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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01666

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her medical discharge be upgraded to medical retirement.

Her Generalized Anxiety Disorder (GAD) be added.

APPLICANT'S CONTENTIONS

She was medically discharged as a result of a Medical Evaluation Board (MEB) that mis/underdiagnosed her mental and physical health conditions. The MEB was insufficient and the medical information available in her record to support a medical retirement was blatantly ignored. She was diagnosed with a rare and chronic illness while on active duty and instead of receiving treatment or medical care she was discharged. The lack of access to medical retirement benefits has been and continues to be a hindrance to her ability to seek and obtain healthcare. Furthermore, her discharge status is a constant source of distress, and contributes to her mental health struggles.

In support of her request, the applicant provides DES documentation, her appeal to the MEB and a current list of service-connected disabilities and ratings from the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force technical sergeant (E-6).

On 7 Jul 03, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). She was discharged from the DEP and enlisted in the Regular Air Force 9 Dec 2003 for a period of six years.

Dated 30 Mar 18, a DVA DES Proposed Rating memo provided by the applicant, indicates she was awarded service-connection for GAD and unspecified depressive disorder (claimed as PTSD), chronic; adjustment disorder with anxiety and depressed mood; anxiety disorder; depression with vitamin D deficiency; and insomnia (with fatigue) with an evaluation of 30 percent.

On 28 Aug 18, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received an honorable discharge with a narrative reason for separation of "Disability,

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Severance Pay, Non-Combat, IDES” and was credited with 14 years, 8 months, and 20 days of total active service.

An ebenefits Rated Disabilities website page, provided by the applicant, indicates she was awarded service-connection for GAD and unspecified depressive disorder (claimed as PTSD) with an evaluation of 50 percent effective 19 Jul 19.

For more information, see the excerpt of the applicant’s record at Exhibit B.

APPLICABLE AUTHORITY/GUIDANCE

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.

Currently, service members diagnosed with mental health conditions receive heightened screening to ensure the causal relationship of possible symptoms and discharge basis is fully considered, and characterization of service is appropriate. Veterans discharged under prior procedures, or before verifiable diagnosis, may not have suffered an error because the separation authority was unaware of their condition or experience at the time of discharge. However, when compared to similarly situated individuals under current standards, they may be the victim of injustice because commanders fully informed of such conditions and causal relationships today may opt for a less prejudicial discharge to ensure the veteran retains certain benefits, such as medical care.

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.

The Board sent copies of the Board guidance memoranda (Exhibit G) to the applicant on 26 Aug 22.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application for a medical retirement and that her GAD be added to her list of unfitting Disability Evaluation System (DES) conditions. The applicant was referred for a MEB for a potentially unfitting condition of Migraine Headaches. The MEB Narrative Summary mentions that anxiety could be a contributing factor to the member’s migraines but otherwise the anxiety was unremarkable. Additionally, a review of the member’s military medical records and the DVA’s Compensation and Pension examinations was conducted by the staff psychiatrist which did not reveal any potentially unfitting mental health conditions. The

Informal Physical Evaluation Board (PEB) found the applicant unfit for Migraines including Migraine Variants with a zero percent disability rating and recommended Disability with Severance Pay (DWSP). The applicant disagreed with the IPEB findings and requested a Formal PEB. Subsequently, the Office of Airmen's Counsel contended the applicant's case should be returned without action or the FPEB find her Idiopathic Orthostatic Hypotension as additionally unfitting. The FPEB agreed with the applicant's contention that her Idiopathic Orthostatic Hypotension should also be unfitting because the condition had been diagnosed by treating providers and evaluated and rated by the DVA and added the condition to her list of Category I, Unfitting Conditions with a 10 percent disability rating and DWSP. The FPEB also added GAD to Category II, Conditions That Can Be Unfitting but Are Not Currently Unfitting. The applicant agreed with the FPEB findings but requested a one-time DVA Rating Reconsideration to increase her percentage for migraines; however, DVA denied her request and she was DWSP with a 10 percent disability rating. She provided her current DVA ratings which list her conditions of GAD and Migraines both with a 50 percent rating and effective 19 Jul 19, almost 11 months after her separation from the Air Force. However, GAD was considered not unfitting for DES purposes.

The Air Force and the Department of Veterans Affairs (DVA) disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the Physical Evaluation Board (PEB) must determine whether an Airman's medical condition renders them unfit for continued military service relating to their office, grade, rank or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (a snapshot in time). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA "based on new and/or current exams conducted after discharge from service" does not warrant a change in the total compensable rating awarded at the time of the member's separation.

