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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

THIRD ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2008-00404-5

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for the following:

1. His Officer Performance Report (OPR), ending Apr 02, be removed or replaced.
2. He receive Special Section Board (SSB) consideration for all boards.
3. He be awarded appropriate decorations.

RESUME OF THE CASE

The applicant is a retired Air Force major (O-4).

On 7 Aug 08, the Board considered and denied his request to have his OPR, rendered for the period of performance 3 Apr 01 to 2 Apr 02, removed and he receive SSB consideration for promotion to lieutenant colonel; finding insufficient evidence to demonstrate the existence of an error or injustice. The Board noted the applicant's contentions; however, found the detailed comments provided by the Air Force offices of primary responsibility adequately addressed those allegations. In this respect, the Board noted the applicant did not present any credible evidence from his senior rating chain or other agencies to support his contention of an error or injustice.

On 5 Aug 10, the Board reconsidered and denied his request to remove his Apr 02 OPR and be given SSB consideration; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. After thoroughly reviewing the additional documentation submitted in support of his appeal and the evidence of record, the Board did not believe the applicant had overcome the rationale expressed in the previous decision. While the applicant provided reports stating bias existed against airmen in nuclear-related fields, the Board found these reports broad in nature and did not support his argument. The Board did note, although his medical condition could have been a factor in his duty performance, a letter from his commander dated 26 Sep 08, stated he was more than able to perform his primary duties. Furthermore, the AFI on performance reports states raters are to assess and document what the ratee did, how well he or she did it, and the ratee's

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potential based on that performance. Based on the evidence of record, the Board noted it appeared, his rater did just that.

On 13 Apr 15, the AFBCMR Staff sent a letter to the applicant denying his request for removal of his OPR and SSB consideration stating the applicant did not provide new relevant evidence to meet the criteria for reconsideration by the Board.

On 3 Feb 22, 30 Mar 22, and 13 May 22, the Board reconsidered and denied his request to remove his Apr 02 OPR and be given SSB consideration. The Board concurred with the rationale and recommendation of the AFRBA Psychological Advisor and found a preponderance of the evidence did not substantiate the applicant's contentions. Specifically, the Board found no evidence the applicant's mental health condition of Post-Traumatic Stress Disorder (PTSD) caused his alleged poor performance during service. There was no evidence he had any behavioral, conduct, or performance issues during service that would impair his functioning due to his mental health contention or be the cause of a substandard OPR for the rating period ending on Apr 02.

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, H, I, and N.

On 11 Aug 23, the applicant requested reconsideration of his request to remove his 2002 OPR and be considered for SSB promotion and/or decorations. He again contends his OPR was negatively affected by his PTSD. A board certified licensed professional counselor provided a letter with a new assessment of PTSD and the Department of Veterans Affairs (DVA) increased his disability rating for PTSD to 50 percent. There is still stigma surrounding mental health issues and this was the case regarding his 2002 OPR and the events surrounding its creation. Liberal consideration should be applied to his request due to his PTSD.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Secretary of the Air Force (SAF) Brandon Act memorandum regarding mental health evaluations; (2) his DVA disability rating dated 18 Jan 23; (3) letters from his reviewer and additional reviewer requesting his OPR be removed and he be considered for appropriate boards, (4) a letter from a licensed professional counselor, and (5) other correspondence related to his request and attesting to his character. Both of the letters from his reviewer and additional reviewer state his performance report was not fairly prepared and was inaccurate; it excluded relevant information; and proper procedures were not followed for providing feedback.

The applicant's complete submission is at Exhibit O.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds no error or injustice identified with the applicant's military records, specifically his 2002 OPR, from a mental health standpoint. A review of the newly submitted records continues to find insufficient evidence to support the applicant's request for the desired changes to his records of removing his 2002 OPR and having his record be re-competed for any applicable boards and/or decorations as requested. There is no evidence or records indicating the results of his 2002 OPR performance report and ensuing rating were caused

or contributed by his mental health condition; and therefore, finds the applicant's contentions and newly submitted evidence to be insufficient and not compelling to overturn the previously rendered opinion regarding his mental health condition and request.

This advisory will address his newly submitted evidence as a reconsideration of his previously denied petition and is limited to his mental health condition. Matters pertaining to personnel issues should be addressed by the appropriate subject matter expert as deemed appropriate by the Board. The new records did not provide any substantive information that would suggest his mental health condition including PTSD had a direct impact or was a contributing factor to his performance and rating for his 2002 OPR. The applicant's mental health provider opined his PTSD did have an effect on his OPR but did not provide any clear or specific details to support this opinion. His provider also believed his 2002 OPR was classically characteristic of interactions with PTSD individuals and PTSD can be a pervasive condition and does not manifest in a straightforward fashion. Again, she did not provide any specific details or evidence to support these opinions. It is reminded in the previous advisory, it was discussed there is no evidence or records he had PTSD or a similar condition during service, especially around the 2002 OPR rating cycle. He was not diagnosed with PTSD until 2020, which was about nine years after his military discharge and 18 years after his 2002 OPR was completed. His mental health provider did not evaluate him at any time during his military service including around the 2002 OPR rating performance period and could not accurately attest to his functioning, mental health condition, or symptoms at the time of service. His provider's opinions are speculative and are not supported by his military records or other objective records. Mental health symptoms frequently and commonly fluctuate and may recur over time and the onset of a condition or symptoms differ from one individual to the next. He may have met the diagnostic criteria for PTSD in 2020 and presently at the time of these evaluations but does not indicate he retroactively had PTSD during service. His existing service treatment records or military records do not support he had PTSD at the time of service.

Classic symptoms of PTSD according to the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition-Text Revision (DSM-5-TR) may include recurrent distressing dreams or nightmares related to the traumatic event(s), dissociative reactions such as flashbacks, intense or prolonged psychological distress or marked physiological reactions when exposed to internal or external cues that may represent or resemble aspects of the traumatic event(s), avoidance of stimuli associated with the traumatic event(s) such as distressing dreams, thoughts, feelings, people, places, conversations, etc., negative alterations of cognition and mood associated with the traumatic event(s) such as inability to remember important aspects of the event, persistent and exaggerative negative beliefs about oneself, others, or the world, persistent distorted thoughts about the cause or consequences of the event(s), persistent negative emotional state of fear, horror, guilt, anger, or shame, etc., diminished interest or participation in significant activities, feelings of being detached or estranged from others, an inability to experience positive emotions such as happiness, satisfaction, or loving feelings, marked alterations in arousal and reactivity associated with the event may include irritability and anger outbursts, reckless or self-destructive behaviors, hypervigilance, exaggerated startled responses, concentration problems, and sleep disturbances. Furthermore, the duration of the disturbance is more than one month and causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. There is no evidence or records he experienced any of these symptoms of PTSD during service or this condition caused any impairment to his overall functioning, particularly to

his occupational functioning. The remarks made by his rater on his 2002 OPR did not indicate any of these PTSD symptoms had existed or occurred during that rating period, caused a decline in his job performance, or had impacted his work performance which would result in a poor performance rating. He met standards on all performance factors on the 2002 OPR and all prior and subsequent OPRs throughout his military career. It is agreed PTSD can be a pervasive condition and may not manifest in a straightforward fashion; however, there are no clues or hints in his service treatment records or military records whatsoever that may suggest he had PTSD or any PTSD symptoms during his time in service.

Addressing his submission of the Brandon Act policy about mental health referrals. There is no evidence or records he should have been referred to a mental health evaluation. Mental health referrals or commander-directed mental health evaluations are typically made when there are concerns about one's mental health condition, emotional state or distress, maladaptive behaviors, misconduct issues, substance use, safety concerns, inability to tolerate or manage stress, etc. that impacted the individual's ability to perform military duties or functioning in a military setting. None of these concerns were present in his records that would warrant a referral to mental health evaluation and not because of stigma. There are no records or evidence he had any symptoms of PTSD that would indicate he had undiagnosed PTSD at any time during his military service.

The DVA increased his rating for PTSD from 30 percent to 50 percent in Jan 23 and the rationale provided for this revised rating was he experienced symptoms of anxiety, depressed mood, difficulty in adapting to a work-like setting, difficulty in adapting to stressful circumstances, difficulty in adapting to work, difficulty in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, occupational and social impairment with reduced reliability and productivity, and suspiciousness. There is no evidence or records he had or experienced any of these symptoms or problems during service. For awareness since the applicant was service-connected for PTSD by the DVA. The DVA, under Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to the narrative reason for release from service, its impact upon a member's fitness to serve or duty performance, 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. Service connection does not establish causation or mitigation of a behavior or duty performance and does not establish or confirm his condition of PTSD had caused his 2002 OPR rating.

The witness statements the applicant submitted for review and consideration contradicts the impression he had a mental health condition or had any impairments to his work performance and functioning because of his mental health condition. He was praised for his behaviors and performance in managing a difficult and stressful work environment. These positive comments and experiences with the applicant during the time of the 2002 OPR rating period do not support or suggest he had a mental health condition. If his mental health condition was pervasive, severe, or chronic, he most likely would not be able to achieve these exceptional performances and accomplishments, particularly in a stressful situation that could or may exacerbate his emotional distress and PTSD symptoms. He appeared to be able to manage his stressors and perform at a high level simultaneously. His remaining witness statements stated his rater or rating report was

unfair, biased, did not follow proper procedures, etc. These statements did not reflect or indicate his mental health condition was the cause or a factor in any of these problems. These problems appeared to be a personnel issue and not related to his mental health condition.

The applicant is requesting liberal consideration to be applied to his petition; however, liberal consideration does not apply to his requests relating to the removal of military records/OPR, competition for promotions, or receiving decorations, which the applicant is requesting to receive relief. Liberal consideration applies to discharge upgrades and his requests do not fall under this category. He was discharged from service due to voluntary retirement and was given an honorable character of service. His 2002 OPR did not cause his discharge from service nor will a removal of this OPR from his records upgrade or change any of this information. The mere mention of PTSD or having a condition or contention of PTSD does not automatically indicate liberal consideration is applicable but is based on the type of request made. In the previous mental health advisory, the four questions from the Kurta Memorandum were provided to the Board based on the available records should the Board elect to apply liberal consideration to his petition despite his request not meeting the criteria for liberal consideration. The answers to these questions remain the same or similar even if new evidence or records had been presented because the new evidence did not change the content of responses to these questions or the outcome of his request. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

The complete advisory opinion is at Exhibit P.

AFPC/DP3SP recommends denying the application. The applicant has not provided compelling evidence to substantiate the contested report was unjust or inaccurate. The applicant also did not provide factual, specific, and concrete information from all the rating chain officials who would have had direct firsthand observation and could have validated the applicant's claim. Based on lack of corroborating evidence and the presumed legitimacy of the evaluator's overall documentation on the subject OPR, AFPC/DP3SP recommends no removal be made to the contested OPR. To void this report would remove the accountability of the applicant's actions for this reporting period.

The applicant has not provided any substantiating documentation or evidence to prove the final OPR was rendered unfairly or unjustly. Air Force policy dictates an evaluation report is accurate as written when it becomes a matter of record. Additionally, it is considered to represent the rating chain's best judgment at the time it is rendered. To effectively challenge an evaluation, it is necessary to hear from all members of the rating chain-not only the support but, also for clarification/explanation. Statements from two of the evaluators of the contested report during the rating period are conspicuously absent. The applicant has failed to provide the necessary information/support from the other two rating officials on the contested OPR. Without the benefit of these statements, AFPC/DP3SP can only conclude the OPR is accurate as written. It is determined the OPR was accomplished in direct accordance with all applicable Air Force policies and procedures, and it is contended, once a report is accepted for file, only strong evidence to the contrary warrant correction or removal from an individual's record. The burden of proof is on the applicant. The applicant has not substantiated the contested OPR was not rendered in good faith by all evaluators based on the knowledge available at the time.

The complete advisory opinion is at Exhibit Q.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 28 Mar 24 for comment (Exhibit R), and the applicant replied on 31 Mar 24. In his response, the applicant contends his PTSD adversely affected his relationship with his rater which resulted in a negative OPR and the DVA board-certified psychiatric counselor provided evidence to this fact. He volunteered to serve in a combat zone which resulted in his PTSD; however, he never sought treatment for his PTSD in the service due to the stigma associated with the disease. Two general officers and multiple colleagues provided evidence to support his rater did not prepare a fair performance report.

The applicant's complete response is at Exhibit S.

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 recommendations of the AFRBA Psychological Advisor and AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant's memorandum from their LPC suggesting his PTSD influenced his 2002 OPR lacked specifics on why the OPR should be removed or how it caused an error or injustice. Additionally, the Board finds the letters from his reviewer and additional reviewer lacked specifics as to how the OPR was inaccurate and what relevant information was excluded. The letters also stated proper procedures were not followed for providing feedback; however, the Board finds per applicable guidance at the time, the ratee also bear responsibility to ensure feedback sessions occurred and finds this reason does not prove the OPR was inaccurate or invalid simply due to the absence of feedback. Additionally, he did not provide factual, specific, and concrete information from all the rating chain officials who would have had direct firsthand observation to validate his claim. Furthermore, the Board noted the applicant's request to apply liberal consideration to his petition but finds this policy applies to discharge upgrades and does not apply to the change or removal of OPRs, requests for promotion, or awarding of medals or decorations. There was no evidence or records he had PTSD or any other mental health condition around the 2002 OPR rating cycle as he was not diagnosed with PTSD until 2020. The Board noted his contention he should have been referred for a mental health evaluation citing the Brandon Act; however, the applicant did not exhibit any symptoms of emotional stress or maladaptive behaviors to warrant such a referral by his commander. Lastly, the applicant does not explain what specific decorations he should be awarded or why he was denied such. Therefore, the Board finds no reason to grant this portion of the applicant's request and recommends against correcting the applicant's records. Since the Board recommends denial of the removal of his 2002 OPR and award of decorations; they find no reason to grant his request for a SSB.

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-2008-00404-5 in Executive Session on 23 May 24 and 30 May 24:

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Panel Chair

, Panel Member

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Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 7 Aug 08.

Exhibit H: Addendum Record of Proceedings, w/ Exhibit G, dated 5 Aug 10.

Exhibit I: Non-Viable Letter, SAF/MRBC, dated 13 Apr 15.

Exhibit N: Second Addendum Record of Proceedings, w/ Exhibits J-M, dated 3 Feb 22, 30 Mar 22, and 13 May 22.

Exhibit O: Application, DD Form 149, w/atchs, dated 11 Aug 23.

Exhibit P: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Feb 24.

Exhibit Q: Advisory Opinion, AFPC/DP3SP, dated 19 Mar 24.

Exhibit R: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Mar 24.

Exhibit S: Applicant's Response, w/atchs, dated 31 Mar 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.

6/4/2024

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Board Operations Manager, AFBCMR
Signed by: USAF