

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02230

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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### APPLICANT'S REQUEST

1. Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflect her narrative reason for separation be changed from "Completion of Initial Active Duty Training" to "Service-Connected Disability."
2. Her NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflect her reason for separation be changed from "Physical Disqualification" to "Service-Connected Disability."

### APPLICANT'S CONTENTIONS

Her discharge code is preventing her from qualifying for veteran benefits as she does not meet the requirements. She was granted a 30 percent service-connected disability rating for anxiety and depression in Dec 20 by the Department of Veterans Affairs (DVA). She was honorably discharged from the Air National Guard (ANG) in 2008 and was told not to return to duty due to a medical disqualification but her DD Form 214 and NGB Form 22 do not reflect separation due to a service-connected disability, thus it has caused issues with qualifying for benefits. She was discharged improperly and has very little documentation to prove what happened. She spent years working on getting her records fixed; she thought once the DVA determined her anxiety and depression was in-fact due to service-connection, that would be all she needed, but it has not worked out that way. She has been advised that her DD Form 214 and NGB Form 22 are still interfering with her receiving DVA benefits.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air National Guard airman first class (E-3).

On 4 Nov 06, (Corrected per DD Form 215) DD Form 214, reflects the applicant was honorably discharged in the grade of airman first class (E-3) after serving 4 months and 11 days of active duty. She was discharged, with a narrative reason for separation of "Completion of Initial Active Duty Training."

On 2 Oct 08, NGB Form 22, reflects the applicant was honorably discharged from the Air National Guard after serving two years, six months, and two days of total service for pay. She was discharged, with a narrative reason for separation of "Physical Disqualification."

On 2 Oct 08, according to Special Order XXXX, dated 23 Jan 09, the applicant was honorably discharged from the XXXX Air National Guard due to being medically disqualified for worldwide duty – failed to respond to Disability Evaluation System (DES) correspondence.

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

### **AIR FORCE EVALUATION**

NGB/SGPS recommends denying the applicant's request for a change to her narrative reason for separation. Based on the documentation provided by the applicant and analysis of the facts, this application request requires military and civilian medical records in order to provide a medical recommendation for eligibility of disability evaluation per AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. No military medical records were provided with this application for review. It is the applicant's burden to provide proof of error or injustice. Without military medical records, our office is unable to review the case to recommend if the condition(s) were incurred or service aggravated while in a qualified duty status or incurred/aggravated in a non-duty status. All military and civilian medical documentation related to all potentially disqualifying medical conditions should include pertinent labs, diagnostic reports, specialty consults, and/or encounter notes related to the condition(s).

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 14 Mar 22 for comment (Exhibit D), and the applicant replied on 14 Mar 22. In her response, the applicant contends she returned from basic military training and technical school in Nov 06 and attended unit training assemblies as required. Her experiences in the military caused anxiety and depression. In 2007, her civilian doctor diagnosed her with anxiety and depression and she was placed on anti-depressants. She informed her guard unit and was told she could not perform her military duties while on this particular medication. She contacted her unit but received no other guidance with regards to her medical condition or her attendance. She moved out of the area and received a dishonorable discharge due to being absent without leave (AWOL) [sic]. Her discharge was due to her depression and anxiety; her leadership failed to document and follow the correct procedures for discharge nor did they offer any solution or help with her situation. She did not realize this until 2020 when she applied for DVA disability benefits. As further evidence, the applicant submitted her medical records.

The applicant's complete response is at Exhibit E.

### **ADDITIONAL AIR FORCE EVALUATION**

NGB/SGP recommends denying the applicant's request for a change to her narrative reason for separation. The applicant's anxiety and depression was diagnosed and treated while the applicant

was in a non-duty status. No additional supporting medical documentation was provided to substantiate the applicant's contention that her unfitting anxiety and depression was incurred or aggravated while on published orders or inactive duty training status.

The DES, can by law, under Title 10, U.S.C., only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. The DVA on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran. The DVA granted the applicant a 30 percent service-connected disability rating for persistent depressive disorder, with anxious distress, not in remission, early onset, with persistent major depressive episode effective 22 Dec 14.

The complete advisory opinion is at Exhibit F.

NGB/A1PP recommends denying the applicant's request for a change to her narrative reason for separation finding no evidence of an error or injustice. The applicant does not have sufficient documentation to support the claim. NGB/A1PP would not be able to recommend approval without further review and recommendation from NGB/SG. Additionally, per AFI 36-3202, *Separations Documents*, the applicant received the appropriate DD Form 214 based on the reason of action which was "Completion of Initial Active Duty Training" and therefore does not constitute a correction to her DD Form 214 with a date of separation of 22 Nov 06. The applicant does not qualify for an additional DD Form 214 with a date of separation of 2 Oct 08.

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 9 Jun 22 for comment (Exhibit H), however, the applicant has not replied.

## **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 recommendations of NGB and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the medical records provided by the applicant were not sufficient enough to warrant a change to her discharge documents granting her a service-connected medical separation. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical

separation or retirement. The applicant's military duties were not degraded due to her medical condition, although they did impact her deployability. A Service member shall be considered unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. The Board notes the applicant was discharged from the ANG due to being medically disqualified for worldwide duty and failed to respond to DES correspondence. If the applicant has evidence to the contrary, the Board encourages her to submit this evidence for reconsideration. Furthermore, 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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.

## 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-2021-02230 in Executive Session on 24 Mar 22 and 22 Jul 22:

, 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 24 Jun 21.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, NGB/SGPS, dated 7 Mar 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Mar 22.  
Exhibit E: Applicant's Response, w/atchs, dated 14 Mar 22.  
Exhibit F: Advisory Opinion, NGB/SGP, dated 9 May 22.  
Exhibit G: Advisory Opinion, NGB/A1PP, dated 6 Jun 22.  
Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jun 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