

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-01384

 COUNSEL: NONE

 HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

His regular Reserve retirement be changed to a medical retirement.

APPLICANT CONTENDS THAT:

He was medically disqualified; therefore, he should have been medically retired and immediately awarded his retirement.

The documentation regarding his discharge is incorrect. He had not completed the return trip after his Unit Training Assembly (UTA) on 4 April 2009. He was living with his daughter at that time.

He returned to his Reserve duty assignment for the weekend of 11-12 July 2009 and performed his duties both days. His unit stated there were 10 non-deployable positions. He was capable to perform those duties.

The Informal Physical Evaluation Board (IPEB) made the determination that he was unfit to perform the duties of his office based on the VA code 5235, not on his abilities to perform.

In support of his appeal, the applicant provides a personal statement, rental agreement, and Medical Evaluation Board (MEB) documentation.

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

STATEMENT OF FACTS:

The applicant is a former member of the Air Force Reserves. On 4 April 2009, the applicant returned home after completing a UTA and fell 15 feet while performing tree work. He was diagnosed with T-12 Burst Fracture. An IPEB found the applicant was unfit to perform the duties of his office, grade, rank or rating noting the T-Burst Fracture caused complete spinal stenosis and he was paralyzed below the mid-thigh with slow signs of feeling

returning to his lower extremities. The applicant uses a part-time brace/walker and a wheel chair for mobility. The IPEB also noted the applicant sustained the injury after returning home after a UTA.

The applicant was notified of his commander's intent to discharge him from the Reserve for physical disqualification. The member elected to be transferred into the Retired Reserve in lieu of administrative discharge on 15 October 2010. He was transferred to the retired Reserves effective 29 October 2010.

AIR FORCE EVALUATION:

The BCMR Medical Consultant recommends denial. The applicant's injuries were considered not in the line of duty since the injury occurred after he returned home following completion of his UTA and no longer in a duty status. The record indicates all the proper notifications and rights to appeal the medical disqualification through a "fitness only" assessment via the Disability Evaluation System were implemented. Since the applicant was eligible to transfer into the retired Reserve section, he was notified of his eligibility to apply for transfer or risk administrative discharge from the Air Force for his medical condition.

The applicant has not met the burden of proof of error or injustice that justifies the desired change of the record.

The complete BCMR Medical Consultant is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 18 December 2012, for review and comment within 30 days (Exhibit D). As of this date, this office has received no 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 an error or injustice. We carefully considered the applicant's submission and the available evidence of record and do not find that it supports a determination that his transfer to the Retired Reserve was improper. Other than his own assertions, the applicant has provided no evidence that would lead us to believe the

assessment of his medical condition was based on factors other than accepted medical principles. The evidence of record indicates that the applicant was afforded due process through the disability evaluation system and we find the evidence submitted insufficient to determine otherwise. Therefore we agree with the opinion and recommendation of the BCMR 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 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-2012-01384 in Executive Session on 23 January 2013, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 17 Dec 12.
- Exhibit D. Letter, SAF/MRBC, dated 18 Dec 12.

Panel Chair