RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXX

DOCKET NUMBER: BC-2022-00826

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

Her official military record be corrected to reflect the following:

1. Reinstatement in the Air Force Reserve, effective 1 Nov 16.
2. Award constructive credit for the period 1 Nov 16 to present.
3. Allow her to apply for a Reserve retirement

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends the applicant's unit failed to meet the requirements of Air Force Instruction (AFI) 36-2905, *Air Force Fitness Program*, prior to initiating a separation action, in that the medical assessment conducted in her case was invalid. The Board of Inquiry was presented provably false evidence on a critical aspect of her case. Additionally, the Board President went into deliberations confused on an issue because the legal advisor failed to guide the Board as required by AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*. Finally, the government failed to meet its burden of proof in her case by providing directly contradictory evidence on the most critical issue in the case.

Separations for unsatisfactory physical fitness must meet two conditions: 1) the service member has failed 4 fitness assessments (FA) within a 24-month period; and 2) a military medical provider has reviewed the service member's medical record to rule out medical conditions precluding the service member from achieving a passing score. The medical assessment is a two-step process. The first step is for the unit to provide the provider with the dates of the failed FAs. The second step requires the medical provider to review the service member's medical record to look for underlying conditions that preclude them from achieving a passing score in the non-exempt portion(s) of the test.

In the applicant's case, the provider based his assessment on four failed tests, three of which indicated she was exempt from both the run and walk, and one where she was exempt from the run. He, therefore, did not look for a documented condition that would have precluded her from achieving a passing score on the exempt portions. However, the unit's Individual Test History shows scores for these exempt portions, resulting in evidentiary exhibits that were directly contradictory. If the applicant was exempt from the run and walk on these three tests, then she actually achieved a passing score on one of the four FAs. On the other hand, if the applicant performed the run or walk on those FAs and failed, then the medical assessment was improper, invalid, and erroneous information and must be rejected because the provider did not screen the applicant's records for an underlying condition that would have prevented her from achieving a passing score on the run/walk. This oversight has the effect of completely invalidating the medical assessment required by the AFI before any recommendation for discharge may be made. The Statement of Reasons for the applicant's separation listed six FA failures; however, there is only evidence that four failures were submitted for medical assessment. Therefore, the two failures listed but not assessed did not meet the requirements of AFI 36-2905 and neither the

original Board of Inquiry (BOI), nor the Air Force Board for Correction of Military Records (AFBCMR) may consider them.

Regarding the FA conducted on 20 May 11, the only record of the applicant's score is found on her Individual Test History (ITH). The unit indicated on the Memorandum for Medical Provider, that the applicant was exempt from both the run and the walk. With that exemption, the total composite score is 77.5, a satisfactory overall score. If the information provided by the unit is correct, the applicant passed the FA. If the data provided was wrong, then the medical assessment itself was invalid. Either way, the evidence was contradictory and the BOI should have found in favor of the applicant.

The record shows the BOI believed they only had to determine if the applicant performed in a substandard manner, when they should have also considered whether there was a medical assessment done to look for underlying medical conditions that precluded her from achieving a passing score. One may ask if the BOI ignored the contradicting evidence, but the record shows the board members were concerned enough to ask about it. The answers they received were not true and the board president went into deliberations confused on the issue. While there is no belief the applicant's commander intentionally provided false testimony, she did make two false statements that were likely fatal to the applicant's case, both regarding effects of medication taken to treat hypertension and whether that was considered during the medical assessment.

Additionally, at the conclusion of the BOI, the board president wanted clarification on an issue; however, we do not know what he was confused about as the legal advisor did not allow the question to be asked. According to AFI 36-3209, "[the legal advisor, guides the board any time they ask for guidance.]" Without even determining the nature of the board president's confusion, the legal advisor shut the door and left the board president confused. The legal advisor should have fielded the question and resolved whatever confusion existed as was his duty under the AFI.

Finally, the burden of proof rested with the government which was required to prove by a preponderance of evidence that 1) the applicant had four unsatisfactory FAs in a 24-month period, and 2) a military medical provider reviewed her medical records to rule out a condition that precluded her from achieving a passing score. Because the two key documents in this case – the Memorandum for Medical Provider and the Individual Test History – were directly contradictory, no reasonable person could find the government met its burden. Any one of the defects above would have been enough to overturn the separation action.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve (AFR) lieutenant colonel (O-5).

