THIRD ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXX XXXXXXXXXXXX

DOCKET NUMBER: BC-2012-01264-4

COUNSEL: XXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request for a medical retirement for her mental health condition of bipolar disorder with a disability rating of 100 percent.

RESUME OF THE CASE

The applicant is a former Air Force senior airman (E-4) who was honorably discharged on 14 Mar 11 with a narrative reason for separation of "Personality Disorder."

On 10 Jan 13, the Board considered and denied her request for a change to her narrative reason for separation to a medical disability due to Post-Traumatic Stress Disorder (PTSD), bipolar disorder, and anxiety finding no evidence an error or injustice occurred during the discharge process. The Board noted the discharge appeared to be consistent with the substantive requirements of the discharge regulation and within the commander's discretionary authority finding the applicant provided no evidence, which led them to believe the narrative reason for separation was contrary to the provisions of the governing regulation. Furthermore, the Board noted the applicant's contention her PTSD, bipolar disorder and anxiety should be reflected as the narrative reason for separation due to post-service medical evidence; however, the Board did not find this evidence sufficient to support these contentions.

On 22 Aug 18, the Board reconsidered and denied her request to void her discharge and return her to active duty to be evaluated by a Medical Evaluation Board (MEB). The Board concurred with the rationale and recommendation of the AFBCMR Clinical Psychology Consultant, the AFBCMR Psychiatric Advisor, and AFPC/DP2STM finding the preponderance of evidence did not substantiate the applicant's contentions.

On 4 Jun 19, the Board reconsidered her request to void her discharge and return her to active duty to be evaluated by a MEB. The Board noted the recommendation of the AFBCMR Mental Health Advisor against correcting the record; however, found a preponderance of the evidence substantiated the applicant's contentions, in part. The Board opined while each case is evaluated independently and judged totally on the evidence provided and the merits of the case, they did review the two cases cited by the applicant's counsel and determined neither one set precedent for a decision in this case. With respect to BC-2014-03920, the applicant's physical limitations centered on the range of motion of her spine. Unlike in this case, the evidence submitted in that case strongly supported a change in the rating at the time of the applicant's service separation. With respect to BC-1996-00146, the Board determined the applicant's diagnosis of personality

disorder was an error, based upon the AFBCMR Psychiatric Advisor's opinion the applicant's symptoms during the period in question were more consistent with an adjustment disorder diagnosis and not a diagnosis of personality disorder. Importantly, the applicant was re-evaluated shortly after discharge. Therefore, the reference to personality disorder was properly removed from the applicant's records.

The Board did note the action and disposition of the applicant's discharge complied with the Air Force directives in effect at the time of her discharge, and the standard of review was proper. However, based on their review of the evidence, the Board believed it would be an injustice for the applicant to continue to suffer from the stigma placed on individuals with a narrative reason for separation of Personality Disorder and recommended changing the applicant's narrative reason for separation be changed to reflect "Secretarial Authority" with a corresponding separation code to "JFX." However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore found no basis to recommend granting those portions 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 C, L, and Q.

On 31 Dec 22 and 30 Jan 23, the applicant requested reconsideration of her request. She again contends, through counsel, her bipolar disorder had its onset during her military service and the evidence presented in her previous case, her Board of Veterans' Appeals decision, added further weight to her claim. This, in combination with her civilian treatment records showing a diagnosis and treatment of bipolar a few months after her discharge, provides compelling evidence she suffered from bipolar disorder and not from a personality disorder at the time of her discharge. Furthermore, the "snapshot in time" standard is arbitrary, capricious, and directly contrary to the legal mandate of the AFBCMR and, even if it were not, it is inapplicable here. The Air Force misdiagnosed the applicant's condition and did not properly process her through the Disability Evaluation System (DES). The applicant presented evidence from two psychologists who evaluated her, considered her pre-separation medical documents, opined she did not have a personality disorder while in service, and confirmed bipolar disorder was the proper diagnosis. In support of her reconsideration request, a copy of the court motion was provided. This motion was filed on 12 Sep 22 by counsel on behalf of the applicant in the United States Court of Federal Claims. Her counsel contends the AFBCMR Board did not properly address the following:

a. The Board failed to address her argument the Air Force violated its own regulations by not attempting rehabilitative services before discharge.

b. The Board failed to consider the new evidence that demonstrates she had been suffering from bipolar disorder in 2011, triggered by violence at home.

c. The Board applied an erroneous legal standard, the "snapshot in time," when evaluating her request to change her discharge records.

