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**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2010-03303-2

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**COUNSEL:** Work-Product

**HEARING REQUESTED:** NO

**APPLICANT’S REQUEST**

The Board reconsider his request for the following:

1. His “Uncharacterized” Entry Level Separation (ELS) be upgraded to honorable or general (under honorable conditions).
2. His narrative reason for separation of “Fraudulent Entry into Military Service” be changed to “Secretarial Authority.”
3. His reentry (RE) code be changed to a “1” to allow him to reenlist.

**RESUME OF THE CASE**

The applicant is a former Air Force airman basic (E-1) who enlisted on 17 Jul 07 and was discharged on 30 Oct 07. He was given an “Uncharacterized” ELS with a narrative reason for separation of “Fraudulent Entry Into Military Service.” His RE code is listed as “2C” which denotes ineligibility to reenlist due to involuntarily separated with an honorable discharge, or entry level separation without characterization of service.

On 24 May 11, the Board considered and denied his request for his narrative reason for separation to be changed to erroneous, medical or general; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board took note of the applicant’s complete submission; however, agreed with the rationale and recommendation of AFPC/DPSOS. In this advisory, it was stated, based on the applicant’s own admission, the fraudulent enlistment was the correct basis for discharge. The discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority.

For an accounting of the applicant’s original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 23 Jan 24, the applicant requested reconsideration of his request to change his discharge type, narrative reason, and RE code. He contends, through counsel, his recruiter committed an error in

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discretion by instructing him to submit false medical information. When his unit eventually discovered he was untruthful about his shoulder condition, he stated he did not inform the recruiter of the condition when this was not the truth as he did not want to get the recruiter in trouble. While his command did not commit an error in his discharge, his recruiter did. He admits his error in not disclosing the medical information; however, if he was given proper and truthful information from the recruiter, he could have potentially received a medical waiver to enter service since his shoulder condition at the time of his entry was not aggravated. He never meant to defraud the government, and his narrative reason has a negative connotation. Courts have recognized the punitive nature of negative service characterizations.

He wants to reenter the military and indicates his work experience and education would be an asset to the military. He no longer suffers from a shoulder injury which was repaired in 2011, and he has had no issues since his surgery. In support of his reconsideration request, the applicant submitted the following new evidence to include a personal statement, his college transcripts and degree certificate, his resume, and character reference letters. His character reference letters attest to his character, high morals, honesty and integrity.

The applicant's complete submission is at Exhibit F.

#### **APPLICABLE AUTHORITY/GUIDANCE**

Per Air Force Instruction (AFI) 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, paragraph 5.12, RE codes determine whether or not airmen may reenlist, or enlist in a military service at a later time. They are annotated on military discharge documents and document the airman's RE code at the time of discharge.

Per Department of the Air Force Manual (DAFMAN) 36-2032, *Military Recruiting and Accession*, paragraph 3.4.1, for enlistment waiver authority, the AETC/SG (or appropriate Regular Air Force major command Surgeon General), ANG Command Surgeon (NGB/SG), or AFRC Command Surgeon (AFRC/SG), as appropriate, is the authority to waive physical standards for enlistment in accordance with AFI 48-123, *Medical Examinations and Standards*. Per paragraph 3.7.1.1, the applicant's ability to enlist is determined by reviewing prior service reenlistment eligibility code and other factors. Individual components will do a service eligibility determination to determine applicant's eligibility. Per paragraph 3.7.2, a waiver is a formal request to consider the suitability for service of an applicant who because of inappropriate conduct or morals violations, dependency status, current or past medical conditions may not be qualified to serve. Upon the completion of a thorough examination using a "whole person" review, the applicant may be granted a waiver if the applicant has displayed sufficient mitigating circumstances that clearly justify waiver consideration. For medical conditions, this may require a new physical examination with appropriate medical evaluation to determine medical qualification to enter the Air Force per Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, and AFI 48-123.

AFI 36-3208, *Administrative Separation of Airmen*, dated 9 Jul 04, describes the authorized service characterizations that were applicable at the time of the applicant's separation.

