

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01790

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel records be amended to:

- a. Upgrade his general (under honorable conditions) discharge to an honorable discharge.
- b. Award a disability discharge with severance pay (DWSP).

APPLICANT'S CONTENTIONS

There was an error in judgment and the correction should be made due to his age. He was RIFFED (sic¹) after refusing the 10 percent rating from the medical board for a mental health condition. In retaliation for refusing, he was discharged within 30 days. He has been seeking redress since the erroneous action. He was receiving medical care at discharge and to date.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 10 Jun 82, according to AF Form 618, *Medical Board Report*, the applicant was diagnosed with: (1) low back pain, Grade 1 out of 10 without corroborating physical or radiological findings; (2) mixed personality disorder with passive, aggressive and dependent features; (3) psychological factors affecting physical condition, acute and moderate, DSM-3 [Diagnostic and Statistical Manual, Third Edition] axis 1 (316-0); and (4) passive, aggressive personality disorder with passive dependent features, chronic, mild, DSM-3, axis 2 (301.84), and referred to the Physical Evaluation Board (PEB).

On 17 Jun 82, according to AF Form 1185, *Statement of Record Data*, the applicant stated, "I do wish to remain on active duty, preferably to cross train into a position where I can move freely when hampered."

On 6 Jul 82, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Low back pain without corroborating physical findings, associated with psychological factors affecting physical condition with moderate social and industrial impairment; Incurred while entitled to receive basic pay: YES; Degree of impairment is permanent: YES; Percent: 10; Veterans Affairs Diagnostic Code Number: 9505.
- Other diagnosis considered but not ratable: Passive-aggressive personality disorder.

The informal PEB (IPEB) recommended DWSP with a 10 percent compensable rating.

¹ Normally, RIF refers to "reduction in force."

On 13 Jul 82, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the PEB informal hearing and demanded a formal hearing of the case.

On 5 Aug 82, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was not found unfit because of physical disability and was diagnosed with:

- Low back pain without corroborating physical finding, improving.

The formal PEB (FPEB) recommended Return to Duty.

On 5 Aug 82, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the FPEB.

On 7 Sep 82, according to an AFMPC/MPCARA2 memorandum, Subject: Return to Duty of [applicant], a determination was made in the Office of the Secretary of the Air Force (OSAF) that the member is physically fit for the performance of active military service.

On 1 Mar 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, Section H, paragraph 5-46. The specific reasons for the action were:

a. On 17 Aug 81, [the applicant] departed his place of duty without authority. On 25 Aug 81, he departed his place of duty without authority. On 9 Sep 81, he departed his place of duty without authority. He received a letter of counseling (LOC) (ATC Form 18, *Record of Individual Counseling*) for these infractions.

b. On 12 Feb 82, [the applicant] failed to go to his appointed place of duty at the prescribed time (40 minutes late). On 17 Feb 82, he failed to go to his appointed place of duty at the prescribed time (20 minutes late). He received an LOC (ATC Form 18) for these infractions.

c. On 10 and 11 Mar 82, [the applicant] was disrespectful to a superior noncommissioned officer (NCO). He received an LOC (ATC Form 18) for this infraction.

d. On 1 Apr 82, [the applicant] was disrespectful of a superior NCO. He received an LOC (ATC Form 18) for this infraction.

e. On 4 May 82, [the applicant] failed to report to his appointed place of duty at the prescribed time (20 minutes late). On 5 May 82, he failed to report to his appointed place of duty at the prescribed time (35 minutes late). He received an LOC (ATC Form 18) for these infractions.

f. On 17 May 82, [the applicant] failed to report to his appointed place of duty at the prescribed time. He received a letter of reprimand (LOR) for this infraction.

g. On 10 Sep 82, [the applicant] failed to report to his place of duty at the prescribed time (15 minutes late).

h. On 10 Sep 82, [the applicant] failed to obey a lawful order given to him by the First Sergeant.

i. On 24 Jan 83, [the applicant] was derelict in the performance of his assigned duties. He received an LOR for this infraction.

j. On 27 Jan 83, [the applicant] failed to report to his appointed place of duty at the prescribed time. He received an LOR for this infraction.

The applicant had a record of disciplinary actions: Article 15, 28 Aug 80, Possession of marijuana, suspended reduction, \$150.00 forfeiture.

On 9 Mar 83, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Mar 83, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, Chapter 5, paragraph 5-46., with a general (under honorable conditions) service characterization.

On 18 Mar 83, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct (Minor Disciplinary Infractions)" and he was credited with 2 years, 10 months, and 26 days of total active service.