In addition to the court motion, the applicant's counsel also provided copies of the Hagel, Carson, and Kurta memorandums and a copy of a similar court case. This case brings forth arguments

concerning the liberal consideration policy issued by the Department of Defense concerning mental health diagnoses. Counsel argues several things are relevant to the applicant's case. First, because her application involves a mental health diagnosis, the AFBCMR is obligated by law to give the applicant liberal consideration. Second, the case emphasizes a diagnosis made by a licensed psychiatrist or psychologist the condition existed during military service will receive liberal consideration, and lastly, it underscores a determination made by the Department of Veterans Affairs (DVA) should be considered persuasive evidence a mental health condition existed during military service.

The applicant's complete submission is at Exhibit R.

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.

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 her record. The opinions rendered by five different AFBCMR's medical and mental health advisors were consistent, and sound based on facts and information documented in her service treatment records and from review and consideration of her available post-service treatment records. The Psychological Advisor also performed an additional review of her post-service treatment records to demonstrate these records were indeed reviewed and considered and the results were consistent to her military providers' and the previous advisors' findings. The applicant's records do not support her request for medical discharge for her mental health condition to include bipolar disorder. The Psychological Advisor has laid out the facts documented from the applicant's available service and post-service treatment records that were used to formulate an in-depth analysis to address the applicant's expressed desire for a medical discharge for her mental health condition by the five AFBCMR's medical and mental health advisors as instructed by the court. The analysis and rationale provided by the advisors were consistent and sound. The applicant's mental health symptoms during service better resemble a personality disorder versus bipolar disorder. Although some of these symptoms may overlap with bipolar disorder, as most mental health conditions share similar symptoms, her symptoms have been enduring and pervasive since she was a child. This would delineate the differences between her personality and bipolar disorders. Furthermore, her symptoms were derived from her rigid and unhealthy pattern of thinking, behaving, and functioning, which are distinct traits exclusive to personality disorders. Despite her well-documented behaviors during service pointing to a personality disorder, the validity of her personality disorder was disputed by some of her post-service providers, claiming her behaviors were caused by bipolar disorder. This was evident in the court document mentioning, "No medical provider endorsed the diagnosis of personality disorder post-discharge, and each, including the DVA, confirmed the diagnosis of bipolar disorder" to dispute her personality disorder diagnosis. Her DVA medical records do not support the statement no medical provider had endorsed the diagnosis of personality disorder post-service. A primary care note dated 27 Apr 17 written by a DVA Internal Medicine Physician reported, "personality d/o [disorder]: not taking meds, refuses psych f/u [follow-up] denies SI/HI [suicidal ideation/homicidal ideation]." This note showed a credential medical provider from the DVA did indeed give her a personality disorder diagnosis and would be contrary to the quoted statement from the court document. As indicated in the quotation, the applicant refused psychological follow-up reflecting she was not amenable or cooperative with mental health treatment interventions. This noted behavior would be significant as it may explain her approach and reporting albeit cautiously to her mental health providers.

The Psychological Advisor has performed an additional review of her post-service treatment from the DVA. It appeared, based on the review of the records, some of her mental health providers may have been reluctant to give her a personality disorder diagnosis due to various competing symptoms that needed further clarification, but they were not hesitant to document personality disorder traits she had reported and displayed. The following are extracts from her treatment records completed by her various DVA providers discussing her personality disorder diagnosis and traits:

On 28 Jan 13, a Compensation and Pension (C&P) examination completed by a Clinical Psychologist reported this relevant information: The vet reported separation from Air Force due to diagnosis of personality disorder, not otherwise specified (NOS) with Narcissistic and Histrionic traits, but she (the veteran) felt a more appropriate diagnosis would have been bipolar disorder. A social worker note dated 28 Jun 11, indicates the veteran disagreed with discharge status of honorable discharge because of a personality disorder due to what she feels is an incorrect diagnosis; however, personality disorder diagnoses are most appropriate after multiple observation time points are possible. The veteran described a history of Cluster B personality traits today (e.g., fear of abandonment, risky and impulsive behaviors in response to threats of loss). She has a documented history of personality disorder with Narcissistic and Histrionic Traits in her C-File, which was the primary reason for her early separation from the Air Force.

On 4 Nov 14, the applicant received a third intake evaluation with a Clinical Psychologist to complete an assessment for borderline personality features per recommendation by her psychiatry provider. The assessment notes reported an assessment of Borderline Personality Disorder (BPD) symptoms as follows:

EMOTION DYSREGULATION:

- The veteran endorsed almost daily emotional reactivity since age 16, primarily noticing anger and sadness/crying. The veteran reported this is out of proportion to the situation and dramatic shifts in affect occur (although she considers this recent).

- She noted emotional intensity, particularly anger and fear (re: PTSD), stating she finds this overwhelming. She reports “everybody” refers to her as “dramatic” and “emotional” and the emotions often leave her feeling “jumbled up” and with “spinning thoughts” that lead to “shut down” or intense behavioral reactions like yelling and throwing things.

- She denied slow return to baseline, indicating things like crying, throwing things and yelling help her calm down, although she is often retriggered.

- The veteran endorsed difficulty understanding her emotions and generally finds tolerating intense emotions difficult, leading to behavioral outbursts or rumination.

INTERPERSONAL DYSREGULATION

- The veteran indicated a predominance of relationships that are "doing ok" and denied significant interpersonal conflict. She did endorse once relationships are "already bad," she will engage in acting out on her anger and then avoids those people.

- She denied significant impairment in this domain.

COGNITIVE DYSREGULATION

- The veteran note's ability to watch herself in slow motion and is able to note a desire to not do what she is doing but feels low behavioral control.

- Endorsed daily rumination.

- The veteran endorsed "mind reading" that impairs her ability to be social and enjoy it.

BEHAVIORAL DYSREGULATION

- The veteran noted some impulsivity, particularly in past times in which she considers the behavior part of manic episodes (e.g., excessive spending). The veteran also noted she is aware of other times in which she spends money on her children (more than is affordable) to compensate for her insecurities as a mother. She reported this was particularly problematic after being discharged from the military (e.g., insecurities were high after having to move in with mother, losing job and car, not having money, etc.).

SELF DYSREGULATION

- The veteran reports low self-esteem with relation to self-image/body, motherhood, school, finances, etc. She reported feeling inadequate. The veteran noted this existed prior to the military as well, with an emphasis on looking a certain way to please her partner.

- The veteran notes a sharp decline in self-confidence after marriage in 2008, reporting "none" since.

PREDISPOSITIONS/INVALIDATING ENVIRONMENT

- The veteran endorsed, while growing up, her grandmother was quite nurturing; however, her aunt and mother would often argue, be abusive with partners and treated the veteran "like a boy" telling her to "be strong" and to "dust it off, suck it up."

- The veteran experienced sexual trauma from a young age (8-years old), without proper support, thereafter from her family."

Assessment: The veteran is a XXXX seeking Mental Health services after terminating care in the community due to lapse in Medicaid coverage. The veteran carries multiple prior diagnoses, largely centering around possible Bipolar diagnosis and PTSD diagnoses 2/2 repeated sexual and physical trauma starting in childhood. The veteran's presentation over three intake sessions is consistent with Unspecified Mood Disorder and PTSD. The veteran's mood disorder at this time

is largely depressive in nature, although the veteran reports what appears to be manic episodes occurring in the past. Given some inconsistency in reporting and unclear data obtained via medication trials, it has been difficult to discern whether the veteran has true bipolar spectrum disorder. This has also made it difficult to determine whether borderline personality features are present, as much of the veteran's most significant mood and behavior instability is reported to occur within the context of reported manic episodes. The writer has encouraged the veteran to re-engage with a psychiatry provider to determine if there are alternate approaches to medication management possible, will continue to assess. Regardless of whether the veteran has underlying bipolar or personality dysregulation, the veteran is likely to benefit from available offerings in the clinic; however, it will be of most benefit to the veteran's engagement if she is able to feel confident in her medication regimen. Diagnostic and Statistical Manual of Mental Disorders (DSM5) Diagnoses: Unspecified Mood Disorder (rule out (r/o) Bipolar Disorder), PTSD, and Borderline personality traits.

On 28 Jan 15, treatment notes from psychiatry resident with consultation from supervising psychiatrist reported her active psych issue as emotional lability, weight gain, and increased sexual acting out with a diagnosis of unspecified bipolar disorder, PTSD, borderline personality traits. The assessment notes the following: XXXXX female with recent diagnosis of Bipolar I who presents to women's health clinic for medication management follow-up. Patient reports continued mood stability and is sleeping eight hours per night with addition of mirtazapine. Thought process is linear and goal directed. Patient reports decrease in sexual acting out. Unclear currently whether sexual acting out is a product of hypomania versus complex PTSD versus borderline personality structure. However, it is clear, not all of the patient's symptoms can be explained by bipolar disorder. The patient's mood symptoms are stable on current medication regimen. Would benefit from psychotherapy to address PTSD as well as borderline personality traits. Appointment scheduled to finish intake for further recommendation for specific therapy.

On 15 Jul 15, treatment notes from psychiatry resident with consultation from supervising psychiatrist reported a diagnosis of unspecified bipolar disorder, PTSD, borderline personality traits. The assessment notes the following: XXXXXX female with recent diagnosis of Bipolar I who presents to women's health clinic for medication management follow-up. The patient reports continued mood stability and improvement in symptoms (irritability, hyper-sexuality) on Mirtazapine and Depakote. Continues to have a busy schedule and has been unable to schedule a therapy intake. She has an extensive a history of trauma, impulsivity and mood lability and would benefit from psychotherapy to address PTSD as well as borderline personality traits.

On 15 Sep 15, treatment notes from psychiatry resident with consultation from supervising psychiatrist reported a diagnosis of Bipolar I disorder, PTSD, borderline personality traits. A safety assessment was completed, and patient was determined to be at low risk of self-harm acutely. However, she remained at chronically elevated risk of self-harm compared to general population based on risk factors including a diagnosis of a severe mental illness, history of assault/trauma, divorced/separated/widowed/no history of significant relationship, axis II diagnosis, chronic mood lability, history of impulsivity, chronic poor judgement, or rigid thinking. The Axis II diagnosis her provider referenced was personality disorder. Personality disorder is a condition categorized under Axis II according to the DSM. This reference also supports a personality disorder diagnosis her post-service provider had given to her.

On 18 Nov 15, treatment notes from a Psychology Intern with supervisory consultation from a Clinical Psychologist reported the veteran is a XXXXX female seeking Mental Health services for mood dysregulation. The veteran carries multiple prior diagnoses, including Bipolar I and PTSD diagnoses 2/2 repeated sexual and physical trauma beginning in childhood. The veteran reports what appear to be hypomanic episodes occurring in the recent past. Given inconsistency in medication adherence, it will be difficult to discern whether borderline personality features are present, as much of the veteran's most significant mood and behavior instability is reported to occur within the context of medication disruption. Given significant dysregulation and pattern of medication disruption, Dialectical Behavior Therapy (DBT) treatment may be useful to the veteran regardless of BPD diagnosis. DSM5 Diagnoses (per chart): Bipolar I disorder, PTSD, and borderline personality traits.

On 6 Jan 16, the DBT Intake from a Psychology Intern with supervisory consultation from a Clinical Psychologist reported as such, current assessment suggests the veteran's presentation is best accounted for Bipolar I disorder and PTSD and secondarily by borderline personality traits (r/o BPD). Her presentation throughout intake is consistent with this assessment. Given dysregulation independent of hypomanic/manic episodes and pattern of medication disruption, the veteran is likely a good fit for the DBT framework in which continued efforts to reduce risk/increase life worth living will be made. DSM 5 Diagnoses: Bipolar I disorder, PTSD, and borderline personality traits.

