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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01163

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

She be given a medical separation.

APPLICANT'S CONTENTIONS

She has been waiting for a response from the medical board and has yet to receive one. All of her medical records are at the Department of Veterans Affairs (DVA) hospital and her other records are at March Air Force Base. She never received a separations packet.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 17 Sep 15, the applicant's commander recommended it would be in her best interest to retire with current medical conditions further stating she is unable to perform the required primary Air Force Specialty Code (AFSC) duties, recommend separation. It is noted, prior to placement in a P-4 status, the applicant had 29 unexcused absences as she stopped showing up and did not notify the unit as to why she was not participating. Her profile restrictions include no driving, no prolong standing, no heavy lifting, no handling sharp objects or weapons, and no fitness activities; stating these restrictions would impact the unit's ability to effectively accomplish the mission. The nature of her conditions is chronic and cannot be accommodated.

On 29 Sep 15, the Force Support Squadron commander concurred with the unit commander's recommendation, returning the applicant to duty would adversely affect the unit or wing mission.

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

APPLICABLE AUTHORITY/GUIDANCE

AFBCMR Docket Number BC-2023-01163

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Controlled by: SAF/MRB
CUI Categories: *Work-Product*
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, paragraph 8.1. states this chapter provides the guidelines for processing through the disability system certain Air Reserve Component (ARC) members who meet eligibility requirements in paragraph 8.2 Paragraph 8.3 gives an ineligibility guideline. The Air Force disability system will evaluate ARC members who meet the basic requirements for disability benefits under 10 U.S.C., chapter 61. Further, Ready Reserve members who are pending separation for a non-duty related impairment and Reserve members who are not on a call to active duty of more than 30 days and who are medically disqualified for impairments unrelated to the member's military status and performance of duty shall be afforded the opportunity to enter the disability system for a determination of fitness only but shall not be afforded disability benefits. Eligibility for Disability Processing is for ARC members who have impairments which were incurred or aggravated in the line of duty are eligible for disability processing when (1) on active duty for 31 days or more while the member was entitled to basic pay; (2) after 23 Sep 96, on active duty for 31 days or more but not entitled to basic pay under 37 U.S.C. 502(B) due to authorized absence to participate in an educational program, or for an emergency purpose, as determined by the SAF or designated representative; (3) on active duty for 30 days or less or on call to Inactive Duty Training (IDT); (4) while traveling directly to or from the place at which such duty is performed; and/or (5) after 23 Sep 96, any injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods of IDT, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence.

Per paragraph 8.19, any member of the Ready Reserve who is pending separation for a non-duty related impairment shall be afforded the opportunity to enter the Disability Evaluation System (DES) for a determination of fitness. If determined fit, the member is deemed medically qualified for retention in the Ready Reserve in the same specialty for which he or she was found fit. Members of the Reserve components who are not on a call to active duty for more than 30 days and who are medically disqualified for impairments unrelated to the member's military status and performance of duty shall be referred into the DES solely for a fitness determination upon the request of the member or when directed by the Secretary concerned.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a post-service Medical Evaluation Board (MEB) and a retroactive medical disability retirement. This is due to insufficient service evidence upon which to conduct an objective search and identification of an error or injustice warranting the desired change of the record. However, her case should be reconsidered following receipt and review of recommended necessary documentation.

In responding to the applicant's request for changing her honorable discharge to a medical separation or retirement, she is respectfully advised a medical diagnosis does not automatically warrant separation from military service. First, there must be evidence the given medical condition(s) interfered with her ability to reasonably perform the duties of her office, grade, rank, or rating. Secondly, the military DES, established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offers 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 future progression of injury or disease. Accordingly, DoDI 1332.18, *Disability Evaluation System*, paragraph 6.2, *General Criteria for Making Unfitness Determinations*, states a Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating to include duties during a remaining period of Reserve obligation. The evidence establishes their disability represents a decided medical risk to their health or to the welfare or safety of other members; or imposes unreasonable requirements on the military to maintain or protect the Service member.

In the case under review, although the DVA electronic health record is reflective of the applicant's evaluation and treatment of Multiple Sclerosis (MS), Type 2 Diabetes mellitus, Major Depressive Disorder (MDD), and Post-Traumatic Stress Disorder (PTSD), among other conditions, it does not contain information vital to the determination of her fitness at the time of discharge, nor her eligibility for processing via the Integrated or Legacy DES, as one or more compensable medical conditions. In addition to missing necessary service medical progress notes, line of duty (LOD) determinations and AF Forms 469, *Duty Limiting Condition Reports*, are essential to determining whether an individual should be referred for MEB/Physical Evaluation Board processing and whether the condition should be processed as a compensable, in the line of duty, versus non-duty related.

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 11 Dec 23 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFRC/SG recommends denying the applicant's request finding no evidence of an error or injustice. There was one LOD determination completed for the applicant. On 19 Dec 06, a LOD for "exertional chest pain" was found in the line of duty (ILOD) from a previous IDT weekend fitness test. Exertional chest pain was resolved and was therefore not disqualifying per the continued service (retention) standards as outlined in AFI 48-123, *Medical Exams and Standards*, and the associated Medical Standards Directory (MSD). In Jan 15 the Reserve Medical Unit (RMU) processed an Initial Review in Lieu Of Medical Evaluation Board (IRILO MEB) for the diagnosis of MS, for which the applicant was found disqualified for continued military service. Because MS was not found to be a military duty related condition, a Non-Duty Disability Evaluation System (NDDDES) case was initiated by the RMU in Dec 15. The applicant seems to assume that because a diagnosis of MS was made while she was a member of the AFR, she would automatically be entitled to duty related MEB/Integrated DES processing, which is only the case if the disqualifying medical diagnosis was found ILOD. When a member of the USAFR has a diagnosis that disqualifies them for further service but was not determined to be ILOD, there is no option for a medical retirement as an outcome in the NDDDES process. The applicant's NDDDES

case was cancelled on 17 May 18 by the RMU after more clinical information was requested on 27 Apr 16 (no annotation made for cancellation reason).

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Dec 23 for comment (Exhibit F), 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 recommendations of the AFBCMR Medical Advisor and AFRC/SG and finds a preponderance of the evidence does not substantiate the applicant's contentions. The burden of proof is placed on the applicant to provide evidence to support her claim. Specifically, the Board finds the applicant's unfitting condition of MS for which she was discharged is a non-duty related medical condition and was not incurred during a period of active duty. Non-duty related fitness determinations are non-compensable. Furthermore, her LOD determination for "exertional chest pain" was resolved and therefore was not considered for DES processing. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, 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 from active service. 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 Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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.
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 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 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-2023-01163 in Executive Session on 18 Jan 24 and 30 Jan 24:

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Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, dated 15 Mar 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 6 Dec 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Dec 23.
- Exhibit E: Advisory Opinion, AFRC/SG, dated 28 Dec 23.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Dec 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.

2/9/2024

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Board Operations Manager, AFBCMR
Signed by: USAF