

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01568

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her official military personnel records amended to reflect an honorable discharge.

APPLICANT'S CONTENTIONS

Her character of discharge currently reads "Not Applicable." It was stated the disability the applicant incurred was prior to service and her character of discharge was "Not Applicable." That injury has since been found to have been permanently worsened as a result of service and she is not in receipt of Department of Veterans Affairs (DVA) compensation. The applicant is requesting her application be accepted and her discharge be upgraded to honorable. The applicant is currently being denied benefits as a service-connected veteran due to her discharge character being "Not Applicable."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Jul 85, according to AF Form 618, *Medical Board Report*, the applicant was diagnosed with Right Chondromalacia Patella; Incurred while entitled to basic pay: No; Existed prior to service (EPTS): Yes; Permanently aggravated by service: No.

The applicant was referred to the Physical Evaluation Board (PEB).

On 9 Jul 85, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the applicant was found unfit because of physical disability and diagnosed with:

- Right Chondromalacia Patella, EPTS without service-aggravation; Incurred while entitled to receive basic pay: No; Degree of impairment is permanent: Yes; Veterans Administration Diagnostic Code: 5014-5003.

The PEB recommended discharge under other than Chapter 61, Title 10, United States Code (10 USC), with compensable percentage not applicable.

On 15 Jul 85, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the PEB.

On 18 Jul 85, according to Secretary of the Air Force Personnel Council memorandum, Subject: Disposition of Physical Evaluation Board Proceedings on [Applicant], the Secretary of the Air Force approved the recommendation of the Physical Review Council and directed the applicant

be separated from active service for physical disability due to a condition that EPTS. Applicant is not entitled to any benefits under the provisions of Chapter 61, 10 USC.

On 23 Jul 85, the applicant received an Entry Level Separation (ELS) with a narrative reason for separation of "For Disability Which Existed Prior to Service; No Severance Pay" and a character of service of "Not Applicable."

On 25 Sep 98, according to an excerpt from a DVA Rating Decision, provided by the applicant, she was granted service-connection for residuals of right knee injury with an evaluation of 10 percent, effective 14 Dec 93.

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

Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, dated 1 Oct 82, Chapter 1 - *General Policy and Procedures*, Section B – *Guidelines for Characterization of Service or Description of Separation*:

1 -19. Separation Without Service Characterization:

a. *Entry Level Separation.* Airmen are in entry level status during the first 180 days of continuous active military service. A separation based on an action that starts while the airman is in entry level status will be described as an entry level separation unless:

(1) 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

(2) 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. This characterization is authorized if the reason for separation is:

- (a) A change in military status according to chapter 2;
- (b) For the convenience of the government according to chapter 3;
- (c) For disability according to AFR 35-4; or
- (d) Directed by the Secretary of the Air Force according to paragraph 1-2.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Based on review of the applicant's request, there is no 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.

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. Although the applicant may not have been aware of, or did not report, a previous injury during Military Entrance Processing Station (MEPS) processing, medical evidence shows otherwise. Additionally, the DVA made an independent assessment of the applicant's medical condition to determine if it was service-

connected and eligible for compensation under 38 USC. However, this determination has no bearing on the original PEB determination.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (10 USC), 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. 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 (38 USC), 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.

The applicant entered the Air Force on 6 May 85. On 1 Jul 85, a Medical Evaluation Board was convened which found her potentially unfitting for Right Chondromalacia Patella which was determined to have EPTS and was not permanently aggravated by service for which she agreed at that time. An accompanying medical narrative summary, dated 24 Jun 85, indicated on the 17th day of Basic Military Training (BMT), the applicant fell, twisting her right knee. She was initially able to walk without difficulty but soon thereafter, her knee pain progressively worsened with interference in walking and carrying on other BMT functions. Upon examination, it was determined all ligaments were intact, including the medial collateral ligament and anterior collateral ligaments. However, x-rays showed an old avulsion fracture on the medial retinaculum along the border of the patella. The impression was the applicant had a previously undisclosed older injury of the right patella which EPTS.

On 9 Jul 85, the Informal PEB (IPEB) found the applicant unfitting for Right Chondromalacia Patella and determined this condition EPTS without permanent service-aggravation based on the medical evidence. The IPEB recommended Discharge Under Other Than Chapter 61, 10 USC (EPTS) which is non-compensable under the DES. On 15 Jul 85, the applicant agreed with the IPEB findings and did not appeal to the Formal PEB to potentially find this condition as not EPTS or permanently service-aggravated during PEB processing. The applicant was subsequently discharged without disability benefits on 23 Jul 85.

In preparation for this advisory, a PEB medical reviewer reviewed the original case data along with the documents provided by the applicant as part of this Air Force Board for Correction of Military Records (AFBCMR) submission to determine if the right knee injury incurred during BMT should have been considered as service-aggravated. The medical reviewer noted although the applicant did not disclose a history of knee or joint problems during her MEPS examinations, an avulsion fracture would take approximately 12 weeks to heal; therefore, this injury had to have occurred prior to BMT entry on 6 May 85 and consequently, EPTS. The minor medial collateral ligament sprain that was diagnosed would have healed quickly with conservative measures. Therefore, the unfitting condition would not be considered service-aggravated for DoD DES purposes.

As part of this AFBCMR submission, the applicant submitted a DVA rating decision, dated 25 Sep 98, in which the DVA service-connected the residuals (arthritic changes) of her right knee injury retroactive to 14 Dec 93 (8.5 years after separation). As part of this rating decision, the DVA utilized medical records from 1978-1980 (prior to service) which disclosed in Nov 80, the applicant complained of constant aching around the right kneecap which had been present for two weeks from dancing and twisting her knee. X-rays were unremarkable at the time, and the applicant was not seen by the physician again. However, x-rays conducted during the DVA

claims process showed some arthritis. The DVA examiner also determined the applicant had a pre-existing right knee injury that was asymptomatic upon entry into the Air Force and the new arthritis diagnosis was aggravated by her BMT knee injury. The DVA indicated reasonable doubt was used to resolve this finding in favor of the veteran.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 21 Jan 25 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552 and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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 rationales and recommendations of AFPC/DPFDD and AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Based upon available medical evidence, the PEB determined the applicant's diagnosed condition of Right Chondromalacia Patella, EPTS without service-aggravation and recommended discharge under other than Chapter 61, 10 USC. The applicant agreed with the finding and recommendation and did not request a formal hearing of her case. The Secretary of the Air Force approved the recommendation and directed the applicant be separated from active service without entitlement to benefits.

Additionally, the Air Force and the DVA disability systems operate under separate laws. Under 10 USC, the PEB must determine if the service member's condition renders them unfit for continued military service. 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 and that rating determines the final disposition. The DVA, under 38 USC, may evaluate a service 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. However, a higher rating by the DVA based on 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.

Further, prior to separation, the applicant served 2 months and 18 days of active service; hence, her ELS and characterization of service were in accordance with AFR 39-10. Therefore, the board recommends against correcting the applicant's records.

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-2024-01568 in Executive Session on 21 May 25:

, 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/atch, dated 22 Apr 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP2SSR, Undated.
Exhibit D: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 16 Jan 25.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jan 25.

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.

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Board Operations Manager, AFBCMR