On 4 Apr 17, treatment notes from a Psychiatry Resident with supervisory consultation from Psychiatrist reported the patient is a XXXXX Female, 30 percent service connection for other than psychiatric reasons with a history of bipolar disorder, PTSD, borderline personality disorder who presents c/o anxiety and wanting someone to talk to. The patient is tangential, disorganized, grandiose, pressured, irritable and labile concerning for manic/hypomanic state. She refuses to take Seroquel, saying it is unhelpful and questions her diagnosis. She is amenable to therapy and requests a letter for school that was written for her. The patient denies SI/HI and has an adequate plan for self-care, describing the address of where she lives and the source of her income. She is unwilling to be admitted voluntarily to the psychiatric unit although it does appear she would benefit from admission. Furthermore, at this time, she does not meet criteria for an involuntary hold. At this time the patient denies any SI and is assessed to be at little to no acute risk of self-harm, verbalizing an understanding she will return to the emergency department/psychiatric emergency care (ED/PEC) if she's in a crisis. DSM-5 diagnoses: Bipolar disorder, currently manic. Also, per chart, borderline personality disorder and PTSD. The psychiatrist provided an addendum to this note reporting agree with above assessment and plan by psychiatry resident. It is not clear exactly what the patient is struggling with apart from serious psychosocial stressors and PTSD. However, her presentation is not consistent with her past diagnosis of bipolar disorder, though her behavior is certainly consistent with a maladaptive personality disorder. The latter could easily be a product of one or more traumatic experiences in her life. She appears to only require a letter stating she was seen in the clinic today and has no expressed interest in psychopharmacology. She does not exhibit any clear SI, HI, or auditory visual hallucination (AVH), mostly just anger at the system.

On 26 May 20, Psychotherapy notes from a Social Worker reported a diagnosis of bipolar disorder service-connected: personality disorder.

These extracted notes reported the applicant had displayed traits of a personality disorder, specifically borderline personality disorder, post-service. Borderline personality disorder is under the Cluster B traits of personality disorders that also consisted of narcissistic and histrionic personality disorders. Cluster B traits share the distinction of dramatic, overly emotional, or unpredictable thinking or behaviors. Her post-service providers had varying opinions about her bipolar and personality disorders. Some reported she had both disorders/symptoms, another finds her personality disorder traits were secondary to bipolar disorder, a different provider opined her presentation was consistent to personality disorder and not bipolar disorder, and another found some of her symptoms were not completely consistent to bipolar disorder but to personality disorder. The varying opinions most likely were attributed to the applicant's noted inconsistent reporting. The applicant repeatedly was expressive and adamant about not having a personality disorder. Due to this steadfast belief, she may attempt to conceal, underreport, or plainly deny her personality symptoms/traits to be congruent with her thoughts. Manipulation is a personality disorder trait. Despite her best efforts, her personality symptoms and traits were detected and acknowledged by numerous providers. Her efforts led to varying opinions among her providers about her clinical presentation and may deprive them from being able to assess her true presentation and conditions and provide adequate care to her. She was reported to have been at times, non-compliant to treatment interventions and recommendations, which may be the result of her inconsistent or underreporting or unwillingness to accept she has personality disorder traits/disorder. Her reporting style may also explain the restraint from some of her providers for not diagnosing her with a confirmed personality disorder even though she apparently had personality symptoms/traits. It is reminded, mental health providers rely on the reporting of their clients/patients to make an informed diagnosis and treatment plan. Disclosure or non-disclosure of symptoms to different providers at separate times may very well account for the discrepant assessment and diagnosis that her post-service providers appear to still be in disconcerted contention of her diagnosis. Notwithstanding the much needed clarity of her personality disorder diagnosis, the fact that numerous providers had detected and reported she had personality symptoms, traits, and/or disorder at different times post-service, gives credence to the validity of her personality disorder diagnosis that was given during her military service. To reiterate, a personality disorder is an enduring pattern of inner experience that deviates markedly from the expectation of one's culture that is also inflexible, pervasive, stable, and long duration that could be traced to adolescence or early adulthood causing significant distress in social, occupational, or other important areas of functioning (DSM-5 and DSM-5-TR [Text Revision]). Her personality traits have been pervasive, stable, and enduring through the years that began in childhood/adolescence.