**Honorable.** The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

**Under Honorable Conditions (General).** If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

**Entry Level Separation.** Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

According to AFI 36-3202, *Separation Documents*, Table 4, note 3, time spent in an enlistment that is determined to be fraudulent and has been specifically terminated by reason of fraud is not creditable service.

## **AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application finding no evidence of an error or injustice with the discharge processing. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

The complete advisory opinion is at Exhibit G.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 25 Mar 24 for comment (Exhibit H), and the applicant replied on 29 Apr 24. In his response, the applicant contends, through counsel, a continuing injustice exists, not just with his characterization of discharge, but also with his RE code and narrative reason of separation as these are preventing him from reenlisting into the Air Force, constituting a continuing injustice. The advisory opinion's conclusion no injustice currently exists with his characterization of discharge overlooks the fact an injustice can arise from more than just an applicant's characterization of discharge alone. With requests for correction of

records, material injustice can take several forms and can be upgraded based on post-service activities and accomplishments.

In a similar advisory recommending denial of the applicant's petition, the Board in case number BC-2003-02212 decided favorably in that case which involved a "Fraudulent Entry Into Military Service." In that case, an airman with a history of migraine headaches was instructed by a recruiter to not report the issue since it was not currently affecting him and had not for some time, that it was not an issue. In that case, where AFPC had also recommended denial, the Board concluded the possibility existed where the applicant misunderstood what information was required to be noted on the Standard Form 93, *Report of Medical History* and may have requested help from his recruiter about his history of migraine headaches as a child. The Board recommended to change the reason for his separation to "Secretarial Authority" since the possibility existed the applicant did in fact answer the questions honestly. This case is similar to his case. He made a youthful mistake by following a directive his recruiter gave him, but he was truthful in that his condition had not been bothering him at the time. Although he had incorrectly filled out his enlistment medical documentation based on direction from the recruiter, this would not automatically equate to fraud based on the above case rationale. He did not knowingly falsely represent his medical circumstances for the purposes of his enlistment.

The applicant's complete response is at Exhibit I.

#### **ADDITIONAL AIR FORCE EVALUATION**

The AFBCMR Medical Advisor finds insufficient medical evidence to support the applicant's request for the desired change to his records, i.e., a finding his reason for separation be changed from "Fraudulent Entry." However, there is also no evidence to exclude the possibility the applicant's discharge may have been the result of a misunderstanding rather than willful misrepresentation of his medical history. Thus, the Board may wish to render reasonable doubt in the applicant's favor by granting his request to change the narrative reason for separation to that of "Secretarial Authority" as suggested by the applicant's counsel. Nothing in the reviewed evidence indicates a possibility could not exist whereby the applicant conveyed his medical history honestly, as reportedly instructed by his recruiter, believing his then resolved shoulder pain was immaterial to the military accession process. Consequently, from the perspective of the Medical Advisor, it may be unnecessarily detrimental to the applicant, and perhaps an injustice, to characterize his discharge as the result of a fraudulent entry into the Air Force, which is likely to affect him adversely in perpetuity.

The applicant states his recruiter misinformed him about reporting his prior injury and had his recruiter had been truthful; he could have obtained a medical waiver. Per DODD 6130.3, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, which was in effect at the time of the applicant's service, listed medical conditions that were disqualifying for entry. Although that document was not available for review, a subsequent version DoDI 6130.03, from Apr 10, revised the format and the nomenclature of the directive but did not substantively change the medical standards, which would have been very similar, or in many cases, identical, to those in effect in 2007. Per Enclosure 4, Section 18, *Upper Extremities: paragraph C, Residual Weakness and Pain*, current disease, injury, or congenital condition with residual weakness or symptoms that

prevents satisfactory performance of duty, including but not limited to chronic joint pain associated with the shoulder, the upper arm, the forearm, and the hand; or chronic joint pain as a late effect of fracture of the upper extremities, as a late effect of sprains without mention of injury, and as late effects of tendon injury. Counsel's assertion the applicant could have potentially received a medical waiver to enter service may be reasonable from a medical perspective. Undisputedly, and by his own admission, the applicant's shoulder pain preceded his entry into military service. It is questionable however whether it would have precluded his accession if in fact he had no residual pain or other limitations in May 07, as he and his counsel indicated in their statements to the Board. Per the above-referenced medical standards, "chronic joint pain" or other "late effects," such as reduced range of motion, would have potentially required the applicant to undergo a waiver process, and he still conceivably could have been approved to enter Air Force service even if such issues were present.

Also undisputedly, and by his own admission, the applicant failed to disclose his pre-existing shoulder injury. His narrative reason for separation, "Fraudulent Entry Into Military Service" is addressed in the AFI 36-3208, paragraph 5.13.4 which states fraudulent entry is one involving deliberate deception on the part of the member. Medical circumstances meeting this definition are generally determined to involve conditions that pre-existed military service and were known to the enlistee but were deliberately concealed or misrepresented. The medical evidence in this case does not necessarily contravene such a characterization, but neither does it support deliberate concealment or misrepresentation.

The complete advisory opinion is at Exhibit J.

#### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 15 Oct 24 for comment (Exhibit K), and the applicant replied on 22 Oct 24. In his response, the applicant contends, through counsel, he agrees with the advisory opinion from medical and further finds his full request to include a change to his separation code and RE code and upgrade his discharge to honorable be granted. The physician assistant in orthopedic surgery noted although he should be separated given his significant symptoms, he may reenlist after appropriate physical therapy and rehab. This opinion not only indicates his condition was transitory but also notes nothing in his history suggested his injury was preexisting. As the medical advisory states, the applicant did not knowingly conceal any condition, and it would be unjust to allow this discharge to stand.

The applicant's complete response is at Exhibit L.

#### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of AFPC/DP2SSR against correcting the

record, the Board finds a preponderance of the evidence substantiates the applicant's contentions in part and agrees with the AFBCMR Medical Advisor, the applicant's narrative reason for separation should be changed to "Secretarial Authority." Specifically, the applicant's counsel argued in his response to the AFPC/DP2SSR advisory citing a previous case which allowed the Board to recommend granting the request based on the fact the applicant in that case was under a similar impression his medical condition was not an issue at the time of his enlistment and therefore was not reported. In this case, the Board felt the applicant's reasoning for withholding medical information did not constitute a fraudulent enlistment. In the present case, the Board finds the applicant's situation to be the same in which he did not intentionally withhold medical information with an intent to defraud the government which is sufficient to justify granting the applicant's request for a change to his narrative reason. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. The applicant served less than four months of active service; therefore, the type of separation and character of service are correct as indicated on his DD Form 214. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the Board finds no unusual circumstances of personal conduct and performance of military duty which warrants a characterization of honorable. The applicant did have a pre-existing medical condition at the time which did not meet accession standards. The Board understands the applicant's desire to remove the RE code claiming his medical condition no longer exists; however, the RE code annotated on his DD Form 214 represents the condition for which he was separated and is not subject to change unless an error was made in the original annotation. This decision does not preclude the applicant from pursuing a medical waiver through recruiting services for reentry into the military as outlined in DAFMAN 36-2032. Each component can waive the RE code and enlist an individual if they determine the needs of the component outweigh the reason for the RE code condition/risks; the AFBCMR is not the reenlistment waiver authority. Therefore, the Board recommends correcting the applicant's records as indicated below.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 30 October 2007, he was discharged with a separation code and corresponding narrative reason for separation of JFF (Secretarial Authority).

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2010-03303-2 in Executive Session on 20 Nov 24:

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Panel Chair

Panel Member

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All members voted to correct the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 24 May 11.
- Exhibit F: Application, DD Form 149, w/atchs, dated 23 Jan 24.
- Exhibit G: Advisory Opinion, AFPC/DP2SSR, dated 25 Mar 24.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Mar 24.
- Exhibit I: Applicant's Response, w/atchs, dated 29 Apr 24.
- Exhibit J: Advisory Opinion, AFBCMR Medical Advisor, dated 27 Sep 24.
- Exhibit K: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Oct 24.
- Exhibit L: Applicant's Response, atchs, dated 22 Oct 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

12/5/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF