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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00192

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

1. She either be medically retired, placed on the temporary disability retired list (TDRL), or receive a military retirement and any back pay and benefits allowed.
2. Her narrative reason for separation and corresponding separation code be changed to "Secretarial Authority" and JFF.
3. Her reentry (RE) code be changed to RE-1<sup>1</sup> versus RE-2<sup>2</sup>.

### APPLICANT'S CONTENTIONS

Through counsel, the applicant contends she suffered from behavioral health issues while she was on active duty. She requested help through her chain of command and medical care providers at the time but was erroneously diagnosed with personality disorder. Since her discharge, she has been diagnosed with post-traumatic stress disorder (PTSD) and currently receives benefits from the Department of Veterans Affairs (DVA). Counsel indicates liberal consideration should be applied based on her PTSD and other behavioral health issues. In addition, she references several court cases for consideration.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 14 Mar 17, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen* for personality disorder. The specific reason for the action was: On 15 Feb 17, she completed a Commander Directed Evaluation (CDE). At the conclusion of the CDE, she was diagnosed with Histrionic Personality Disorder and Narcissistic Personality Disorder. These disorders were so severe her ability to function effectively in the military environment was significantly impaired. This impact was shown by her removal from patient care, and her inability to consistently complete required tasks such as arriving to work on time, making patient appointments, checking patients into appointments and charting.

<sup>1</sup> Eligible for Immediate Reenlistment

<sup>2</sup> Conditions Barring Immediate Reenlistment

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On 20 Mar 17, the Staff Judge Advocate found the discharge action legally sufficient and on the same date, the discharge authority directed the applicant be discharged for personality disorder, with an honorable service characterization. Probation and rehabilitation were not offered. On this same date, according to a memorandum for record, dated 21 Mar 17, the applicant was a no-show to her scheduled appointment with Family Health and remained noncompliant, refusing to complete any documentation or meet separation out-processing requirements for her administrative discharge action.

On 24 Mar 17, the applicant received an honorable discharge. Her narrative reason for separation was "Personality Disorder" with corresponding separation code JFX, and RE code 2C. She was credited with 3 years and 14 days of total active service.

On 26 Feb 19, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for a change to her narrative reason for separation.

On 5 Sep 19, the AFDRB concluded the applicant met the Department of Defense criteria for a change in the narrative reason for separation to Secretarial Authority.

On 3 Feb 20, a new DD Form 214, *Certificate of Release of Discharge from Active Duty*, was accomplished, correcting her narrative reason for separation to "Secretarial Authority." No change was made to the separation code and it remained as "JFX" (personality disorder).

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

#### **APPLICABLE AUTHORITY/GUIDANCE**

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.

On 28 Sep 23, the Board staff provided the applicant a copy of the supplemental guidance (Wilkie memorandum) (Exhibit E).

#### **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for a medical discharge/retirement. The Psychological Advisor, however, recommends changing her separation code to one that does not indicate a personality disorder for privacy reasons but does not recommend a change in the reentry code due to a documented diagnosis of personality disorder, for which she was discharged.

While the applicant did suffer from mental health issues at the time of her discharge, her mental health diagnoses at discharge were unsuiting rather than unfitting. Her mental health encounters during her time in service clearly document the issues surrounding her losses were resolved prior to her discharge from the military. She was also evaluated for PTSD and it was determined she did not meet the criteria for a PTSD diagnosis at the time of her discharge. Her CDE determined she did not have an unfitting condition that would require disposition through medical board channels. She was diagnosed with acute reaction to stress and bereavement, but these conditions were resolved by the time of her discharge. The screening instruments she was administered on 13 Feb 17 and 22 Feb 17 show minimal to no symptoms with regard to depression, anxiety, and PTSD symptoms.

Counsel contends the applicant had PTSD while she was on active duty. There is no evidence to support this claim. None of her in-service medical records have a diagnosis of PTSD. She was diagnosed with an acute stress reaction and bereavement to losses in her life, but even these diagnoses were resolved through mental health treatment. Counsel contends she was erroneously diagnosed with a personality disorder. There is evidence to confirm her diagnosis of histrionic personality disorder and narcissistic personality disorder are accurate and reflect the applicant's functioning. The CDE was conducted over multiple days, with the evaluator completing diagnostic interviews with the applicant, psychological testing, and obtaining collateral information. Counsel along with some of the materials submitted on behalf of the applicant seems to imply a person can only have one mental health diagnosis and that having one, precludes having a second diagnosis. Oftentimes, patients who present with situational problems resulting in a diagnosis (i.e., depression and anxiety), have additional underlying personality structures (personality disorders). These long-standing ways to inappropriately manage life's stressors, often

result in difficulties as described in the applicant's records, leading to other mental health diagnoses.

Counsel contends the applicant has been diagnosed with PTSD and receives DVA benefits. The applicant has an 80 percent service connection, with a 70 percent service connection for major depressive disorder (MDD), not PTSD. She was diagnosed with MDD, approximately six years after her military discharge. There is insufficient evidence the applicant was unfit for duty as a result of MDD while she was serving in the Air Force. The military's Disability Evaluation System, 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 time of separation and not based on post service progression of disease or injury. To the contrary, the DVA, 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 DVA 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 applicant submitted a letter from a retired lieutenant colonel dated 19 Feb 21, who is not trained in mental health or PTSD. In this letter, he claims the applicant suffered PTSD as a result of side effects from taking an antidepressant medication, Zoloft (200 mg), which also likely caused permanent damage to her amygdala. There is no evidence for this contention. The applicant was evaluated for PTSD during her military service and was found not to meet the criteria for a PTSD diagnosis. Records indicate she was only prescribed 50 mgs and 100 mgs, not 200 mgs. The normal therapeutic dose of Zoloft is from 50 mg to 200 mg. Her dosage was well within this range. Records also do not indicate any reported side effects from taking Zoloft. Additionally, her medical records show she reported good benefits from taking Zoloft.

The applicant also submitted an undated letter (psychological evaluation) from a Doctor of Psychology. He mentions, "According to the PHQ and PTSD Checklist utilized, [applicant] suffers from Anxiety, major depression, PTSD and suicidal ideation without practice. Patient received a score of 54 on the PTSD Checklist which demonstrates a positive result for PTSD." The AFRBA Psychological Advisor does not negate this diagnosis, although relying on a PTSD checklist and PHQ as the primary criteria for a diagnosis is not standard practice. These measures are screening self-report instruments where the respondent is free to circle the degree of symptomology. Respondents can over or under endorse symptoms in attempts to appear healthier or sicker depending on the circumstances. The applicant scored 54 on the PTSD checklist, according to this evaluation. It is uncertain when she completed this screening, but at the time of her discharge, she scored a zero, indicating no PTSD symptoms. She likewise scored within normal limits at the time of her discharge on other screening instruments, indicating no symptoms relating to anxiety or depression, which also factor into a PTSD diagnosis. Finally, this evaluation does not appear to assess or evaluate her for the presence of a personality disorder. Under Diagnostic Evaluation for Personality Disorder, the evaluator commented, "Not Relevant currently." There are numerous psychological instruments, as well as a thorough diagnostic interview that can help diagnose a personality disorder. This evaluation does not seem to evaluate the applicant for a personality disorder, which was the applicant's basis for separation. A personality disorder can be a comorbid condition with other mental health conditions.

Liberal consideration is not appropriate to be applied to the applicant's petition for a medical discharge/retirement because this policy does not apply to these types of requests.

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 5 Jul 23 for comment (Exhibit D), 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, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. While the Board notes the AFDRB corrected the applicant's narrative reason for separation to reflect "Secretarial Authority," the corresponding separation code should have also been corrected accordingly. Specifically, the applicant's diagnosed mental health condition of Histrionic Personality Disorder and Narcissistic Personality Disorder is an unsuiting and not unfitting condition and is not warranted to process through the Integrated Disability Evaluation System as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Therefore, the Board does not find compelling evidence the personality disorder was diagnosed erroneously. Regarding the applicant's request for a military retirement, the applicant completed 3 years and 14 days of total active service and does not meet the requirements for retirement eligibility in accordance Air Force policy. The Board applied the Wilkie memorandum criteria to the applicant's request based on a mental health condition and does not find her condition warrants changing her RE code nor award of retirement. Additionally, the Board notes counsel's arguments and references to several other cases but does not find them to persuade our decision. Each case before this Board is considered on its own merits. While the Board strives for consistency in the way evidence is evaluated and analyzed, the Board is not bound to recommend relief in one circumstance simply because the situation being reviewed appears similar to another case. Therefore, the Board recommends the applicant's records be corrected as indicated below.
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 pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show her DD Form 214, issued in conjunction with her 3 Feb 20 discharge, reflect a separation code of "JFF."

However, the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## **CERTIFICATION**

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00192 in Executive Session on 25 Oct 23:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 10 Jan 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Jun 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jul 23.

Exhibit E: Letter, SAF/MRBC, w/atchs (Clarifying Guidance), dated 28 Sep 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.

3/19/2024

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, AFBCMR

Signed by

*Work-Product*

**AFBCMR Docket Number BC-2023-00192**

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