Mental disorders are complex. Symptoms may fluctuate in its frequency and severity, sometimes they may recur or appear for a brief period and do not return, sometimes they may be in partial or sustained remission, or they may be acute or chronic. Most mental disorders are not permanent. The applicant has a long and complicated history of mental health concerns stemming from her childhood that continued during her military service and carried forward to post-service and present time. Her mental health conditions and symptoms have changed over time and the applicant was reported to have symptoms of bipolar disorder during service that were identified

by other providers that may have begun prior to her military service. She was evaluated by numerous duly qualified and credentialed mental health providers during service and none of them gave her a confirmed diagnosis of bipolar disorder but concurred her primary condition/symptoms/traits influencing her behaviors was personality disorder. She met diagnostic criteria for bipolar disorder post-service and even some of her post-service providers disagreed with this diagnosis. It may be more likely than not she had experienced an onset of bipolar disorder during service since she was in the age range at the time of service of when this condition would typically appear or become more apparent. A condition like bipolar disorder takes time to fully appear and may take years to be diagnosed properly; however, there was no evidence she had a confirmed bipolar disorder during service. She had symptoms of this condition during service that also overlapped with personality disorder because they share common symptoms. Nevertheless, receiving a mental disorder diagnosis and/or mental health treatment does not automatically render a condition as unfitting. More information is needed to meet the criteria of unfitting such as she was never placed on a duty limiting condition profile for her mental health condition, and she was never determined not to be worldwide qualified or not deployable due to her mental health condition. She had an unsuiting mental health condition of a personality disorder at the time of her service causing her administrative discharge from service. As mentioned, mental health conditions may fluctuate and at the time of her service, her personality disorder was her primary condition that may become a secondary or even a tertiary condition post-service as her other conditions of bipolar disorder and PTSD may become more prominent from various triggers and stressors in her life at that time. Therefore, the Psychological Advisor finds no error or injustice with her discharge from a mental health perspective.

Finally, the court discussed the problematic verbiage and usage of the concept of "snapshot in time of service" which was used by the AFBCMR advisors. As the Psychological and Psychiatric advisors had clarified in their advisory dated 6 Jun 18, this verbiage was used in referenced to the applicant's time in service, which was from 15 Jan 08 thru 14 Mar 11. Her military providers evaluated her during service and not post-service and her DVA provider evaluated her post-service and not during service. Her DVA providers made speculations about her presentation and conditions during service, but these are merely speculations that could not be verified by them because they did not observe nor evaluate her during service. The applicant's clinical presentation had differed during her time in service and in comparison, to her presentation to her DVA providers post-service. Through time, one's behaviors may change and evolve. Her problems and environment also vastly differ from her time in service versus post-service which account for differences in diagnostic opinions and impressions. Nevertheless, we are also reminded of recognized reasons for disparities in diagnostic impressions within the mental health profession; some base upon variances in clinical presentation at a given time, different disclosures during a subsequent interview, clinical bias between equally competent clinicians, or legitimate differences due to new observations made over the longer period of care. Hence, the importance of her records kept at the time of her service is crucial to her request; however, there was no evidence of any misdiagnosis from her military providers. The evidence at the time of service does not support her request for a medical discharge for bipolar disorder or any other mental health condition.

The complete advisory opinion is at Exhibit S.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Apr 23 for comment (Exhibit T), and the applicant replied on 4 Aug 23. In her response, the applicant's counsel contends the advisory opined by the Psychological Advisor is legally deficient because it neglects to consider and apply liberal consideration. These liberal consideration standards have been applied in similar cases; *Doyon v. United States* and *Harrison v. Kendall*, and the courts held the Kurta Memorandum applies to any petition seeking discharge relief which includes a request to change the narrative reason for separation. Furthermore, the advisory opinion is analytically deficient as it fails to consider the Air Force violated its own regulations by not affording the applicant a period of rehabilitation and fails to address the extensive post-service evidence of her bipolar disorder as being service-connected. The applicant was misdiagnosed with a personality disorder as she suffered from the onset of bipolar disorder while on active duty and the service expeditiously and unlawfully discharged her. Lastly, the advisory opinion's use of a snapshot in time reference is disconcerting and is nothing more than a board created doctrine arbitrarily relied upon to deny meritorious applications where applicants have demonstrated through pre- and post-separation evidence, a mental health diagnosis made by the service was erroneous, as is the case here.

The applicant's complete response is at Exhibit U.

ADDITIONAL AIR FORCE EVALUATION

After review and consideration of the legal counsel's rebuttal, the Psychological Advisor continues to find insufficient evidence presented to support the applicant's request for a medical discharge for her mental health condition. This advisory supplements the previous mental health advisory. It is recommended the Board review this supplementary advisory in addition to the previous mental health advisory to address the applicant's request and concerns. This supplementary advisory will only address contentions and concerns made in the rebuttal response.