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 18 Jan 22 and 27 Jan 22 for comment (Exhibit D), and the applicant replied on 10 Feb 22. In her response, the applicant contends the neurologist summary of her health statement was not considered in the MEB process and is still being ignored, specifically "it is clear from the patient's history that anxiety and stress, lack of sleep, new medical conditions, increase the patient's migraine headaches, which can be very difficult to control and interfere with her ability to work." She was improperly rated and was simply discharged and has struggled since discharge to get medical care. She has provided her DES one-time appeal, dated 18 May 18 which included her neurologist's statement.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the desired changes to the applicant's records. A review of her available service treatment records finds there was no evidence to support the applicant's contentions and no evidence she had any unfitting mental health conditions to include GAD that

would provide her with additional disability ratings. The applicant's service treatments revealed she received individual psychotherapy, group therapy, psychological testing, and psychiatry/medication management services during service but none of her providers had determined her mental health condition had interfered with her ability to reasonably perform her military duties in accordance with her office, grade, rank or rating. She was never placed on a duty limitation code profile for her mental health condition and was never deemed not world-wide qualified (WWQ) due to her mental health condition. In fact, her last psychotherapy treatment notes reported her anxiety and depression have been improving, her stress with her daughter had improved, and her prognosis was "good." Her psychiatrist reported similar information and reported her anxiety and depressive symptoms were mild and improving and was not referred to the MEB for these reasons. Although the applicant was never referred to the MEB or IPEB for her mental health conditions, her mental health conditions of GAD and unspecified depressive disorder were assessed and considered by the FPEB by appeal. The FPEB cited the same reasons as her psychotherapy and psychiatry providers—her anxiety and depressive symptoms have improved, her prognosis was "good," she was WWQ, she elected to decline medication to moderate her anxiety and depressive symptoms, and she had not undergone any neuropsychological testing as reasons her mental health condition was found not unfitting. The psychological advisor concurs with the FPEB's decision and rationale. The applicant contended she was mis/underdiagnosed, and her records did not contain verbiage for ratings. Her military providers provided the appropriate rationale for her mental disorder diagnoses specifically for GAD and unspecified depressive disorder and their diagnoses were consistent with one another. The DVA also concurred and identified the same diagnoses for which she had received a disability rating and recurring compensation. She did not provide any records to corroborate her claim she was mis/underdiagnosed and all records she submitted showed the same diagnoses given in service. Therefore, her mental disorder diagnoses given during service were valid. There was no error or injustice identified with her PEB/DES process and discharge from service.

The Board applied liberal consideration to the applicant's request. The following are responses based on information presented in the records to the four questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant requests a medical retirement for her mental health condition identified as GAD and unspecified depressive disorder.
2. Did the condition exist or experience occur during military service?
There is evidence she received mental health treatment and was given a diagnoses of GAD and depressive disorder NOS or unspecified depressive disorder during military service.
3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence her mental health condition to include GAD and unspecified depressive disorder had elevated or was found unfitting by the IPEB or FPEB causing career termination. Her psychotherapy and psychiatry providers both reported her anxiety and depressive symptoms have improved and her prognosis was reported as "good" and "fair". She was never placed on a DLC profile for her mental health condition, was never deemed not WWQ, and no evidence her mental health condition had impacted her ability to perform her military duties. Therefore, her mental health condition does not excuse or mitigate her discharge.
4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition was never found unfit by the IPEB and FPEB, her condition or experience does not outweigh her current discharge and would not provide to her the additional rating necessary for a medical retirement.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Aug 22 for comment (Exhibit F), and the applicant replied on 29 Aug 22. In her response, she non-concurs with the letter she received that states her Military Human Resource Record (MHRR) was destroyed in the fire at the National Personnel Record Center (NPRC) during the fire in 1973 because she was discharged in 2018 so her record is digital. Next, her medical record is littered with anxiety and depression diagnoses and treatments. During her treatment, while stationed at Lackland, she was enrolled in a specific treatment through the behavioral health clinic to help with depression, anxiety, and insomnia. The records of that treatment as well as each encounter with a mental health professional to verify her competency to hold a clearance gives the context that her evaluation in 2018 was anything but a standard periodic assessment. In addition, the statement that she was never put on a non-deployment status due to mental health is false. She was documented to be on a non-deployable status, due to mental health reasons; and in addition to the non-deployability, she was also medically assigned work hours. Also, there was also a false context in the way her medication management was spoken of. The facts are she was given multiple mental health medications to see which if any helped, but when none worked and the side effects were unbearable, she didn't want to keep checking off the list of medications as her my medical record show over 200 prescriptions.

The applicant's complete response is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).
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 AFRBA Psychological Advisor and finds insufficient evidence to support the applicant's requests for a medical retirement based on her mental health condition and that her General Anxiety Disorder (GAD) be added to her list of unfitting Disability Evaluation System (DES) conditions. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence her mental health condition had a direct impact on her discharge, her condition or experience does not excuse, mitigate, or outweigh her discharge. Finally, we note the applicant was sent a letter, reflecting her Military Human Resource Record (MHRR) was destroyed in the fire at the National Personnel Record Center (NPRC) in 1973. However, on 19 Sep 22, the Board staff notified the applicant that her MHRR was available and used while adjudicating her case. Therefore, the Board recommends against correcting the applicant's record.
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

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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-2021-01666 in Executive Session on 18 Feb 22 and 21 Sep 22:

-  *Work-Product*, Panel Chair
-  *Work-Product*, Panel Member
-  *Work-Product*, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 Apr 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, dated 4 Nov 21.
- Exhibit D: Letter, SAF/MRBC, 18 Jan 22.
- Exhibit E: Applicant’s Response, dated 10 Feb 22.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 14 Feb 22.
- Exhibit G: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 26 Aug 22.
- Exhibit H: Applicant’s Response, dated 29 Aug 22.
- Exhibit I: Letter, SAF/MRBC, dated 19 Sep 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.

3/9/2023

 *Work-Product*

Board Operations Manager, AFBCMR
Signed by: USAF