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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03716

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her official military personnel record be amended to reflect a disability retirement versus a discharge with severance pay (DWSP).

APPLICANT'S CONTENTIONS

She was discharged at 19 years, 5 months based on Physical Training (PT) exemptions and non-deployability. She followed all medical protocols and met her PT standards as outlined by the Air Force. As an Air Force Specialty Code that was not deployable, the rationale and decision to not retain her based on non-deployability was made erroneously. She was recommended not to fight the Physical Evaluation Board (PEB) by the PEB Liaison Officer (PEBLO) due to the chance she would lose or not be able to delay until her 20-year mark. Based on her Medical Evaluation Board (MEB), she was found unfit for right wrist pain and left knee pain. Both received a zero rating and found her to be non-deployable. She requested to remain for the remaining seven months to reach retirement but was denied. The disabilities they mentioned did not affect her job.

She did not fight this after the fact because of the stress it caused her. She has had a hard time coming to terms with this decision and is mourning her Air Force career. After speaking to multiple service members, Department of Veterans Affairs (DVA) representatives, and her congressman, she decided to seek possible change after their encouragement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force master sergeant (E-7).

On 9 Nov 16, according to AF IMT 618, *Medical Board Report*, the applicant was referred to the informal PEB (IPEB) for: right wrist pain, right calf pain, right shoulder pain, lower back pain, chronic tailbone pain, epigastric pain, and neck pain.

On 8 Feb 17, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions:

- Right Wrist Pain; DVA rated as S/P Triangular Fibrocartilage Complex (TFCC)

Repair, Right Wrist; Incurred While Entitled to Receive Basic Pay: YES;

AFBCMR Docket Number BC-2023-03716

Work-Product

Work-Product

Disability Compensation Rating: 0; Veterans Affairs Schedule for Rating Disabilities (VASRD) Code: 5215; Combat-Related: NO.

- Right Knee Pain; DVA rated as Bone Spur, Right Knee w/Chronic Soleus Muscle Inflammation; Incurred While Entitled to Receive Basic Pay: YES; Line of Duty: YES; Disability Compensation Rating: 0; VASRD Code: 5257-5015; Combat-Related: NO.

- Category II – Conditions That Can Be Unfitting but Are Not Currently Unfitting:

- Neck Pain; VASRD Code: 5242.
- Right Shoulder Pain; VASRD Code: 5201-5003.
- Lumbar Back Pain; VASRD Code: 5237.
- Chronic Tailbone Pain; VASRD Code: 5298.
- Epigastric Pain; VASRD Code: 7399-7346.

The IPEB recommended DWSP with a combined compensable percentage of zero percent.

On 15 Feb 17, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed to the findings and recommended disposition of the IPEB and waived the right to a formal PEB hearing. The applicant requested a separation date of 29 May 17. On this same date, according to the *Legal Representation Form*, the applicant elected, “No. I do not want an attorney from the OAC [Office of Airmen’s Counsel] to represent me.”

On 29 May 17, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge, with Narrative Reason for Separation of Disability, Severance Pay, Non-Combat (Enhanced), and was credited with 19 years, 5 months, and 1 day active service.

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

APPLICABLE AUTHORITY/GUIDANCE

In accordance with Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, dated 2 Feb 06, Chapter 6 – *Limited Assignment Status (LAS)*:

Section 6A – *Purpose and Eligibility*.

6.1. *Basic Eligibility*. Some members found physically unfit by a PEB can serve on AD in LAS with limitations and controls over their assignments. This option is open to members on EAD who meet the eligibility criteria and apply for LAS. Members who have some type of non-disability retirement or separation pending are not eligible for LAS.

6.2. *Procedures and Objective*. The SAF may defer the final disposition of members found physically unfit by a PEB and who request LAS.

6.3. *LAS Retention Criteria.* The number of members retained in LAS will be held to an absolute minimum. Action offices will use the following guidelines:

6.3.1. From 15 to 19 Years AD. Consider members:

6.3.1.1. If there is a need for the member's skill, experience, grade or specialty, and

6.3.1.2. If their physical defect or condition has essentially stabilized or, based on accepted principles, shows either gradual improvement or slow progression. Members must be able to function in a normal military environment without adverse effects on their own health, or the health of others, and without need for an excessive amount of medical care.

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 Disability Evaluation System (DES) processing. The overall compensable disability rating of zero percent resulted in the applicant's DWSP. She did not request a DVA rating reconsideration during processing for a possible increase to these ratings. Lastly, the applicant did not submit a request for retention on the LAS following IPEB adjudication in order to reach the time in service requirements for retirement and was discharged on the date she requested.

In accordance with AFI 36-3212, dated 2 Feb 06 (in effect at the time of disability processing), paragraph 1.1.1., the purpose of the DES is to maintain a fit and vital force. Disability law allows the Secretary of the Air Force to remove from active duty those who can no longer perform duties in their office, grade, rank, or rating and ensures fair compensation to members whose military careers are cut short due to a service-incurred or service-aggravated physical disability. Under Title 10, United States Code (U.S.C.), the 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. Under the Integrated DES the PEB then applies the ratings assigned by the DVA at the time of disability processing. That rating determines the final disposition (DWSP, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated.

On 9 Nov 11, an MEB found the applicant potentially unfitting for: 1) Right Wrist Pain; 2) Right Calf Pain; 3) Right Shoulder Pain; 4) Lower Back Pain; 5) Chronic Tailbone Pain; 6) Epigastric Pain; and 7) Neck Pain. The commander's assessment indicated the applicant was able to satisfactorily perform her duties in-garrison and did not occupy a mobility position; however, she was under an Assignment Limitation Code C-2 which limited her ability to deploy without Major Command approval. Additionally, the accompanying MEB Narrative Summary (NARSUM) indicated she had a 10-year history of chronic right wrist pain that required surgery in 2012. The pain continued following surgery and she remained on a profile which exempted her from doing push-ups for the Air Force PT (AFPT) test. She also had an approximate 2-year history of chronic right calf pain which required a profile which restricted her from running no greater than 100 yards. Therefore, the applicant was also exempt from the 1.5-mile run/2km walk component of the AFPT. The NARSUM indicated she was not cleared to complete the run, push-ups, and sit-ups components of the AFPT and was only cleared to complete the abdominal circumference component due to her ongoing medical conditions.

On 8 Feb 17, the IPEB found the applicant unfit for: 1) Right Wrist Pain; DVA rated as TFCC Repair, Right Wrist; and 2) Right Knee Pain; DVA rated as Bone Spur, Right Knee with Chronic Soleus Muscle Inflammation. Both conditions received a zero percent compensability rating as assigned by the DVA. The remaining five conditions were placed into Category II for conditions

that can be unfitting but are not currently unfitting. A combined compensable disability rating of 0-20 percent will result in DWSP for members with under 20 years of service at the time of IPEB adjudication. The AF Form 356, Block 15 contains the IPEB's rationale for this decision. The IPEB noted her right wrist and right knee pain conditions were determined to be unfitting due to them contributing to her being unable to meet the physical requirements of military service and meet deployment standards. The IPEB also noted they had reviewed her 22 Nov 16 MEB Letter of Exception in which she expressed her desire to remain on active duty until she reached full retirement eligibility. However, the IPEB's job was to determine her fitness for continued service based on her medical limitations. The Air Force has a separate process for members who have been found unfit by the PEB to remain on duty. On 29 May 17, she agreed with the IPEB's findings and did not request a one-time DVA reconsideration of her ratings which could have possibly resulted in a rating increase for her unfitting conditions during DES processing. The AF Form 1180 also reflects the applicant requested a 29 May 17 date of separation versus having our office calculate her separation date. On 2 Mar 17, our office directed the applicant be DWSP, effective 29 May 17, with 19 years, 5 months, and 1 day of service, per her request.

As part of her petition to the Air Force Board for Correction of Military Records, the applicant states she requested to remain on active duty until Dec 17 to qualify for retirement but was denied. Additionally, she states she based her decision to accept the IPEB's findings on a recommendation from her PEBLO. However, it is noted when she accepted the IPEB's findings, she also declined to seek advice from the OAC, a group of attorneys assigned to assist members going through the DES with making these career impacting decisions and suggesting proper courses of action. Although the applicant initially expressed her desire to remain on active duty until she reached full retirement eligibility at 20 years during the MEB process, her record does not indicate she requested retention under the LAS program following IPEB adjudication. In accordance with AFI 36-3212, Chapter 6, the objective of LAS is to defer the final disposition of members found unfit by the PEB with between 15 to 19 years of service, with needed skills who can be economically used, to request retention on LAS. PEBLOs and OACs are well versed in this program and, since she fell into this category, she would have been eligible to apply.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor, having considered the entire record, including the applicant's submission and contentions, and all pertinent materials, finds there is insufficient evidence to support changing the applicant's narrative reason for separation from a psychological perspective. Additionally, this advisor does not find any mental health condition unfitting; therefore, a change in her severance pay is not warranted.

The applicant did receive mental health services while she was in the military. 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 profile for a mental health condition, being deemed not world-wide qualified 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. Her records indicate she was primarily treated for marital issues (diagnosis-partner relational problem). During part of the time she was in mental health treatment, she was diagnosed with depression and anxiety. Both of these diagnoses were resolved with treatment and without any limitations on her duty status from a psychological perspective. The applicant was routinely released without duty limitations, cleared for mobility, temporary duty, and deployment, and she was determined to be fit for continued military duties. The applicant's termination of care summary provided by her mental health provider six days before discharge noted she was fit for continued military service from a psychological perspective.

While a Compensation & Pension (C&P) examination that was completed while the applicant was in service noted a diagnosis of adjustment disorder, unspecified (Adjustment Disorder, Unspecified, Chronic, which was claimed as PTSD [Post-Traumatic Stress Disorder, Depressive Disorder w/ Anxiety and Insomnia]) and rated her at 30 percent, it specifically noted she did not meet the Diagnostic and Statistical Manual criteria for PTSD and only met criteria for adjustment disorder. While the C&P examination rated her at 30 percent, it also noted her symptoms were not severe enough to interfere with social or occupational functioning. This C&P examination prompted clarification, with the President of the IPEB requesting further review (Memorandum, dated 23 Jan 17). The applicant's provider submitted a clinical opinion. The provider determined the applicant was fit for duty from a mental health perspective and that, in the provider's opinion, she did not meet the diagnostic criteria for PTSD or adjustment disorder.

While the applicant is currently service-connected for PTSD, it should be noted 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 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 re-evaluations 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.

Based on the above evidence, this psychological advisor concludes the applicant was fit for duty from a psychological perspective during her military service and discharge. Further evidence of this can be gleaned from her consistent exemplary overall performance ratings (4s and 5s out of a possible 5) throughout her military career, earning Air Force Achievement Medals and promotion to the rank of master sergeant (E-7). There is insufficient evidence to support the applicant's mental health condition had an impact on her ability to perform the duties of her office, grade, rank, and rating.

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 5 Jun 24 for comment (Exhibit E) 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 of the AFRBA Psychological Advisor and the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant was fit for duty from a psychological perspective during her military service and at discharge. Regarding her unfitting conditions, the

applicant was afforded due process via the IPEB, she was offered, and declined, OAC representation, and concurred with the findings and recommended disposition of the IPEB, waiving her right for further appeal. Finally, the applicant did not submit a request for retention under the LAS program. The applicant's date of separation was per her request, according to the AF Form 1180. 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 Title 10, U.S.C. § 1552, and Department of the Air Force Instruction (DAFI) 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-03716 in Executive Session on 13 Aug 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 14 Nov 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 30 Apr 24.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 30 May 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jun 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.

10/17/2024

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