

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-02898

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

Her disability rating be increased to 100 percent and she be medically retired.

### APPLICANT'S CONTENTIONS

She endured a neck injury on active duty that caused her to be separated earlier than expected. She suffered from migraines and pain daily. She had surgery on both her hands and elbows. She received a 20 percent disability rating for her cervical strain. The Department of Veterans Affairs granted her a 100 percent disability rating. She hopes the Air Force will accept this and agree to give her a full retirement.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

Dated 27 Aug 12, AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (PEB)*, found the applicant unfit due to a Major Depressive disorder, rated at 50 percent and Bulimia Nervosa (IPEB Referred as Eating Disorder Not Otherwise Specified) at zero percent. Both conditions existed prior to service with Service Aggravation. The AF Form 356 also reflects that her medical conditions of Neuritis, Median and Ulnar Nerve, Left Elbow; Carpal Tunnel Syndrome, Left Upper Extremity; and Cervical Strain with Intervertebral Disc Syndrome were conditions that can be unfitting but were not currently compensable or ratable.

On 4 Sep 12, the applicant agreed with the findings and recommended disposition of the Informal PEB and waived the right to a formal PEB hearing.

On 5 Sep 12, the Secretary of the Air Force directed the applicant be placed on the temporary disability retired list (TDRL).

Dated 12 Sep 12, Special Order Number Work-Product, indicates that effective 28 Oct 12 the applicant was relieved from active duty and placed on the TDRL in the grade of A1C with a compensable percentage for physical disability of 50 percent, effective 29 Oct 12. Issued 28 Oct 12, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects she was retired in the grade of airman first class (E-3) with a narrative reason for separation of "Disability, Temporary, Enhanced."

Dated 4 Mar 14, AF Form 356, found the applicant unfit due to a Major Depressive disorder and Bulimia Nervosa (IPEB referred as Eating Disorder Not Otherwise Specified) Both conditions existed prior to service with service aggravation.

On 4 Apr 14, the Secretary of the Air Force directed the applicant be removed from the TDRL.

On 24 Apr 14, per Special Order Number Work-Product, the applicant was removed from the TDRL an discharged in the grade of A1C by reason of physical disability with entitlement to disability severance pay (DWSP).

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### **AIR FORCE EVALUATION**

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time the PEB processed her disability case. On 4 Mar 21, the applicant underwent TDRL reevaluation and the IPEB determined that her unfitting medical conditions had apparently improved since being placed on TDRL and appeared to have stabilized. Based on that, the IPEB found the applicant unfit and recommended DWSP with a compensable disability rating of 10 percent. She was removed from the TDRL effective 24 Apr 14. Under the Air Force system (Title 10, United States Code [U.S.C.]), the PEB must determine whether an Airman's medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. Although the applicant had subsequent surgeries and the DVA provided service connection for her Carpal Tunnel Syndrome, back condition and migraine headaches and ultimately awarded a 100 percent disability rating several years after separation from the Air Force it does not warrant change to her disability evaluation system rating after the fact.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 12 Mar 21 for comment (Exhibit D), but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application was not 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board

also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

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 Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2020-02898 in Executive Session on 14 Jun 21:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted against correcting 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: Advisory opinion, AFPC/DPFDD, dated 12 Mar 21.  
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 12 Mar 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**

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Board Operations Manager, AFBCMR