



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-03111

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

She be placed on the Permanent Disability Retired List (PDRL) for her medical conditions of chronic pain in left foot, chronic pain in right foot, fibromyalgia and major depressive disorder (MDD), noted in her Narrative Summary (NARSUM) and rated by the Department of Veterans Affairs (DVA).

APPLICANT'S CONTENTIONS

During her initial entry-level training, she broke her left foot and returned to duty after recovering. She was later deployed, and her foot injury was aggravated. During another deployment she broke her right foot. She had a Line of Duty (LOD) determination indicating her right foot injury was in the LOD. She has suffered from chronic pain, fibromyalgia and MDD which are continually being aggravated by service. The DVA has rated her 100 percent disabled. Her return to duty was not in the interest of the Air Force.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former senior airman (E-4).

On 22 May 15, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the Air Force Reserve (AFR).

Issued 7 Sep 17, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects she was honorably discharged in the grade of E-4 after serving 7 months and 29 days of active duty this period. Her narrative reason for separation is "Completion of Required Active Service."

On 21 May 21, according to Reserve Order *Work-Pro...* dated 26 May 21, the applicant had a remaining Air Reserve commitment and was assigned to Air Reserve Personnel Center.

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

AIR FORCE EVALUATION

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The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence has been presented to support the applicant's request. There is evidence the applicant was referred and processed through a Medical Evaluation Board (MEB). The applicant was evaluated by a military provider in Sep 20, and determined a MEB was warranted for her potentially unfitting physical conditions and mental health condition of MDD. A few weeks later, a different provider reported the applicant's case was reviewed by the Deployment Availability Working Group (DAWG) and found her to be fit to be returned to duty. From this information, two separate offices had reviewed the applicant's case and found she was fit for duty and was placed on a profile but did not disqualify her completely from the Air Force. The full rationale from the DAWG and AFRC/SG to return her to duty was not available in her military records, and the applicant nor her legal counsel had submitted these documents for review to determine if there was any error or injustice with the decision from these two respective offices. The burden of proof is placed on the applicant to submit the necessary evidence to support her request and so presumption of regularity is applied.

The Psychological Advisor acknowledges the applicant has been receiving mental health treatment from the DVA for depression that was precipitated by her chronic pain. There was no evidence her depression would hinder her ability to perform modified military duties. Her mental health condition was never found to be unfitting for continued military duties. Receiving mental health treatment and/or a mental disorder diagnosis does not automatically render a condition as unfitting. Her legal counsel reported she received an LOD determination for her foot injury and made no mention of her mental health condition. There are no records to verify she received an LOD determination for her mental health condition so she would not qualify for a medical retirement. There is no evidence of any error or injustice with her military records or with the decisions made by the DAWG or AFRC/SG. The information presented by the legal counsel on behalf of the applicant was also found to be insufficient to support her request to be referred to a MEB for a medical retirement.

For awareness since the applicant has been receiving disability compensation from the VA: The military's DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active 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 post-service progression of disease or injury. To the contrary, the VA, operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

The Psychological Advisor finds the application of liberal consideration does not warrant relief because the applicant has not been officially discharged from service and in fact, she was returned to duty by the DAWG and AFRC/SG. Liberal consideration applies to discharges.

The complete advisory opinion is at Exhibit C.

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AFRC/SGO recommends denying the applicant's request to undergo a MEB. Based on a review of the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant has one LOD of a fracture which healed. The applicant was appropriately returned to duty with a waiver so that she may continue to seek treatment as the diagnosis can show signs of improvement with proper treatment. Even if it was determined the applicant was no longer fit for duty, she did not and likely would not have been granted an In Line of Duty or Prior Service Condition (PSC) applicable finding and therefore not eligible for a MEB.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the counsel on 28 Mar 23 for comment (Exhibit E), and the applicant replied on 29 Apr 23. In her response, counsel provided a statement from her DVA providers. The DVA providers contend the applicant is working diligently to address chronic and acute mental health related challenges, but they are also largely exacerbated by her physical military related injuries and chronic pain. They have spoken in previous sessions about the ongoing difficulty during the process of this very lengthy case for medical discharge, which has caused a great deal of more stress for the applicant regarding her trajectory. This has negatively impacted treatment gains as well.

The applicant's complete response is at Exhibit E.

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, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/SGO and the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's medical and mental health conditions were never found to be unfitting for continued military service. Therefore, she does not meet the requirement for a MEB. Therefore, the Board 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 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 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-2021-03111 in Executive Session on 21 Jun 23:

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Work-Product [Redacted] Panel Chair
[Redacted] Panel Member
Work-Product [Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Jun 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Oct 22.
- Exhibit D: Advisory Opinion, AFRC/SGO, dated 25 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 28 Mar 23.
- Exhibit F: Applicant's Response, w/atchs, dated 29 Apr 23.

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.

1/30/2024
[Redacted]
Work-Product
Board Operations Manager, AFBCMR
Signed by: [Redacted] *Work-Product*