On 26 Jun 11, the applicant was issued a Letter of Counseling, for violation of Article 92, Uniform Code of Military Justice (UCMJ), Failure to Obey Order or Regulation, Unsatisfactory Fitness Score.

On 16 Dec 12, the applicant was issued a Letter of Reprimand, for violation of Article 92, UCMJ, Failure to Obey Order or Regulation, Unsatisfactory Fitness Score.

On 23 Mar 13, in response to the applicant's commander's request, the Medical Provider completed the Medical Condition Determination for Fitness Assessment Test Failures.

According to *Report of Individual Fitness*, dated 7 May 13, the applicant failed more than 4 fitness assessments within 24 months:

- Unsatisfactory score of 85.90*, 26 Feb 11 (*did not meet minimum component score for Abdominal Circumference)
- Unsatisfactory score of 68.10, 20 May 11
- Unsatisfactory score of 62.30, 24 Mar 12
- Unsatisfactory score of 23.80, 23 Jun 12
- Unsatisfactory score of 59.75, 23 Sep 12
- Unsatisfactory score of 42.50, 15 Dec 12
- Unsatisfactory score of 17.50, 20 Apr 13

On 19 May 13, the applicant was issued a Notice to Stop Participating in Reserve Activities, pending recommendation for discharge. On this same date, the applicant's commander recommended the applicant be discharged from the Air Force Reserve, under the provisions of AFI 36-3209, Table 2.1., Rule 35, and paragraph 2.34.8. The specific reason for the action was substandard performance of duty to maintain physical fitness.

On 20 Nov 13, the Staff Judge Advocate found the discharge action legally sufficient.

On 26 Jun 14, according to the AFRC/JA advisory opinion and documentation provided by the applicant, an Administrative Discharge Board was convened at Robins Air Force Base (AFB), Georgia (GA). The board recommended the applicant be involuntarily separated with an honorable discharge.

On 26 Apr 16, AFRC/CC concurred with the recommendations of the Administrative Discharge Board and recommended the Secretary of Air Force (SECAF) approve the applicant's discharge with an honorable service characterization.

On 27 Jul 16, on behalf of the SECAF, the Air Force Personnel Board (AFPB) approved the discharge.

On 29 Aug 16, according to Reserve Order XXXXX, the applicant was to be honorably discharged from the AFR, effective 1 Nov 16.

On 3 Jul 17, upon the applicant's request for reconsideration, and on behalf of the SECAF, the AFPB upheld their previous decision.

On 17 Nov 17, according to AF IMT 973, *Request and Authorization for Change of Administrative Orders*, Reserve Order XXXXX, dated 29 Aug 16, was totally rescinded. On this same date, according to Reserve Order XXXXX, the applicant was honorably discharged from the AFR, effective 1 Oct 17.

On 2 May 18, according to Reserve Order XXXXX, the applicant was honorably discharged from the AFR, effective 1 Mar 17.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2905, *Fitness Program,* dated 1 Jul 10:

Chapter 2, Fitness Assessment,

2.1. *General*. The AF uses an overall composite fitness score and minimum scores per component based on aerobic fitness, body composition, and muscular fitness components to determine overall fitness. Members must earn a composite score of 75 or greater, and meet the minimum component scores identified in Attachment 14 (and Attachment 16 if taking the 1-mile walk test).

2.3. *Fitness Assessment Requirement*.

2.3.2. All members must complete the FSQ [Fitness Screening Questionnaire] prior to FA (Attachment 4).

2.3.2.1. The FSQ should be completed no earlier than 30 calendar days (90 days for ARC), but NLT 7 days prior to FA to provide time for medical evaluation, when indicated. Note: Failure to complete FSQ does not invalidate the FA.

2.3.2.2. A medical provider must evaluate all members with health issues identified on the FSQ prior to the FA. Member must notify the UFPM of the assessment/training clearance status from the provider. The provider or ARC MLO completes the bottom portion of the FSQ or the Medical Clearance Letter (MCL) if the member has no limitations (Attachment 10 or 11) and an AF Form 469, if applicable.

2.9. *Fitness Categories*.

2.9.1. *Excellent*. Composite score ≥ 90, all component minimums met.

2.9.2. *Satisfactory*. Composite score of 75 - 89.99, all component minimums met.

2.9.3. *Unsatisfactory*. Composite score < 75 and/or one or more component minimums not met.

2.9.4. *Exempt*. All four components exempted.

2.10. *Determining Composite Fitness Score*.

