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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02528

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His "Uncharacterized" Entry Level Separation (ELS) be upgraded to a medical separation.

### APPLICANT'S CONTENTIONS

He was in an accident and sustained an injury while at Basic Military Training (BMT) for which he was medically boarded and separated. When applying for Department of Veterans Affairs (DVA) benefits, his claims were denied stating his injury was not sustained during service. His condition was found to have existed prior to service (EPTS); however, this is an error as he was not predisposed to a shoulder dislocation. He was cleared at the Military Entrance Processing Station (MEPS) with no need for a waiver.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 7 Jun 07, AF Form 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for multidirectional instability left shoulder status post (s/p) dislocation which notes the injury EPTS.

On 7 Jul 07, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant's left shoulder pain due to multidirectional instability s/p dislocation EPTS without permanent service aggravation with a recommendation of "Discharge Under Other Than Chapter 61, Title 10 U.S.C. (EPTS)."

On 6 Jul 07, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and disposition of the board and waived his rights to a formal hearing.

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On 11 Jul 07, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant received an ELS with an “Uncharacterized” service characterization after serving five months and five days of active duty. He was discharged, with a narrative reason for separation of “Disability Existed Prior to Service.”

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

## APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3208, *Administrative Separation of Airmen*, dated 9 Jul 04, describes the authorized service characterizations that were applicable at the time of the applicant’s separation.

**Honorable.** The quality of the airman’s service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

**Under Honorable Conditions (General).** If an airman’s service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

**Under Other than Honorable Conditions.** When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

**Entry Level Separation.** Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

## AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application finding no evidence of an error or injustice during Disability Evaluation System (DES) processing. Although the applicant may not have been aware of or did not report a previous shoulder injury during MEPS processing, medical evidence

shows otherwise. Additionally, the DVA made an independent assessment of his medical condition to determine if it was service connected and eligible for compensation under Title 38.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (Title 10, U.S.C.), the Physical Evaluation Board (PEB) must determine whether an airman'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. 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 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.

A Medical Evaluation Board (MEB) found him potentially unfitting for multidirectional instability left shoulder status/post dislocation and the condition was determined to have EPTS and not permanently aggravated by service for which he agreed at that time. An accompanying medical consult dated 29 Jan 07 (6 days after entry), indicated he injured his left shoulder while performing pushups during BMT and was diagnosed with a left shoulder dislocation in the emergency room. Although, as indicated by the applicant as part of his contention, this shoulder injury was unknown to the Air Force and not identified during his MEPS physical; a magnetic resonance imaging (MRI) of the left shoulder conducted on 16 Feb 07 showed no signs of a recent injury but demonstrated a small Hill-Sachs deformity. Thickened, remodeled anterior band of the inferior glenohumeral ligament, including at the peripheral attachment, indicated response to a prior injury. This consult also indicated the applicant had continued joint instability that prevented him from safely completing BMT. His left arm condition made him predisposed to shoulder dislocation, therefore prompting a Line of Duty Determination (LODD) and MEB. This consult's notes also indicated the applicant was aware of these findings and wished to proceed with the MEB.

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 Dec 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. Airmen are given entry level separation with uncharacterized service when they fail to complete a minimum of 180 days of continuous active military service and the applicant only served five months and five days of active service, therefore, the type of separation and character of service are correct as indicated on her DD Form 214. Additionally, the Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant was correctly diagnosed and was correctly processed through the DES which found he had a pre-existing left arm condition which made him predisposed to shoulder dislocation which EPTS and was not aggravated by his military service. 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-2023-02528 in Executive Session on 23 May 24 and 30 May 24:

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Panel Chair

Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, dated 12 Jul 23.

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

Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 12 Dec 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Dec 23.

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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.

6/10/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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