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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2023-02066

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

He be given medical separation.

### APPLICANT'S CONTENTIONS

His right Achilles tear which occurred on 3 Aug 07 should have been evaluated for a fitness determination. The Orthopedist's assessments stated, on 30 Oct 07, some defect which has been created in the Achilles repair roughly at the musculotendinous junction; on 1 Jul 08, demonstrates some mild atrophy of the right calf muscle; and on 17 Dec 10, right gastrocnemius and Achilles weakness and dysfunction with activity secondary to right Achilles tendon rupture and subsequent repair. After successful appeals to the Department of Veterans Affairs (DVA), he received a 30 percent disability rating for his Achilles tear and continues to have muscle atrophy to this day. After receiving the disability rating in 2017, he did not realize he could request a medical separation.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force Reserve captain (O-3).

On 30 Sep 07, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of captain after serving 10 months and 29 days of active-duty service for this period. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 15 Apr 08, the applicant was notified he was not recommended for promotion and due to his second deferral for promotion, would be discharged.

On 26 Sep 08, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of captain after serving 10 months and 25 days of

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active-duty service for this period. He was discharged, with a narrative reason for separation of “Completion of Required Active Service.”

Dated 27 Oct 08, Reserve Order Work-Pro... indicates the applicant was honorably discharged from the Air Force Reserve, effective 1 Nov 08.

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

## AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant’s request for a medical separation. After an extensive review of the available records, the Medical Advisor opines the submitted evidence was insufficient to demonstrate the existence of an applied error or calculated injustice. His DVA service connected and rated condition remains separate from any service disability as it pertains to DoD impairment ratings. The fact his injury was not in and of itself disqualifying for continued military service and resolution had occurred under the auspices of assignment availability code 31 of a single year period as evidenced by his separation physical examination (PE), processing through the Disability Evaluation System (DES) was not appropriate. No error or injustice occurred in the non-medical out-processing due to his second deferral for promotion.

The date of his injured right foot on 3 Aug 07 was during a period of active duty. Although, it would have been significantly more beneficial to have had the actual injury report as well as the initial treatment and civilian surgical repair documents, the follow-up civilian outpatient reports coupled with military treatment facility follow-up records provided enough proof and details of the stated accident. Data base acquired records did reveal, after post-surgical repair, he was appropriately treated in rehabilitation with physical therapy and close specialty follow-up and was restricted from running for a period of 9-12 months from Aug 07; the point of his original injury. The applicant petitions the Board requesting his discharge separation be re-evaluated to a medical discharge due to a right Achilles tendon tear. The record remained unclear if the applicant was retained on active duty (as in a Medical Hold status) during the time of his rehabilitation and recovery, or was he continued in an active Reserve status. However, according to both AFI 48-123, *Medical Examinations and Standards*, paragraph A2.14.2.7.9 and DoDI 6130.03V2, Medical Standards for Military Service – Retention, paragraph E4.2.6, a torn Achilles tendon is not disqualifying for service retention. Rather, what is disqualifying is when there is a tendon transplant with unsatisfactory restoration of function and tendon and/or ligament transplantation if restoration of function is not sufficient to adequately perform the preponderance of duties required, respectively.

When a member’s health, safety and well-being, mission safety or abilities to effectively accomplish the mission are at risk, providers must convey this information to the commander via a Form 422, *Physical Profile Serial Report*. Although there was no AF Form 422 contained in the record, the provider’s note stating the no running for the 9-12-month period, from Apr to Jul 08, from the date of injury, should have indeed been documented on an AF Form 422 or AF Form

469, *Duty Limiting Condition Report* (a report that conveys ones' physical limitations to ones' commander). According to AFI 10-203, *Duty Limiting Conditions*, paragraph 1.4, duty limitations that are occupational or mobility restrictions are entered on the AF Form 469. For duty restrictions, the maximum duration of AF Form 469 is 12 months. Any duty limiting condition which limits mobility or may be unfitting for continued military service must undergo a MEB or an Assignment Limitation Code (ALC) within one year of the initial AF Form 469 disposition for the condition per AFI 48-123 and AFI 41-210, *Tricare Operations and Patient Administration*. In no case should members on deployment limiting codes 31 (temporary condition resolving within 1 year) and/or code 37 (condition requires board processing) exceed one year without MEB or ALC processing unless the specific case is discussed with AFPC/DPAMM or the applicable ARC/SGP and documented on the AF Form 469 and medical records. In this case, there was no evidence the applicant was incapable of performing the duties of his office, grade, rank, or rating thus designating him to be unfit for continuing service. Additionally, his expected resolution of his condition to be under 1 year (by evidence of no running for 9-12 months) with proof of the same having undergone a normal separation PE just 2 weeks past 1 year out from his injury.

