

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02217

COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

His disability rating be changed from 0 to 30 percent and retired by reason of physical disability.

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APPLICANT CONTENDS THAT:

He should have received a disability retirement, since his psoriasis covered more than 35 percent of his body and he was on steroids for 49 days.

This condition was caused by exposure to JP-8 aviation fuel. According to the Material Safety and Data Sheet (MSDS), JP-8 fuel may cause skin conditions. He would not have been exposed to this fuel had it not been for his military service.

In support of the appeal, the applicant provides pictures, his list of medications, his rebuttal to the Formal Physical Evaluation Board (FPEB), a physician's note, several MSDS' and copies of his medical records.

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

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STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 17 October 2005. He was processed through the Military Disability Evaluation System (MDES), based on the diagnosis of Psoriasiform Spongiotic Dermatitis, ultimately resulting in an unfit finding and the Secretary of the Air Force Personnel Council (SAFPC) directing his discharge, with severance pay and a zero percent disability rating. It was also determined that his condition was not combat related.

The applicant was honorably discharged on 28 May 2012. His narrative reason for separation was listed as disability, severance pay, non-combat. He was credited with 6 years, 7 months and 12 days of active duty service.

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AIR FORCE EVALUATION:

AFPC/DPSD recommends denial of the applicant's request. However, they recommend that the JP-8 fuel be considered an instrumentality of war and that the applicant be awarded a combat-related code for his diagnosis.

The IPEB reviewed his case on 11 March 2011 and recommended discharge with severance pay (DWSP) with a disability rating of 10 percent for the diagnosis of Psoriasiform Spongiotic Dermatitis. The IPEB noted that the applicant had a significant rash on his hands and arms related to exposure to JP-8 fuel that began in December 2009. Multiple treatments had not helped and because of the lesions he was unable to wear protective clothing. They also noted it was unlikely that a change in climate or environmental conditions would resolve the rash. The condition was considered combat related as the disability was a result of the applicant's exposure to JP-8 fuel which can be labeled as an instrumentality of war. On 8 April 2011, the applicant non-concurred with the findings and requested a formal hearing with counsel.

On 17 May 2011, the FPEB reviewed his case and recommended DWSP with a disability rating of 10 percent. The FPEB acknowledged the applicant had a significant rash on his hands, arms and chest potentially related to JP-8 fuel that began in December 2009. The Board also noted the applicant had no rash whatsoever at that time. The applicant used a topical cream and PUVA (Photochemotherapy) therapy to control his rash. He last used steroids for 28 days in December 2010. Overall, he used steroid treatment for 38 days in the past 365 days. The Board found that his condition prevented him from performing his duties and closely approximated a 10 percent rating with intermittent rashes only. The FBEP also considered JP-8 fuel an instrumentality of war. Therefore, his condition was combat related.

On 18 May 2011, the applicant requested his case, with rebuttal, be sent to the Secretary of the Air Force Personnel Council (SAFPC) for review. On 16 March 2012, SAFPC directed the applicant be discharged with severance pay with a zero percent disability rating. Although the applicant contended that his condition warranted permanent retirement at 30 percent for the use of systemic steroids for more than six weeks, no systemic steroid therapy had been noted since October 2010. The IPEB and FBEB each recommended DWSP at 10 percent. A clinic visit on 19 October 2011 noted a normal skin exam with no medications. SAFPC also determined that his condition was not combat related by instrumentality of war as jet fuel is not specific to military service and is synonymous with Jet A, which is a common aviation jet fuel used in commercial aviation worldwide.

The Boards are required by law to rate a disability using criteria outlined in the VASRD code at the time the case processed. As the applicant only required topical medication to

control his symptoms, according to his most recent examination (normal skin exam), and since less than 5 percent of exposed body surface was affected, VASRD rating code 7816 is DWSP at zero percent.

The Department of Defense (DoD) and the 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 service relating to their office, grade, rank or rating. The fact that a person has a medical condition does not mean that the condition is unfitting for continued military service. The DoD also rates disabilities based on the member's condition at the time of evaluation. 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.

The preponderance of the evidence reflects that no error or injustice occurred during the disability process. DPSD recommends that the JP-8 fuel be considered an instrumentality of war and the applicant be awarded the combat related code for this diagnosis.

The complete DPSD 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 17 July 2012, for review and comment within 30 days (Exhibit D). As of this date, this office has received no response.

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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 timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice with regard to the applicant's disability rating. Evidence has not been submitted which would lead us to believe the rating he received at final disposition was improper. While we note the applicant's contention that his psoriasis covered more than 35 percent of his body and that his condition was caused by exposure to JP-8 jet fuel, the evidence of record appears to indicate the applicant was afforded due process through the disability evaluation system.

4. Notwithstanding the above determination, we believe some relief is warranted. AFPC/DPSD has recommendation that the JP-8 fuel be considered an instrumentality of war and that he be awarded a combat related code for his diagnosis. The applicant contends he would not have been exposed to the fuel had it not been for his service. Therefore, we agree with DPSD's opinion and recommendation that the JP-8 jet fuel be considered as an instrumentality of war. Accordingly, we recommend the applicant's record be corrected to the extent indicated below.

5. 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.

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THE BOARD DETERMINES THAT:

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

a. On 16 March 2012, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; that the diagnosis in his case was Psoriasiform Spongiotic Dermatitis VASRD code 7899-7816, rated at 0 percent; that the degree of impairment was permanent; that the disability was not due to intentional misconduct or willful neglect; that the disability was not incurred during a period of unauthorized absence; and that the disability was received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war.

b. On 28 May 2012, he was honorably discharged for a disability with a rating of 0 percent, with entitlement to severance pay - combat.

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The following members of the Board considered AFBCMR Docket Number BC-2012-02217 in Executive Session on 10 January 2013, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

All members voted to correct the record, as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02217 was considered:

Exhibit A. DD Form 149, dtd 9 Sep 11, w/atchs.

- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dtd 29 Jun 12.
- Exhibit D. Letter, SAF/MRBR, dtd 17 Jul 12.

Panel Chair