The Psychological Advisor has reviewed the legal counsel's rebuttal response and does not concur with the opinion that liberal consideration should be applied to the applicant's request for a medical discharge or retirement for her mental health condition. Liberal consideration does not apply to fitness determination petitions. To receive a medical discharge or retirement one's mental health condition needs to be determined as unfit for duty. Various medical and mental health advisors at different points in the time of review were consistent with their findings the applicant did not have any unfitting mental health conditions which would result in early career termination or a referral to a MEB for a potential medical discharge or retirement. She had an unsuiting mental health condition meeting the criteria for an administrative discharge. Her mental health condition did not meet the requirements of unfitness in accordance with DoDI 1332.18, *Disability Evaluation System*, and AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. Even if liberal consideration was applied to the applicant's petition for a medical discharge or retirement, the outcome of her discharge would not change as liberal consideration does not transpire a mental health condition as unfitting. It is also important to recognize liberal consideration does not mandate an upgrade per number paragraph 26.k. of the Kurta Memorandum, the most recent liberal consideration policy. To give the applicant the benefit of liberal consideration, despite her request not covered under this policy, the following are responses to the four questions from the Kurta Memorandum from information available from her records for review:

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

The applicant and her legal counsel are requesting a medical discharge or retirement for her mental health condition of bipolar disorder. They disputed her mental health diagnosis and discharge for having an unsuiting personality disorder. They cited her post-service mental disorder diagnosis, treatment, and service connection from the DVA for bipolar disorder as reasons to grant her request for a medical discharge or retirement.

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

The applicant was never diagnosed with bipolar disorder during service. She experienced symptoms of bipolar disorder, but her symptoms had overlapped with personality traits. Bipolar disorders and personality disorders share similar symptoms. She was evaluated by numerous duly qualified mental health providers during service and all providers assessed she had a personality disorder and this condition was determined to be her primary condition influencing her behaviors. She was diagnosed with bipolar disorder after she was discharged from military service.

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

The applicant's personality disorder was identified to be her primary mental health condition. This is an unsuiting mental health condition and was the reason for her discharge. There is no evidence of an error or injustice with her personality disorder diagnosis or discharge for this condition. There is no evidence the applicant had any unfitting mental health condition to include bipolar disorder during military service that would meet the criteria for a referral to a MEB. Her mental health condition of bipolar disorder does not actually excuse or mitigate her discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant does not have any unfitting mental health condition including bipolar disorder that would provide her with a medical discharge or retirement, her bipolar disorder/mental health condition does outweigh her original discharge. Again, she had an unsuiting mental health condition of personality disorder that was determined to be her primary mental health condition.

Finally, the applicant's legal counsel contended the supplementary advisory focused on the applicant's service treatment records and functioning at the time of service. The supplementary advisory addressed and considered her service treatment records and post-service mental health treatment records to include her conditions/disorders, treatment, and service connection from the DVA. In terms of the matter regarding more focus placed on her service treatment records, it is reminded, 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 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 laws, 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.

The complete advisory opinion is at Exhibit V.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 29 Aug 23 for comment (Exhibit W), and the applicant replied on 26 Sep 23. In her response, the applicant's counsel contends this case is subject to the liberal consideration rules and the advisory opinion is incorrect when stating liberal consideration does not apply to fitness determination petitions. In a similar case, *Doyon v. United States*, the Court held liberal consideration standards apply to mental health-related discharge claims seeking a change in the reason for separation to physical disability. In *Labonte v. United States*, the Court correctly observed in Doyon, the Federal Circuit reasoned the same liberal consideration standard would need to be applied to the retroactive determination of whether the plaintiff was entitled to retirement due to disability.

