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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02371

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her entry level separation (ELS) be upgraded from uncharacterized to under honorable conditions due to a service-connected disability.

APPLICANT'S CONTENTIONS

She experienced a medical trauma that led to multiple medical procedures that failed to discover the cause of her migraines and dizzy spells. Her character of service has an adverse effect on her current and future Department of Veterans Affairs (DVA) benefits. She is currently receiving 30 percent disability from the DVA for her combined service-connected disabilities.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 30 Mar 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airman*, chapter 5, section C, Defective Enlistments, paragraph 5.14 for Erroneous Enlistment. The specific reason for the action is the applicant's narrative summary dated 27 Mar 06 found she did not meet minimum medical standards to enlist. She should not have been allowed to join the Air Force because of migraines and persistent headaches.

On 4 Apr 06, the Attorney Advisor found the discharge action legally sufficient.

On 5 Apr 06, the discharge authority directed the applicant be discharged with an ELS under the provisions of AFPD 36-32 and AFI 36-3208, chapter 5, section C, Defective Enlistments, paragraph 5.14 for Erroneous Enlistment.

On 7 Apr 06, the applicant received an ELS. Her narrative reason for separation is "Failed Medical/Physical Procurement Standards." She was credited with two 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 Exhibits C and D.

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POC: SAF.MRBC.Workflow@us.af.mil

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3208, *Administrative Separation of Airmen*, section 1.19, paragraph 1.19.1. describes Entry Level Separation as:

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.

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie memorandum.

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On 15 Mar 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

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. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

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

AFPC/DP2SSR recommends denying the application. Airman are given ELS with uncharacterized service when the discharge is initiated within 180 days of total active service. The Department of Defense determined that it was unfair to both the member and the service to characterize their limited service. Based on the review of the applicant's records, there is no error or injustice with the discharge processing.

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The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. There was no evidence she had any mental health conditions during her brief time in service that caused her discharge. She claimed during service she experienced medical trauma due to multiple medical procedures she had endured to find the root cause of her migraine and dizzy spells. These alleged experiences of medical trauma; however, had no relation or impact to her actual discharge for having disqualifying existed prior to service (EPTS) physical conditions. She was also not eligible for a medical discharge as requested due to these reasons per her commander's report. As a result, the Psychological Advisor finds no error or injustice with her discharge from a mental health perspective.

The Board may elect to apply liberal consideration to the applicant's request. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contends she experienced medical trauma from multiple procedures and a failed attempt to find the root cause of her migraine and dizzy spells. She believes her discharge was due to service-connected disability and her character of service should be changed to Under Honorable Conditions (Medical). She did not specify her service-connected disability.

2. Did the condition exist or experience occur during military service?

There is no evidence the applicant experienced medical trauma during military service and no evidence she had any mental health conditions or issues during service.

3. Does the condition or experience excuse or mitigate the discharge?

The applicant was discharged for erroneous enlistment for having EPTS conditions of migraine and persistent headaches that were determined to be disqualifying for military service. There is no evidence her medical trauma or mental health condition had caused her discharge from service. Her mental health condition does not excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no evidence her mental health condition excuses or mitigates her discharge, her mental health condition also does not outweigh her original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 22 Sep 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such application as untimely, since the Board typically looks for over 15 years of good conduct post-

service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).

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. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the applicant only served two months and seven days of active service; therefore, the type of separation and character of service are correct as indicated on her DD Form 214. Additionally, the Board concurs with the rationale and/or recommendation of AFPC/DP2SSR and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence of any unfitting mental health condition meeting the criteria for a medical discharge/disability and would also not outweigh her administrative discharge. The Board notes the applicant was discharged for erroneous enlistment for having EPTS conditions of migraine and persistent headaches that were determined to be disqualifying for military service. In addition, there is no evidence her medical trauma or mental health condition had caused her discharge from service. Therefore, her mental health condition does not excuse or mitigate, her original discharge. Therefore, the Board recommends against correcting the applicant's records.

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-2022-02371 in Executive Session on 26 Apr 23:

<i>Work-Product</i>	Panel Chair
	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, dated 7 Sep 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 12 Sep 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Sep 22.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 15 Mar 23.

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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.

1/4/2024

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Board Operations Manager, AFBCMR

Signed by:

Work-Product

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