

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01117
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His removal from the Temporary Disability Retired List (TDRL) and discharge with entitlement to disability severance pay, effective 8 September 2010, be changed to a permanent retirement with a minimum 40 percent disability rating.

By amendment at Exhibit E, the applicant now seeks a 50 percent disability rating.

APPLICANT CONTENDS THAT:

He believes he should receive a medical retirement. He was placed on the TDRL for PTSD based on his experiences while serving in support of Operation Iraqi Freedom (OIF) and recently tested positive for Traumatic Brain Injury (TBI). During a medical exam he was led to believe that because his PTSD had not stabilized, he would either be continued on the TDRL or granted a permanent disability retirement.

He still has PTSD and is in a constant struggle to keep a job due to the medication and troubles related to the TBI and PTSD.

In support of the applicant's appeal, he provides a personal statement and documents extracted from his military personnel records.

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

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 15 November 2000.

A Medical Evaluation Board (MEB) convened and referred the applicant's case to an Informal Physical Evaluation Board (IPEB) with a diagnosis of PTSD. On 21 September 2006, the IPEB found him unfit for further military service and recommended placement on the TDRL with a disability rating of 30%. On 10 June 2010, the IPEB reviewed the medical information and recommended the applicant be removed from the TDRL and discharged with severance pay with a disability rating of 10 percent. The medical narrative indicated that the applicant's condition was improving and his social and industrial adaptability impairment was mild.

Special Order ACD-02539 issued 20 August 2010 removed the applicant from the TDRL effective 8 September 2010. He served 5 years, 11 months, and 22 days on active duty.

AIR FORCE EVALUATION:

AFPC/DPSD recommends denial. DPSD states records indicate that travel orders and the findings from his first TDRL re-evaluation in 2008 were mailed to his home address in Kentucky. The findings from his second TDRL re-evaluation were mailed to the same address on 11 June 2010. The orders removing him from the TDRL effective 8 September 2010 were also mailed to the address in Kentucky on 20 August 2010. His application for correction indicates that he did receive the final package with orders that indicated he was removed from the TDRL and given discharge with severance pay with a 10 percent disability rating. The preponderance of evidence reflects that no error or injustice occurred during the disability process.

The DPSD complete evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

His conditions with his PTSD or TBI have not improved. He has recently been diagnosed as 80% disabled through the VA and 100% through SSI. His medical condition has not improved. He now asks for a 50 percent disability rating rather than 40 percent.

The applicant's complete response, with attachment, 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.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a thorough review of the record and the applicant's submission, we find no error or injustice in regard to his disability processing or the final rating applied. In this respect, we note the military DES, operating under Title 10, is established to maintain a fit and vital force and can compensate for unfitting conditions which render a member unfit and unable to perform their military duties, and then only to the degree of severity at the time of separation and not based on future possibilities. No change in disability ratings can occur after permanent disposition, even though the condition may become better or worse. Although the Air Force is required to rate disabilities in accordance with the VASRD, the DVA operates under a totally separate system with a different statutory basis. The DVA, operating under Title 38, rates for any and all service-connected conditions, to the degree they interfere with future employability, without regard to whether it was unfitting for continued military service. The DVA is also empowered to reevaluate veterans periodically for the purpose of changing their disability awards if their level of impairment varies over time. Thus, the two systems represent a continuum of medical care and disability compensation that starts with entry on to active duty and extends for the life of the veteran. In view of this and since the recommendation and opinion of the Air Force office of primary responsibility is supported by the evidence of record, we 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.

The following members of the Board considered AFBCMR Docket Number BC-2012-01117 in Executive Session on 16 October 2012, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01117 was considered:

- Exhibit A. DD Form 149, dated 10 December 2011, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dated 2 May 2012.
- Exhibit D. Letter, SAF/MRBR, dated 11 May 2012.
- Exhibit E. Letter, Applicant, not dated, w/atch.