

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02471

COUNSEL: XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His characterization of discharge be changed to honorable.
2. His narrative reason for discharge be changed.
3. He be disability retired with a service connected, post-surgical 100 percent disability rating.
3. He be reimbursed for out-of-pocket expenses, time off work, and for his personal insurance costs.
4. He be promoted to the grade of senior airman (E-4).

APPLICANT CONTENDS THAT:

He was unjustly forced out of the military under the basis of erroneous enlistment (failed medical/physical procurement standards) subsequent to sustaining a knee fracture and torn meniscus during basic training. However, he was cleared and declared fit by the Military Entrance Processing Station (MEPS) prior to his enlistment.

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

STATEMENT OF FACTS:

The applicant entered military service on 10 January 2012 and was involuntarily discharged with an entry-level separation on 17 February 2012, under the authority of Air Force Instruction 36-3208, with uncharacterized service, by reason of "Failed Medical/Physical Procurement Standards." Prior to service, he had a long-standing history of undergoing prior knee surgery for meniscal injuries; most recently in December 2006 with follow-on care in 2007.

An extract from the applicant's Basic Military Training Record indicates that on 27 January 2012, he was sent to the Trainee Health Facility for sharp knee pains in his left knee, a result of which he was placed on medical hold pending administrative release from service.

[REDACTED]

On 11 February 2012, the applicant was notified of his commander's intent to recommend the applicant for discharge from the Air Force with an entry-level separation under erroneous enlistment. The commander cited his intent was based on a medical narrative, dated 27 January 2012, indicating the applicant did not meet minimum medical standards to enlist into the military service. The applicant acknowledged receipt of the notification and waived his rights to consult with legal counsel and to submit statements in his own behalf. The discharge authority approved the separation and directed the applicant be separated with an uncharacterized entry-level separation. The applicant was separated effective 17 February 2012 after serving one month and eight days on active duty.

AIR FORCE EVALUATION:

AFPC/DPSOR recommends denying the applicant's request to change his separation. DPSOR states the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, is correct. He should not have been allowed to join the Air Force because he had chronic knee pain secondary to left meniscal and left ACL injuries. Had the Air Force known of this condition at the time of his enlistment, the applicant would not have been allowed entry into the military. Although the applicant states his injury was sustained during basic training, his medical condition does not meet assessment standards.

The applicant's discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority.

The complete DPSOR evaluation is at Exhibit C.

AETC/SGPS recommends denying any change to the applicant reenlistment (RE) code. SGPS states the applicant's separation was in accordance with established policy and procedures. Although his knee surgeries were noted, it appears the fact that they remained symptomatic was not. The physical requirements of Basic Military Training (BMT) aggravated his knee to the degree he could no longer continue training. Had the condition and symptoms been disclosed at the MEPS, it is highly probable that a waiver would have been denied to enter active duty. Since the applicant does not meet current medical criteria for military duty, they do not support a change to his RE code.

The complete SGPS evaluation is at Exhibit D.

AFRC/A1K recommends denying the applicant's request for promotion to senior airman (E-4). A1K states the applicant did not meet the minimum requirements for promotion eligibility at the time of his discharge. If the Board changes the record to the extent of

[REDACTED]

[REDACTED]

changing his discharge date to on or after 6 May 2012, it would then be reasonable to expect the applicant would have met the minimum promotion eligibility requirements to senior airman.

The complete A1K evaluation is at Exhibit E.

The BCMR Medical Consultant giving the benefit of the doubt to the applicant, he recommends granting partial relief by changing the record to reflect the applicant was found physically unfit for further military service due to tibial plateau fracture, and was honorably discharged under the provisions of Air Force Instruction 36-3212. The BCMR Medical Consultant states that had the applicant received a bone scan or MRI scan prior to his discharge, it is likely the findings would have been positive for a tibial plateau fracture. Therefore, utilizing the recommended Department of Veterans Affairs (DVA) rating code for tibial plateau fracture, 5259, and noting the maximum possible disability rating, the BCMR Medical Consultant opines the applicant would have been found unfit and discharged, but not retired, from the Air Force. It should be noted the applicant had no evidence of knee joint instability or frequent episodes of locking of the knee joint. Moreover, noting the applicant required ongoing evaluations after his discharge; would have no bearing upon the applicant's final military disposition, but could open an opportunity for his eligibility for care by the DVA.

The complete BCMR Medical Consultant's evaluation, with attachments, is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

He had no intentions of being injured while on active duty and had full intentions of retiring from the Reserves when he retired from his civilian job. When he was injured and placed on medical hold, he was told to go home and have surgery using his own personal insurance. Three weeks later he was being discharged. If he had elected the military to perform his surgery, he would have added seven more months of service time based on when his civilian surgeon released him to return to work without any restrictions. If he had it to do all over again, he would have joined earlier and elected or stay under military pay until September 2012 allowing for a medical board and no out of pocket expenses. He is only requesting changes to his DD Form 214 (date, discharge type, and a service-connected injury) and the reimbursement he was promised.

The applicant's complete rebuttal, with attachments, is at Exhibit E.

[REDACTED]

[REDACTED]

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 an injustice. The BCMR Medical Consultant states that giving the benefit of the doubt to the applicant, it is likely that had he received a bone scan or MRI scan prior to his discharge, the findings would have been positive for a tibial plateau fracture, resulting in a physically unfit finding. In view of this, he recommends the applicant's records be corrected to show that he was discharged. We disagree, as we do not find substantial evidence to substantiate this assumption. Moreover, given our mandate under 10 USC 1552, we must base our decision on whether an applicant has met the burden of establishing the existence of an error or an injustice in the records, rather than rendering a decision based on the benefit of the doubt. In this respect, we note that although the applicant did disclose, prior to entering the Air Force, that he had undergone knee surgeries, he did not disclose that he had a history of chronic knee pain secondary to left meniscal and left anterior cruciate ligament injuries, which, if known by the Air Force, would have precluded his entrance. Furthermore, although this pre-existing condition may have been aggravated during BMT, the evidence of record taken as a whole, is not substantial for us to reach the conclusion that it was permanently aggravated; thus, necessitating his processing through the Military Disability Evaluation System. In view of our above finding the applicant has not demonstrated that his entry-level separation was improper and in the absence of substantial 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.

[REDACTED]



The following members of the Board considered AFBCMR Docket Number BC-2012-02471 in Executive Sessions on 5 March 2013, under the provisions of AFI 36-2603:

XXXXXXXXXXXXXXXXXXXXXXXXX, Panel Chair
XXXXXXXXXXXXXXXXXXXXXXXXX, Member
XXXXXXXXXXXXXXXXXXXXXXXXX, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-02471:

- Exhibit A. DD Form 149, dated 21 May 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOR, dated 10 Jul 12.
- Exhibit D. Letter, AETC/SGPS, dated 24 Jul 12.
- Exhibit E. Letter, AFRC/A1K, dated 27 Aug 12.
- Exhibit F. Letter, BCMR Medical Consultant, dated 16 Jan 13, w/atchs.
- Exhibit G. Letter, SAF/MRBR, dated 5 Feb 13.
- Exhibit H. Electronic Mail, Applicant, dated 12 Feb 13.

XXXXXXXXXXXXXXXXXXXXXXXXX
Panel Chair