2.10.1. Age and gender-specific fitness score charts are provided in Attachment 14.

2.10.2. Members will receive a composite score on a 0 to 100 scale based on the following maximum component scores: 60 points for aerobic, 20 points for body composition, 10 points for push-ups and 10 points for sit-ups.

2.10.3. Determine the score by the following formula:

$$\text{Composite score} = \frac{\text{Total component points achieved X 100}}{\text{Total possible points}}$$

Component:	Aerobic	Body Composition	Push-ups	Sit-ups
Possible Points:	60	20	10	10

2.10.4. Scoring for exemptions: Members with a DLC prohibiting them from performing one or more components of the FA will have a composite score calculated on the assessed components. Abdominal Circumference will be performed on all members, unless exempted by medical provider IAW para 4.2, since there is no risk to the member. Members must achieve a minimum of 75 adjusted points, based on points available, and meet minimum component standards in order to receive a "Satisfactory" rating.

Examples:
1) Member exempted from push-ups: If member receives 48 points for aerobic fitness, 16 pts for AC and 8 pts for sit-up component; the total component pts achieved = 72. Possible pts from aerobic fitness, AC, and sit-up components = 90 pts. Composite score is: (72/90) x 100 = 80 pts. As long as member meets minimum component scores, member receives a "Satisfactory" rating.

2) Member exempted from aerobic fitness: If member has a 39.5-inch waist and receives 11.7 pts for AC, 9.5 pts for push-ups and 9.5 pts for sit-up component; the total component pts achieved = 30.7. Possible pts from AC, push-up and sit-up components = 40 points. Composite score is: (30.7/40) x 100 = 77 points. However, based on minimum component score (because member did not meet minimum AC requirement of 39.0 inches), member receives an "Unsatisfactory" rating.

Chapter 4, *Exemptions,*

4.2. Exemptions. Exemptions are designed to categorize members as unable or unavailable to train or assess for a limited time period. Commanders may grant exemptions as outlined in Table 4.3. Members with a DLC prohibiting them from performing one or more components of the FA will be assessed on the remaining components and scored IAW para 2.10. All members will complete an AC assessment as listed in para 4.2.5., unless exempted by medical provider. Temporary exemptions will not be issued for personnel still currently assigned to a unit solely for the purpose of improving currency compliance rates (i.e. impending retirements, separations, etc. where member is not on terminal leave). Members with chronic medical DLCs preventing them from performing one or more components of the FA will be medically reviewed during the annual PHA, at a minimum, and referred to the Deployment Availability Working Group for evaluation as appropriate IAW AFI 10-203. Member may be referred to a medical care provider or MTF if they have been exempt from the same component for more than two consecutive FAs to identify the possibility of a chronic medical condition. ARC members are referred to MLO.

Chapter 9, *Administrative and Personnel Actions*,

9.1. *Adverse Personnel Actions (for Unsatisfactory Fitness Members)*. Members are expected to be in compliance with Air Force fitness standards at all times. When members fail to comply with those standards (receive an Unsatisfactory FA score), they render themselves potentially subject to adverse action. Commanders should consult with their servicing Staff Judge Advocate before taking such action.

9.1.2. Unit CCs may take adverse administrative action upon a member's Unsatisfactory fitness score on an official FA (see Attachment 19). For administrative separation criteria, see para 9.1.5. below.

9.1.5. *Administrative Separation*. (See AFI 36-3208 for active duty enlisted members, AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, for active duty officers, AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, for all ARC members.)

Air Force Guidance Memorandum for AFI 36-2905 (AFI 36-2905_AFGM5), *Fitness Program*, dated 3 Jan 13:

4. Airmen are responsible for maintaining currency standards. Specifically, each Airman is responsible for the following:

d. Monitor his/her FA exemptions, schedule any necessary medical examinations, and initiate FA test arrangements in a manner that prevents non-currency.

11. The UFPM will identify Airmen who have been exempted from one or more of the four components of the fitness test for a continuous 12-month period or have four component exemptions in a 24-month period. The UFPM will notify the Unit Commander, who will, in turn, request the EP/Wing Fitness Program Manager (FPM) review the case at the Deployment Availability Working Group (DAWG). The DAWG will review and evaluate the member's medical history and determine the best course of action IAW AFI 10-203. This guidance supplements guidelines established in AFI 36-2905 (dated 1 July 2010), paragraph 4.2.

