

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXX

DOCKET NUMBER: BC-2019-05105-3

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to change her honorable discharge to a medical retirement.

RESUME OF THE CASE

The applicant is a former Air National Guard (ANG) airman first class (E-3), who received an honorable discharge on 25 Aug 82, with service credit for 1 year, 10 months and 23 days. On 17 Jan 20, the Board considered and denied her request for a medical discharge, finding that the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted. The Board noted that at the time of the applicant's discharge, she was not found unfit for continued service and there was no evidence her back condition was the cause for career termination; therefore, a medical discharge was not warranted in accordance with DoDI 1332.32, *Physical Disability Evaluation*.

On 14 Apr 21, the Board reconsidered and denied her request for a medical discharge, remaining unconvinced the evidence presented demonstrated an error or injustice to justify relief.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Records of Proceedings at Exhibits I and J.

On 28 Jun 21, the applicant requested a second reconsideration of her request for a medical discharge. She again contends she was hurt during basic training and began suffering from back pain after returning to her home base. During this incident, she was almost killed due to the lack of training in the field. She did not report her back pain until she returned home to her ANG unit. As new evidence, the applicant submitted further medical documentation to include an AF Form 348, *Line of Duty Determination*, documenting her back injury and a letter to her commander requesting a discharge due to lack of training to which he concurred, granting her an honorable discharge due to failure to meet minimum training requirements. In support of her reconsideration request, the applicant contends the medical documentation submitted from the previous appeal was overlooked and not reviewed by a medical advisor. The applicant submitted no new evidence.

The applicant's complete submission is at Exhibit L.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application. The applicant claims her medical records were overlooked from her first appeal to the Board. As previously noted, her submission of “new” information/documents in this second appeal were minimal and emphasized the Line of Duty (LOD) determination and the single entry on the SF 600, *Chronological Record of Medical Care*. It appears from the newly submitted documents that the applicant is weighing heavily on the AF Form 348, dated April 1981, to show that she injured her back and that it was initially determined to occur in the line of duty (ILOD). The date of the LOD (and alleged injury) was one month after the member was released from active duty. It is important to reiterate the diagnosis that was made for the 1981 LOD determination was anatomically different from what was reviewed in the Joint Legacy Viewer (JLV) records from 2016 and beyond. The LOD diagnosis was that of “*contusion para-thoracic muscles*” which means bruising of the chest-level back muscles...nothing to do with the actual spine/vertebra. The thoracic (chest level) of the spine is completely different from the low back or the lumbar spine, anatomically. Consistently, the records in JLV noted that of chronic “low back (lumbar) pain” throughout the later years prior to her having low back surgery in March 2021. Although the AF Form 348 appeared to have been filled out appropriately, its content would reflect something different when compared to the applicant’s e-mail to the Board administrator after her first appeal where she noted hurting her back while in basic training in late 1980s.

Specifically addressing the applicant’s questions and comments from her e-mail response to the Board, this medical advisor will not or cannot say that she did not get hurt in basic training, but can unequivocally say that there is no evidence to prove that an injury occurred while performing basic training activities. As to the applicant’s question of “what time of the service was [she] injured?” This medical advisor can distinctly say it was on 6 Apr 81 (not during basic training) as noted on the LOD determination. The inconsistencies of the anatomic differences from the LOD determination and the future lower back pain issues as well as the basic training occurrence in conflict with the dating of the LOD determination lends a degree of skepticism in the accuracy of the overall circumstances. According to AFI 36-2910, *Line of Duty Determination, Medical Continuation and Incapacitation Pay*, paragraph 1.8.1, an illness, injury, disease or death sustained by a member in any duty status is presumed to be ILOD. Additionally, per paragraph 1.10.1, a determination of ILOD is made when the illness, injury, disease or death was not due to the member’s misconduct and was incurred when the member was present for duty or absent with authority. Lastly, per paragraph 1.3.8, for Air Reserve Component (ARC), LOD determinations are used to establish, manage, and authorize healthcare. Such authorization of healthcare is not in itself synonymous with authorizing someone entry into the Disability Evaluation System (DES); that requires a condition which has progressed to being unfit for continued military service. In this case, the LOD determination was locally determined to be ILOD by the medical officer; however, there was no evidence that such a local determination was sent up to the ANG surgeon’s office for further adjudication. This medical advisor opines that evidence is non-existent as to a basic training back injury and the newly submitted documents of the ILOD determination is insufficient to have had the applicant advance into the DES, but did authorize the initial care and treatment of an injury in accordance with both AFI 36-2910 and AFI 41-210, *TRICARE Operations and Patient Administration Functions*.

The complete advisory opinion is at Exhibit K.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jan 22 for comment (Exhibit L), but has received no response.

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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Evidence is non-existent as to a basic training back injury for the applicant and the newly submitted documents of the in line of duty (ILOD) determination is insufficient to have had the applicant advance into the DES, but did authorize the initial care and treatment of an injury in accordance with both AFI 36-2910 and AFI 41-210. For Air Reserve Component (ARC) members, line of duty (LOD) determinations are used to establish, manage, and authorize healthcare. Such authorization of healthcare is not in itself synonymous with authorizing someone entry into the disability evaluation system (DES); that requires a condition which has progressed to being unfit for continued military service. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2019-05105-3 in Executive Session on 21 Mar 22:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 17 Jan 20.
- Exhibit I: Addendum Record of Proceedings, w/ Exhibits G-H, dated 14 Apr 21.
- Exhibit J: Application, DD Form 149, w/atchs, dated 28 Jun 21.
- Exhibit K: Advisory Opinion, AFBCMR Medical Advisor, dated 22 Jan 22.
- Exhibit L: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jan 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR