

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02394

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her "Uncharacterized" Entry Level Separation (ELS) be upgraded to an honorable discharge.

### APPLICANT'S CONTENTIONS

During basic military training (BMT) she injured her ankle; was diagnosed with a grade 2 ankle sprain; and instructed not to put weight on it for three days. When she returned to her flight, she was told she would need to participate in flight formations and drill, contrary to her medical discharge orders. Due to this, her condition worsened. She was placed on a medical hold and was further diagnosed with stress fractures in both her feet and her right femur. When she was finally seen by a Podiatrist, she was diagnosed with flat feet, pes planus and was recommended for a discharge due to an erroneous enlistment. To this day, she continues to have problems with pain and swelling and would like her discharge upgraded so she can receive proper medical care from the Department of Veterans Affairs (DVA) for an injury that occurred while she was in the service.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 14 Aug 06, the applicant's commander recommended the applicant receive an ELS from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.14 for an erroneous enlistment due to the 9 Aug 06, medical narrative summary that found she did not meet the minimum medical standards to enlist due to her medical condition of pes planus which was found to be existed prior to service (EPTS).

On 16 Aug 06, the Chief of Litigation found the discharge action legally sufficient.

On 18 Aug 06, the discharge authority directed the applicant be discharged for erroneous enlistment, with an uncharacterized service characterization.

On 22 Aug 06, the applicant received an uncharacterized, ELS. Her narrative reason for separation is "Failed Medical/Physical Procurement" and she was credited with three months and seven days of total active service.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

According to AFI 36-3208, incorporating changes through 8 Jun 17, paragraph 1.18, the types of service characterization are as follows:

**Honorable.** The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

**Under Honorable Conditions (General).** If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

**Under Other than Honorable Conditions.** When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

**Entry Level Separation.** Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

## **AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends denying the applicant's request to have her "Uncharacterized" ELS be upgraded to an honorable discharge but does find an error with her narrative reason for separation and recommends it be changed to "Secretarial Authority." The authority for the ELS separation under AFI 36-3208, Section A3.5 was correct in this case as the applicant was within her first 180 days of service and thereby was assigned an uncharacterized character of service. However, in reviewing this case, it appears that the podiatrist, whom recommended ELS for pes planus, was (although not documented) relating to physical accession standards for the military whereby pes planus is indeed a disqualifying condition. Nonetheless, to be a disqualifying condition, there are certain parameters set about the pes planus condition. According to DoDI 6130.03, *Medical Standards for Military Service*, Section C, paragraph (5),

only “rigid or symptomatic pes planus” is disqualifying. When reviewing the applicant’s enlistment physical examination which was accomplished in May 06, under “feet” only “mild, asymptomatic pes planus” was circled. Additionally, handwritten right above the word “asymptomatic” were the letters “NDQ” which means not disqualifying. So, by letter of the instruction, the applicant *was* physically qualified for entry into the service and the original entry provider was correct in marking an asymptomatic pes planus as not being disqualifying. It matters not if the pes planus condition was acquired or congenital as relating to accession and or retention standards, but rather the degree of flexibility or rigidity of the foot remains the central criterion in determining qualifying status. Rigid pes planus was not found in this case review.

As per the difference regarding rigid versus flexible, the additional notation of the podiatrist’s diagnosis of “mild flexible” pes planus is clearly not in line with the disqualifying “rigid” pes planus. The applicant met accession standards to enter service and developed pain shortly after starting basic training. The bone scan revealed no actual fractures of any kind, but did however, show mild stress changes of the left mid-foot, which was the foot that the applicant noted in her personal statement. Stress changes or stress response that is identified by a bone scan is simply the early form of a bone injury that could possibly lead up to alterations in the bony structure which can (if continued overuse) lead to a stress fracture. This medical advisor opines that the description of her commander authored discharge as being “defective enlistment” implies that the applicant deliberately did something non-conforming during the enlistment process. That is an inaccurate statement given that the medical standards were met both at service entry and while serving in an active duty status. In her statement of request to this Board, the applicant seeks such a change as to allow her the ability to qualify for DVA healthcare benefits. For awareness, this Board exist to ensure due process, equity, fairness and impartial treatment that is applied to all applicant’s request of errors or injustice while in service and not simply to support requests to access DVA benefits. However, in this case, discovering the fact that her flexible condition could have allowed her to remain in service as well as knowing that such bony stress changes rapidly heal and do not become eligible for Medical Evaluation Board (MEB) processing, this medical advisor opines that an unjust error did occur regarding the application of pertinent accession and retention standards and an appropriate corrective justice would be to recommend the applicant’s narrative reason for separation be changed from “Failed Medical/Physical Procurement” to “Secretarial Authority.”