On 24 Mar 83, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 6 Jul 83, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits D and F.

POST-SERVICE INFORMATION

On 13 Jul 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; however, he has not replied.

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 issued supplemental guidance, known as the Wilkie Memo, 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 13 Jul 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

On 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. § 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. § 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 5 Jul 24, Board staff provided the applicant a copy of the updated liberal consideration guidance (Exhibit I).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

The use of force or violence to produce serious bodily injury or death.

Abuse of a special position of trust.

Disregard by a superior of customary superior - subordinate relationships.

Acts or omissions that endanger the security of the United States.

Acts or omissions that endanger the health and welfare of other members of the DAF.

Deliberate acts or omissions that seriously endanger the health and safety of other persons.

Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an honorable discharge and DWSP based on his mental health condition.

This advisory is limited to the applicant's mental health condition. This psychological advisor recommends the Board receive/review an advisory from a medical advisor to address his physical condition. A review of the applicant's available records finds the applicant did not have any unfitting mental health condition that would result in a medical discharge. He was evaluated during service and was diagnosed with mixed personality disorder with passive, aggressive, and dependent features, psychological factors affecting physical condition, acute and moderate, and passive-aggressive personality disorder with passive dependent features, chronic, and mild. He was referred to the Medical Evaluation Board (MEB) for these conditions and the IPEB determined his condition of passive-aggressive personality disorder was not ratable; he was found unfit for his physical condition of low back pain with a proposed 10 percent disability rating by the IPEB and not for his mental health condition as he contended. His personality disorder was not rated because his personality disorders, including mixed personality disorder and passive-aggressive personality disorder, are unsuiting and not unfitting conditions for military service. Unsuiting conditions meet the criteria for an administrative separation, which is non-compensable. The IPEB did not address his condition of psychological factors affecting physical condition but a subsequent mental health evaluation on 12 Sep 82 found he did not meet the criteria for this condition. The applicant appealed the IPEB's decision to the FPEB requesting to be returned to duty and the FPEB determined he was fit for duty. The FPEB had requested consultation by Mental Health (and Orthopedics) and Mental Health recommended the applicant be returned to duty signifying he did not have any unfitting mental health condition. The FPEB concurred with the Mental Health consultation's findings and recommendation.

There is no error identified with the applicant's personality disorder diagnosis that was given to him during service. His military mental health providers had documented and observed he would exaggerate for minor gains, to establish his credibility, or to convince others his problems were major or unresolvable, and he was fixated on others' shortcomings and may be

intentionally inefficient and stubborn. These behaviors were assessed to be personality traits that made him unlikely to respond to treatment and were the reasons for this personality disorder diagnosis. This psychological advisor finds his personality disorder diagnosis was appropriate based on the personality traits he had exhibited and was observed to display. Providing further support that his personality disorder diagnosis was valid, the applicant was evaluated for mental health treatment twice by the Department of Veterans Affairs (DVA) decades after service. His DVA providers had reported he had personality traits of interpersonal conflict, limited insight, paranoia, and persecutory beliefs that had impacted his overall functioning. His DVA providers did not give him a confirmed personality disorder diagnosis and rather gave rule-outs for personality disorder NOS [not otherwise specified] and paranoid personality disorder respectively, because more information was needed to confirm either diagnosis. Regardless of a confirmed diagnosis, his DVA providers noted he had personality traits that were similar to traits he had during service. According to the current version of the DSM, personality disorders are characterized by enduring maladaptive patterns of behavior, cognition, and inner experiences exhibited across many contexts and deviating from those accepted by an individual's culture that causes distress or problems functioning and lasts over time. The fact that his DVA providers were able to detect similar personality traits which he had during service would support his personality traits had been enduring and problematic to his functioning years and decades after service and thus, his personality disorder diagnosis was appropriate and valid.

The applicant's military mental health providers and the FPEB reported an administrative separation should be considered should his maladaptive behavioral problems persist and interfere with his military duties and performance. There are no records his mental health providers had recommended to his commander to separate him for having an unsuiting mental health condition of a personality disorder. Although a recommendation for administrative separation for his personality disorder could have been warranted because his personality disorder or traits were most likely a contributing factor and caused some of his misconduct such as being disrespectful to an NCO and being late to work on some occasions, the reason or type of administrative separation action he would receive was at his commander's discretion. If his mental health provider had made a recommendation for administrative separation for his personality disorder, his commander did not have to accept the recommendation. It appeared his pattern of minor disciplinary infractions was sufficient for administrative discharge action and was the reason for his discharge. If he had been discharged for having a personality disorder, it would have resulted in an administrative discharge, which he had already received for a different reason. As mentioned, there are records and evidence his personality traits had caused some of his minor disciplinary infractions. While his personality disorder may cause and explain some of his behaviors, his condition does not excuse or mitigate his behaviors and discharge. The applicant did report having sleep problems and depressive symptoms during his physical examination during service, but he explained these problems or symptoms were caused by his physical condition. There is no evidence these problems or symptoms caused his acts of misconduct or discharge.

The applicant marked PTSD [Post-Traumatic Stress Disorder] on his application to the Board and did [not²] explain how and when he incurred this condition, how the condition was related to his military service and duties, his traumatic experience(s), and how this condition affected his functioning. There are no records he was ever diagnosed with PTSD during service and no records he experienced or displayed symptoms of this condition during service. He was never placed on a duty limiting condition profile for PTSD or any other mental health condition, he was never deemed not worldwide qualified due to his mental health condition, and there are no statements from his commander or leadership that his condition of PTSD had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. There are no records to support his mental health condition of PTSD was potentially

² Typographical error.

unfitting meeting the criteria to be referred to an MEB for a medical discharge. His DVA records reported he attended a PTSD group for a month in the 1980s and no records exist to corroborate his report or to clarify the rationale for this condition/diagnosis. There are no records he attended a PTSD group during service. The applicant was evaluated at least twice by his DVA providers after service, and he was not given a diagnosis of PTSD from either evaluation. He was never diagnosed or treated for PTSD at the DVA.

After an exhaustive review of the available records, this psychological advisor finds no error or injustice with the applicant's discharge from a mental health perspective and insufficient evidence has been presented to support his request for a medical DWSP based on his mental health condition. This psychological advisor opines liberal consideration is not appropriate to be applied to the applicant's request because this policy does not apply to medical discharge requests. This policy, however, applies to his request for an upgrade to honorable. It is reminded that liberal consideration does not mandate an upgrade. The following are answers to the four questions from the Kurta Memorandum from the available records for review:

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

The applicant contends there was an error in judgment as he was riffed after refusing a medical board of 10 percent for his mental condition. He was retaliated against for refusing and was discharged within 30 days. He marked "PTSD" on his application and did not explain how this condition may excuse or mitigate his discharge.

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

There is no evidence the applicant's mental health condition of PTSD had existed or was experienced during his military service. There are no records to confirm he was ever diagnosed with PTSD in his lifetime, including by his DVA providers. He was diagnosed with mixed personality disorder with passive, aggressive, and dependent features, psychological factors affecting physical condition, acute and moderate, and passive-aggressive personality disorder with passive dependent features, chronic, and mild during service.

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

There is no evidence or records the applicant's mental health condition of PTSD had a direct impact or was a contributing factor to his misconduct and subsequent discharge. There are records reflecting his personality disorder may have caused some of his misconduct and while his personality disorder may explain his behaviors, this is an unsuiting condition for military service and does not excuse or mitigate his discharge. He was reported to have sleep problems and depressive symptoms during service that he attributed to his physical condition or back pain. There is no evidence these problems or symptoms caused his numerous acts of misconduct and thus, they do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Dec 23 for comment (Exhibit E) but has received no response.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time the PEB processed his disability case.

Under Title 10, United States Code, Chapter 61 (10 USC § 61), the PEB must determine if a member's condition(s) renders them unfit for continued military service relating to their office, grade, rank, or rating and fairly compensate those members whose military careers are cut short due to a service-incurred or service-aggravated disability.

On 10 Jun 82, an MEB found the applicant potentially unfit for: (1) Low Back Pain, Grade 1 out of 10 without corroborating physical or radiological findings; (2) Mixed Personality Disorder with passive, aggressive and dependent features; (3) Psychological factors affecting physical condition, acute and moderate, DSM-3 axis 1; and (4) Passive Aggressive Personality Disorder with dependent features, chronic, mild, DSM-3, axis 2. The accompanying medical narrative summary indicated he had an approximately six-month history of back pain due to falling down a flight of stairs. The applicant's primary care manager (PCM) indicated, "x-rays taken of thoracic lumbar spine in the past, including an AP lateral, both obliques, and spot lateral with an AP of the pelvis was normal. X-rays of the thoracic spine showed no abnormalities." The PCM graded the applicant's condition as a 1 out of 10, with 10 being the worst he had seen. The PCM directed a psychological evaluation to determine if there were other causes for the applicant's perceived back pain.