Example: If an Airman was exempt from sit-ups in Apr 10 FA, exempt from sit-ups and push-ups in Oct 10 FA, exempt from 1.5 mile run/1.0-mile walk in Apr 11 FA and exempt from sit-ups in Oct 11 FA, the Unit Commander must recommend review at the DAWG.

12. When an Airman receives four Unsatisfactory FA scores within a 24-month period and a medical records review by a military health care provider has ruled out medical conditions precluding the Airman from achieving a passing score, the Unit Commander must make a discharge or retention recommendation to the separation authority (enlisted Airmen), show cause authority (officers), or appropriate discharge authority for AFR and ANG members. If the member is retained, every subsequent FA failure requires the Unit Commander to submit another discharge or retention recommendation. This guidance supersedes guidelines established in AFI 36-2905 dated 1 July 2010), paragraphs 9.1.5.2 and 9.1.5.2.3.

Unit Commanders may initiate (enlisted Airmen) or recommend (officers) administrative discharge only after the Airman has: received four Unsatisfactory FA scores in a 24-month period; failed to demonstrate significant improvement (as determined by the commander) despite the reconditioning period; and has had his/her medical records reviewed by a military health care provider to rule out medical conditions precluding the member from achieving a passing score (Attachment 5). This guidance supersedes guidelines established in AFI 36-2905 (dated 1 July 2010), paragraphs 9.1.5.1, 9.1.5.1.1, 9.1.5.1.2, 9.1.5.1.3, 9.1.5.2, and 9.1.5.2.3.

NOTE: The 24-month period is calculated from the most recent Unsatisfactory FA and is measured in months, not days, including the month of the most recent failure. For example, if the most recent failure is 15 Jun 12, then count the failures in the previous 23 months plus the month of the most recent failure (Jun 12). In this example, the inclusive months in which you must count FA failures are Jul 10 through Jun 12. Four FA failures anytime in those 24 months meets the criteria and would require the Unit Commander to make a discharge or retention recommendation, provided the member does not have a medical condition to preclude him/her from achieving a passing score. A recommendation for discharge or retention will be made regardless of an Airman's achieving one or multiple passing FAs in between the four failures.

AIR FORCE EVALUATION

AFRC/JA recommends denying the application. Based on a review of the case file and analysis of the facts, there is no evidence of the alleged errors or injustices.

On 19 May 13, an involuntary discharge action was initiated against the applicant on the basis of Substandard Performance of Duty to Maintain Physical Fitness, with the applicant acknowledging receipt of notification on 13 Aug 13. A BOI was convened on 24 Jun 14 to consider the involuntary discharge action and occurred on 26 Jun 14. After receiving and considering the evidence, a panel of three superior officers found a basis for discharge and recommended the applicant be involuntarily separated with an honorable discharge. The AFPB, on behalf of the SECAF, subsequently approved the discharge, which was executed effective 1 Mar 17. On 13 Jun 17, the AFPB convened to reconsider the applicant's case, and on reconsideration, upheld the applicant's discharge.

Counsel alleged the unit failed to meet the requirements of AFI 36-2905 prior to initiating a separation action, in that the medical assessment in this case was invalid. During the time period from 20 May 11 – 20 Apr 13, AFI 36-2905, dated 1 Jul 10, provided unit commanders shall make a discharge or retention recommendation when an individual remains in the Unsatisfactory fitness category for a continuous 12-month period or received four Unsatisfactory scores in a 24-month period, and when a military medical provider has ruled out medical conditions precluding the member from achieving a passing score. Looking at the BOI Record of Board Proceedings, it is indisputable the applicant received four Unsatisfactory FA scores in a 24-month period. It is

similarly indisputable that a military medical provider ruled out medical conditions precluding the applicant from achieving a passing score. The commander's actions in initiating the separation action were neither arbitrary or capricious, nor did the unit fail to meet the requirements of AFI 36-2905. To the contrary, considering the AFI's language, the unit commander did exactly what the AFI required her to do.

It was further alleged the BOI was presented with provably false evidence on a critical aspect of this case. According to AFI 36-3209, at Administrative Discharge Boards, the legal advisor rules on all matters of evidence, procedure, and challenges. In making rulings, the legal advisor is not bound by the formal rules of evidence. The AFI contains no requirement for the legal advisor to ensure evidence is true prior to allowing it to be presented to the board. The legal advisor's responsibility is to ensure the evidence is admissible, and the board's responsibility is to determine how much weight to give that evidence. Counsel asserts the board was presented false evidence when the government's witness answered a question from a board member. Prior to allowing the question, the legal advisor had the board member proffer the question without the witness hearing it, and then twice offered applicant's counsel the opportunity to object. Applicant's counsel made no objection. When asked if the applicant's medication for hypertension was considered in the medical assessment, the witness stated it was. The testimony was clearly relevant and material, and the legal advisor committed no error in allowing it to be presented.

