



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-1987-00749-2

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request for a medical separation.

RESUME OF THE CASE

The applicant is a former Air Force sergeant (E-4) who was honorably discharged on 23 Oct 74 with a separation code of "KBK" which denotes "Completion of Required Active Service."

On 14 Sep 87, the Board considered and denied his request for a medical separation; finding the application was not timely filed. The Board noted the date of discovery on the application which would, if correct, make the application timely; however, found the essential facts were known to the applicant long before the asserted date of discovery. Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing permitted by 10 U.S.C. 1552. Furthermore, the Board found the applicant had not provided persuasive reasons for the delay or substantial evidence of egregious error or injustice that would otherwise warrant waiver of the timeliness requirements.

On 7 Sep 88, the applicant submitted a reconsideration request asking for a medical separation however, his application was not considered and was returned to him on 28 Jul 89. In the advisory opinion from SAF/MICB, dated 17 Apr 89, it was determined the applicant had not submitted any new relevant evidence to support his new contentions he was denied medical care, his records were tampered with, or that he was denied a physical evaluation prior to separation.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letters and Record of Proceedings at Exhibits E and I.

On 19 Dec 22, the applicant requested reconsideration of his request for a medical separation. He again contends he had two strokes and medical issues to include head trauma prior to his discharge which were related to a motor vehicle accident. A staff sergeant caused the accident and when he spoke to his commander about this, he was sent to **Work-Product** even though he was still recovering from his injuries. While in **Work-Product** he had several severe medical issues and when he was returned stateside, he was discharged for being unadaptable instead of receiving a medical

AFBCMR Docket Number BC-1987-00749-2

Work-Product

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

separation. At the time of his discharge, he was unable to defend himself and was convicted of a crime he did not commit. He has Post-Traumatic Stress Disorder (PTSD) and other medical issues and is 100 percent disabled.

The applicant's complete submission is at Exhibit J.

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 discharge. The Psychological Advisor opines and agrees with past board determinations and the Surgeon General's Consultant indicating the applicant was fit for duty from a psychological perspective at the time of his discharge. Liberal consideration is not applied to the applicant's petition because this policy does not apply to medical discharge/retirement requests. There is evidence throughout his records that document at the time of his discharge he was fit for duty from a psychological perspective. The applicant contends throughout his application he was given an unadaptable discharge. There is no evidence of this in his records. He was given an honorable discharge and the authority and reason for his separation was the normal expiration of service after four years.

While the applicant was hospitalized for psychosis, paranoid acute, documentation shows this was a single episode that gradually cleared. There is no evidence these symptoms returned, even after stopping all psychotropic medication during his hospitalization, or for years afterward. He was monitored post-hospitalization, with his symptoms not returning, again without the use of any medications. He was placed on a temporary profile, which was not renewed, and he was later rated an S-1 on his physical capacity/stamina, upper extremities, lower extremities, hearing and ears, and psychiatric (PULHES) rating, indicating he was fit for duty from a psychological perspective. He was evaluated at discharge, several months later, with the provider not documenting any psychological symptoms. While the applicant's length of psychiatric hospitalization may seem concerning, it should be noted he was hospitalized in the 1970s. Psychiatric hospitalizations since this period have steadily shortened from several months, to a few days to weeks, for even serious psychiatric disorders. The goal for the release of patients from the hospital is for the stabilization of acute symptoms and then monitoring and treatment on an outpatient basis.

The applicant's post-service mental health encounters support the conclusion he was fit for duty as his psychotic or paranoid symptoms had not returned by 1978 (four years after discharge) where an encounter noted he denied any auditory or visual hallucinations and had not taken any psychotropic medication since 1973. In 1983 and 1986, while providers noted his past transient psychotic episode, they did not diagnose him with schizophrenia. The applicant's first service connection for mental health reasons was not until 2007, and then it was for PTSD, rather than any psychotic disorder (schizophrenia). The applicant had a Compensation and Pension (C&P) evaluation completed on 20 Apr 12 that diagnosed him with schizophrenia. The documentation contained in this encounter appears to present facts that are not consistent with past records. The provider noted the applicant had "extensive documentation both by the military and subjectively that demonstrates history of schizophrenia while in the military." This statement is not supported by available documentation. Documentation shows he had a brief psychotic episode that remitted and was stable for many years without any psychotropic medication during his military service.

The provider also noted he was “seen consistently throughout the years with diagnosis (dx) of schizophrenia.” This statement is also not consistent with past records. He was first diagnosed with schizophrenia on 29 Jun 09, approximately 35 years after his discharge from the military.

