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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02551

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

Her official military personnel record be amended to reflect a medical discharge.

### APPLICANT'S CONTENTIONS

Members at her unit state that due to her being in Individual Ready Reserve (IRR) status, they were unable to process her medical discharge. This correction should be made due to her current disabilities being the result of active service prior to her discharge.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve (AFR) staff sergeant (E-5).

On 25 Nov 15, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the AFR for a period of six years.

On 24 Jun 22, according to Reserve Order Work-Pro..., dated 27 Jul 22, the applicant was honorably discharged from the AFR.

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

### APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

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Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie memorandum.

On 4 Jan 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

## **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 a medical disability discharge.

There is insufficient evidence to suggest the applicant was not fit for duty during her service and at discharge. While she did have mental health treatment in the military, she was released without any limitations or duty restrictions. Her termination summary from mental health noted she was operationally ready, she was cleared for real-world deployment, and she had no duty limitations. Additionally, it was noted she was not being referred for a Medical Evaluation Board (MEB). While the applicant claims her unit cannot process her for an MEB because she is in an IRR status, there is no indication her mental health providers ever recommended referral to an MEB or that she met the criteria for referral to an MEB, while in service, from a mental health perspective.

Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition unfitting. More information is required to determine unfitness such as being placed on a permanent Duty-Limiting Condition (DLC) profile for a mental health condition, being deemed not world-wide qualified (WWQ) due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their

military duties in accordance with their office, grade, rank, or rating. These designations were absent from her records.

As mentioned above the applicant was never on a profile or had a DLC from a psychological perspective. She remained WWQ and performed her duties above average (exceeding some, but not all expectations, and earned an overall rating of a 4 out of possible 5 on all her performance evaluations). There is insufficient evidence her mental health condition impacted her ability to perform the duties of her office, grade, rank, or rating.

While the Department of Veterans Affairs (DVA) has determined her chronic adjustment disorder is service-connected and diagnosed her with Post-Traumatic Stress Disorder post-service, this does not demonstrate the applicant was unfit for duty during her service or at discharge. The military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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 time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran. Again, her military and service record demonstrate she was able to perform the duties of her office, grade, rank, or rating during her time in the military.

Liberal consideration is not applied to the applicant's petition because this policy does not apply to medical discharge/retirement requests.

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 18 Jan 24 for comment (Exhibit E) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant did receive mental health treatment during her military service, she was released without limitations or duty restrictions. She was found to be operationally ready and cleared for real-world deployment. There is no evidence the applicant was not fit for duty during her service and at discharge. Liberal consideration was not applicable to the applicant's request. Therefore, the Board 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 evidence did not demonstrate material error or injustice, 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-2023-02551 in Executive Session on 14 May 24:

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 4 Aug 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 4 Jan 24.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 17 Jan 24.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Jan 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.

7/15/2024

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