Additionally, counsel alleged the board president went into deliberations confused on an issue due to the legal advisor's failure to advise the board in accordance with AFI 36-3209. The AFI provides, at Administrative Discharge Boards, the legal advisor guides the Board any time they ask for guidance, or it appears appropriate. AFI 51-602, *Board of Officers*, in place at the time of the hearing, contained no guidance regarding the legal advisor's provision of instructions to the board. However, AFPAM 36-3210, *Procedural Guide for Enlisted Administrative Discharge Boards*, gives the legal advisor broad discretion to tailor the suggested instructions to cover unusual circumstances or issues that may arise in the proceedings. The suggested instructions include language instructing the board members that counsel will also present arguments for their consideration, although arguments are not evidence.

In this case, following closing arguments and final instructions, the board president had a clarification question regarding the applicant's counsel's closing argument. The legal advisor instructed again that arguments are not evidence, and that the applicant's counsel was not a witness and not obligated to answer any particular question regarding what he was trying to get across. Considering this exchange, this evaluator cannot conclude the legal advisor failed to guide the board as required. A board member seeking clarification on an argument is not contemplated by AFI 36-3209, or the other persuasive authorities; therefore, the circumstances might be properly characterized as unusual, and the legal advisor has broad discretion addressing unusual circumstances.

Finally, counsel alleged the government failed to meet its burden of proof by providing directly contradictory evidence on the most critical issue in the case. The regulations provide no guidance as to the standard of review for challenges to the factual findings of BOIs. The very existence of the board, however, suggests considerable deference should be given rather than having the AFBCMR review the case totally anew. On questions of fact, the legal standard of review is "clearly erroneous," that is the board's conclusions will be accepted as long as they are plausible in light of the entire record. The board's standard of proof is "preponderance of evidence." In this case, the board's finding is plausible in light of the entire record because, notwithstanding the purported contradictory evidence, the greater weight of evidence shows 1) the applicant received more than four Unsatisfactory FA scores in a 24-month period; and 2) a military medical provider found no medical condition precluding the applicant from achieving a passing score. The board was only required to determine if the medical provider made a finding.

The board was not required to determine if the finding was correct. This is because medical determinations are outside the competency of the board. Most notably, going back to 2004, the applicant took a fitness assessment 19 times. Of these 19 attempts, she failed 15 times. This strongly supports a conclusion the applicant should be discharged because over the course of the preceding nine years, she either could not, or would not, pass the fitness assessment nearly 80 percent of the time. This, despite considerable efforts by the unit to encourage her to improve. There is no error or injustice because the record indicates the government met its burden of proof.

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 25 May 22 for comment (Exhibit D), and the applicant replied on 21 Jun 22. In response, counsel contends there is one error in this case that caused a cascade effect that tainted the entire discharge board process. The unit provided false information to the medical provider who then could not provide an accurate medical assessment of the case. The advisory opinion does nothing to refute this fact.

The board was so concerned about the medical assessment that a board member asked the witness whether the applicant's hypertension medication, that caused increased heart rate, were considered in the medical assessment. The witness provided false testimony when she said they were considered. They were not considered because the unit's information communicated to the medical provider instructed him not to look for underlying conditions that could have cause a failure of the run/walk.

The advisory opinion author appears to have reviewed the AFBCMR application not as an unbiased expert, but rather as an advocate for the Air Force. Counsel asked the AFBCMR consider the opinion as if it were argumentation from opposing counsel. In fact, a more appropriate advisory opinion would have come from a medical expert who would have analyzed whether a valid medical assessment could have been performed given the information provided to the medical provider at the start of the process.

The advisory opinion ignored the undisputed fact the unit provided the wrong information to the medical provider, causing him to fail to look for a documented condition that would preclude the applicant from achieving a passing score on either the run or walk on three of the FAs. The advisory concluded the unit commander did exactly what the AFI required her to do; however, the Board should reject that logic because the unit provided inaccurate data to the medical provider. While counsel acknowledged this was likely a clerical error, it is the commander's responsibility to ensure the medical assessment is completed and truthful.