The complete advisory opinion is at Exhibit K.

The AFBCMR Medical Advisor recommends denying the applicant’s request for a medical separation. The Medical Advisor wishes to inform the applicant the military 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 future progression of injury or disease. A preponderance of evidence failed to demonstrate the applicant was unfit for military service, at the time of separation. As codified in the historical Air Force Regulation 35-4, *Disability Evaluation for Retention, Separation, and Retirement*, and its contemporary, AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, a medical diagnosis does not automatically make a service member unfit for military service. The medical condition must be shown to interfere with the service member’s ability to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation.

The Medical Advisor concedes there is no clear explanation for the drop in the applicant’s performance, to a “3” as indicated on his Airman’s Performance Report (APR), covering the period of 1972 to 1973, while assigned to Thailand, for example whether developmental, environmental, exposure to new overseas culture, or behavioral factors beyond the applicant’s conscious ability to control. The Medical Advisor also acknowledges the high-speed automobile accident in Oct 71, wherein he suffered injury to the head (lacerations to temporal region and forehead) and a second injury to the head in a bus accident in Aug 73, which had the theoretical potential to result in immediate or delayed psychological sequelae. While the literature searches have shown a statistical association of Traumatic Brain Injury (TBI) with psychological sequelae, for example, psychosis and certain mood disorders, depending upon the severity of the injury and the presence of any premorbid predisposition for developing a mental disorder, there was no recorded objective evidence of residual effects of a TBI at the time of discharge. Therefore, collectively given the applicant’s favorable response to treatment, following the display of delusional thoughts in Sep 73, and the absence of recurrence or any residual deficits at his 12 Jan 74 evaluation at the USAF

Work-Product

the short-term profile restrictions imposed for his humerus and clavicle fracture, painful callouses of the feet, and the final Physical Profile Report reflecting all 1’s, depicting worldwide qualification at his separation, *Report of Medical Examination*, the Medical Advisor found no objective basis upon which to justify and change his reason for discharge to a medical disability separation or retirement.

On the other hand, operating under a different set of laws, Title 38, Code of Federal Regulations (C.F.R.), with a different purpose, the Department of Veterans Affairs (DVA) is authorized to offer compensation for any medical condition determined service-incurred, without regard to, and independent of, its demonstrated or proven impact upon a service member’s retainability, fitness to serve, the narrative reason for separation, nor length of time since date of separation. This is

the reason why an individual can be separated for one reason and yet sometime thereafter receive a compensation rating from the DVA for one or more medical conditions that were determined service-connected but were not proven militarily unfitting at the time of release from military service. Conditions previously found non-service connected, may also be later be determined service-connected following subsequent assessments. Moreover, the DVA is empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service-connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit L.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Oct 23 for comment (Exhibit M), and the applicant replied on 14 Nov 23. In his response, the applicant contends the Air Force made several mistakes on his paperwork. He was told in a letter from his commander he was being discharged because he could no longer perform his military duties. He is 100 percent disabled due to his military service which started due to the motor vehicle accident prior to his deployment to Southeast Asia. He was sent to Southeast Asia because he was having problems at work and his commander wanted to get rid of him. Upon his return, he requested medical treatment for his medical issues but instead was discharged, even though he wanted to stay 20 years. Because of his mental issues, he was unable to defend himself and was convicted of a crime he did not commit. He is a paranoid schizophrenic as a result of being sent to Southeast Asia and is still undergoing treatment with the DVA.

The applicant's complete response is at Exhibit N.

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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions he had a TBI, PTSD or was diagnosed with schizophrenia at or near the time of separation. The mere existence of a medical/mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to his medical conditions. A Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, 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 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 or near the time of separation and not based on post-service progression of disease or injury. Therefore, the Board recommends against correcting the applicant's records.

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-1987-00749-2 in Executive Session on 20 Dec 23:

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 E: Record of Proceedings, w/ Exhibits A-D, dated 14 Sep 87.

Exhibit I: Non-viable Letter, w Exhibits F-H, dated 28 Jul 89.

Exhibit J: Application, DD Form 149, w/atchs, dated 19 Dec 22.

Exhibit K: Advisory Opinion, AFRBA Psychological Advisor, dated 10 Aug 23.

Exhibit L: Advisory Opinion, AFBCMR Medical Advisor, dated 18 Oct 23.

Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Oct 23.

Exhibit N: Applicant's Response, dated 14 Nov 23.

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.

1/8/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF