

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00274

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His narrative reason for separation be changed to read "Medically Retired," rather than "Medically Disqualified."
2. He be awarded with correct pay and benefits or medical severance pay in accordance with 10 USC 61.
3. He be able to transfer his Post-9/11 GI Bill educational benefits to his wife and two minor children.

APPLICANT CONTENDS THAT:

He should be eligible for Disability retirement in accordance with 10 USC 61. He was informed by physician at Buckley Medical Clinic that due to his sleep apnea he would be Medically Retired. However, he was not afforded his due process to appeal under the Disability Evaluation System (DES). While he received a letter from Buckley AFB, CO describing his recommendation for discharge and his rights to appeal through the DES, he still does not understand the system or the Physical Evaluation System. He was first told he was disqualified for worldwide duty due to his current medical conditions but the letter he received does not state the condition that required his discharge. Furthermore, at the time of his discharge/outprocessing, his attention to detail was lacking because he was required to take medications. He was told that due to his years of service and points, "he should be medically retired, no problem". He was given more forms to sign but no real helpful information to explain the forms or what it meant to his retirement situation.

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

STATEMENT OF FACTS:

On 8 Jan 00, the applicant contracted his enlistment in the Colorado Air National Guard (ANG).

On 6 Dec 10, the applicant's unit was notified that he was "Medically Disqualified for Worldwide Duty" by the NGB, Office of the Air Surgeon.

On 7 Dec 10, the applicant's commander notified him that he was recommending him for discharge from the ANG due to his medical disqualification and advised of his appeal rights under through the Disability Evaluation System (DES).

On 8 Jan 11, the applicant was honorably discharged from the Colorado ANG and credited with 26 years, 1 month, and 21 days of total reserve service. According to his NGB Form 22, the authority and reason for the applicant's discharge is AFI 36-3209, paragraph 3.14, *Physical Disqualification*.

According to documentation provided by the applicant, on 15 Nov 11, the Department of Veterans Affairs (DVA) awarded the applicant a combined compensable disability rating of 40 percent; however, his diagnosis of obstructive sleep apnea (OSA) was found not related to his military service.

The Post-9/11 GI Bill, Chapter 33 became effective 1 August 2009. As early as April 2009, the Department of Veterans Affairs, Air Force and Air Force Reserve Components published articles in service related newsletters and web sites explaining the program benefits and requirements.

On 23 July 2009, the Air Force published AFI 36-2306_AFGM1, Air Force Guidance Memorandum-Post 9/11 GI Bill. In accordance with that guidance, AFRC implemented a communication plan that employed AFRC and unit education training offices to convey program information locally in briefings, as well as, articles in service related newsletters and multiple websites. By mid June 2009, unit education offices were trained via a webinar session and received flyers to ensure as complete exposure as possible. Information was made available to program managers, Base IMA's, and the Readiness Management Group.

AIR FORCE EVALUATION:

AFBCMR Medical Consultant recommends denial noting that under AFI 36-3212 and in accordance with 10 USC 61, a condition must be found "in line of duty," service-incurred, or permanently aggravated by military service in order to qualify as a compensable disorder. The applicant has not submitted any evidence to suggest that his OSA was service-related or permanently aggravated by his military service. Furthermore, the applicant has not supplied any evidence to show that he is eligible for compensation under any other provision of the law.

Additionally, Department of Defense Instruction (DoDI) 1332.38, *Physical Disability Evaluation*, paragraph E3.P3.3.3, *Cause and*

Effect Relationship, states: "Regardless of the presence of illness or injury, inadequate performance of duty, by itself, shall not be considered as evidence of unfitness due to physical disability unless it is established that there is a cause and effect relationship between two factors." The applicant has not supplied any medical evidence, other than his OSA diagnosis, that establishes a cause and effect relationship with the termination of his military service. However, the OSA was not deemed service connected.

Unlike the DoD, the DVA is authorized to award compensation for any medical condition determined service incurred, independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or narrative reason for separation.

A complete copy of the AFBCMR Medical Consultant evaluation is at Exhibit C.

APPLICANT REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 14 Jan 13 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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 AFBCMR Medical Consultant and adopt his 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 applicant's request to change his narrative reason for separation or to award medical severance pay sought in this application. As for the applicant's request to correct his record to reflect he transferred his Post-9/11 GI Bill educational benefits, other than his own assertions, he has presented no evidence to indicate that his inability to transfer his educational benefits was the result of an error on the part of the Air Force, that he was not counseled, or somehow mis-counseled as to his responsibilities under the program.

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

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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 AFBCMR Docket Number BC-2012-00274 in Executive Session on 20 Feb 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 Jan 12, w/atchs.
- Exhibit B. Applicant's Master Military Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 11 Jan 12 (sic).
- Exhibit D. Letter, SAF/MRBC, dated 14 Jan 13.

Panel Chair