

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974

MAR 10 2014

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]

DOCKET NUMBER: BC-2013-00786

COUNSEL: DAVID P. SHELDON

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. He be granted a medical retirement with 19 years of service.
2. [REDACTED] be rated accordingly.
3. In the alternative, the applicant requests one year of constructive service credit to complete 20 years of service for retirement eligibility.
4. In a letter, dated 13 Aug 13, the applicant amended his request to be credited with five years of constructive service credit so that he could qualify for a 20 year length of service retirement rather than one year of constructive service credit.
5. He be placed on the Temporary Disability Retired List (TDRL).

APPLICANT CONTENDS THAT:

The applicant's counsel states that he should have been medically retired because he had [REDACTED] [REDACTED] that would have precluded his continued active duty service.

His decision to resign rather than continue with the Medical Evaluation Board (MEB) is consistent with [REDACTED] [REDACTED] [REDACTED].

In support of his appeal, the applicant provides a memorandum from counsel; copies of supporting information from his medical records; Officer Performance Reports (OPRs), and various other supporting documents.

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

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974

STATEMENT OF FACTS:

On 23 Jun 09, the applicant submitted a voluntary request to separate upon completion of his Active Duty Service Commitment (ADSC).

On 14 Dec 09, the applicant's request to change his projected separation date to 13 Feb 10 was approved.

On 13 Feb 10, the applicant resigned his Regular Air Force commission, with a reason for separation of completion of required active service. He was credited with 15 years, 8 months and 13 days of active duty service and 3 years, 11 months and 3 days of inactive service.

THE AIR FORCE EVALUATION:

BCMR Medical Consultant recommends granting the applicant one year of constructive service credit; or in the alternative, placing the applicant's name on the TDRL so his present functional status could be assessed.

The Medical Consultant notes that this appears to be the first [REDACTED] [REDACTED] [REDACTED] [REDACTED] there is nothing in the records to question a condition existing prior to service and the applicant has greater than 8 years active duty service.

Rather than proceed with an MEB, the applicant chose to voluntarily separate from the Air Force. This decision to

[REDACTED]

The applicant has not met the burden of proof of error or injustice to warrant a "Permanent Medical Retirement." In addition, his decision to voluntarily resign was made under conditions of [REDACTED] and he may not have fully realized the implications of his decision. With this in mind and the stellar military record of this applicant, the Medical Consultant recommends, for fair and equitable reasons, he be granted one year of constructive credit relief so as to be entitled to retirement.

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974

The Medical Consultant recommends that the applicant contact the Department of Veterans Affairs (DVA) which operates under a different set of laws (Title 38, U.S.C.), with a different purpose. The DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to [and independent of] its demonstrated or proven impact upon a service member's retainability, fitness to serve, narrative reason for separation, or the intervening or transpired period since the date of separation. With this in mind, Title 38, U.S.C., which governs the DVA compensation system, was written to allow awarding compensation ratings for conditions that were not unfitting for military service or at the time of separation. This is the reason why an individual can be found fit for release from military service and yet sometime thereafter receive a compensation rating from the DVA for service-connected, but militarily non-unfitting conditions. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

The complete Medical Consultant evaluation is at Exhibit C.

AFPC/DPSOR recommends denial, stating, in part, that the DD Form 214, *Certificate of Release or Discharge from Active Duty*, is the official source document of an airman's service and they found no error in the preparation of the applicant's 214. The applicant did not provide any evidence of an error or injustice to warrant the requested change to his separation code. Based on the documentation on file in the master personnel records, the discharge to include his separation code as reflected on his DD Form 214 was in accordance with the governing instruction.

DPSOR notes that in regards to the applicant's type of separation, officers may apply to separate when they complete their Active Duty Service Commitment (ADSC). To qualify, an officer's Date of Separation (DOS) must fall on or after the member's Active Duty Service Commitment Date (ADSCD) and no earlier than six months from the date of application.

The complete DPSOR evaluation is at Exhibit D.

