

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-03392

XXXXXXXXXX

COUNSEL: NONE

(AKA) XXXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. She be given a medical discharge/retirement.
2. Her narrative reason for separation be changed from "Personality Disorder."

APPLICANT'S CONTENTIONS

She was evaluated for a cardiac condition prior to being separated early and was not processed for a medical discharge/retirement. This condition was documented since 2001. She was treated poorly and harassed while on active duty due to her medical and mental health appointments. There is a mental health stigma from "Personality Disorder" being listed on her DD Form 214, *Certificate of Release or Discharge from Active Duty*.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 19 Nov 02, AF Form 100, *Request and Authorization for Separation*, indicates the applicant was being involuntarily separated with an honorable character of service under the Separation Program Designator (SPD) of "JFX," which denotes "Personality Disorder – A Service initiated discharge directed by established directive when a personality disorder exists, not amounting to a disability which significantly impairs the member's ability to function effectively in the military environment."

On 19 Nov 02, DD Form 214, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving 3 years, 11 months, and 6 days of active duty. She was discharged, with a narrative reason for separation of "Personality Disorder."

On 22 Nov 02, the applicant filed an Inspector General (IG) complaint alleging inappropriate influence on the limitations placed on the applicant by her Primary Care Manager (PCM); inappropriate solicitation of confidential information; creating a hostile work environment and harassment; releasing confidential information; and being rated by an individual who was not her

rater. On 2 Dec 02, the [REDACTED] AW IG Office responded by referring most of her complaints to her chain of command to determine if said incidents happened. The IG Office did uncover another issue finding the Behavioral Health flight received four phone calls from members not in her chain of command alleging the applicant was suicidal. The Deputy Inspector General states “You denied to your doctor having spoken to any of these people concerning your condition. It is possible that security forces squadron members, who possessed this confidential information concerning you, inappropriately discussed it with others and thereby fed the unit rumor mill. You may consider referring this issue to the chain of command.” **(Provided by the Applicant)**

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits D, E, and F.

APPLICABLE AUTHORITY

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal

sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case are within the sound discretion of each Board. In determining whether to grant relief based on equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 28 Jan 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFBCMR Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. However, the Psychological Advisor noted the applicant did not have a valid personality disorder, but most likely had another unsuiting mental health condition that would have resulted in her receiving the same administrative discharge. To correct the identified error, the Psychological Advisor notes the Board could change the applicant's narrative reason for separation to "Secretarial Authority." This will also serve to eliminate the stigma as identified by the applicant. The applicant had no unfitting mental health conditions that would have led to a medical discharge or retirement. The applicant was not clear in her petition in regards to her mental health condition, but she indicated stigma of "Personality Disorder" listed on her DD Form 214 as an error or injustice. The applicant's discharge paperwork and entire service treatment records were not available or submitted for review. Therefore, this advisor is unable to assess them. Assumption of regularity however, is applied as the burden of proof is placed on the applicant to demonstrate there was an error or injustice with her discharge. The applicant was discharged for having an unsuiting personality disorder. Personality disorders are characterized by having an enduring, life-long, pervasive, and stable pattern of behavioral and emotional disturbances causing distress or impairment. The applicant was evaluated and treated by military, Department of Veterans Affairs (DVA), and civilian mental health providers for several years post discharge and none of them identified, observed, or had given her a personality disorder diagnosis. If she truly had a personality disorder, her personality traits would have been apparent and detected by any of her post service providers. Thus, despite the absence of her records confirming her personality disorder and discharge, this advisor finds no validity to her personality disorder diagnosis due to those reasons. Although the validity of her personality disorder has been negated, there is evidence the applicant had a mental health condition during service causing her to seek treatment and leading to her discharge. The exact condition she was diagnosed with in service is not known at this time but was most likely also unsuiting for continued service, as she was never referred to the Medical Evaluation Board (MEB) by her mental health provider for a medical discharge. The records she submitted finds no evidence she had any unfitting mental health conditions during service that would meet criteria for a medical discharge/retirement, she was never placed on a duty limiting condition (DLC) profile for a mental health condition but only for her physical condition, no reports she was deemed not worldwide qualified due to a mental health condition, and no reports

from her leadership her mental health condition interfered with her abilities to reasonably perform her military duties in accordance to her office, grade, rank, or rating. Unsuiting mental health conditions meet criteria for an administrative discharge which she received despite the current narrative reason, and there was no error identified with her administrative discharge.