The advisory opinion goes on to address the four questions regarding liberal consideration but offers nothing new which was not rebutted in previous submissions. The advisory opinion ignores the central rehabilitation claim the court determined the AFBCMR must address which is discussed in the 31 Dec 22 supplemental material and the 4 Aug 23 advisory opinion rebuttal. Furthermore, the advisory opinion continues to disregard the preponderance of evidence she suffered the onset of bipolar disorder while on active duty and it is more probable than not, the diagnosis of personality disorder was erroneous, particularly when considered under the applicable liberal-consideration guidance. The record is replete with numerous medical findings she suffers severe bipolar disorder which has resulted in psychiatric hospitalization on several occasions. Duly qualified and credentialed mental health providers confirmed her bipolar diagnosis and opined she exhibited symptoms of the condition in service. The advisory opines the "no evidence" assertion; however, acknowledges more likely than not she experienced symptoms of bipolar disorder during service since she was in the age range at the time this condition would typically appear. Finally, the advisory opinion points out the military's DES and the DVA disability compensation system operate under separate law, seemingly to justify more focus placed on her service treatment records. Although not entirely clear, the advisory opinion appears to invoke the "snapshot in time" analysis without using the phrase. As repeatedly argued, the "snapshot in time" standard is inapplicable here and inconsistent with Doyon.

In short, *Doyon* mandates application of the liberal consideration guidelines to this case. Under these guidelines, the AFBCMR must afford such consideration to a diagnosis made by a licensed psychiatrist or psychologist the condition existing during military service will receive liberal consideration; and must consider determinations made by the DVA to be persuasive evidence a mental health condition existed during military service. Thus, the advisory opinion's disregard for, or even deliberately reduced focus on, is wholly inconsistent with federal law.

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 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. Furthermore, 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. The Board finds the applicant's mental health symptoms during service better resemble a personality disorder versus bipolar disorder. Noting some of these symptoms may overlap with bipolar disorder, as most mental health conditions share similar symptoms; however, the Board finds her symptoms were enduring and pervasive since she was a child which delineates the differences between her personality and bipolar disorders. Additionally, the Board finds her symptoms stemmed from her rigid and unhealthy patterns of thinking, behaving, and functioning, which are distinct traits exclusive to personality disorders. She was evaluated by numerous duly qualified and credentialed mental health providers during service and none of them gave her a confirmed diagnosis of bipolar disorder but instead diagnosed her with an unsuiting mental health condition of a personality disorder. Furthermore, the Board finds post-service evidence of personality disorder traits and in some instances of a diagnosis of personality disorder; additionally finding her post-service providers had varying opinions about her bipolar and personality disorders and were most likely attributed to the applicant's inconsistent reporting. Due to these findings, a period of rehabilitation was not offered to the applicant because she was diagnosed with an unsuiting mental health condition which disqualified her from continued military service. Based on this and her post-service records showing a decline in her mental health, the Board finds it would not have been in the best interest of the Air Force to offer the applicant a period of rehabilitation.

Liberal consideration was applied to the applicant's request; however, the Board finds the applicant's mental health condition did not impair her ability to reasonably perform her military duties in accordance with her office, grade, rank, or rating nor was there evidence her bipolar disorder caused her discharge. She was found to have a condition that was unsuited for continued military service but not an unfitting condition meeting criteria to be processed through medical channels for a medical discharge. In a previous Board decision, the potential stigma of "Personality Disorder" listed on her DD Form 214 was corrected; however, this decision does not indicate she was not properly diagnosed with a personality disorder at the time of her discharge. A Service member shall be considered unfit when the evidence establishes the member, due to a mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the total compensable rating awarded at the time of the member's separation. The usage of "snapshot in time" is used in reference to the applicant's time in service, which was from 15 Jan 08 thru 14 Mar 11. Her military providers evaluated her during service and not post-service and her DVA providers evaluated her post-service and not during service. 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

time of separation and not based on post-service progression of disease or injury. 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 the 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-2012-01264-4 in Executive Session on 25 Oct 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit C: Record of Proceedings, w/ Exhibit A, dated 10 Jan 13.
Exhibit L: Addendum Record of Proceedings, w/ Exhibits D-K, dated 22 Aug 18.
Exhibit Q: Second Addendum Record of Proceedings, w/ Exhibits M-P, dated 4 Jun 19.
Exhibit R: Court Motion w/atchs, dated 31 Dec 22 and 30 Jan 23.
Exhibit S: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Apr 23.
Exhibit T: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Apr 23.
Exhibit U: Applicant's Response, dated 4 Aug 23.
Exhibit V: Advisory Opinion, AFRBA Psychological Advisor, dated 28 Aug 23.
Exhibit W: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 23.
Exhibit X: Applicant's Response, dated 26 Sep 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.

X

Board Operations Manager, AFBCMR