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The applicant, through counsel concurs with the BCMR Medical Consultant's analysis and recommendation to grant relief based upon principles of fairness and equity. However, he believes some clarification is in order. In regards to the applicant's service time, the applicant was honorably discharged with 15 years, 8 months, and 13 days of active service and 3 years, 8 months, and 3 days of inactive service (reflecting his time as an USAF Academy cadet). The DPSOR advisory opinion correctly notes these figures but combines them as "satisfactory service" totaling 19 years and 7 months. To clarify, it appears that the applicant's time as a cadet does not count toward his military retirement and the applicant would therefore need five years of constructive credit to be eligible for a military retirement. So he agrees that the Medical Consultant's alternative form of relief may be the most appropriate here-placement on the TDRL. Consistent with this recommendation, the applicant respectfully requests placement on the TDRL and any and all accordant back pay and allowances.

In the alternative, the applicant requests five years of constructive credit that would entitle him to a military retirement. As the Medical Consultant noted the applicant's decision to voluntarily resign, was made under conditions of [REDACTED] and he may not have fully realized the implications of his decision. The Medical Consultant's analysis of his exemplary record and the principles of fairness and equity that govern the Board should provide a sufficient basis for granting constructive credit as an alternative form of relief.

The complete response is at Exhibit F.

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 to warrant a permanent medical retirement or to grant constructive service credit to allow for a length of service retirement. 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 Air Force office of primary responsibility and adopt its 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.

FOR OFFICIAL USE ONLY -- PRIVACY ACT OF 1974

4. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice warranting partial relief. While we note the comments of the Air Force Office of Primary Responsibility (OPR), the BCMR Medical Consultant has provided a thorough review of the applicant's case and has adequately addressed the issues presented, and we are in agreement with his recommendation. While the applicant was being assessed medically [REDACTED], he elected to resign his commission and separate from the Air Force. In our view this decision was premature, therefore, we agree with the BCMR Medical Consultant's alternative form of relief that the applicant's name be placed on the TDRL so that he can be properly assessed and a determination made as to what his final disposition should be. Subsequently, the BCMR Medical Consultant advised the Board that the [REDACTED] in the applicant's case [REDACTED] and recommended a 50 percent disability rating. In arriving at our decisions, we are keenly aware that the courts have held that correction boards have an abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and take steps to grant thorough and fitting relief. Accordingly, we recommend the applicant's record be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT are corrected to show that:

a. On 12 Feb 10, he was found unfit to perform the duties of his office, rank, grade or rating by reason of physical disability incurred while entitled to receive basic pay; that the diagnosis in his case [REDACTED], with a disability rating of 50 percent; that the disability is temporary; that the disability was not due to intentional misconduct or willful neglect; that the disability was not incurred during a period of unauthorized absence; that the disability was not received in line of duty as a direct result of armed conflict.

b. On 13 Feb 10, he was not discharged from all appointments; but rather, on that day, his name was placed on the Temporary Disability Retired List (TDRL).

c. Since this record correction is retroactive to 2010, the member is now overdue for a TDRL re-evaluation under 10 U.S.C. 1210 and AFI 36-3212. [REDACTED]

FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974

[REDACTED] and the applicant's level of impairment in civilian social and industrial adaptability. The results of the re-evaluation must be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions may be completed.

The following members of the Board considered AFBCMR Docket Number BC-2013-00786 in Executive Session on 17 Dec 2013, under the provisions of AFI 36-2603:

[REDACTED]

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 Jan 13, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCOMR Medical Consultant, dated 28 May 13.
- Exhibit D. Letter, AFPC/DPSOR, dated 21 Jun 13.
- Exhibit E. Letter, SAF/MRBR, dated 5 Aug 13.
- Exhibit F. Letter, Applicant's Counsel, dated 13 Aug 13.

PARKER.GREGO
RY.A.1013639376

Digitally signed by
PARKER.GREGORY.A.1013639376
DN: cn=US, ou=U.S. Government, ou=DoD,
ou=PKL, ou=USAF,
cn=PARKER.GREGORY.A.1013639376
Date: 2014.01.31 16:47:41 -0500

GREGORY A. PARKER
Panel Chair