Regarding whether the legal advisor erred in allowing the false testimony, the advisory argument is interesting but not germane. He made no argument that the legal advisor erred in allowing the false testimony, but instead argues the AFBCMR should reject the findings of the Administrative Discharge Board because false testimony was provided. When false testimony is given at trial, the truth finding process is fundamentally corrupted. The jurisprudence of false testimony is extensive and confusing; however, the only just outcome is overturning the results of the discharge board.

When the board president asked the legal advisor to allow him to clarify a point in the closing argument, it was an unusual request, and counsel was under no obligation to answer any particular question on what he was trying to get across. However, it indicated the board president was confused on an issue. The worst-case scenario would have been the legal advisor

ruled the question as improper; that would not have caused an error. The AFBCMR should find it unjust to allow the board president to go into deliberations confused on an issue.

The advisory opinion mischaracterizes the applicant's argument regarding the medical conclusions and counsel does not attack the medical opinion, but rather avers it was incomplete and inaccurate based on false data provided. Furthermore, the BOI was competent to make a determination of whether the unit provided false information, and that information invalidated the medical assessment. In terms of preponderance of evidence, the advisory opinion notes the applicant's 19 FAs, with 15 failures. The Statement of Reasons for the discharge lists 6 failures, not 15. Additionally, any failure other than those listed cannot be considered as there was no medical assessment performed regarding those failures. Which puts the AFBCMR back to where it started, with a medical assessment on the four failures that was so flawed it disqualifies the action for separation.

The applicant's complete response is at Exhibit E.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application. There was insufficient evidence to support the applicant's requested changes.

The case is regarding an involuntary discharge action initiated against the applicant on the basis of Substandard Performance of Duty to Maintain Physical Fitness (4 fitness assessment failures within a 24-month period), with a concern or question of a medically related nexus to the same. The medical advisor was tasked to address two separate and distinct concerns brought by counsel at the BOI. First, failure of the unit to meet the requirements of AFI 36-2905 prior to initiating discharge proceedings. Counsel described this as the unit providing the medical provider erroneous information on which to perform a medical assessment and causing him to fail to look for a documented condition that would have precluded the applicant from achieving a passing score on three separate dates/occasions. The second issue of medical concern was the assessment of any medication taken by the applicant that could or would have an expected change of heart rate with regards to a pass/fail on the aerobic (run/walk) portion of the fitness test. When a question of this nature was brought up by a board member, and answered in the affirmative, opposing counsel considered it false testimony. In the applicant's records was a letter from her primary care provider, dated 16 Jan 13, which stated, "…[the applicant] has long standing but well controlled hypertension. Her prognosis is excellent. She had no limitations or restrictions in regard to the hypertension. The medication she takes is hydrochlorothiazide (HCTZ). It is a diuretic. HTCZ intentionally depletes intravascular volume. This being the case, it is expected that her pulse rate will need to increase to levels above what one might expect at various levels of exertion demands. She appears to be in good physical condition and regularly tolerates exercise without complications."

Contained in the documents provided for consideration was a template version of the Memorandum for Medical Provider with the subject: Medical Condition Determination for FA Test Failure, signed by the unit commander. There were four dates listed as failures from 20 May 11 - 23 Sep 12. An Individual FA History report was also submitted which revealed two more FA failures on 15 Dec 12 and 20 Apr 13. The BOI was convened to determine if the applicant should be discharged under the provisions of AFI 36-3209. The administrative discharge board concluded the applicant did fail at least 4 FAs within a 24-month period, with "fail" being defined as a composite score of less than 75 points. The case file went before the AFPB on 13 Jun 17, for reconsideration, and the administrative discharge board findings were upheld.

The issue in this case is between two separate and possible contradicting documents which were the Individual Test History and the memorandum from the commander requesting a review of the applicant's medical records and history to assess if any medical conditions were present to preclude portions of the fitness test. The contradiction in question is whether the wrong information was provided to the medical provider regarding the applicant being exempted from the aerobic portion of the FA conducted 20 May 11, and if she was exempted, the applicant did indeed pass that FA; thereby, negating the basis for discharge. After an in-depth review of the entire case file, to include medical records contained in any of the three Department of Defense (DoD) electronic medical record databases, this medical advisor concurs the recorded score [with exemption] coupled with the other components of the test would give the applicant a passing score of 77.5 points. While it is counsel's contention the exemption checked as "B" for both run/walk on the 20 May 11 test is erroneous, the applicant's records reflect an encounter signed by a senior flight surgeon documenting "no run/walk" restrictions with a 1 Oct 11 expiration; this time period included the 20 May 11 FA.

