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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03795

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COUNSEL: NONE

AKA

Attorney-Client

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. Her discharge with an uncharacterized service characterization be changed to an honorable to accurately reflect her service.
2. Her separation code JFW and narrative reason for separation "Failed Medical/Physical Procurement Standards" be changed to reflect her medical disability.
3. Her reenlistment (RE) code 4C be changed to 2Q to reflect she was medically discharged.

APPLICANT'S CONTENTIONS

She was discharged with an Uncharacterized, Entry Level Separation (ELS) after sustaining an Achilles tendon injury in basic military training (BMT). During the discharge process, it was incorrectly and unjustly determined that her the injury existed prior to service (EPTS) despite statements and medical records to the contrary, including the Air Force's own records at entry. Immediately after discharge, she attempted to correct the error with help from the Department of Veteran's Affairs (DVA); however, she was advised there was no process to change her service characterization. Recently she became a DVA accredited attorney and discovered the DVA was wrong and she could have her case reviewed. Therefore, she is requesting correction of her character of discharge, narrative reason for separation, separation code, and RE code, as none accurately reflect her my time in service nor reason for discharge.

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 Mar 95, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for four years under the Delayed Entry/Enlistment Program (DEP). She was discharged from the DEP and enlisted in the Regular Air Force on 12 Apr 95 for a period of four years.

On 10 May 95, AF Form 618, *Medical Board Report*, shows the Medical Evaluation Board (MEB) diagnosed the applicant's Left Achilles Tendonitis injury as EPTS.

On 16 May 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*. The specific reason for the action was erroneous

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enlistment based on the MEB finding the applicant did not meet minimum medical standards to join the Air Force.

On 16 May 95, a Receipt of Notification Memorandum, shows the applicant disagreed with the findings of the Medical Board because her injury was sustained while she was enlisted in the Air Force, and it did not EPTS. She further states she was unwilling to contest the separation due to an already stressful environment would be prolonged with no guarantees of a favorable outcome.

On 17 May 95, the discharge authority directed the applicant be discharged with an ELS.

On 19 May 95, DD Form 214, *Certificate of Release or Discharge from Active Duty*, shows the applicant was discharged from the Air Force with an Uncharacterized ELS, a narrative reason for separation of "Failed Medical/Physical Procurement Standards" with the corresponding separation code of JFW and reentry code 4C.

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

AIR FORCE EVALUATION

The AFRBA Medical Advisor opines there is sufficient evidence to support the applicant's contentions and her requests. The Air Force followed what it believed to be an appropriate use of established policies for the separation of members, who within the first 180 days of service, demonstrate the inability to complete BMT. Unless warranting a referral through the Disability Evaluation System for completion of a MEB and subsequent fitness and rating determination by a Physical Evaluation Board (PEB), or other basis for discharge, then a service member is released as an ELS, with an "uncharacterized" character of service. The definition of ELS appears in AFI 36-3208, Attachment 3, paragraph A3.5, *Entry-Level Separation*, which reads, "This type of separation is given only when the person is in his or her 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." This is a discharge that does not attempt to characterize the type of service as either good or bad. It is not the only type of separation authorized during the first 180 days of military service, as it is possible for a person to receive either an honorable or an under other than honorable conditions discharge as well. The Board is provided the following extracted definitions taken from AFI 36-3208, Chapter 5, *Reasons for Involuntary Separation*, Section 5C, *Defective Enlistments*, to further facilitate an informed Board decision. Paragraph 5.13.3. *Erroneous Enlistments* reads, "An erroneous enlistment is one the Air Force should not have accepted, but it does not involve fraud." 5.13.4. *Fraudulent Entry*, reads, "A fraudulent entry is one involving deliberate deception on the part of the member." Medical circumstances meeting the criteria are generally determined to have EPTS and either was not known to the applicant at the time of entry (Erroneous Entry) or was known by the member, but deliberately concealed or misrepresented at the time of entry to military service (Fraudulent Entry). According to the applicant's medical enlistment history and physical examination (PE) into AD, there were no adverse remarks or findings regarding an orthopedic condition. Her initial medical documents were signed off as being physically qualified for enlistment on 14 Mar 95. There was no documentation of any pre-existing or historical condition of any sort pertaining to bony joints, cartilage, or tendons of either "lower extremity. Additionally, her entrance PE noted "normal" for feet and lower extremities. Addressing whether the ELS basis for discharge was appropriate, the Board's attention is directed to DoDI 1332.39, *Application of the Veterans Administration Schedule for Rating Disabilities (VASRD)* which although no longer is in effect, was in effect at the time of the applicant's separation and offers additional insight into the administrative management and disposition of individuals diagnosed with certain conditions. Although the DoDI does not specifically state the process or action for the specific diagnosis of Achilles tendonitis, the VASRD rating for such a condition is centered upon range of motion of the surrounding joint, in this case, the left ankle.

The maximum impairment rating for limited range of motion of the ankle is 20 percent marked limitation (moderate limitation is 10 percent). There was no evidence that the applicant's case was ever reviewed by the Deployment Availability Working Group nor sent off to AFPC (Medical Evaluation Branch) for their adjudication. Knowing that a MEB did take place tells the advisor that AFPC rendered that she was not fit for duty and to initiate an MEB (recorded documents not available); which did occur on 10 May 95. Historically, it is a rare event whereby the MEB returns someone back to duty vice referring to the PEB for final adjudication in a cooperative process with the DVA for rating purposes. The medical advisor is of the opinion that a referral to the PEB would have been the appropriate action. If this had occurred, the advisor opines, more likely than not, the applicant would have been found unfit for further military service and discharged with severance pay (20 percent rating for "marked" limited ankle motion) under VASRD code 5271 as noted in DoDI 1332.39. The medical advisor recommends granting the applicant relief by changing the reason for separation to a "Medical (Disability), with severance pay" discharge, with a 20 percent disability rating for limitation of ankle motion, under VASRD code 5271; and a change of her "uncharacterized" service to an "honorable" character of service. Additionally, recommend changing the separation code from "JFW (Failed medical/physical procurement standards)" to "JFLI" (Physical disability with severance pay, USAF)." Lastly, the RE code should be changed from "4C (Concealment of juvenile records; or minority, or failure to meet physical standards; or failure to obtain 9.0 reading grade)" to "2Q (Medically retired or discharged)."

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 8 Feb 22 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 19 May 95, the applicant was not discharged due to Failed Medical/Physical Procurement Standards but instead was honorably discharged due to Medical Disability – Entitled to Severance Payment, with a 20 percent compensable disability rating, with the corresponding separation code of JFLI and reentry code 2Q.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-03795 in Executive Session on 26 Oct 22:

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

All members to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Oct 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFRBA Medical Advisor, dated 26 Jan 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 8 Feb 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.

5/30/2023

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Board Operations Manager, AFBCMR
Signed by: USAF

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