



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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00900

Work-Product

COUNSEL: NONE

Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her "Uncharacterized" Entry Level Separation (ELS) be changed to an honorable, medical separation.

APPLICANT'S CONTENTIONS

She did not know of her scoliosis prior to her enlistment as she was medically cleared at the Military Entrance Processing Station (MEPS). She was not diagnosed until a follow-up physical was done a week before basic training was over. She completed her training and was forced to leave the military because of her medical condition due to no fault of her own. She wants to be classified as a Veteran and receive all benefits owed to her from past to present, including disability pay from the date of discharge to now and all Department of Veterans Affairs (DVA) benefits such as the GI Bill and DVA home loan eligibility.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 17 Nov 99, the applicant's SF 88, *Report of Medical Examination* and the SF 93, *Report of Medical History*, do not indicate she had any know scoliosis or curvature of the back issues.

On 19 Dec 00, the applicant received an uncharacterized, entry level separation. Her narrative reason for separation is "Failed Medical/Physical Procurement Standards." She was credited with 1 month and 25 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.

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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

APPLICABLE AUTHORITY/GUIDANCE

According to AFI 36-3208, *Administrative Separation of Airmen*, 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 application finding insufficient evidence to demonstrate the existence of an error or injustice. Based on the applicant's records, it appeared that the administrative discharge processing as well as the narrative reasoning for separation were appropriate and accomplished in accordance with Air Force policy. The applicant has not met the burden of proof of an error or injustice that warrants the desired change to her record.

The sole area where a medical condition was mentioned was on the applicant's submission to this Board; stating that she had scoliosis. Apparently, as interpreted from her statement, her condition (not found upon her physical exam entrance and unbeknown to her) was found near the end of basic training. Not having medical records to review, the Medical Consultant has no knowledge of the degree of severity of her condition or if it was symptomatically painful or if it did, in any

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way limit her ability to wear military equipment. However, what is known in this case is that according to DOD Instruction 6130.03-Vol 2, *Medical Retention Standards for Military Service*, Chapter 5.16, paragraph (d), scoliosis is disqualifying for retention in military service when and if the following criteria is present: (1) the condition results in severe deformity, greater than 30 degrees of curvature or if symptomatic so as to limit the wearing of military equipment; or... (2) if recurrently symptomatic, regardless of the degree of spinal curvature.

So, with the extreme limitation of record documentation, no absolute conclusion can be offered as to the applicant's actual medical condition. Additionally, absent any commander's statement of intent to separate, only assumptions could be offered. Secondary to her separation, the Medical Consultant will assume that her newly found scoliotic spine condition met one of the disqualifying criteria, and her limited time in service would then dictate the character of service currently listed on her DD Form 214. The condition of scoliosis is where the spine twists and curves to the side. It can affect people of any age, from babies to adults, but most often starts in children aged 10 to 15 years. The condition can improve with treatment, but it is not usually a sign of anything serious and treatment is not always needed if it's mild. The applicant's condition, most likely presented prior to her entering the service, but not known by either herself or the Air Force, would not constitute any purposeful errors during her enlistment process. In this case, it is apparent that when the spinal structural abnormality was found, the applicant was discharged under the most likely premise that had the Air Force known of the applicant's spinal abnormality, it is likely that she would not have been accepted onto active military service; or if so, under a waiver. Under such separation actions where the evidence or the condition indicates that the abnormality existed prior to entering service and was not permanently aggravated beyond the natural progression of the condition, the reasons for separation (as per AFI 36-3208) may be designated as Erroneous Entry, Failed Medical Procurement Standards, or Fraudulent Entry; the latter is only reserved for individuals who knowingly failed to disclose a pre-existing medical condition on entering military service. In the case under review, as stated on the applicant's application to the Board, it is indeed likely she had no idea that there were any medical problems at all until she underwent a different (and probably more thorough) physical examination in basic training. It appears that the applicant was not a victim of an error or injustice in her discharge processing. According to AFI 36-3208; paragraph 1.19.1, airmen are in entry level status during the first 180 days of continuous active military service. In this case, the applicant with 55 days of active duty service is well below the 180-day benchmark and thus an uncharacterized/ELS was appropriate.

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 15 Sep 22 for comment (Exhibit D) 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. The Board concurs with the rationale and recommendation of the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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-2022-00900 in Executive Session on 30 Nov 22:

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, dated 26 Jan 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 14 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Sep 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.

11/30/2023

Work-Product [Redacted] _____
Board Operations Manager, AFBCMR
Signed by *Work-Product* [Redacted]