The applicant's entire reasoning for his request was based solely upon excerpts taken from his three civilian encounters. The first submitted civilian encounter was three months post injury and simply denotes the word "defect" as a term to identify the location of the repair, not a defect of an abnormal finding or that of a disability. The second civilian encounter was 11 months post injury and two and a half months after being notified of a second deferral for promotion. The examination simply identified mild decrease in muscle mass that is not unusual after surgery. There was no evidence such a finding was debilitating in any way and the applicant was released without limitations. The third civilian encounter was over three years post injury and identified muscle and tendon weakness with activity. The applicant cited and submitted DVA disability ratings for residuals, tear, right Achilles tendon at an original impairment rating of 10 percent which was eventually increased to 30 percent with an effective date of 27 Sep 08. From his statement on his application, he appears to believe that same rating should have been decided by the military, thus enabling him for a medical retirement. At this point, it remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, 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 near the time of service separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

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 14 Feb 24 for comment (Exhibit D), and the applicant replied on 8 Mar 24 providing additional medical records to support his contentions.

The applicant's complete response is at Exhibit E.

#### **ADDITIONAL AIR FORCE EVALUATION**

The AFBCMR Medical Advisor reviewed the additional evidence submitted by the applicant; however, the original recommendation remains unchanged. The civilian medical records included encounters and follow-ups from Aug 07 (the month of initial injury) thru Jul 08, 11 months after his injury. He also maintained physical therapy intermittently through that time. On 1 Jul 08, the applicant's orthopedic provider documented the applicant was doing well and made further comments regarding his injury.

Approximately six weeks later, 15 Aug 08, during his separation physical examination, the applicant reported having no adverse musculoskeletal or neurological symptoms within his review of symptoms (ROS) and his exam findings were normal. His exam findings within both the musculoskeletal and neurological systems were precisely in line with his denying of symptoms in the ROS. The applicant's additional record submission did not provide any compelling evidence to alter the Medical Advisor's previous recommendation. Previously cited regulatory guidance covered the non-disqualifying condition that was repaired and rehabilitated as to remain in service. The additional submission still did not provide sufficient evidence the applicant was incapable of performing the duties of his office, grade, rank, or rating thus designating him unfit for continued service. The weighted verification of this included his provider noting the expected resolution of his condition to be under one year and having a normal physical exam just two weeks past one year out from his injury.

The complete advisory opinion is at Exhibit F.

#### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 19 Mar 24 for comment (Exhibit G); and the applicant replied on 16 Apr 24. In his response, the applicant contends his physical therapy did not fix the Achilles tear rupture and lists the perpetual issues with his injury.

The applicant's complete response is at Exhibit H.

#### **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 mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. According to applicable guidance at the time of the applicant's separation, a torn Achilles tendon is not disqualifying for service retention. The Board finds the applicant's military duties were not degraded due to his medical condition; he was not separated due to a medical condition but rather was separated for a promotion deferral. 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. Additionally, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change to the separation reasoning. 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 or near the time of separation and not based on post-service progression of disease or injury. Furthermore, the Board finds the civilian medical records submitted by the applicant are not convincing enough to warrant his torn Achilles tendon as unfit to the level he was unable to perform his military duties. Therefore, the Board recommends against correcting the applicant's records. 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)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

## 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-2023-02066 in Executive Session on 20 Mar 24 and 22 Apr 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, w/atchs, dated 16 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 8 Feb 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Feb 24.

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Exhibit E: Applicant's Response, w/atchs, dated 8 Mar 24.

Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 19 Mar 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Mar 24.

Exhibit H: Applicant's Response, dated 16 Apr 24.

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.

5/10/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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