by the Department of Veteran Affairs (DVA) effective the date of his discharge.

He recently discovered after talking to Senators and Congressional offices that he should have been medically retired.

In support of his request, the applicant provides copies of his DVA Rating Decision and an extract of his Medical Records.

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

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STATEMENT OF FACTS:

The applicant entered the Regular Air Force on 5 Mar 1997.

On 21 Feb 2008, he was honorably discharged from Active Duty in the grade of technical sergeant (TSgt, E-6). He received a Reentry Code of 1J, which denotes "Eligible to Reenlist-Elected Separation or Discharge" and a Separation Program Designator code of KBK which denotes "Completion of Required Active Service." He served 9 years, 11 months and 17 days of active service.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force at Exhibit C.

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AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends denial. Addressing the applicant's expressed desire for a medical retirement, the Medical Consultant states the military Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on future occurrences. The applicant's career was not terminated due to a medical condition. An extract from Department of Defense Instruction 1332.32, *Physical Disability Evaluation*, Enclosure 3, Part 3, *Standards for Determining Unfitness Due to Physical Disability or Medical Disqualification*, paragraph E3.P3.2.1, reads: " A Service member shall be considered *unfit* when the evidence establishes that the member, due to physical disability, is *unable to reasonably perform* the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation." Indeed, as the applicant asserts, he did attend multiple episodes of care, which he characterized as being "sick" during calendar year (CY) 2006. However, there is no indication in the record that any of the applicant's health providers, his flight surgeon, and various consulting specialists, ever entertained the prospect of initiating a Medical Evaluation Board (MEB) and medically separating him; although placed on an extended period of duties not including flying (DNIF) status as a pararescue craftsman.

The Board and the applicant should also be aware that the mere evidence of one or more medical conditions during military service does not automatically justify a medical basis for discharge. Specifically, under Department of Defense Instruction 1332.38, *Physical Disability Evaluation*, paragraph E3.P3.3.3, *Adequate Performance Until Referral*, "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."

Operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for *any* medical condition with an established nexus with military service, without regard to [and independent of] its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the narrative reason for release from military service. With this in mind, Title 38, U.S.C., which governs the DVA compensation system, was written to allow awarding compensation ratings for conditions that were not proven unfitting for military service at the time of separation. This is the reason why an individual can be found fit for release from military service for one reason and yet

sometime thereafter receive a compensation rating from the DVA for service-connected, but militarily non-unfitting medical conditions.

The Medical Consultant acknowledges, from this paper review, that the medical evidence suggests that an MEB, or a review in lieu of (RILO) MEB, should have been considered, as a minimum, for the applicant's *Depressive Disorder, NOS*, before his release from service. However, there is significant competing evidence that medical officials, the applicant, and his commander may have been aware of this option prior to his release from military service, but elected to proceed with terminal leave and completion of required service. The Medical Consultant is not in a position to second-guess the decisions made by the applicant or his healthcare providers during the waning months of CY 2006, but opines these were likely based collectively upon clinical judgment, the applicant's desires, his impending terminal leave, and approaching separation. Thus, the supplied post-service disability ratings alone, although quite compelling, are insufficient to now justify a retroactive medical retirement; and are not necessarily proof of the applicant's actual level of impairment for any of his medical conditions at the "snap shot" time of his release from military service; notwithstanding the DVA practice of making disability compensation effective the day after the date of separation, albeit issued, in this case, two years after the applicant's date of separation.

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 26 Oct 2012 for review and comment within 30 days. As of this date, this office has received no response (Exhibit D).

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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 BCMR Medical Consultant 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 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.

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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 in Executive Session on 29 Nov 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered in AFBCMR BC-2012-00287:

- Exhibit A. DD Form 149, dated 2 Feb 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 24 Oct 2012, w/atch.
- Exhibit D. Letter, SAF/MRBC, dated 26 Oct 2012.

Panel Chair