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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00712

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her "Not Applicable" entry level separation (ELS) be upgraded to reflect a medical separation.

APPLICANT'S CONTENTION

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, narrative reason be changed due to her disability. The Department of Veterans Affairs (DVA) approved her claim for Post-Traumatic Stress Disorder (PTSD), and she was discharged for migraine headaches which started while she was in Basic Military Training (BMT).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Jun 84, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, paragraph 5-15 for erroneous enlistment. The specific reason for the action was due to the Medical Evaluation Board (MEB) report, dated 25 May 84, which found the applicant's medical condition of migraine headaches which existed prior to service (EPTS) and was not service aggravated, did not meet medical standards for enlistment/retention. On this same day, the discharge authority directed the applicant be discharged for erroneous enlistment, with "Not Applicable" ELS.

On 6 Jun 84, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant received an "Not Applicable" ELS after serving 23 days of active duty. She was discharged, with a narrative reason for separation of "Failed to Meet Physical Standards for Enlistment."

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

AFBCMR Docket Number BC-2024-00712

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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.

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 issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department in determining whether, prior to “severance from military service,” the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(l) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

- First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.
- After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 22 Nov 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

AFR 39-10, *Administrative Separation of Airmen*, dated 1 Oct 82, 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.

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/DP2SSR recommends denying the application finding no evidence of an error or injustice with the discharge processing. Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service.

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 9 Apr 24 for comment (Exhibit D) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request finding the applicant did not have any unfitting mental health conditions including PTSD or major depressive disorder (MDD) meeting the criteria for a referral to the Medical Evaluation Board (MEB) for a medical discharge, disability, or retirement. There are no records she had any of these conditions during her brief time in service of 23 days. The applicant was discharged from service for having a disqualifying physical condition of common migraine headaches that was determined to have existed prior to service (EPTS). There is no evidence or records her mental health condition had a direct impact or caused her discharge from service. Her Narrative Summary (NARSUM) dated 21 May 84 reported she had a history of depression, but this condition EPTS and no records showed she actually had or experienced depression during service. There is no evidence her EPTS condition of depression was permanently aggravated beyond the natural progression of the condition by her military service.

Furthermore, there is no evidence or records she experienced a traumatic event during service and no records she had or was diagnosed with PTSD (or any other mental health conditions) during service as well. There are no reports of any trauma during service in her military records. There are no records she was placed on a duty limiting condition profile for her mental health condition,

she was never deemed not worldwide qualified due to her mental health condition, and no statements from her commander her mental health condition had impaired her ability to reasonably perform her military duties in accordance with her office, grade, rank, or rating. She had an "S1" profile signifying she had no duty restrictions due to her mental health condition. There are no records the applicant was ever diagnosed with PTSD by any of her mental health providers at the DVA. She disclosed to her mental health provider at the DVA, almost 40 years after service, her traumatic experiences were being sexually abused when she was a child, her ex-husband was physically and emotionally abusive, and she had a history of homelessness. These traumatic experiences had either occurred before or after her military service. She was diagnosed with MDD by her DVA providers and endorsed having suicide ideation (SI) to the DVA's suicide hotline provider also almost 40 years after her service; however, her depression and depressive symptoms were caused by her post-service stressors of marital problems and infidelity, employment problems, housing issues, and an ill godmother. There are no reports her depression or MDD was related to or was caused by her military service. Hence, it is baffling how she was service-connected for MDD and/or PTSD by the DVA. She was given a 70 percent rating for problems and symptoms of anxiety, chronic sleep impairment, depressed mood, difficulties in adapting to work-like settings, stressful circumstances, and work, difficulties in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, flattened affect, forgetting names, directions, and recent events, intermittent inability to perform activities of daily living and maintenance of minimal personal hygiene, mild memory loss, near-continuous depression and panic affecting the ability to function independently, appropriately, and effectively, neglect of personal appearance and hygiene, and occupational and social impairment with reduced reliability and productivity. There is no evidence or records she had any of these problems or experienced any of these symptoms during service. The Compensation and Pension (C&P) evaluation report for mental disorders that assessed her for service connection is not available or submitted for review. Regardless of her service connection from the DVA for mental disorders, receiving a service connection does not indicate she had an unfitting mental health condition that would cause early career termination.

For awareness, the military's Disability Evaluation System (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 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.