While it remains indisputable there was some confusing and contradictory evidence regarding this subject, it is also indisputable the applicant was exempt from the aerobic portion of the FA test on 20 May 11. This medical advisor took into consideration the level of probative value in this case and noticed not all inputs to the ITH system were calculated to be accurate. For example, a composite test score of 85.90 was listed as unsatisfactory three months prior to the 20 May 11 FA. Also, a score of 0.0 was input on an FA dated 20 Apr 13 for the aerobic portion performed in 23 minutes. Observing such discrepancies, even minor, leaves this medical advisor placing a low level of probative value on a system that depends on human input of calculated numbers versus a document signed and attested to by a physician in answering the request of a commander regarding the medical condition of their member. Therefore, the evidence is heavily weighted on the physician signed memorandum noting the applicant, "Did not have a documented medical condition that precluded her from achieving a passing score in a non-exempt portion of the FA test." These factors of probative value and documented proof of being exempt explicitly refute that erroneous information was given to the medical advisor.

Regarding the applicant taking the medication HCTZ, and its effect of increasing the pulse rate, such information is known within medical community/literature to be accurate. However, such a change in heart rate is known to occur early on in taking this medication and tends to return to baseline with continued chronic use. The applicant started her HCTZ medication 10 months prior to the 20 May 11 FA, outside the acute phase and well within the time of chronic use. Therefore, her taking HCTZ had no adverse impact regarding her heart rate and FA test.

The burden of proof is placed on the applicant to submit accurate and true evidence to support their request. The evidence submitted, coupled with the DoD held records, were assessed to not favorably support the applicant's petition.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Oct 22 for comment (Exhibit G), and the applicant replied on 16 Nov 22. In his response, counsel requested the Board reject the advisory opinion while accepting its discussion. The discussion supports the applicant's argument that the medical assessment was invalid and asserts she did pass one of the four listed FAs that the BOI was authorized to consider. Confusingly, the advisory opinion concludes that although the government provided contradictory evidence, and the applicant passed one of the four FAs, the recommendation is to deny the requested actions.

It is undisputed the command only sought medical assessment for four FAs. The score for the 20 May 11 FA included a failed run/walk score. The advisory opinion dodged answering whether the original medical assessment was flawed, and instead found the electronic medical record reflected a 16 Apr 11 encounter that was signed by a senior flight surgeon documenting "no run/walk" restrictions which expired on 1 Oct 11. This time period included the date of the 20 May 11 FA. The advisory opinion also agreed the recorded score for this FA would give the applicant a passing score of 77.5 points. This conclusion is 100 percent in keeping with the applicant's argument before this Board.

The advisory opinion goes on to discuss the 20 Apr 13 FA listed on the Statement of Reasons while discussing the inadequacy and inaccuracy of the applicant's FA history and opined the 20 Apr 13 FA was mis-scored and should not be included in this case. The applicant agrees and contends the 15 Dec 12 FA should also not be considered for the same reason – neither FA was included in the medical assessment required by Air Force policy before any separation could be initiated. Following the logic of the advisory opinion discussion, there were only four FAs given a medical assessment, and of those four, the applicant passed one FA.

Somehow, without explanation, the advisory opinion concludes the evidence submitted coupled with the DoD-held records do not favorably support the applicant's petition, and the recommendation to the Board is to deny the requested actions. The only explanation states the burden of proof is placed on the applicant to submit accurate and true evidence to support their case/request, which is baffling as the discussion found only four FAs were medically assessed and should be considered and one of those four were passed by the applicant.

The applicant's complete response is at Exhibit H.

AMENDED AIR FORCE EVALUATION

In an amended advisory, the AFBCMR Medical Advisor retained the recommendation to deny the applicant's request while correcting previous comments regarding FA scores to comply with AFI 36-2905, expanding on the applicant's Individual Test History and clarifying the rationale. Upon complete review of the applicant's AF Forms 422, *Notification of Air Force Member's Qualification Status*, and Standard Forms (SF) 600, *Chronological Record of Medical Care*, the noted restrictions/exemptions and expiration dates were as follows:

AF Forms 422:

