

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02074
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His Post-Traumatic Stress Disorder (PTSD) rated by the Department of Veterans Affairs (DVA) be increased to 50 percent.
2. He be medically retired and receive back pay; and all base privileges.

APPLICANT CONTENDS THAT:

The decision by the United States Court of Federal Claims in December 2011 states that veterans who served between 2003 and 2008 should have their medical records amended; paid back pay and receive military health care, along with being granted base access.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 10 Sep 03 and 3 Jan 04, the applicant completed a post-deployment questionnaire, which indicated no impending PTS condition. The applicant was placed on a profile during the period from April 2005 through September 2006.

The applicant received an Axis I diagnosis of "Acute Stress Disorder; The Axis II diagnosis was deferred; Axis III contributory factor was for chronic hip pain and Axis IV contributory factors were "psychosocial stressor(s) and "alleged sexual assault." His psychiatric profile remained at "S1W" [worldwide qualified].

The applicant's commander offered non-judicial punishment to him for making an official statement that he was sexually assaulted behind a video store, which was not true and was then known by the applicant to be false. He waived his right to appeal and accepted the Article 15. The applicant was reduced in grade to senior airman (E-4), with a new date of rank of 10 Jan 08.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is at Exhibit C.

AIR FORCE EVALUATION:

The BCMR Senior Medical Consultant recommends denial. Addressing the applicant's desire to receive a medical retirement, the military Disability Evaluation System can only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and was the cause of career termination; and then only the degree of impairment present at the time of final military disposition and not based on future occurrences. Although the applicant was allegedly sexually assaulted and now claims compensation for PTSD, the evidence is insufficient to show that it interfered with his military service to the extent that it should have resulted in a medical release from the military. Additionally, it is noted that the applicant had non-judicial punishment initiated for making a false statement.

Although there are entries in his medical records that reflect a diagnosis of "Acute Strees Disorder," absent a validated cause for the applicant's claimed PTSD and absent evidence that such a diagnosis interfered with his military service, the Medical Consultant concludes the applicant has not met the burden of proof of error or injustice that warrants the desired change of the record.

The applicant is reminded that the Military Departments, operating under Title 10 USC only offers compensation for and when an illness or injury is the cause for career termination; and then only based upon the degree of severity or impairment at the time of final military disposition. However, the DVA is authorized to offer compensation for any medical condition determined service connected without regard to its proven or demonstrated impact upon a former service member's retainability, fitness to serve, narrative reason for release from military service, or the span of time since release from military service.

The complete BCMR Senior Medical Consultant's 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 10 Jan 13 for review and comment within 30 days. 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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
 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 BCMR Senior 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.
-

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 AFBCMR Docket Number BC-2012-02074 in Executive Session on 21 Feb 13, under the provisions of AFI 36-2603:

- , Chair
- , Member
- , Member

The following documentary evidence for Docket Number BC-2012-02074 was considered:

- Exhibit A. DD Form 149, dated 26 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 10 Jan 13.
- Exhibit D. Letter, SAF/MRBC, dated 10 Jan 13.

Chair