

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01249

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

She be medically retired and placed on the Permanent Disability Retirement List (PDRL) with a disability rating of 100 percent effective 29 April 2009, the date of the Secretary of the Air Force Personnel Council (SAFPC) ruling.

APPLICANT CONTENDS THAT:

She was offered a choice between electing discharge with severance pay with a disability rating of 10 percent or transfer to the Inactive Status Reserve Section (ISLRS) for purpose of applying for, and receiving retirement pay upon becoming 60 years of age. She opted for transfer to ISLRS in lieu of discharge with severance pay.

Upon leaving the Air Force she applied for Department of Veterans Affairs (DVA) compensation on 17 December 2009. The DVA conducted exams, reviewed her military medical documents and determined that she had service-connected disabilities of: TBI w/cognitive disorder - 70 percent; major depressive disorder (MDD) w/anxiety disorder (NOS) - 30 percent and migraine headaches - 30 percent.

The Physical Evaluation Boards (PEB) addressed these conditions but failed to recommend compensation for them. In fact they were discounted by the Boards and SAFPC. The PEBs did not fully diagnose or explore her injuries and she was not adequately compensated by Air Force.

In support of her request, the applicant provides copies of her DVA rating/decision letter, evaluation Boards findings, MEB summary, DD Form 214, *Certificate of Release or Discharge from Active Duty* and medical records.

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

STATEMENT OF FACTS:

According to documents extracted from the automated records management system (ARMS) the applicant enlisted in the Air Force Reserves on 3 October 1984. On 31 December 2009 she was released from her, then, current assignment and assigned to the HQ ARPC Retired Reserve section and placed on the Retired Reserve List awaiting retirement at age 60 (19 July 2026).

The applicant was processed by a Medical Evaluation Board (MEB) in November 2007 after she sustained a concussion on 29 August 2006, when she was struck in the head by an airplane gear door and, as a result, suffered neurological symptoms (headaches, dizziness, nausea etc...). On 11 February 2008, the Informal Physical Evaluation Board (IPEB) evaluated the applicant's case and recommended discharge with severance pay with a disability rating of 10 percent for post-concussive syndrome with headaches, sleep disturbance and cognitive and memory complaints with a history of four previous concussions under the Veterans Administration Schedule for Rating Disabilities (VASRD) codes 8045-9304. The applicant disagreed with the finding and appealed, through counsel, to the Formal Physical Evaluation Board (FPEB).

On 12 March 2009, the FPEB evaluated the applicant's case, which was recessed on 31 July 2008 for the purpose of obtaining additional medical information. The applicant presented a new contention for permanent disability retirement at a compensable disability rating of 100 percent for traumatic brain injury at VASRD code 8045. The FPEB considered the applicant's contention but subsequently recommended discharge with severance pay with a disability rating of 10 percent for cognitive disorder NOS associated with adjustment disorder with mixed anxiety and depressed mood, under VASRD codes 9304-9435. The applicant disagreed with the finding and appealed, through counsel, to the Air Force Personnel Council (SAFPC).

The SAFPC evaluated the applicant's case, with rebuttal, on 29 April 2009 and considered the contentions but after a thorough review, recommended discharge with severance pay with a disability rating of 10 percent for category I, post-concussion syndrome including features of cognitive disorder not otherwise specified; category II, stage III serous tumor of low malignant potential of the ovary; and category III, adjustment disorder with mixed anxiety and depressed mood. The Board agreed with the applicant's contention to rate her condition under VASRD codes 8045: residuals of traumatic brain injury. The Board noted that the facet with the highest level of impairment is "subjective symptoms." The Board found that the examples cited under level "1" are most characteristic of her symptoms of intermittent dizziness, daily mild to moderate headaches, frequent insomnia, and hypersensitivity to light. While the applicant testified

about the frequency and severity of various symptoms, no other corroborating information was presented that might be used to outweigh the available medical documentation. Memory impairment was not considered under this VASRD code as testing indicated that her perception of memory impairment was related to psychiatric disorder factors, not an actual neurological impairment, and that the onset of her "attentional difficulties" preceded the head injury. Therefore, the Board found that the applicant's disability was properly rated at 10 percent under code 8045. The Board found that a combat-related designation was appropriate, as the applicant's injury was caused by an instrumentality of war while she was performing her official duties.

AIR FORCE EVALUATION:

AFPC/DPSD recommends denial. DPSD states the preponderance of evidence reflects that no error or injustice occurred during the disability process.

The Department of Defense (DoD) and Department of Veterans Affairs (DVA) disability evaluation systems operate under separate laws. Under Title 10, U.S.C., Physical Evaluation Boards must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. The fact that a person may have a medical condition does not mean that the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. If the Board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Further, it must be noted the USAF disability boards must rate disabilities based on the member's condition at the time of evaluation; in essence a snapshot of their condition at that time. It is the charge of the DVA to pick up where the AF must, by law, leave off. Under Title 38, the DVA may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies.

The complete AFPC/DPSD evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 27 April 2012 for review and comment within 30 days (Exhibit D). To date, this office has not received a response.

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 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. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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-2012-01249 in Executive Session on 18 December 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 3 March 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dated 25 April 2012.
- Exhibit D. Letter, SAF/MRBR, dated 27 April 2012

Panel Chair