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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01801

Attorney-Client

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

A medical evaluation board (MEB) be held to consider her for medical retirement due to post-traumatic stress disorder (PTSD), migraines and bulging discs.

APPLICANT'S CONTENTIONS

In 2008, she returned from a deployment to Qatar with bulging discs, severe PTSD and anxiety, as well as chronic migraines from the anthrax vaccination and was placed on multiple debilitating prescriptions. She served over 15 years in the Air Force Reserve and was put into Individual Ready Reserve (IRR) status in Oct 18 after being denied re-entry due to her severe PTSD. In 2017, the Department of Veterans Affairs (DVA) rated her PTSD with 70 percent disability rating and an overall 90 percent disability rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) master sergeant (E-7).

On 30 Jul 02, the applicant entered the AFR.

On 3 Oct 08, the applicant was issued a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for the period of 29 Apr 08 thru 3 Oct 08 indicating she served in the area of responsibility in support of Operation ENDURING FREEDOM from 2 May 08 thru 5 Sep 08.

On 10 Mar 17, the applicant's commander initiated the applicant's involuntary reassignment to the non-participating IRR in accordance with (IAW) AFI 36-2115, *Assignments Within the Reserve Components*, Table 4.3., Rule 15 (manpower change). The applicant was directed to acknowledge receipt within 24 hours upon receipt and informed she may provide a rebuttal within 15 calendar days.

On 28 Apr 17 and on 15 Jun 17, according to a notarized statement from the noncommissioned officer in charge (NCOIC), Force Management, Headquarters IRR Integration Organization (HQ RIO), dated 14 Nov 17, the commander's notification for involuntary reassignment action was mailed twice to the applicant via certified mail with certified mail receipt returned signed by the applicant each time, but the acknowledgement memo was not returned.

On 13 Apr 18, the applicant's commander approved the applicant's involuntary IRR Reassignment effective 1 Oct 18.

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Controlled by: SAF/MRB
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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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On 1 Oct 18, according to Reserve Order **Work-Product**, dated 15 Oct 18, the applicant was assigned to the IRR for reason, “unit deactivated, relocated, or manpower authorization changed, and member declines/fails to accept reassignment for [sic] retraining to a SELRES (selective reserve) position.”

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

APPLICABLE AUTHORITY

The Department of Defense (DoD) and the DVA disability evaluation systems operate under two separate laws. Under Title 10, United States Code, Physical Evaluation Boards must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. The fact that a person may have a medical condition does not mean the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. If the board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Further, it must be noted the Air Force (AF) disability boards must rate disabilities based on the member's condition at the time of evaluation; in essence a snapshot of their condition at that time. It is the charge of the DVA to pick up where the AF must, by law, leave off. Under Title 38, the DVA may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies.

10 United States Code (U.S.C.) 12731b, *Special rule for members with physical disabilities not incurred in the line of duty.* In the case of a member of the Selected Reserve of a Reserve component who no longer meets the qualifications for membership in the SELRES solely because the member is unfit because of physical disability, the Secretary concerned may determine to treat the member as having met the service requirements if the member has completed at least 15, and less than 20, years of service.

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 on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 7 Feb 22, the Board staff provided the applicant a copy of the clarifying guidance (Exhibit F).

AIR FORCE EVALUATIONS

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant’s request for a disability discharge based on mental health. There is evidence the applicant was diagnosed with PTSD by the DVA due to her military experiences in Qatar. However, being diagnosed and receiving treatment for PTSD do not

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automatically make the condition as unfitting for continued military service that would meet criteria for a referral to the MEB for a potential medical discharge. She was never referred to the MEB for her mental health condition. Furthermore, since the applicant was a Reservist, there was no In Line of Duty (ILOD) determination completed or approved for her mental health condition. Hypothetically, if she had received an approved ILOD for her mental health condition, there is still not enough information to warrant a referral to the MEB. There is no evidence the applicant was placed on a duty limiting conditions (DLC) profile for PTSD or other any mental health conditions, she was never deemed not worldwide qualified due to her mental health condition, and no statements or observations from her commander or leadership in her records her mental health condition had interfered with her ability to reasonably perform her military duties in accordance to her office, grade, rank or rating.

The complete advisory opinion is at Exhibit C.

The BCMR Medical Advisor recommends granting the applicant a retirement, noting that the applicant had completed 15 satisfactory years of service under Title 10 U.S.C., Section 12731b, effective date of her transfer to the IRR, due to chronic cervical degenerative disc disease, which was potentially disqualifying and progressed to unfitness, but was not proven permanently service-aggravated, in its most contemporaneous state at the time of transfer to the IRR.

In no instance did the applicant's active orders require extension due to an unresolved medical condition that occurred while on active duty orders; but particularly following the period ending on 3 Oct 08, during which her alleged cervical disc bulges were sustained. Therefore, while one or more medical conditions or events may have been found ILOD during the applicant's periods of service, if, after resolution and return to unrestricted duty, there is a recurrence, exacerbation, worsening of the condition(s), a new LOD Determination must be made. Nevertheless, under *Prior Service Condition* policy, in DoDI 1332.18, "Any medical condition incurred or aggravated during one period of active service or authorized training in any of the Military Services that recurs, is aggravated, or otherwise causes the member to be unfit, should be considered incurred ILOD, provided the origin of such *condition* or its current state is not due to the Service member's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Service member was not in a duty status." The medical advisor opines the applicant's progression to *unfitness* was due to the expected natural progression of the *degenerative disc disease process* over time.

