

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00966
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His Reserve Retirement be changed to a disability separation with entitlement to disability severance pay or a disability retirement.

APPLICANT CONTENDS THAT:

He should have been retained on active duty subsequent to his deployment (in excess of 31 days) to be evaluated under the Disability Evaluation System (DES) due to sustaining a back injury while he was deployed. Through his persistence for care subsequent to deployment, his back injury was found to be in the line of duty (LOD) and required microdisectomy surgery. He was profiled as "P4," disqualified for deployment and any service participation with an indefinite expiration date. He continues to experience left leg numbness, looseness/jarring spine movement, back spasms, leg and lower back burning pain, and inability to prolong walking, standing, or sitting. In addition, he remains restricted to no lifting above 40 pounds or running as set forth by his military surgeons.

In support of his appeal, the applicant provides copies of his medical records; separation documents; deployment orders; Informal LOD Determination; Physical Profile; an excerpt of Air Force Instruction 36-3212, Chapter 8; and an excerpt of his DVA disability decision.

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

STATEMENT OF FACTS:

The applicant is a former member of the Air Force Reserve (AFRES) who served in the grade of master sergeant (E-7). On 1 March 2009, the applicant reported for medical care as a result of back pain sustained as a result of lifting baggage for his initial outbound deployment flight.

An AFRC IMT 349, *Informal Line of Duty Determination*, dated 10 July 2010, indicates the applicant's injury was found to be in

the LOD. Meanwhile, his Reserve Retirement scheduled to be effective 1 August 2009, was put on hold. An Air Force Form 422, *Physical Profile Serial Report*, dated 5 August 2009, placed the applicant on a "P4" profile, indicting he was not allowed to participate in the Reserve program until after he was cleared from restrictions. The applicant underwent surgery on 5 August 2009. He was subsequently authorized to return to work/school on 14 September 2009, with restrictions of no running and no lifting over 40 pounds.

The applicant was transferred to the Retired Reserve Section and placed on the USAF Reserve Retired List effective 1 November 2009.

A Department of Veteran Affairs (DVA) letter, dated 4 December 2009, indicates the applicant was awarded 30 percent disability compensation for his service-connected disabilities; however, due to an incomplete DVA record being submitted, which disabilities compromise the disability rating are not available.

AIR FORCE EVALUATION:

AFRC/SG recommends denial. SG states that it is not clear if the applicant would overcome the presumption of fitness and meet criteria for medical retirement. Any Air Force Reservist afforded a disability retirement would normally be required to be seen as part of the Medical Evaluation Board (MEB) process with multiple physicians and experts evaluating a case. By not taking into consideration his commander's potential recommendations and the possibility to return to duty with an Assignment Limitation Code (ALC), and solely relying on a DVA disability rating, the applicant would be afforded a benefit of direct retirement without the level of medical scrutiny of Reservists with similar medical situations.

It is SG's opinion that the limited medical documentation provided is insufficient to afford relief to the applicant; however, if any relief is afforded, consideration should be given for the applicant's return to full active duty for an evaluation by an active duty training platform, to include presenting all military and civilian documents and evaluations as part of the process. An opinion of his commanders as their ability to work with the applicant, even with an ALC, would also be appropriate. A return to ALC limited duty is a distinct possibility in this case and would negate any disability retirement, but not remove the Reserve retirement he is already entitled to.

The complete SG evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

He feels his condition was overlooked. He had no prior back injuries or disease. After his back injury during his deployment, he knew his military career was coming to an end. Had he not put in for retirement, he would have eventually been deemed unfit for duty with his limitations of no running or lifting over 40 pounds. His retirement request was temporarily revoked due to being placed on a medical hold. However, despite not being processed for a medical assessment, he was subsequently told he could go ahead and retire. He continues to experience increasing pain and diminished physical motion.

The applicant's complete rebuttal, with attachments, 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 timely filed.

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1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice. After reviewing the complete case file, the Board is of the opinion that the applicant has established reasonable doubt as to whether or not the decision not to process him through the disability evaluation system was appropriate under the circumstances. In this respect, a review of the evidence provided shows that during the time period in question, a condition existed that may have warranted consideration by the disability evaluation system (DES). The Board believes that those in the disability evaluation process would be in the best position to evaluate his records and render a fitness and/or rating determination. Accordingly we recommend his records be corrected to the extent indicated below.
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.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. Invitational travel orders were issued by competent authority for the purpose of evaluation for an analysis of his qualification for worldwide duty, at or about the date [2009] of his release from military service and currently.

b. The evaluation be conducted within 45 days of this directive, in consultation with a neurosurgeon or orthopedic surgeon at the nearest available active military medical treatment facility.

c. The medical evidence of record, at or about the date of his release of military service and within the 12 months following his release from military service, be utilized in determining the applicant's previous [2009] worldwide qualification.

d. The results of the evaluation be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions may be completed; and, that all charges for the physical examination be, and hereby are, waived.

The following members of the Board considered AFBCMR Docket Number BC-2012-00966 in Executive Session on 27 November 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records, as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00966 was considered:

- Exhibit A. DD Form 149, dated 23 Feb 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFRC/SG, dated 29 Aug 12.
- Exhibit D. Letter, SAF/MRBR, dated 11 Sep 12.
- Exhibit E. Letter, Applicant, dated 15 Sep 12, w/atchs.

Panel Chair