RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2016-00706

COUNSEL: NO

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

She be afforded a Medical Evaluation Board (MEB), and her voluntary separation be changed to a medical retirement.

APPLICANT CONTENDS THAT:

She sustained a leg injury while serving in Germany. She was sent to a MEB, but the MEB process was not completed. She was getting the run around from her command, so he voluntarily separated. She is permanently disable, and there are also major limitations to her mental health as the result of the harassment from her commander. She received an overall 80 percent disability rating from the Department of Veterans Affairs (DVA), proof she should have been medically retired.

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

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 29 Jan 02.

On 4 Jul 11, while stationed in Germany, the applicant suffered multiple fractures to her leg while bungee jumping.

On 15 Dec 11, the applicant was diagnosed with an Adjustment Disorder.

On 6 Jun 12, the applicant was found fit and returned to duty with an Assignment Limitation Code (AFC) C-2 (Mobility Restrictions).

On 22 Jun 12, the applicant was diagnosed with Major Depressive Disorder (MDD).

On 26 Sep 12, the applicant requested a voluntary separation.

On 1 Dec 12, the applicant was furnished an honorable discharge, with a narrative reason for separation of “Miscellaneous/General Reasons,” and was credited with 10 years, 10 months, and 3 days of active service.

According to the documentation submitted by the applicant, on 3 Oct 12, the DVA rated her as having a combined overall disability rating of 80 percent.

The remaining relevant facts pertaining to this application are contained in the memoranda prepared by the Air Force offices of primary responsibility (OPRs), which are attached at Exhibits C and D.

AIR FORCE EVALUATIONS:

The BCMR Medical Consultant recommends denial indicating there is no evidence of an error or an injustice. The applicant has a legitimate argument her femur fracture, surgical revision, and resultant residual pain might have been found unfitting, had her case been forwarded for a full MEB and review by a Physical Evaluation Board (PEB). However, if only found unfit for the femur fracture and repair, under today’s Integrated Disability Evaluation System (IDES), the Military Department would adopt the 10 percent disability rating assigned by the Department of Veterans Affairs, resulting in discharge with severance pay. For the applicant’s right knee, which likely caused or contributed to a disturbance of gait and pain, the DVA granted a 10 percent rating. Although it appears the DVA also granted a rating for both wrists and both knees, the service evidence is lacking for a functional impairment of either contralateral knee or wrist to warrant inclusion as unfitting by a PEB; not to mention a MEB, noting no AF Form 469 was issued for either the wrist or the knee. Thus, considering the probative value of the 10 percent rating assigned for the applicant’s femur, even with inclusion of a 10 percent rating for the applicant’s right knee, the combined rating would fall short of the 30 percent rating qualifying for retirement.

Addressing the 50 percent rating assigned by the DVA for PTSD, the only principal mental health diagnosis in the supplied service treatment records is recorded as Adjustment Disorder; a condition which was not considered a compensable disability at the time. An AF Form 469, *Duty Limiting Condition Report*, was issued for mental health restrictions on 14 May 12, with an expiration date of 29 Sep 12. The check mark placed in code “31” is an indicator the provider expected improvement or resolution within 31 to 365 days. If believed to warrant a MEB/PEB, a check mark would have been placed in code “37.” There is insufficient evidence a diagnosis such as PTSD caused or contributed to or should have contributed to cutting her career short. Finally, there is no evidence to indicate the applicant’s command or her health care providers maliciously ended her MEB or maliciously precluded referral to a PEB.

Recommend denial of the applicant’s request to conduct a MEB or to supplant her voluntary separation with a medical retirement.

A complete copy of the BCMR Medical Consultant evaluation is at Exhibit C.

The AFBCMR Psychiatric Advisor recommends denial indicating there is no evidence of an error or an injustice. The applicant received mental health treatment post-leg injury. Her initial diagnoses was an Adjustment Disorder, however, subsequent to her psychiatric evaluation it was changed to a Major Depressive Disorder (MDD). Ultimately she responded well to the interventions and achieved improvement, though, not a full resolution of symptoms. The applicant did not exhibit anxiety symptoms until her request for voluntary separation, most likely due to the impending transition to the civilian life and the end of her military career.

The applicant was evaluated by the DVA on 6 Mar 13, three months post-discharge. During the exam she was diagnosed as suffering from MDD and Post Traumatic Stress disorder (PTSD) with an occupational and social impairment due to mild or transient symptoms. The DVA awarded her a 50 percent disability rating for her psychiatric illness. However, the fact the DVA granted the applicant a 50 percent disability rating for PTSD/MDD does not invalidate the appropriateness of the military discharge disposition. The military Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active service and were the *cause* for career termination; and then only for the degree of impairment present at the “snapshot” time of separation and not based on post-service progression of disease or injury. In the case of the applicant, there is no indication her Adjustment Disorder or MDD have ever reached a level of unfitness.

Although, the applicant’s psychologist has placed the applicant on a temporary/90-days profile, in June of 2012, and marked code “31” (illness will be resolved within 31 -365 days) on her Form 469, the profile was never renewed and was not elevated to the code “37” to indicate the applicant’s depression requires an MEB or PEB processing. In other words, the applicant’s treating mental health providers, who applicant acknowledges were supportive, did not feel her mental health condition had risen to the level of unfitness.

The DVA is authorized, under Title 38 USC, to offer compensation for *any* medical condition with a nexus with military service, without regard to its proven impact upon a former Service member’s fitness to serve, the narrative reason for release from Service, or the duration of time passed since separation. This is the reason why an individual may be released from Service for one reason and later receive a compensation rating for one or more medical conditions that were not considered militarily unfitting or eligible for military disability processing at the time of military Service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating determinations (increase or decrease) as the level of impairment from a given medical condition may vary (worsen or improve) over the lifetime of the veteran.

The Psychiatric Consultant finds insufficient evidence to warrant the desired change of the record.

A complete copy of the AFBCMR Psychiatric Advisor evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

Copies of the Air Force evaluations were forwarded to the applicant on 17 Nov 17 for review and comment within 30 days (Exhibit E). As of this date, no response has been received by this office.

FINDINGS AND CONCLUSIONS OF THE BOARD:

Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the applicant's contentions, documentation submitted in support of the request, and the available evidence of record, we are not convinced the applicant has provided sufficient evidence for us to conclude she is the victim of an error or injustice. We also note the applicant did not file the application within three years after the alleged error or injustice was discovered, or should have been discovered, as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. While the applicant claims a date of discovery of less than three years prior to receipt of the application, we believe a reasonable date of discovery was more than three years prior to receipt of the application. Therefore, because we do not find it would be in the interest of justice to recommend granting relief, and the applicant has offered no plausible reason for the delay in filing the application, we cannot conclude it would be in the interest of justice to excuse the failure to timely file the application. Accordingly, we find the application untimely.

THE BOARD DETERMINES THAT:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered AFBCMR Docket Number BC-2016-00706 in Executive Session on 12 Mar 18 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 16 Feb 16, w/atchs.

Exhibit B.  Master Personnel Records [Excerpt].

Exhibit C.  Memorandum, BCMR Medical Consultant, dated 17 Jun 16.

Exhibit D.  Memorandum, AFBCMR Psychiatric Advisor, dated 13 Nov 17.

Exhibit E.  Letter, SAF/MRBR, dated 17 Nov 17.

Pursuant to paragraph 1 of AFI 36-2603 (Title 32 Code of Federal Regulations, Part 865.1), it is certified a quorum was present at the Board's review and deliberations, and the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.