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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01284

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her discharge with severance pay (DWSP) be changed to a permanent disability retirement.

APPLICANT'S CONTENTIONS

Her disability conditions of depression and anxiety were misdiagnosed and rated inappropriately during her medical separation. In Sep 22, the Department of Veterans Affairs (DVA) increased her overall disability rating to 100 percent; however, it was subsequently backdated to Sep 21.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4) who entered the Regular Air Force on 22 Feb 11.

According to an Initial Review in Lieu of (IRILO) Narrative Summary (NARSUM), dated 1 Aug 16, the applicant had a four-year history of bilateral knee pain, with the right knee being significantly worse. Although anxiety and depression were listed in the Past Medical History section of the NARSUM, it was not deemed as a potentially unfitting condition for Disability Evaluation System (DES) purposes. According to an AF IMT 618, *Medical Board Report*, dated 6 Jan 17, the applicant was referred to the Physical Evaluation Board (PEB) for right knee pain.

According to a Letter of Exception, dated 10 Jan 17, the applicant sought to clarify the NARSUM Past Medical History during the DES process, and stated her anxiety and depression had not been resolved and she was currently still taking medication for this condition on a daily basis and seeing a mental health specialist once a week. On this same date, an Impartial Review Election Form, reflects the applicant elected to receive an impartial review of her Medical Evaluation Board (MEB) findings which was subsequently concurred by the impartial medial reviewer on 17 Jan 17.

According to the DVA DES Proposed Rating Decision, dated 14 Feb 17, used during the DES processing, the DVA originally service-connected her mental health condition for unspecified depressive disorder (claimed as depression and anxiety) and assigned a 30 percent disability rating.

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However, since this condition was not considered unfitting by the MEB or PEB it was not listed on her AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*. Additionally, this rating decision shows she initially received service-connection for five claimed conditions totaling 80 percent.

According to an AF Form 356, dated 17 Feb 17, the applicant was found unfit due to her medical condition of right knee pain; DVA rated as Bucket Handle Tear of Lateral Meniscus Status/Post Partial Meniscectomy and Lateral Release with Residual Surgical Scar and recommended DWSP with a 10 percent compensable disability rating in accordance with the ratings provided by the DVA. It is noted the Informal PEB (IPEB) considered all other medical conditions (Category II and III) rated by the DVA related to the applicant's military service and as required under the Integrated Disability Evaluation System (IDES) and found none of these conditions currently unfitting for duty, either separately or collectively.

According to an AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, dated 24 Feb 17, the applicant disagreed with the IPEB's findings and requested a Formal PEB hearing but later waived this request on 25 May 17 and agreed with the IPEB's findings.

On 28 Jul 17, according to the DD Form 214, *Certificate of Release or Discharge From Active Duty*, the applicant was honorably discharged from the Air Force with Disability, Severance Pay, Non-Combat (Enhanced).

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

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the applicant's DES processing. There is no indication the applicant's mental health condition rose to the level of being unfitting for service prior to the DES processing. Furthermore, award of a DVA disability rating for a medical condition or change in diagnosis or rating by the DVA after separation does not warrant change to the original DES ratings after the fact.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the PEB must determine whether a service member's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (*a snapshot in time*). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the service member's medical condition at the current

time. However, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the total compensable rating awarded at the time of the member's separation.

On 6 Jan 17, a MEB was held which found the applicant potentially unfitting for Right Knee Pain [sic]. The accompanying Medical NARSUM, dated 1 Aug 16, reveals she had a four-year history of bilateral knee pain with the right knee being significantly worse. Although anxiety and depression were listed in the Past Medical History section of the NARSUM, they were not deemed as potentially unfitting conditions for DES purposes. Prior to the MEB convening, the applicant's providers had to complete a review of all DVA claimed conditions to determine if any of these additional conditions may have been potentially unfitting. This review was completed on 6 Jan 16, and it was determined none of these claimed conditions were potentially unfitting and needed to be added to the MEB.

On 10 Jan 17, she elected to have an impartial medical reviewer examine the MEB findings and her medical records. In a Letter of Exception, dated 10 Jan 17, she sought to clarify the NARSUM's Past Medical History section by pointing out her anxiety and depression had not been resolved and she was currently still taking medication for this condition daily and seeing a mental health specialist once a week. However, this does not infer this condition negatively impacted her abilities to perform her daily duties and was severe enough to be considered unfitting for DES purposes. There is no indication she sought to have this condition added to her list of potentially unfitting conditions by the MEB. Rather, this letter seems to imply she should not be found potentially unfitting for her right knee condition and returned to duty although she admits the condition impacted her daily life. On 17 Jan 17, the impartial medical reviewer agreed with the MEB's findings that the right knee condition warranted referral to the PEB due to it being a chronic condition which limited her ability to perform her primary duties.

On 17 Feb 17, the IPEB found the applicant unfitting for Right Knee Pain; DVA rated as Bucket Handle Tear of Lateral Meniscus Status/Post Partial Meniscectomy and Lateral Release with Residual Surgical Scar and recommended DWSP with a 10 percent compensable disability rating in accordance with the ratings provided by the DVA. The DVA Proposed Rating Decision used during DES processing indicates the DVA originally service-connected her mental health condition for unspecified depressive disorder (claimed as depression and anxiety) and assigned a 30 percent disability rating. However, since this condition was not considered unfitting by the MEB or IPEB, it is not listed on her AF Form 356. This DVA assessment further backs up the MEB's decision not to include this condition as a potentially unfitting condition since it had no negative impact on the performance of her daily duties. Additionally, if the MEB would have considered this condition as potentially unfitting the IPEB would have more than likely determined the condition existed prior to service without service aggravation and therefore non-compensable under the DES. On 24 Feb 17, the applicant disagreed with the IPEB's findings and requested a Formal PEB hearing. She later waived this request and agreed with the IPEB's findings. While it is unclear whether she requested a Formal PEB hearing to be returned to duty as originally implied during the MEB process or to find her unspecified depressive disorder as also unfitting, she provided the following statement in this waiver request "The reason for my waiver is that I now

feel it is in my best interest to agree with the findings and recommended disposition of the IPEB.” She was subsequently DWSP on 28 Jul 17.

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 20 Jun 23 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 AFPC/DPFDD and finds there was no evidence of an error or injustice during the applicant’s DES processing. Specifically, the Board finds no indication the applicant’s mental health conditions of anxiety and depression rose to an unfit level for service prior to the DES processing. The mere existence of a mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant’s military duties were not degraded due to her mental health conditions. A Service member shall be considered unfit when the evidence establishes the member, due to a disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the total compensable rating awarded at the time of the member’s separation. 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; and then only for the degree of impairment present at the “snapshot” time of separation and not based on post-service progression of disease or injury. 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.

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

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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-2023-01284 in Executive Session on 27 Sep 23:

Work-Product, Panel Chair

Work-Product Panel Member

Work-Product, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 17 Apr 23.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, dated 6 Jun 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Jun 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.

3/6/2024

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Board Operations Manager, AFBCMR

Signed by

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