For awareness, the military's 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*" in time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for *any* medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. The board may elect to apply liberal consideration to the applicant's request due to her contention of a mental health condition, however, there was no evidence she was diagnosed with a personality disorder post discharge and subsequently, would invalidate that her personality disorder was enduring, pervasive, long-life and stable that are required for this type of diagnosis. She most likely had another unsuiting mental health condition because she was never referred to the MEB by her mental health provider. Unsuiting conditions meet criteria for an administrative discharge, which she received, appeared to be appropriate and does not outweigh her original discharge.

The complete advisory opinion is at Exhibit D.

AFPC/DP2SSM recommends denying the applicant's request to change her reenlistment eligibility (RE) code. There is no error or injustice to the RE code assigned to the applicant based on the type of discharge she received. The applicant was involuntarily discharged with an honorable character of service on 19 Nov 02 after serving 3 years, 11 months, and 6 days of active service. Per AFI 36-2606, *Reenlistments in the United States Air Force*, table 3.2, item 3, her RE code is "2C" which denotes "Involuntarily separated with an honorable discharge; or entry level separation without characterization of service." If the Board grants the applicant's request for a medical discharge, per AFI 36-2606, table 3.2, item 16, the appropriate RE code would be "2Q" which denotes "Personnel medically retired or discharged."

The complete advisory opinion is at Exhibit E.

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical discharge/retirement based on her cardiac heart medical condition. The applicant's clinical evaluations nearest to and shortly after her separation date were not available nor submitted for review. Therefore, this advisor is unable to assess them. Assumption of regularity however, is applied as the burden of proof is placed on the applicant to demonstrate there was an error or injustice with her discharge. The evidence she did submit was assessed to not medically or administratively support her request for a finding of a medical discharge/retirement as it pertained

to a non-qualifying cardiac condition. The majority of the applicant's medical records were significantly outside the timeframe of her active duty service. The few records within her service time spanned five months from April 2002 through September 2002 with only two clinical encounters, May and September. As gathered from her physical profiles, as well as the two clinical appointments, the applicant's diagnosis waivered from exertional chest discomfort and palpitations to chronic sinus tachycardia and hypertension. Despite the original cardiology work-up, as well as follow-on specialty care, being unavailable, the April 2002 physical profile indicated that the applicant had been on a restrictive profile since early February 2002. Also, despite further treatment records after the 30 Sep 02 encounter being unavailable, the evidence of 'persisting' adverse symptoms were not able to be fully addressed at the time of separation. However, the verbiage as seen in the applicant's Enlisted Performance Reports (EPR) would indicate a change in profiling to unrestricted activity. According to DoDI 6130.03-Vol 2, *Medical Standards of Military Service: Retention*, section 5.11, the intermittent presence of sinus tachycardia is not a disqualifying condition and the limited evidence of the applicant's EPR's stating either 'meets AF standards' or higher supports evidence that her intermittent tachycardia condition did not significantly interfere with her ability to perform military duties and therefore, was not to be considered as unfitting and not eligible for processing through the DES.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 Dec 21 for comment (Exhibit G), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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. The Board concurs with the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided medical evidence that shows she did not have a valid personality disorder, which is sufficient to justify granting the applicant's request to change her narrative reason for discharge to "Secretarial Authority." 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. Specifically, the Board agrees with the offices of primary responsibility that the evidence the applicant submitted was assessed to not medically or administratively support her request for a finding of a medical discharge/retirement, as it pertained to a non-qualifying cardiac condition. The applicant had no unfitting mental health or other medical condition that would have led to a medical discharge or retirement. Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show on 19 November 2002, she was discharged with a separation code of "JFF" and narrative reason for separation of "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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-03392 in Executive Session on 26 Jan 22:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Sep 20.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 28 Jan 21.
Exhibit D: Advisory opinion, AFBCMR Psychological Advisor, dated 19 Feb 21.
Exhibit E: Advisory opinion, AFPC/DP2SSM, dated 5 Mar 21.
Exhibit F: Advisory opinion, AFBCMR Medical Advisor, dated 28 Sep 21.
Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 6 Dec 21.

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.

X

Board Operations Manager, AFBCMR