



**CUI//SP-MIL/SP-PRVCY**

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

**FORTH ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-1998-03153-5

*Work-Product*

**COUNSEL:** *Work-Product*

*Work-Product*

**HEARING REQUESTED:** YES

**APPLICANT’S REQUEST**

The Board reconsider his request for the following:

1. His narrative reason for separation be changed to “Disability, Permanent.”
2. Correct all relevant records to reflect he was permanently retired for disability on 16 Feb 98.
3. He receive all back pay and allowances due to him as a result of these corrections.
4. He be awarded any other corrections the Board deems necessary to effectuate full and fitting relief.

**RESUME OF THE CASE**

The applicant is a former Air Force senior airman (E-4) who was honorably discharged on 16 Feb 98 due to a reduction in force (RIF).

On 1 Dec 99, the Board considered and denied his request to have his nonjudicial punishments (NJP) set aside; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board noted the applicant’s contentions that his commander ignored the evidence and the advice of counsel which showed he was a victim and not the perpetrator; however, the Board did not find a compelling basis upon which to conclude he had been the victim of an error or injustice. In this respect, the Board noted the commander determined the applicant committed the alleged offenses and imposed NJP. Furthermore, the Board noted the opinion of the Military Justice Division which stated there were no legal errors requiring corrective action and agreed with this opinion and determined the applicant failed to sustain the burden he suffered from an error or injustice.

On 27 Apr 11, the Board reconsidered and denied his request to have his NJPs set aside; be reinstated to the grade of staff sergeant (E-5); and be credited with active service, pay and allowances from the date of his separation until he retained 20 years of service for retirement. Again, after reviewing this application and the evidence provided in support of his appeal, the

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Board remained unconvinced the applicant had been a victim of an error or injustice. As previously determined, the NJP actions rendered upon the applicant were appropriate to the circumstances and within the commander's discretionary authority. The Board noted the applicant's voluminous submission describing the volatility of his relationship with his former spouse; however, they did not find it sufficient to overturn the previous Board's decision. The Board noted a substantial portion of the applicant's instant submission included various supporting statements, excerpts from his military personnel records, and character references rendered on behalf of the applicant during the NJP proceedings. However, the Board noted these documents were a matter of record and originally considered by the commander during the NJP proceedings. Absent evidence to the contrary, the Board presumed the command acted in good faith and used the knowledge of events and circumstances at the time in arriving at the appropriate punishment for the applicant's misconduct. Therefore, absent a strong showing the commander abused his discretionary authority; the Board chose not to substitute their judgment for that of officials who were closer to the events in question. The Board also noted the applicant provided copies of medical documentation, a supporting statement from his current spouse, and various studies regarding the effects of domestic abuse as further evidence he was the victim of domestic abuse. Nevertheless, the Board remained unconvinced the applicant did not commit the acts which formed the bases of the NJP actions. Therefore, in the absence of evidence the punishment was disproportionate to the circumstances, his commander exceeded his discretionary authority, or he was denied rights to which he was entitled, the Board found no basis to warrant relief.

On 16 Aug 12, the Board reconsidered and denied his request to have his NJPs set aside; be reinstated to the grade of E-5; and be credited with active service, pay and allowances from the date of his separation until he retained 20 years of service for retirement. Again, after reviewing the application and the evidence provided in support of his appeal, the majority of the Board remained unconvinced the applicant had been a victim of an error or an injustice. Previous Boards twice determined the NJP actions rendered upon the applicant for assaulting his former spouse and subsequently violating a no contact order were appropriate to the circumstances and within the commander's discretionary authority. In his most recent submission, the applicant's counsel argued the Board did not consider certain cases previously decided by this Board in evaluating the applicant's case which were cited in the initial request for reconsideration, where relief was granted in comparable circumstances. The applicant's counsel argued the court would likely find the Board failed to do this and would remand the matter to the AFBCMR for further consideration.

Counsel provided a copy of a court decision addressing the matter of precedent in an Army Board for Correction of Military Records case. In the case conclusion, the AFBCMR emphasized that while it strives for consistency in the way evidence is evaluated and analyzed, the Board is not bound to recommend relief in one circumstance simply because the situation being reviewed appears similar to another case. After reviewing the various cases cited by the applicant's counsel, and particularly the reasons given for the earlier Boards granting of relief, a majority was not convinced the applicant was the victim of an error or injustice. Counsel's primary argument remained to be that because there is evidence the applicant was subjected to abuse at the hands of his wife, he must be innocent of the alleged offense of striking her and, as such, the initial and subsequent NJP actions should not have been rendered. However, the Board majority did not find this to be a persuasive argument. The Board member voting in the minority did not submit a minority report.

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On 14 Aug 15, the U.S. District Court for the District of Columbia remanded the case to the AFBCMR, directing the Board to consider the applicant's submitted medical records showing he was suicidal at the time he committed the offense of disrespect and that the Board should state what difference this makes, if any, in reviewing the commander's determination. The Board's decision fails to provide any basis upon which this court could conclude the denial was the product of reasoned decision-making regarding the effect, if any, of the applicant's mental state at the time of the disrespectful outburst. The Board has not fulfilled its duty to provide a brief statement explaining "why it chose to do what it did."

On 21 Jul 16, the Board denied the applicant's request to have the vacation of his suspended NJP set aside. Pursuant to the remand order of the United States District Court of the District of Columbia, the Board provide the following response:

In an earlier finding, the Board determined there was insufficient evidence to warrant corrective action of the applicant's request. During the court-directed review, the Board noted all the applicant's submissions in reconsidering the merits of the case, to include his rebuttal responses to the advisory opinions; however, they still concluded the applicant had not been the victim of an error or injustice. The Board believed the applicant's mental state of mind during the incident of disrespect was largely irrelevant to his commander's decision to void his suspended reduction in rank, and the commander's decision to vacate the suspended reduction in rank was appropriate.

On 7 Oct 96, the applicant's commander issued him an Article 15 for unlawfully punching his wife in the eye with his fist. The Board did not deliberate on the appropriateness of this NJP, since review of the Article 15 was not within the narrow scope of the court's remand. As punishment for his actions, the applicant was reduced to the grade of senior airman, suspended until 1 Apr 97, after which time it would have been remitted without further action had the applicant conducted himself in a manner commensurate with his grade of staff sergeant during the period of suspension. A reduction in grade is an extremely serious action, and a suspension of a reduction puts an Air Force member on notice that during the suspension period their personal conduct and behavior must be exemplary. On 30 Oct 96, well prior to the 1 Apr 97 completion of the applicant's suspended reduction in grade, the applicant's commander issued him another Article 15, this one for violating a legal order not to contact his wife. Again, the Board did not deliberate on the appropriateness of the second NJP, since this Article 15 was also not within the narrow scope of the court's remand. However, the Board members were convinced that the applicant's commander would have been well within his legal rights to vacate the applicant's suspended reduction and reduce him to the grade of senior airman as early as 30 Oct 96. In fact, the Psychiatric Advisor stated given the applicant's extensive Behavioral Health issues around 1996, she is "bedazzled by the commander's decision not to discharge him administratively on that ground alone" and the Board concurred. Yet, on 4 Nov 96, still well prior to the 1 Apr 97 completion of the applicant's suspended reduction in grade, the commander had cause to take action against the applicant again. This action was to vacate the reduction in grade levied under the Article 15, dated 7 Oct 96, and reduce him in grade to senior airman. The reasons for this action were that the applicant became "drunk and disorderly," conduct which was of a nature to bring discredit upon the armed forces; assaulted a fellow airman by throwing a wine bottle at him; and disrespected both his commander and a superior noncommissioned officer. The AFBCMR Medical Consultant stated while an individual is more prone to express disrespect towards another individual when under the

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disinhibitory effects of alcohol, the applicant's use of alcohol does not excuse his actions. Furthermore, the AFBCMR Psychiatric Advisor acknowledged a legally intoxicated individual still carries the full responsibility for his actions, and the claim he drank because he was so distressed is not justification for intoxication. The Board acknowledged in the *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, the incident of disrespect appears to be the most prominently highlighted issue on which the action was based; however, the Board is convinced the applicant's initial decision to drink alcohol, his becoming drunk and disorderly, and his assaulting a fellow airman were, even without the incident of disrespect which followed, more than sufficient to establish the applicant did not deserve to retain his grade as a staff sergeant.

While the Mental Health Advisor describes the applicant as being in medical "crises" during the incident of disrespect, and the Board members themselves may have been more lenient in their assessment of the disrespect aspect of the applicant's behavior given his mental state of mind at the time; however, it was the applicant's responsibility to comport himself in an exemplary manner while serving under a suspended bust. His drinking to the point of becoming drunk and belligerent while serving under a suspended bust clearly warranted his commander's decision to vacate the suspended punishment. In summary, both the applicant's mental state of mind during the incident of disrespect, and the act of disrespect itself, were simply the unpleasant and unfortunate result of the applicant's extremely poor judgment reflected in his decision to imbibe heavily at a point in time when impeccable behavior was the only acceptable option. Therefore, in the absence of evidence to the contrary, the Board found no basis to recommend favorable reconsideration of the applicant's request.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letters and Records of Proceedings at Exhibits F, I, K, and U.

