

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01182

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He be continued on Medical Continuation (MEDCON) orders from 24 March 2010 through 1 November 2010 and receive back pay and allowances for that timeframe.
2. His five Lines of Duty Determinations (LODs) that were abandoned be processed to completion.
3. He be medically retired effective 1 November 2010.

APPLICANT CONTENDS THAT:

In a twelve-page personal statement the applicant presents the following contentions:

- a. During the course of specialized training and conditioning for a six-month assignment to Speicher Air Base (AB), Iraq, he suffered shoulder and low back pain and a large posterior vitreous detachment in his right eye which caused blurred vision. The Army medical facility took x-rays of his shoulder and treated the pain with a steroid shot. He was told to see a surgeon when he returned stateside.
- b. Due to a lack of knowledge of reserve component medical care policy, regulations, and poor administration and cooperation between reserve management and active duty units, four of his LODs were not processed in a timely manner resulting in loss of pay, medical care and ability to meet a medical evaluation board.
- c. His commander incorrectly informed him that he could not go on MEDCON orders until the LODs were completed. The LODs took over six months to complete in spite of the stated goal of 39 days per page 12 of AFI 36-2910, *Line of Duty (Misconduct) Determination*. Because of the lengthy processing, little time remained for appeals.
- d. A medical evaluation board was not conducted on his behalf because of careless administration and incorrect coding of the

AF Form 469, *Duty Limiting Conditions Report* which contained the following significant errors:

(1) The "Physical Limitations/Restrictions block did not include a reduction or weight limit to accommodate his shoulder pain nor did it place him on weapons restriction because of his blurred vision.

(2) Code 31; "Illness or Injury will be Resolved Within 31-365 Days" was check marked instead of code 37; "Medical Defect/Condition Requires MEB or PEB Processing (IAW AFI 41-210)."

e. His final AFRC IMT 348, *Informal Line of Duty Determination*, contained a change of date and a change in the medical officer's signature block from the medical officer overseeing his case to an enlisted member who was not a physician.

f. He could not deploy, complete his annual two-week tour, or accomplish mandays because of his medical coding, yet, at the very same time, he was not medically continued on orders, precluding him from receiving treatment for his conditions or starting new LODs. His second set of LODs were never processed.

g. He received several documents to sign verifying he was briefed on his responsibilities for the LOD process; however, he was not briefed. He was given the documents via email over five months after the LOD processing began. Additionally AFMOA, the local BIMAA and his commander were still coordinating with him and working MEDCON orders issues well past his retirement date because neither they nor he knew that he was retired effective 1 November 2010.

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

STATEMENT OF FACTS:

According to copies of documents extracted from his Military Personnel Record (MPR) the applicant is a former commissioned officer of the Regular Air Force and Air Force Reserves. He was progressively promoted to the grade of Lieutenant Colonel, (O-5), with an effective date of rank and pay grade of 1 October 2003. During his reserve service, the applicant completed five active duty tours for a combined total of 3 years, 7 months and 4 days of active duty service.

Effective 1 November 2010, the applicant was relieved from his, then, current assignment and assigned to the Retired Reserve section awaiting pay at age 60 (24 February 2015).

AIR FORCE EVALUATION:

AFRC/SG recommends denial. AFRC/SG states the applicant's statements and medical records reveal that his shoulder condition stems from his time in the Regular Air Force. Although orthopedic conditions that affect one's ability to perform functions of the AFSC are potentially disqualifying, he was able to continue to perform his military duties for many, many years after leaving active duty and joining the AF Reserves. Therefore, he was not eligible for a medical board because his condition clearly overcame the presumption of fitness. His underlying condition was not permanently worsened beyond its natural progression as is required in AFI 36-2910, *Line of Duty (Misconduct) Determination*. He was found not in the line of duty for his original shoulder injury as there was no evidence of permanent worsening on any specific period of reserve service.

The applicant also filed an LOD (which was completed as in line of duty) for vitreous detachment of his right eye. This is not a permanently disqualifying condition either, and he was not boarded for this non-disqualifying condition as, again, no board is warranted unless the service member is unable to perform duties of their office. Finally, the applicant filed an LOD for a cervical herniated disk which was found existed prior to service, service aggravated. Each of these lines of duty cases were initiated on 29 June 2010 and completed on 25 August 2010, well within the SAF/MR measurable time requirements, although, it appears, he may have asked the active duty military treatment staff to initiate a line of duty sooner. The applicant requested line of duty completion on several chronic orthopedic conditions, some of which date into the mid 1980s. He was granted a 30-day medical hold through 1 November 2010, but the applicant provided no further documentation to AFRC/SGP requesting continuation on medical hold.

Given the chronic and longstanding nature of his complaints, the underlying issues remain his ability to overcome the presumption of fitness. It would not be appropriate to continue medical hold given he was able to participate many years with those very same conditions. Medical continuation orders also require a member to be in the process of a medical board. Given his lack of disability, they do not recommend the applicant gain relief from the Board with respect to his request for medical retirement. His conditions were longstanding and he remained qualified for military service throughout.

The complete AFRC/SG evaluation is at Exhibit C.

AFMOA/SGHI recommends denial. SGHI states there is no adequate evidence within the provided medical records and Command Man-Day Allocation System (CMAS) to establish that the applicant would have been eligible for Medical Continuation orders during the timeframe requested. For that reason, they are unable to recommend approval for the back pay portion of the request based upon the documentation submitted demonstrating the applicant's ability to run marathons and complete overseas deployments.

The complete AFMOA/SGHI evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a four-page response, the applicant references the AFMOA/SGHI evaluation and indicates he did report he was pain free on 5 February 2010; however, his pain was and is caused by movement. He does not believe he has to be in continuous pain to have a significant ailment. The remark "already running marathons, so no room to improve on exercise" was taken out of context. He was not in training for a marathon during or after his deployment. He made the statement to say that he did not need assistance regarding physical conditioning. SGHI inferred that this one statement about marathons suggested that his conditions were not to a degree of severity that would render him disqualified for continued service. There was no relationship of having run a marathon in years past to his current condition.

SGHI failed to note his mobility restriction as well as medical personnel remarks regarding his shoulders and neck in the original package. He does not deny that his shoulders suffered pain as far back as 1988 while at pararescue indoctrination training. His shoulders have had pain on and off throughout the years, but not enough to be disabling as long as he took care during physical conditioning and work.

Regarding the medical treatment documentation he was asked to provide after his medical retirement date was extended, he explained in his original statement that losing Tricare coverage, moving to the VA healthcare system, and suffering two heart attacks during that specific period did not allow him the time to meet the request.

His request for early retirement based on an MEB is centered on the factors that surround the marking of a wrong block on the AF Form 469 and that his shoulders should have been found in the line of duty paired with four other debilitating issues not acknowledged based on poor administration from the medical group.

The applicant's complete response is at Exhibit F.

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 error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. We note the applicant's contention that he had mobility restrictions regarding his shoulders and neck; however, he did not provide evidence to overcome the presumption of fitness for duty in spite of the chronic and long-standing nature of his complaints. 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.

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.

The following members of the Board considered this application BC-2012-01182 in Executive Session on 14 November 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 28 February 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFRC/SG, dated 15 May 2012.
- Exhibit D. Letter, AFMOA/SGHI, dated 2 July 2012.
- Exhibit E. Letter, SAF/MRBR, dated 22 August 2012.
- Exhibit F. Letter, Applicant, dated 12 September 2012.

Panel Chair