The applicant was not sustained on an AF Form 469, *Duty Limiting Condition Report*, of the sufficient duration nor under the appropriate code ["37"] to trigger referral to the Deployment Availability Working Group (DAWG) for consideration of MEB processing due to either a physical or mental impairment. It must also be stated that headaches and vertebral disc bulges, in and of themselves do not warrant a medical separation or retirement. The medical conditions must be shown to prevent the member from reasonably performing the duties of his or her office, grade, rank, or rating. If one considers the Medical Group *should have disqualified* the applicant for continued service, prior to her transfer to the IRR, then noting she had completed 15 years of satisfactory service, the medical advisor opines an appropriate remedy would be to offer her a retirement, under provisions of Title 10 U.S.C., Section 1207a, for individuals found medically disqualified for non-duty related medical conditions, who have achieved at least 15, but less than 20 satisfactory years of service.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

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The Board sent copies of the advisory opinions to the applicant on 7 Feb 22 for comment (Exhibit E) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFRC/SGO notes the BMCR Medical Advisor's opinion, however, recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. Although the applicant does have LODs related to her deployment at the time of her placement into the IRR and there is evidence of chronic cervical degenerative disc disease, the applicant appeared to meet retention standards or at least would have been returned with an assignment limitation code and therefore not eligible for a MEB and medical retirement. As far as entering the Air National Guard (ANG), if she was in the IRR for greater than 12 months, the applicant would have to meet accession standards which she may not have been able to meet with her DVA listed diagnoses.

There is no evidence that at any point in time during the applicant's military service the applicant was considered to have a disqualifying medical condition. No Initial Review in Lieu Of (IRILO) was ever submitted to AFRC/SGO. The applicant had an evaluation as late as 2017 and she had no complaints of any long standing medical concerns other than some neck pain. The applicant feels as if around 12 Jun 17, she should have undergone an MEB but medical records from this time state that the applicant was worldwide qualified and there was no indication to submit an IRILO.

Current medical standards state that migraines do not meet retention criteria when attacks result in frequent absences from duty, mobility, or require frequent follow up. There were no profiles issued for migraines. The applicant was receiving treatment for her neck and did have various profiles but at the time of placement into the IRR, she had only fitness restrictions. The applicant in fact specifically stated in her last physical health assessment (PHA) that she had no concerns regarding her physical or mental health.

The process by which the DVA rates disabilities is outside the scope of AFRC/SGO. It is often that members with high DVA ratings are considered qualified for service. There is not a direct correlation from the percentage given by the DVA and the current status of the problem which is what is most important in determining medical qualification for continued service.

The applicant states that she was placed into the IRR after being denied re-entry due to severe PTSD. Evidence submitted shows the applicant was placed into the IRR and was relieved due to an expired term of service (ETS). There is no evidence that she was placed into the IRR due to any medical condition. If the applicant was trying to enter the Air National Guard after being in the IRR for over 12 months, she would have to meet accession standards, not retention standards. It is possible that the applicant would not meet accession standards without a waiver, but at the time she certainly met retention standards.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Oct 22 for comment (Exhibit H) 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, it is the Board majority's opinion the applicant is the victim of an error or injustice. The Board notes the Psychological Advisor finds insufficient evidence to support a disability retirement based on mental health reasons and AFRC/SGO finds the applicant is not eligible for a MEB and medical retirement, and we agree. Although the applicant's medical conditions are not warranted to process through the disability evaluation system (DES) as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4, as they were not a basis for career termination nor entry into the DES, she had achieved at least 15 satisfactory years for retirement under 10 U.S.C. 12731b due to her potentially disqualifying chronic cervical degenerative disc disease at the time of her transfer to the Individual Ready Reserve (IRR). Therefore, the Board agrees with the rationale and recommendation of the AFBCMR Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. 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. Due to her mental health condition, the Board applied fundamental fairness to her request IAW the Under Secretary of Defense supplemental guidance (Wilkie memo), dated 25 Jul 18, specifically paragraph 6.h., and considered relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety, and does not find her PTSD was unfitting at the time of her transfer to the IRR to justify a medical retirement. Therefore, the Board majority 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 APPLICANT be corrected to show:

a. On 1 Oct 18, she was not medically cleared for separation, but she was medically disqualified for her chronic cervical degenerative disc disease and she was retired under Title 10, United States Code (U.S.C.), Section 12731b, having achieved at least 15, but less than 20 years of satisfactory service.

b. Her election of the Survivor Benefit Plan option will be corrected in accordance with her expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

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-2021-01801 in Executive Session on 23 Feb 22 and 10 Jan 23:

Attorney-Client

Panel Chair
Panel Member

Attorney-Client

Panel Member

A majority of the panel voted to correct the record. *Work-Product* voted against correcting the record; however, she did not provide a minority opinion. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Mar 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFRBA Psychological Advisor, dated 14 Oct 21.
- Exhibit D: Advisory opinion, AFBCMR Medical Advisor, w/atchs, dated 23 Nov 21.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 7 Feb 22.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Clarifying Guidance), dated 7 Feb 22.
- Exhibit G: Advisory opinion, AFRC/SGO, dated 20 Apr 22.
- Exhibit H: Notification of advisory, SAF/MRBC to applicant, dated 26 Oct 22.

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.

6/14/2023

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Attorney-Cl...

Attorney-Client

Board Operations Manager, AFBCMR

Signed by: USAF