On 13 Dec 21, the applicant is now requesting a medical retirement. He contends through counsel, after 14 years of service, he began to exhibit chronic mental health issues that rendered him unfit to perform the duties of his office, grade, rank, or rating. Despite the clear evidence he did not meet retention standards, he was never referred to the Disability Evaluation System (DES) that would deem him unfit and be retired for reason of disability. He was exhibiting symptoms of Post-Traumatic Stress Disorder (PTSD) that were allegedly ignored, misdiagnosed, or mischaracterized as an Adjustment Disorder, Occupational Problems or Personality Disorder, which were conditions that would not be subjected for DES processing. He had no mental health or psychological issues until he was stationed in Work-Product and entered a relationship with another service member who was his former spouse. He was abused by his wife and was assessed to having PTSD or possibly having PTSD for this issue by his providers. After one of his recent suicidal ideations, a clinical psychologist indicated he was probably not qualified for worldwide duty, but the opinion was superseded by the Chief of Mental Health Services, who had opined he was not at risk to himself or others and was cleared for mobility. His last treatment note dated 28 Jan 98 reported that despite being treated with Prozac and/or Zoloft for over a year, he presented to the Mental Health Clinic (MHC) for complaints of depression, anxiety, and fear and the provider diagnosed him with PTSD due to relationship abuse. He was discharged honorably for RIF on 16 Feb 98 and was never referred to the DES. In Nov 98, he completed a Comprehension and Pension (C&P) Examination by the DVA and was given a diagnosis of Axis I: PTSD (battered spouse syndrome) and Major Depressive Disorder (MDD) and Axis II: Personality Disorder, not otherwise specified

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(NOS) with paranoid and obsessive/compulsive features. He was given service connection with a valuation of 50 percent for PTSD by the DVA.

He attempted to expunge his records of the NJPs he received with the AFBCMR in previous cases but was denied. He requested a reconsideration through counsel in May 10 to remove these records and to receive constructive credit to allow him a 20-year retirement but was denied. His counsel requested a reconsideration for the same NJP related relief contending the Board had not sufficiently explained its decision to reject certain evidence and did not consider relevant prior AFBCMR precedent. The AFBCMR denied his application. On 6 Nov 14, the applicant sought a second reconsideration arguing the AFBCMR's decision was arbitrary, capricious, and unsupported by evidence. The court remanded the matter and instructed the Board to consider the narrow issues of the applicant's mental state in the moment he made derogatory statements about his command while he was in the emergency room (ER) in Oct 96. On remand, the Board denied relief citing, the applicant's mental state of mind during the incident of disrespect was largely irrelevant to his commander's decision to void his suspended reduction in grade and was appropriate. His legal counsel stated the advisory opinion referenced some of his medical records, but the AFBCMR did not substantively address his entitlement to DES separation and the AFBCMR had yet been presented with numerous pieces of evidence germane to the applicant's fitness for duty, entitlement to DES processing and disability separation.

In support of his reconsideration request, the applicant's counsel provides a lengthy discussion about his mental health history during his time in service to include his hospitalizations and his relationship problems with both of his former spouses in the military. He again provides excerpts from his military personnel and medical records and new evidence to include his Department of Veterans Affairs (DVA) rating for his PTSD dated 14 Dec 98 and his C&P Examination dated 17 Nov 98. Additionally, he provides the following regulations to support his claim: DoD Directive 1332.18, *Separation or Retirement of Physical Disability*; DoDI 1332.38, *Physical Disability Evaluation*; AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*; AFI 48-123, *Aerospace Medicine, Medical Examinations and Standards*; and a copy of policy changes to medical regulations in effective at the time of his service.

The applicant's complete submission is at Exhibit V.

**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 (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 5 Apr 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit Y).

## **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 the desired changes to his record. There is no error or injustice with his discharge from a mental health perspective and no evidence he should have received a medical retirement or discharge for his mental health condition to include PTSD. The applicant's legal counsel contends he was misdiagnosed with an Adjustment Disorder, Personality Disorder, or Occupational Problem when he was exhibiting symptoms of PTSD. There was no evidence to support he was misdiagnosed, mischaracterized, or his condition of PTSD was ignored. According to the current version of the Diagnostic and Statistical Manual of Mental Disorder, Fifth Edition, Text Revision (DSM-5-TR), an Adjustment Disorder is the development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within

three months of the onset of the stressor. The symptoms or behaviors in response are clinically significant as evidenced by marked distress that is out of proportion to the severity or intensity of the stressor and cause significant impairment in social, occupational, and other important areas of functioning. When the applicant was stationed in Incirlik, Turkey, he got married to his wife in Jun 96 and their first documented marital problems began in Jul 96, within a month of their marriage. His marital problems were his stressors causing him to be in emotional distress. The first treatment record that documented his emotional distress was an ER note dated 18 Aug 96, one month after his first documented identifiable stressor of marital problems, when he was reported to be “acutely agitated” due to his involvement of alleged domestic violence dispute over the past several days. He was in marked distress, reported as overwhelming emotion and disorganized regressed behaviors, causing his “inability to perform usual duties” (impairment to social, occupational, other important areas of functioning such as personal safety) that led to his first brief hospitalization in Aug 96. The applicant’s stressors and symptoms clearly match the diagnostic criteria for an Adjustment Disorder. The applicant’s marital problems and his problems with regulating his emotions and behaviors would cause him to have occupational problems as he received three Article 15’s for striking his wife, violating a no-contact order with his wife, and being disrespectful towards a senior noncommissioned officer (SNCO), assaulting another airman, and being drunk and disorderly within a short period of time. As his stressors grew, his emotional distress and behavioral problems exacerbated leading to his Command Directed Evaluation (CDE), two additional psychiatric hospitalizations for suicide attempt by cutting his wrists while intoxicated and suicidal ideation and self-harming behaviors respectively, and outpatient mental health treatment. He was given various diagnoses to include Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Depressive Disorder, NOS, Personality Disorder NOS, Mixed Personality Disorder, and PTSD related to his relationship abuse. Some of these diagnoses fall under the classification of unsuited conditions (adjustment and personal disorders) and some fall under the classification of unfitting (depressive disorder and PTSD) mental health conditions.

After a review of the records, the Psychological Advisor finds his unsuited conditions were his primary conditions rather than PTSD that had influenced most of his behaviors during service. The applicant was reported to have expressed labile mood, poor concentration, disorganized thoughts, sleep disturbances, suicidal ideation, and engaged in self-harming behaviors. These behaviors and symptoms could be and are symptoms of PTSD, but these symptoms may also be symptoms of other mental disorders such as depression, adjustment disorder, and personality disorders in which he had been given these diagnoses during service. However, many mental disorders share similar symptoms and distinct symptoms would set them apart. Symptoms of PTSD include recurrent, involuntary, and intrusive distressing memories of the traumatic event such as flashbacks and nightmares, persistent avoidance of reminders, stimuli, feelings, memories/thoughts of the traumatic event, negative alterations of cognition and mood such as depressed mood, distorted thoughts, loss of interest, feeling detached or estrangement of others, and/or persistent inability to experience positive emotions, and marked alterations of arousal and reactivity associated with the traumatic event such as irritability and anger, reckless and self-destructive behaviors, hypervigilance, exaggerated startled responses, concentration issues, and sleep disturbance. He experienced some of these symptoms but was never reported to have distressing memories of his traumatic experiences and avoidance of reminders of his trauma. These symptoms are distinct to PTSD and are required and crucial to meet diagnostic criteria for PTSD according to the DSM-5-TR. The applicant’s behaviors, emotions, and symptoms tend to

be exacerbated in response to an overwhelming emotion and/or unstable relationship (marital issues and problem with girlfriend) and not in response to his traumatic experience of spousal abuse and better aligned with adjustment disorder and especially with personality disorder. He was noted to display Cluster B (dramatic, overly emotional, or unpredictable thinking or behavior) and C traits (anxious, fearful thinking or behavior) or specifically histrionic narcissistic, and obsessive-compulsive features. His personality disorder traits were consistently observed and reported by numerous medical and mental health providers to include his military and DVA (C&P exam) providers and so his personality disorder diagnosis is valid and appropriate to his clinical presentation. His personality disorder was also discussed by the Medical Consultant and Clinical Mental Health Consultant for the court remand. The Medical Consultant reported his personality disorder explains his deficient impulse control and the Psychological Advisor concurs with this statement. His deficient impulse control may cause or have caused him to drink excessively, develop suicidal thoughts, engage in suicide attempt with superficial cuts to his wrists, engage in self-mutilating/harming behaviors, have anger outbursts, and have poor decision-making skills. His deficient impulse control was caused and triggered by his personality disorder and not PTSD or Depressive Disorder. Moreover, his difficulties of adjusting to and tolerating stressful situations led him to engage in maladaptive behavioral patterns. The applicant did have depression but again, his symptoms were better aligned with adjustment disorder and personality traits, which were his primary conditions.

The Psychological Advisor acknowledges the applicant did experience PTSD symptoms and was given a diagnosis of PTSD by his military providers during service. His condition of PTSD however, never elevated to potentially unfitting meeting criteria to be referred to the DES. Receiving a mental disorder diagnosis and/or mental health treatment does not automatically render a condition as unfitting as more markers are required to meet the unfitting designation. This is evidenced by AFI 36-3212, paragraph 1.3 that was attached to the applicant's petition to the AFBCMR stating, "The mere presence of a physical defect or condition does not qualify a member for disability retirement or discharge." The applicant was never placed on a duty limiting conditions (DLC) profile for his mental health condition, was never deemed not worldwide qualified or worldwide duty (WWD) qualified due to his mental health condition, and no statements from his chain of command or providers that his mental health condition had interfered with his ability to perform his military duties in accordance with his office, grade, rank, or rating. This latter assessment was supported and evidenced by his Enlisted Performance Reports (EPR). The applicant had received 15 EPRs during his military career and all EPRs revealed he had good work performance. His last EPR during service for the rating of period from 3 May 96 thru 2 May 97, which was within the time frame of his emotional distress, marital problems, and hospitalizations, he received a rating of 4 out of 5 signifying he was ready for promotion. Some comments from his rater and endorser dated 3 Jun 97 regarding his military duties and performance do not reflect his mental health condition had impaired his ability to perform his military duties but was the contrary. He was able to perform at a high and satisfactory manner resulting with him receiving a good performance evaluation. Even though the applicant did report to his mental health provider that his overwhelming emotion and disorganized regressed behaviors had caused his inability to perform his usual duties, this was temporary, and he was able to adapt and manage his emotions and behaviors at work. It is noted that all his disciplinary actions occurred outside of his work but in personal life. His EPR for the rating period of 3 May 95 through 2 May 96 reported he has had minor interpersonal relationship problems which he identified as a problem and was

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actively working to correct. This suggested he became aware of his problems and showed motivation to work on correcting the issue. This attribute or character trait may have had a positive influence on his behaviors as he was able to overcome his difficulties enough to not allow his emotional distress to interfere with his work and duties.

Lastly, the applicant's leadership appeared to be sympathetic to the applicant and his military career. The Aero-evacuation Summary/Narrative Summary dated 10 Oct 96 noted his commander was hoping the applicant would be able to salvage his military career after he received two Article 15s. His two Article 15's for striking his wife and violating the no-contact order were probably sufficient to discharge him from service under unfavorable conditions at that time, but he may have been well liked or was a good performer that led to his commander's decision. Despite the applicant's disciplinary and misconduct issues of receiving three Article 15's, he still received good performance evaluations because his stellar performance most likely superseded his disciplinary issues.

The applicant's legal counsel raised the question about the veracity of his ability to be WWD qualified due to differing opinions. His legal counsel cited the Profile Officer Note dated 2 Sep 97 in which a clinical psychologist, who had seen the applicant that morning after his discharge from his third hospitalization stated he was probably not WWD qualified but deferred this opinion to the Chief of Mental Health Services, for consultation. The profile officer did consult with the Chief of Mental Health Services who reported the applicant was WWD qualified and was cleared for mobility. Regulations that were in effect at the time of the applicant's service, which were AFI 36-3212 and AFI 48-123 that were also submitted with his application, did not state placing a service member on a DLC/4T profile was required when the member had been hospitalized. However, per AFI 48-123, paragraph 10.6.1, *Temporary Assignment and Deployability*, "A 4-T profile precludes reassignment until the Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) processing is completed or the condition is resolved" and "A 4T profile precludes worldwide assignability and mobility." There were no records reporting the applicant was ever placed on a DLC/4T profile for his mental health condition by any of his mental health care providers to include after hospitalization. The Psychological Advisor concedes in present time, the standard operating procedure is to place a service member on temporary DLC profile especially after hospital discharge due to the condition/diagnosis or treatment resulting in high risk to the Air Force or patient due to potential impairment of duty function, risk to the mission or ability to maintain security clearance. The existence of DLC/4T profile would make him not WWD qualified temporarily. Nevertheless, at the time of service or when the decision was made by the Chief of Mental Health Services, it was not standard operating procedure for a service member to be placed on a DLC/4T profile that would render the member to temporarily be not WWD qualified. Thus, there was no procedural error from his mental health care providers. Moreover, AFI 48-123, paragraph 10.6.2 states "Do not establish a 4T profile unless the injury or illness is not compatible with worldwide assignability and is not expected to resolve within 60 days." Although not explicitly reported in his records for the actual reasons he was not placed on DLC/4T profile, the fact that the Chief of Mental Health Services had determined he was WWD qualified and cleared for mobility would signify he was expecting the applicant's mental health condition to be resolved within 60 days, indicating the need to establish a 4T profile for the applicant was not necessary based on this regulatory guidance. This was the reason he did not have a DLC/4T profile. The reason for why or how he was determined to be WWD qualified or cleared for

mobility by the Chief of Mental Health Services was not reported but there was information in the applicant's records that would support the decision/opinion. The Chief of Mental Health Services had evaluated the applicant when he first arrived at Work-Product Air Force Base on 16 May 97 and co-signed the applicant's Family Advocacy Program (FAP) Termination Summary dated 2 Jun 97. This indicated the Chief of Mental Health Services had assessed and was abreast with the applicant's mental health condition, stressors, and functioning. He had sufficient information to make the determination that the applicant was WWD qualified. This provider was also not the only provider that determined he was fit for duty as a Medical Record from the ER physician dated 17 Oct 96 reported he was not suicidal and was fit for duty. He also received a CDE to determine his fitness for duty. He was not discharged from service after his CDE and so this would signify he was determined to be fit for duty from his CDE. Another factor to consider is the applicant's mental health condition did not permanently (but temporarily) interfere with this ability to perform his military duties as discussed previously indicating he was fit for duty. Returning to the Psychological Advisor's comment that present standard operating procedures would be to place the applicant on a DLC/4T profile after his hospital discharge to connote he was temporarily WWD qualified. Hypothetically should the applicant be placed on a DLC/4T profile after his hospital discharge for 60 days, his mental health condition would achieve stability and he would be removed from the temporary profile; therefore, he would not have meet criteria to be referred to the DES.

After the applicant was discharged from the hospital for the third time in Sep 97, there were no records he received or needed mental health treatment to include hospitalization. His service treatment records were unremarkable for any mental health related encounters for several months to include at the time he was discharged from service in Feb 98. His Termination/Transfer Summary dated 28 Jan 98 reported he was first seen on 16 May 97 for complaints of depression, anxiety, and fear and had an initial diagnosis of "rule out" (R/O) Dysthymic Disorder and PTSD-relationship abuse. These problems and diagnoses were applicable when he was first seen on 16 May 97 and not at the time of discharge. During this iteration of treatment, he received individual and pharmacotherapy. His diagnosis at discharge was R/O Dysthymic Disorder only and this was not an actual confirmed diagnosis. He was given a R/O because more information was needed to confirm/validate his diagnosis, or he had displayed some symptoms of this disorder but not enough to give him this confirmed diagnosis. His condition/diagnosis of PTSD was not reported at time of termination/treatment closing. The reason was not provided but it was most likely because he no longer met diagnostic criteria for PTSD or did not have PTSD at the time. Symptoms may wax and wane or recur and most mental disorders are not permanent. The most important information documented in this termination note was his condition at closing/transition was determined to be stable. This note was written by a military provider, Licensed Clinical Social Worker. This assessment and coupled with the fact the applicant did not receive any continuing mental health treatment or had any reported safety concerns after his last hospital discharge in Sep 97 confirmed the Chief of Mental Health Service's determination that he was WWD duty qualified or cleared for mobility, he was not at risk to self or others, and his condition had resolved within 60 days. These reasons corroborate the decision he did not need to be placed on a DLC/4T profile and he was fit for duty.

The applicant's DVA records, specifically his C&P examination, performed nine months after his discharge, also supported the impression his mental health condition was stable and not unfitting

at the time of discharge. There were no records the applicant had received any mental health treatment or had any mental health related encounters with any medical or mental health providers since his hospital discharge on 2 Sep 97 until he was evaluated by the C&P examiner on 10 Nov 98, a time gap of 14 months. He went over a year without meeting with any mental health providers, had no reported suicidal ideations, safety concerns, or emotional distress that required any psychiatric hospitalization or any other levels of care, and there were no records he had PTSD or had difficulties managing his PTSD symptoms during this extended time period. His C&P examination reported his subjective complaints include having severe depression about a week out of every month, tended to isolate himself, sleep poorly, wished to die, had period of tearfulness, had anxiety, became increasingly stressed, anger issues, exaggerated startle responses, reliving his stressful experiences, obsessive-compulsive features of neatness or orderliness, and being fearful of women yelling at him. Some of these symptoms (sleep problems, depressed mood, anxiety, anger issues, etc.) were experienced during his time in service but some symptoms (exaggerated startled response, reliving his stressful experiences, and fearful of being yelled at by women) did not exist or occur during his military service. There was no evidence any of his symptoms reported to the C&P examiner were reported or experienced after his last hospital discharge and at or near the time of his service discharge. Some of these symptoms may have begun or occurred after his discharge. Regardless of whether these symptoms/problems had existed or were experienced during service but more importantly, his C&P examiner reported, "However, these have not caused his (sic) any problems thus far in his functioning." His symptoms did not consistently or permanently interfere with his overall functioning to include his occupational functioning. The C&P examiner noted the applicant was functioning well at his job; however, his severe psychological problems were starting to affect his work. His social functioning was moderately impaired by his suspiciousness and mistrust of others. His wife reported some fear when he becomes angry, although she denies he ever struck her. This report revealed his psychological problems were starting to affect his work, which was his post-service job, and did not report they had affected his military duties or function in the military. Despite this concern, he was still functioning well. This again would support that he did not have any unfitting mental health conditions that would cause early career termination. The applicant was discharged for force reduction and if this unforeseen circumstance did not occur, he most likely would be able to continue performing his military duties based on the information presented in his records.

For awareness since the applicant has been receiving service-connected disability rating from the DVA, the following is 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 "snapshot" 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 law, 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.

**CUI//SP-MIL/SP-PRVCY**

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

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

The applicant's legal counsel contends after 14 years of service, he began to exhibit chronic mental health issues that rendered him unfit to perform the duties of his office, grade, rank, or rating. Despite the clear evidence that he did not meet retention standards, he was never referred to the DES that would deem him unfit and be retired for reason of disability.

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

There is evidence the applicant's mental health condition of PTSD had existed and occurred during military service. He was given a diagnosis of PTSD caused by his relationship abuse during service. The applicant was also given mental disorder diagnoses of Depressive Disorder NOS, Adjustment Disorder with Disturbance with Mixed Emotions and Conduct, Personality Disorder NOS, Mixed Personality Disorder caused by his marital and occupational problems from his CDE, hospitalizations, ER visits, and mental health treatment during his military service.

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

The applicant's mental health conditions to include PTSD never elevated to potentially unfitting meeting criteria to be referred to the DES for a potential medical discharge or retirement. He was never placed on a DLC profile for his mental health condition, never deemed not WWQ due to his mental health condition, and his mental health condition was never determined to have interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. He had unsuiting mental health conditions of Adjustment Disorder and especially Personality Disorder that were determined to be his primary conditions. His deficient impulse control behaviors tend to be exacerbated in response to an overwhelming emotion and/or unstable relationship causing him to drink excessively, have anger outbursts, assault others, having suicidal ideation and engaged in a suicide attempt, self-harming and mutilating behaviors were consistent with his adjustment and personality disorders and not in response to his traumatic experience of spousal abuse. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition was found to have not excused or mitigated his discharge, his mental health condition also does not outweigh his original administrative discharge. There was no evidence to support the applicant should have received a medical discharge or retirement.

The complete advisory opinion is at Exhibit W.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 5 Apr 23 for comment (Exhibit X), and the applicant replied on 3 May 23. In his response, the applicant's counsel contends his client was diagnosed with PTSD and depression while in the service which are Axis I, compensable

or ratable disabilities. The Psychological opinion is problematic for numerous reasons. The applicant is subject to a more lenient liberal consideration evidentiary standard because it involves a PTSD-related condition as expressed in the *Doyon v. United States* and *Harrison v. Kendall* cases. He was never referred to the DES and afforded the additional processing that the system demands. The Psychological opinion does not specifically address this argument, nor does it properly apply liberal consideration. The opinion acknowledges he was diagnosed with and exhibited symptoms of PTSD and depression while in service but argues that neither were unfitting. It attempts to parse his symptoms and conveniently attributes so-called “primary symptoms” to non-ratable conditions, adjustment disorder and personality disorder. This rationale is flawed. The Kurta Memo instructs that evidence that may reasonably support more than one diagnosis should be liberally considered as supporting a diagnosis, where applicable, that could excuse or mitigate the discharge, leading to discharge relief, a change to his narrative reason. The opinion claims his deficient impulse control is the root cause of his behavior. Studies have found a link between impulse control and PTSD and the VASRD expressly provides that impaired impulse control is a feature of mental health conditions (i.e. PTSD and depression).

The opinion’s argument discussing adjustment disorder is misleading and lacks merit. His adjustment disorder diagnosis was supplanted by the diagnoses of PTSD and depressive disorder, both ratable conditions. Based on the DSM-IV, the AFBCMR’s own analysis in a similar case, and especially the liberal-consideration standard, any symptoms that overlap between adjustment disorder and PTSD or depressive disorder should be attributed solely to PTSD or depressive disorder. The opinion’s argument that despite being diagnosed with PTSD and depression, he was fit for duty is arbitrary, capricious, contrary to law or regulation, an abuse of discretion or unsupported by substantial evidence. Using his EPRs to establish his fitness for duty is misleading; there is no field on an EPR to evaluate medical fitness. Furthermore, the speculation as to why he was not placed on a T-4 profile is false. He was being treated with medication for depression and mere months after his separation, the DVA confirmed his diagnosis of PTSD and depressive disorder making it retroactive to Feb 98.

Ultimately, the Psychological opinion gives inadequate consideration of the evidence that supports a conclusion that he was indeed unfit for service. The record reflects that between Aug 96, when he was first diagnosed with PTSD, and his separation, he was repeatedly hospitalized, at one point for two weeks, for mental health issues that involved suicidal ideations and one attempt. His condition was also marked by repeated appointments for psychological care and despite treatment with individual therapy and antidepressants, his condition deteriorated. Indeed, by Jan 98, he had been treated with Prozac and/or Zoloft over a year, and still presented to the mental health clinic complaining of “depression, anxiety, and fear.”

The applicant’s complete response is at Exhibit Z.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. The Board noted of all the applicant's submissions in reconsidering the merits of the case, to include his hospitalizations and his relationship problems with both of his former spouses and his rebuttal response to the advisory opinion which included the various cases cited by the applicant's counsel; however, the Board concludes the applicant is not the victim of an error or injustice. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Furthermore, the Board concurs with the rationale of the AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds no evidence to support he was misdiagnosed, mischaracterized, or his condition of PTSD was ignored. Even though he exhibited symptoms of PTSD and depression while in service, neither were unfitting and his unsuiting mental health conditions of Adjustment Disorder and Personality Disorder were his primary conditions.

His mental health conditions were found to have influenced some of his behaviors and were considered as unsuiting for military service meeting criteria for an administrative discharge; however, he did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical discharge. The mere existence of a medical 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. The Board notes counsel's contention that the applicant was not WWD qualified; however, the Chief of Mental Health Services determination the applicant was WWD qualified and he was not at risk to self or others. A Service member shall be considered unfit when the evidence establishes the member, due to a disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. A rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a compensable rating at the time of the applicant'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 the "snapshot" time of separation and not based on post-service progression of disease or injury.

Additionally, the Board applied liberal consideration to the applicant's request due to the contention of a mental health condition; however, the Board finds his behaviors were consistent with his adjustment and personality disorders and not in response to his traumatic experience of spousal abuse; therefore, his condition or experience does not excuse, mitigate, or outweigh his discharge. His difficulties of adjusting to and tolerating stressful situations led him to engage in maladaptive behavioral patterns. The applicant did have depression, but his symptoms were better aligned with adjustment disorder and personality traits, which were his primary conditions. His unsuiting conditions were his primary conditions rather than PTSD that had influenced most of his behaviors during service. The Board finds his condition of PTSD never elevated to potentially unfitting meeting criteria to be referred to the DES. Receiving a mental disorder diagnosis and/or mental health treatment does not automatically render a condition as unfitting as more markers are required to meet the unfitting designation. 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-1998-03153-5 in Executive Session on 24 May 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 F: Record of Proceedings, w/Exhibits A-E, dated 1 Dec 99.
- Exhibit I: Addendum Record of Proceedings, w/Exhibits G-H, dated 27 Apr 11.
- Exhibit K: Second Addendum Record of Proceedings, w/Exhibit J, dated 16 Aug 12.
- Exhibit U: Third Addendum Record of Proceedings, w/Exhibits L-T, dated 21 Jul 16.
- Exhibit V: Application, DD Form 149, w/atchs, dated 13 Dec 21.
- Exhibit W: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Mar 23.
- Exhibit X: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Apr 23.
- Exhibit Y: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 5 Apr 23.
- Exhibit Z: Applicant’s Response, w/atchs, dated 3 May 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.

1/29/2024

Work-Product  
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 Board Operations Manager, AFBCMR  
 Signed by: Work-Product