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 20 Jan 22 for comment (Exhibit D), but has received no response.

## **ADDITIONAL AIR FORCE EVALUATION**

After a thorough re-review of the case file and electronic record data base, the AFBCMR Medical Advisor recommends (unlike the prior [January 2022] written advisory in which an error was declared) denying the applicant’s request for a change in her characterization of service as well as the original narrative reasoning for separation being “failed medical/physical procurement

standards.” This re-review has confirmed that no error on part of the DoD had occurred in the applicant’s administrative separation proceedings.

Pes planus is a relatively common foot deformity and is defined by the loss of the medial longitudinal arch of the foot where it contacts or nearly contacts the ground. It can be of the flexible or rigid types, and it results in relative flattening of the plantar (bottom of the foot) surface. Biomechanical analysis suggests that in either type, there can develop significant strain on the plantar fascia (band of tissue that runs from the heel bone to the toes, which supports the arch of the foot and absorbs shock when walking), the metatarsals (bones of the forefoot), the calcaneus (heel bone), and the bones of the mid-foot. Dysfunction of the foot arch complex, specifically relating to the flexible flat foot, can be asymptomatic but also collapsing the arch can alter the biomechanics of the lower limbs and lumbar spine causing an increased risk of developing pain and injury to the foot, heel, lower leg, knee, hip, or back (Prevalence of flexible flat foot in adults: A cross-sectional study; Journal of Clinical Diagnostic Research, 2017) and (Pes Planus; National Library of Medicine; Stat Pearls Publishing, CE activity, 2022).

The discussion contained in the original advisory centered on meeting the appropriate medical standards for both service accession as well as service retention. The advisor has already established that her asymptomatic EPTS condition qualified for service entry; however, having new and additional knowledge of all her x-ray findings as well as her additional pain levels, their location, and the progressive symptom intensity near the time of separation, her meeting retention standards became forefront of concern in this re-review. Pursuant to the applicant’s manifestation of known progressive symptoms and the pronation of her feet upon weight bearing, she closely came to not meeting retention criteria except for her ability to continue wearing military footwear; as addressed in the 2006 Air Force Instruction 48-123, *Medical Examinations and Standards*, Vol 2, section A2.14.2.4.2 which states, “Pes planus, symptomatic, more than moderate with pronation on weight bearing which prevents the wearing of a military shoe” is disqualifying for retention. However, additionally under the same attachment of AFI 48-123 includes the note that any of the listed conditions (to include pes planus) can be cause for service rejection based upon the medical judgement of the examining physician. Despite meeting this standard by wearing military footwear, the Medical Standards Directory; Line K57 must also be considered in this case. Line K57 states “Any condition, disease, or injury to feet or toes which results in disabling pain, distracting discomfort, or the inability to satisfactorily perform military duties” is disqualifying for service retention.

The additional information discovered in our data base coupled with the entirety of case file records did reveal that the applicant became symptomatic with a high level of pain intensity (at least, and likely more than moderate) with pronation of her feet (flexible) which caused a disabling pain and distracting discomfort which curtailed her from performing BMT duties. In this case, the symptom parameters cited above coupled with the medical judgement of the podiatrist, who diagnosed the congenital foot deformity-symptomatic, pes planus; mild flexible, would clearly denote that service retention criteria were not met. Lastly, eligibility for processing through the Disability Evaluation System was not applicable for there was no evidence of permanent aggravation of the applicant’s pre-existing condition due to her military duties above what is considered the natural progression of such a condition (refer to the listed scientific citing’s). Therefore, the judgement/recommendations cited in the original advisory should be rescinded.

The complete advisory opinion is at Exhibit E.

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

The Board sent a copy of the advisory opinion to the applicant on 24 Jan 23 for comment (Exhibit F), 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. We note the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing this application, we concur with the rationale and recommendation of the AFBCMR Medical Advisor dated 18 Jan 23 and finds a preponderance of the evidence does not substantiate the applicant's contentions. The authority for the ELS separation under AFI 36-3208, *Administrative Separation of Airmen*, section A3.5 was correct in this case as the applicant was within her first 180 days of service and thereby was assigned an uncharacterized character of service. Furthermore, her medical condition did not meet service retention standards nor was the condition eligible for processing through the Disability Evaluation System as there was no evidence of permanent aggravation of her pre-existing condition due to her military duties above what is considered the natural progression of her condition. 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.

## **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-2021-02394 in Executive Session on 23 Feb 22 and 2 Mar 23:

, 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/atch, dated 8 Mar 21.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 17 Jan 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Jan 22.

Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 18 Jan 23.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jan 23.

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