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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02221

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

She be given a medical separation.

### APPLICANT'S CONTENTIONS

She is 100 percent disabled due to a Line of Duty (LOD) injury during her Operation ENDURING FREEDOM (OEF) tour. She had a permanent profile at the time of her honorable discharge, and she has been service connected at 100 percent by the Department of Veterans Affairs (DVA) for permanent and debilitating disabilities. She marked other mental health on her application.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) senior airman (E-4).

Dated 14 Dec 09, AF Form 348, *Line of Duty Determination*, indicates the applicant's injury to her right shoulder occurred while she was deployed to the [REDACTED] and was found in line of duty (ILOD) by the appointing authority on 7 Jan 10.

On 27 Jul 10, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged after serving 1 year, 3 months, and 17 days of active duty this period. She was discharged, with a narrative reason for separation "Release due to Demobilization."

On 2 Apr 12, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving four years, eight months, and one day of total service for pay. She was discharged, with a narrative reason for separation of "Pregnancy/Childbirth."

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

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Controlled by: SAF/MRB  
CUI Categories: [REDACTED]  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

## 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 the desired changes to her record. This mental health advisory is limited to the applicant's mental health condition. A review of the available records finds no evidence or records the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during her time in service. Her report during the Compensation and Pension (C&P) examination dated 15 Mar 21 corroborates this information as she reported never being diagnosed with a mental disorder and there were no records of any mental health treatment as reported in her C&P exam. Since there are no records she had any mental health condition during service, there is no evidence she would have any potentially unfitting mental health condition that would meet the criteria to be referred to the Medical Evaluation Board (MEB) and Disability Evaluation System (DES) for a medical discharge. There are no records she was ever placed on a duty limiting condition (DLC) profile for a mental health condition and in fact, one of the DLC reports/profiles she did submit reflected she had an S1 profile for psychiatric conditions for no duty limitations due to her mental health condition. There are no records she was deemed not worldwide qualified or deployable due to her mental health condition and no statements from her leadership stating her mental health condition had impaired her ability to reasonably perform her military duties in accordance with her office, grade, rank, or rating. Furthermore, since the applicant was a member of the ANG, there is no record she received an ILOD or LOD determination for her mental health condition, which is required for a compensable medical discharge for an unfitting mental health condition. The records she did submit were for her physical condition and not a mental health condition. She contends she was on a permanent profile at the time of her discharge; however, no records are available or submitted to confirm the profile was for her mental health condition.

Her current mental health treatment with the DVA is for conditions, Major Depressive Disorder (MDD), General Anxiety Disorder (GAD), insomnia, and Attention-Deficit/Hyperactivity Disorder (ADHD), that were developed and diagnosed after service from her family stressors. There are no records or evidence any of these conditions had existed or occurred during her military service. There is no report her post-service mental health conditions/diagnoses were related to or caused by her military duties. From the information presented, her request for a medical discharge based on her mental health condition could not be supported. The applicant was discharged from service for the reason of pregnancy/childbirth and no evidence her mental health condition caused her early career termination. There is no error or injustice identified with her discharge from a mental health perspective.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request for a medical retirement. There was no definitive evidence of a material error, injustice, impropriety, or inequity found in the process leading up to the applicant's separation. The DES is not a direct option for any individual, but rather is bought

forth when there exist a potentially unfitting condition and one's fitness and ability to continue serving remains at bay.

Although there were many service medical records found in the DoD electronic medical record data base, none were germane in this case due to the late dating of the encounters after her separation date that were conducted in both military and civilian medical facilities. Therefore, only the submitted documents were reviewed in making a recommendation to the Board. The applicant's sole specialty care follow-up after her right shoulder surgery occurred nearly 14 months after the initial procedure which had both lifting and limited exercise restrictions that were secondary to her right shoulder post-surgery condition. However, it was only 27 days after this sole follow-up encounter where the applicant was determined to be worldwide qualified noting all 1's across her physical condition, upper extremities, lower extremities, hearing and ears, vision and eyes, and psychiatric (PULHES) profile on her AF Form 422, *Notification of Air Force Member's Qualification Status*, indicating she met all medical fitness standards and was capable to deploy. Despite her being exempt from push-ups, there was no evidence of her not being capable of performing the duties of her military occupation.

This Medical Advisor respectfully acknowledges the applicant's assumed multiple service-connected health conditions, for which she has received compensation by the DVA, under provisions of Title 38, U.S.C.; however, the applicant is advised, operating under Title 10, U.S.C., the Military Department only offers compensation for the medical condition(s), determined in LOD, and which cause career termination; that is, the condition(s) that prevented the service member from reasonably performing the duties of his or her office, grade, rank, or rating; and then based only upon the level of impairment and evidence near the time of service separation, and not based upon new evidence of post-service progression of disease or injury. On the other hand, operating under Title 38, U.S.C., DVA offers compensation for any medical condition determined service-connected, without regard to its proven or demonstrated impact upon a service member's retainability or fitness to service, narrative reason for release from military service, or the time transpired since the date of discharge. The DVA is also empowered to adjust disability ratings, as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran.

In this case, the applicant indicated her 100 percent impairment rating from the DVA was due to a LOD injury which occurred while deployed. Such a statement is not backed by credible evidence for there is no 100 percent DVA impairment rating solely for a shoulder condition unless the applicant underwent a prosthetic replacement of the entire shoulder joint which did not occur in this case. Therefore, there had to be other conditions the DVA rated, but the applicant has only provided her combined rating in her submission of records. Even if the applicant provided a full breakdown of her separate impairment ratings to include the sole portion of impairment related to the right shoulder, her ability to maintain the performance of the duties of her office, grade, rank, or rating during her military service would indicate her overall right shoulder condition which dramatically improved after surgery was not considered permanently unfitting. There was no objective evidence of such an inability. Although it was determined to be an injury as well as occurring in the LOD, it was not considered permanently unfitting for continued service and therefore, processing through the DES, which if applicable, could render an outcome of a medical

retirement, was not appropriate nor would such submission be in line with regulatory and or DoD guidance.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 7 Mar 24 for comment (Exhibit E), and the applicant replied on 1 Apr 24. In her response, the applicant contends her shoulder injury occurred while she was on active-duty orders in 2009. Upon returning stateside, she went to an orthopedic surgeon which indicated an injury to her shoulder. All of her disabilities are related to her shoulder injury. In a letter submitted by the applicant from her DVA psychiatrist, it is noted she previously suffered a shoulder injury which impacted her life and contributed to her struggles with anxiety and depression. The applicant submitted additional evidence to support her claim to include Tricare summaries of benefits and medical records from her shoulder injury.

The applicant's complete response is at Exhibit F.

## **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 AFRBA Psychological Advisor and 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. The applicant's military duties were not degraded due to her medical or mental health conditions. The Board finds the preponderance of evidence indicates her right shoulder condition dramatically improved after surgery and was not permanently unfitting. Although her injury occurred in the LOD, it was not considered permanently unfitting for continued service. Additionally, the Board finds no evidence the applicant received any mental health evaluation, treatment, or mental disorder diagnosis during her time in service. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health 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 compensable change to a 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 or near the time of separation and not based on post-service progression of disease or injury. Therefore, the Board recommends against correcting the applicant's record. 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-2023-02221 in Executive Session on 17 Apr 24 and 1 May 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 5 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 29 Nov 23.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 3 Mar 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Mar 24.
- Exhibit F: Applicant's Response, w/atchs, dated 1 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.

5/13/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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