Liberal consideration is not applied to the applicant's request for a medical disability because the updated clarifying guidance, Vazirani Memorandum, published on 4 Apr 24, clearly states liberal consideration does not apply to fitness determinations requests, which includes medical discharge,

disability, or retirement. The updated clarifying guidance did instruct a bifurcate review should be performed when a mental health condition such as PTSD or TBI potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change the narrative reason is appropriate. As such, liberal consideration is applied to the applicant's petition for the latter request. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contended the DVA had approved her claim for compensation based on PTSD. She had received a 70 percent service-connected rating for MDD with (sleep impairment, stress, and panic attacks) claimed as PTSD. Neither the applicant nor the letters from the DVA she submitted for review identified the cause or trigger for her depression, the traumatic event she experienced during service causing her to develop PTSD, or how her MDD or PTSD was caused or related to her military service or impaired her functioning in the service.

2. Did the condition exist or experience occur during military service?

There is no evidence or records her conditions of MDD, PTSD, or any other mental health condition existed during her military service. There is no evidence or records she experienced a traumatic event occurring during service that would cause her to develop PTSD. The NARSUM reported she had a history of depression, but condition EPTS. There are no records she was ever diagnosed with PTSD by any of her mental health providers at the DVA. She was diagnosed with MDD, which occurred almost 40 years after service, and her depression or depressive symptoms were caused by her post-service stressors of marital problems, employment issues, housing problems, and her godmother's illness. She reported to her DVA provider her traumatic experiences were childhood sexual abuse, her ex-husband being physically and emotionally abusive, and she experienced homelessness. These traumatic experiences occurred before or after her service.

3. Does the condition or experience excuse or mitigate the discharge?

The applicant had a disqualifying physical condition of common migraine headaches and this was the cause and reason for her discharge from service. There is no evidence her mental health condition had a direct impact or caused her discharge and therefore, her mental health condition does not excuse or mitigate her discharge. Moreover, she was discharged under ELS and furnished with a "Not Applicable" character of service for serving less than 180 days of continuous active military service. This characterization is consistent and in accordance with AFR 39-10, the regulation she was discharged under, and to current regulation of DAFI 36-3211, *Military Separations*. There is no error or injustice with her service characterization.

4. Does the condition or experience outweigh the discharge?

Since her mental health condition does not excuse or mitigate her discharge, her mental health condition also does not outweigh her original discharge.

The complete advisory opinion is at Exhibit E.

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support her request to change any current separation documents. Her claimed condition was undeniably present prior to service and therefore, her separation designation of EPTS was correct.

The applicant specifically claims her condition of migraine headaches started while in basic training. While it is accurate she experienced such a headache complaint while in basic training, it is not accurate to say such headaches began in basic training. Clearly, her self-reported medical history of intermittently experiencing the same condition/symptoms for 13 years prior to service entry dictates the condition EPTS. Therefore, her separation from service was appropriate and in accordance with regulatory guidance and service instructions.

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 22 Nov 24 for comment (Exhibit D) 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 and recommendations of AFPC/DP2SSR, the AFRBA Psychological Advisor, and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no evidence of an error with the applicant's discharge. 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 23 days of active service, therefore, the type of separation and character of service are correct as indicated on her DD Form 214. Furthermore, the Board notes the applicant's DVA rating for her mental health conditions; 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 a member's reason for discharge nor does it warrant a medical separation. The DVA (Title 38, U.S.C) may evaluate a member over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. The preponderance of evidence does not show she had any mental health condition which warranted a medical separation or retirement while in the service. The mere existence of a medical or mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. A Service member shall be considered unfit when the evidence establishes the member, due to a medical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Lastly, the Board notes the applicant's claim her headaches started at BMT; however, the medical evidence in her record shows her migraine

headaches started before she entered the service and therefore was correctly assessed to have EPTS. 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-2024-00712 in Executive Session on 18 Dec 24 and 23 Dec 24:

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Panel Chair

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, 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 Feb 24.

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

Exhibit C: Advisory Opinion, AFPC/DP2SSR, sent 2 Apr 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Apr 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 25 Jul 24.

Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 21 Nov 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Nov 24.

Exhibit H: Letter (Liberal Consideration Guidance), SAF/MRBC to Applicant,
dated 22 Nov 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.

1/3/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2024-00712

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