



Work-Product

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

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2010-00208-2

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request for a medical separation.

RESUME OF THE CASE

The applicant is a former Air Force staff sergeant (E-5) who was honorably discharged on 28 Sep 92 with a narrative reason for separation of "Condition that Interferes with Military Service - Not Disability - Character and Behavior Disorder."

On 14 Oct 10, the Board considered and denied his request for a medical separation; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The prior request was not timely submitted however, the Board found it was in the interest of justice to excuse the failure to timely file. The evidence of record reflected the applicant was involuntarily separated for a character and behavior disorder after being diagnosed with a personality disorder. The applicant believed he was misdiagnosed and should have been medically discharged or retired. The Board noted a personality disorder is not considered an unfitting condition, which is required for a medical discharge or retirement. Rather, it is considered an unsuited condition. After an exhaustive review of the facts and circumstances of the case, the Board found no evidence that showed the applicant was misdiagnosed with a personality disorder, the information used as a basis for his involuntary separation was erroneous, or that at the time of his separation, the applicant was unfit, rather than unsuited, to perform the duties of his rank and office within the meaning of the law.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit C.

On 18 Sep 20, the applicant requested reconsideration of his request for a medical separation. He again contends he should have been discharged with a medical disability under AFR 35-4, *Physical Evaluation for Retention, Retirement, and Separation*, due to not being medically qualified for worldwide duty. He was instead discharged under AFR 39-10, *Administrative Separation of Airman*. He suffered from medical problems to include Post-Traumatic Stress Disorder (PTSD) at the time of his discharge due to his deployment in support of Operations DESERT

AFBCMR Docket Number BC-2010-00208-2

Work-Product

Work-Product

SHIELD/STORM. He received incompetent counsel because his counsel should have advised him to be processed through the Disability Evaluation System (DES).

In support of his reconsideration request, the applicant submitted the following new evidence: (1) a personal statement and (2) Department of Veterans Affairs (DVA) Disability Rating.

The applicant's complete submission is at Exhibit D.

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 memo..

On 22 Mar 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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. The applicant was discharged from service for having an unsuited mental health condition of a personality disorder. He was evaluated three times by two different providers at two Air Force bases and all evaluations yielded the same results: he had a personality disorder influencing his behavior rendering him unable to function appropriately in the military. His behavior was well documented and his clinical presentation was assessed thoroughly with the aid of appropriate psychological assessment tools to derive a personality disorder diagnosis. His evaluator at the DVA also detected his personality disorder and traits and had identified it was personality traits that influenced his behaviors. This finding from his DVA evaluator provides more credence that his personality disorder given during service was appropriate and valid. Personality disorders are characterized as enduring, life-long, pervasive, and stable traits and the fact his DVA provider also detected his personality traits after almost 20 years post-discharge, supports the validity of his personality disorder diagnosis.

The applicant reported he was diagnosed with PTSD post-service. This assertion is correct based on his post-service records; however, it is important to be aware he was not diagnosed with PTSD until 2008, almost 16 years post-discharge. His DVA providers acknowledged his PTSD was caused by multiple traumatic experiences throughout his lifetime which included his childhood trauma, deployment/combat experiences in Iraq, and his post-service trauma of being a corrections officer. The culmination of these traumatic experiences caused him to develop PTSD symptoms he eventually met full diagnostic criteria for post-service. It appeared he had a delayed onset of PTSD complicated by post-service stressors, and there was no evidence the applicant had PTSD or PTSD-like conditions or symptoms during service. The applicant was never placed on a duty limiting conditions profile for PTSD or any mental health conditions and was not deemed not worldwide qualified due to his mental health condition. There was no evidence he had any unfitting mental health conditions to include PTSD that would meet criteria to be referred to the Medical Evaluation Board (MEB) for a possible medical discharge. Again, the behaviors he displayed at the snapshot in time of service resembled his personality disorder traits and not PTSD. There was no evidence he was anxious or depressed, had sleep disturbances, avoided reminders of his trauma, had startled responses, flashbacks, etc. that are classic symptoms of PTSD. He did have alcohol issues during service resulting with him receiving alcohol treatment in 1989. This event also predated his deployment to Work-P... His DVA records also reported he had alcohol issues prior to service and he admitted to having alcohol issues at the age of 16 according to his notes dated 15 May 08. The DVA reported his PTSD had existed prior to service (EPTS) and was

aggravated by his military service. This assessment was based on their observation at the time of that evaluation, which was performed post-service. There was no evidence in his objective military and service treatment records his EPTS conditions were aggravated by his military service during his actual time in service that would permanently aggravate his condition beyond the natural progression of the disease/condition. All evidence points to his condition being exacerbated and aggravated by his post-service life and stressors. As a result, there is no error or injustice identified with his discharge from service.

It is acknowledged the applicant has received disability compensation from the DVA for PTSD. For awareness, the military's DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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.

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 contends he had a medical condition and was not worldwide qualified at the time of discharge. He contends he developed PTSD from his time in Iraq.
2. Did the condition exist or experience occur during military service?
There is no evidence the applicant was diagnosed with PTSD or PTSD-like conditions from his deployment during military service. There is no evidence this condition existed during service.
3. Does the condition or experience excuse or mitigate the discharge?
Since there is no evidence his mental health condition from his deployment experience existed or occurred during service, his condition or experience does not excuse or mitigate his discharge. There is no evidence he had any unfitting mental health conditions to include PTSD that would meet criteria for a medical discharge or retirement.
4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition of PTSD or any other conditions were never found to be unfitting for continued military service, his condition or experience does not outweigh his original discharge.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 28 Jan 22 for comment (Exhibit G), and he responded on 15 Mar 22 asking for more time to respond to the advisory and Board staff administratively closed his case.

On 31 Aug 22, the applicant submitted a rebuttal and his case was reopened. In his response the applicant contends the advisory opinion focuses totally on the negative aspects of his final years of service and somewhat willfully neglects to mention his first ten years of honorable service. He had fantastic annual ratings and his interpersonal skills were outstanding, clearly showing he adapted to the military. Any personality disorder surely would have been caught during his first years of service. During his wartime service, he had zero conflicts with his supervisors and fellow airmen. It was not until his last duty assignment he had problems. He was misdiagnosed with a personality disorder in 1992 to precipitate his discharge which caused him tremendous harm. He continues to suffer from PTSD to this day which was exacerbated by his wartime service.

The applicant's complete response is at Exhibit H.

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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions for granting him a medical separation. Specifically, the Board finds the applicant's diagnosis of personality disorder was actuate at the time of his discharge and that he was not misdiagnosed as the applicant contends. Furthermore, the Board applied liberal consideration to the new evidence submitted by the applicant; however, it is not sufficient to overturn the previous Board's decision. The Board found no evidence his mental health condition from his deployment experience existed or occurred during service and there is no evidence he had any unfitting mental health conditions to include PTSD that would meet criteria for a medical discharge or retirement. However, a majority of the Board does support changing the applicant's separation code and corresponding narrative reason for separation due to the stigma associated with character and behavior disorder currently annotated on his DD Form 214. Therefore, the Board recommends against correcting the applicant's records to grant him a medical separation.
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. However, a majority of the Board does recommend correcting his records to show that on 28 Sep 92, he was discharged with a separation code of JFF and corresponding narrative reason for separation of Secretarial Authority.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2010-00208-2 in Executive Session on 23 Feb 22 and 20 Sep 22:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

All members voted against correcting the record to grant the applicant a medical separation. However, a majority of the panel voted to correct his separation code and corresponding narrative reason for separation. Work-Product did not vote to make this correction. The panel considered the following:

- Exhibit C: Record of Proceedings, w/Exhibits A-B, dated 14 Oct 10.
- Exhibit D: Application, DD Form 149, w/atchs, dated 18 Sep 20.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 22 Mar 21.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Aug 21.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Jan 22.
- Exhibit H: Applicant’s Response, dated 31 Aug 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

7/2/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: Work-Product