

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01248

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His AFMPC Form 134, *Retirement Order*, block 12, *Compensable Percentage of Physical Disability*, be changed from 60 to 80 percent.

APPLICANT CONTENDS THAT:

The disability rating he received from the Air Force should be increased since the Department of Veterans Affairs (DVA) awarded him a combined rating of 80 percent for the service-connected disability of Ankylosing Spondylitis and associated compression fractures of T-11/T-12.

It is unjust that he is denied compensation for this condition that was caused by the Air Force. His symptoms did not begin overnight; they are an enduring legacy from the trauma that began in 1967 and still persists today.

His ongoing neurogenic bladder condition arose from nerve trauma induced by compression fractures to T-11/T-12 which was caused by his 20-G force aircraft ejection on 13 September 1967. Neurogenic bladder was not part of his medical record and he was not examined nor tested for it when he medically retired from the Air Force.

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

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who began his service on 5 February 1968. On 18 March 1976, a Medical Evaluation Board referred the applicant to an Informal Physical Evaluation Board (IPEB) based on the diagnosis of Ankylosing Spondylitis associated with compression fractures of T11 and T12 due to trauma. The IPEB found this condition was not unfitting and returned him to duty. He did not agree with the findings and recommendations and requested a formal hearing.

On 28 April 1976, a Formal Physical Evaluation Board (FPEB) reviewed the case and found the applicant's condition would not change by a ratable percent within the next five years. They

recommended he be permanently retired with a compensable rating of 60 percent. The FPEB also found the disability was the direct result of armed conflict or was caused by an instrumentality of war and incurred in the line of duty during a period of war. The applicant was medically retired on 26 May 1976.

On 5 July 2011, the DVA notified the applicant that his Notice Of Disagreement dated 6 October 2009 was considered and his neurogenic bladder was rated 40 percent effective 10 September 2008. The DVA noted there was no mention of urinary complaints during his medical evaluation physical in 1975. The examiner also noted there was ongoing urinary frequency complaints per his reported history, but no continuity of care until 2000. The applicant also presented medical evidence to the DVA dated 6 May 2009 along with medical notes from 2002 identifying his problems with neurogenic bladder which was caused by the plane crash in the 1970's while on active duty. The examining doctor opined that the injury had initiated and has most certainly caused his neurogenic bladder. Based on that evidence, the DVA found the neurogenic bladder was related to his service-connected disability of Ankylosing Spondylitis associated with compression fractures T11 and T12.

Title 10 U.S.C states, Military Departments, can by law only offer compensation for illnesses, injuries or diseases that caused or contributed to early termination, and then, only to the degree of impairment present at the snap shot in time of final military disposition. The DVA, however, operates under Title 38 and is authorized to offer compensation for any medical condition with nexus to military service, without regard to its demonstrated or proven impact upon a service member's retainability, fitness to serve, or narrative reason for release from military service. Therefore, service members may be found fit for release from military service for one reason and yet receive compensation ratings from the DVA for service-connected, but not military unfitting conditions at the time of release from military service.

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. Evidence has not been provided which would lead us to believe that the applicant's disability processing and the rating he received at final disposition were improper. The applicant alleges that his ongoing neurogenic bladder condition was not part of his medical record and he was not examined nor tested for it when he was medically retired from the Air Force; and, as a consequence, was

denied compensation for this condition. The applicant points to the disability assessments and rating he received from the DVA to support his claim. In this regard, we are constrained to note that by law, the DVA rates service-connected conditions on the basis of social and industrial adaptability while the services assign ratings based on the degree of impairment for performance of duties. The evidence of record appears to indicate that the applicant was afforded due process through the disability evaluation system. The applicant has provided no evidence that would lead us to believe the contrary was the case. 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 issues 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 BCMR Docket Number BC-2012-01248 in Executive Session on 10 January 2013, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dtd 14 Jul 11, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.

Panel Chair