- Written 21 Mar 09; exempt 1.5-mile run; expire on 21 Mar 10.
- Written 20 Mar 10; exempt 1.5-mile run; expire on 1 Sep 10.
- Written 18 Oct 10; exempt 1.5-mile run; expire on 1 Mar 11.
- Written 16 Apr 11; exempt BOTH 1.5-mile run (expire on 1 Oct 11) and 1-mile walk (expire on 17 Sep 11) (NOTE: this AF Form 422 was not officially signed by a medical or profile officer until 20 Aug 11).
- Written 16 Apr 11 (same day as above); exempt 1.5-mile run; expire on 1 Oct 11; officially signed same day as written.
- Written 24 Mar 12; exempt 1.5-mile run; expire on 1 Aug 12.
- Written 22 Sep 12; exempt BOTH 1.5-mile run (expire on 22 Sep 13) and 1-mile walk (expire on 22 Mar 13).
- Written 23 Mar 13; exempt 1.5-mile run; expire on 23 Sep 13.

SF 600:

- Encounter dated 18 Oct 10; personal physician recommendation no running/able to walk for PT test until 1 Mar 11.

- Periodic Health Assessment (PHA) dated 16 Apr 11; notes 422 no run/walk; expire 1 Oct 11.
- Encounter dated 23 Mar 12; no run; expire 1 Aug 12.
- Encounter dated 22 Sep 12; no run/walk, 6 months, 1 year.
- Encounter dated 23 Mar 13; no run; expire 23 Sep 13.
- Encounter dated 23 Mar 13; seen for 4x fitness. No documented medical condition identified that precluded failure of test.
  Member received copy of memorandum and will f/u with commander.

Except for the AF Form 422, dated 16 Apr 11 (which was not valid until 20 Aug 11), the applicant was only exempted from the walk component of the FA during the period 22 Sep 12 – 22 Mar 13. A critical element in this case is the fact finding of two different exemptions created on the same date [16 Apr 11]; however, the timeframe of authority is vastly different. The AF Form 422 that exempted both the walk/run was not officially signed by a medical provider until 20 Aug 11. Strictly speaking by the test components performed, no error by the military was found to exist. The applicant performed what she was medically cleared to do.

In the medical memorandum, the provider attested to reviewing the applicant's medical records, but in addition to the review, the SF 600 dated the same day notes the applicant "was seen" and she "received" a copy of the medical memorandum. If the applicant had any disagreement with the memorandum, the opportunity existed to clarify matters at that time.

The complete amended advisory opinion is at Exhibit I.

In an amended advisory, AFRC/JA corrected the reference used to reflect the version of AFI 36-2905 in effect at the time relevant to the case. Additionally, the amended advisory addresses the applicant's claim, via rebuttal, that the initial advisory erroneously considered her contention that false evidence was presented. The advisor finds counsel had the opportunity to object during testimony and present rebuttal evidence that the testimony was false but did not do so. Therefore, the applicant did not present evidence of false testimony, only making the assertion that it was false.

The complete amended advisory opinion is at Exhibit J.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent copies of the amended advisory opinions to the applicant on 10 Feb 23 for comment (Exhibit K) 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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendations of the amended AFBCMR Medical and AFRC/JA Advisory opinions, dated 31 Dec 22 and 17 Jan 23, respectively and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's medical records reflect her eligibility for fitness testing on each individual component and confirm she was tested, and scored, in accordance with AFI 36-2905 in effect at the time of each test. This resulted in her failure to meet fitness standards, by receiving an unsatisfactory fitness score for four fitness assessments during a 24-month period, and her subsequent involuntary discharge action. Additionally, the

Board found the applicant was afforded due process via an administrative discharge board, and the administrative discharge board was conducted in accordance with AFI 36-3209. 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 the 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-2022-00826 in Executive Session on 15 Dec 22 and 26 Apr 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/atchs, dated 1 Mar 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRC/JA, dated 24 May 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 25 May 22.
Exhibit E: Applicant's Response, dated 21 Jun 22.
Exhibit F: Advisory Opinion, BCMR Medical Advisor, dated 21 Oct 22.
Exhibit G: Notification of Advisory, SAF/MRBC to Counsel, dated 24 Oct 22.
Exhibit H: Applicant's response, dated 16 Nov 22.
Exhibit I: Amended Advisory Opinion, BCMR Medical Advisor, dated 31 Dec 22.
Exhibit J: Amended Advisory Opinion, AFRC/JA, dated 17 Jan 23.
Exhibit K: Notification of Advisory, SAF/MRBC to Counsel, dated 10 Feb 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.

X

Board Operations Manager, AFBCMR