On 6 Jul 82, the IPEB found the applicant unfit for low back pain without corroborating physical findings, associated with psychological factors affecting physical condition with moderate social and industrial impairment and recommended DWSP with a 10 percent compensable rating. Passive-aggressive personality disorder was considered but not ratable by the IPEB.

On 13 Jul 82, the applicant disagreed with the IPEB findings and requested an FPEB hearing. AF Form 1185, dated 17 Jun 82, indicates he was petitioning the FPEB to remain on active duty. A full transcript of the FPEB hearing contains a detailed account of the FPEB proceedings and the applicant's testimony verifying his personal request to be returned to duty by the FPEB. In preparation for the FPEB hearing, the applicant was referred to Wilford Hall Medical Center for orthopedic and mental health evaluation. Both consults recommended he be returned to duty. The orthopedic consult contained the following remarks, "Retainable, qualified for worldwide service." The mental health consult contained the following remarks, "Presently he is motivated to return to duty and subsequently his mild back spasms are of little consequence. Rec/Plan (Recommendation Plan) (1) Trial of RTD (Return to Duty) with actions for separation, administratively, if his work performance warrants. If obstructionism, intentional inefficiency, and "stubbornness" become problematic (recurringly) this action will be necessary."

During his FPEB hearing, there was discussion concerning the applicant's previous duty performance with his acknowledgement that he must do a better job if he desired to remain in the Air Force. During sworn testimony, he indicated his back pain was minimal, it had improved, and he had ceased use of medication. Additionally, he testified his depression was due to family stressors and financial issues, but he was developing a plan to resolve those issues. When asked about his diagnosis of passive-aggressive personality disorder, the applicant stated it was due to his "ill-manner to cooperate" and exaggerating on the psychological evaluations. When asked to elaborate, he stated when his orthopedic doctor referred him for psychological evaluation, he felt it was not necessary and took a more negative attitude towards the testing and exaggerated his responses.

On 5 Aug 82, the FPEB found the applicant fit and recommended RTD. The closing remarks contained the following statement, "The [FPEB] recommends return to duty and agrees with the Mental Health consultation that the Evaluatee be separated administratively if his work performance does not improve." The applicant agreed with the FPEB's findings and recommended disposition. On 7 Sep 82, the OSAF determined the applicant was physically fit and directed he be RTD and his medical and personnel records be appropriately updated.

The applicant's records indicate, on 1 Mar 83, his commander initiated administrative discharge proceedings due to multiple minor disciplinary infractions. The applicant was administratively discharged, effective 18 Mar 83, with a general (under honorable conditions) characterization of service. He previously sought redress through the AFDRB which unanimously disapproved his request for an upgrade to his service characterization.

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 May 84 for comment (Exhibit G) and the applicant replied on 15 Jun 84. In his response, the applicant contends the hearing proceedings and intent of the FPEB decision to return him to duty without rehabilitation or retraining were in error and caused extensive residual effect to cause harm to him.

He was not of sound mind according to a doctor's report and his fate was decided by assigning DSM modalities, with a recommendation for his discharge. He was facing a dilemma while under scrutiny for a traumatic fall on duty and labeled by switching his physical injury to a psychological profile. Recommending an administrative discharge was biased and a gross error as well. He also parroted his counsel at the hearing before the FPEB, so his testimony was based on counsel's perceptions, not on his as he was under duress and coerced. He was offered a 10 percent rating for a personality disorder; however, his physical injury has not been deemed in his head today. He appeared before the FPEB to explain the injury was not in his head. The FPEB president persisted in questioning why he wanted to go back to work. The applicant was threatened and coerced into believing he was offered a fair deal. This was done in bad faith and the FPEB elected no probation and no rehabilitation, which is in violation of governing rules when sanity is in question.

He has been adversely affected by the negative narrative that followed the FPEB hearing and RTD orders, which were biased and prejudiced the applicant from the outset. He should have been entitled to probation and rehabilitation and medical treatment. He was returned to a hostile work environment still under the influence of mental and physical stressors and was receiving medical care at the time of discharge. He was never intended to be retained based on inherent bias. The applicant continued to dispute his medical findings. In addition, he alleges an abuse of power and miscarriage of justice. The applicant provided post-service medical records in support of his rebuttal.

The applicant's complete response is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all discharge upgrade requests under fundamental fairness or clemency are technically untimely. However, it would be illogical to deny a discharge upgrade application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 USC § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Although the applicant's petition to the Board contends PTSD, there is no evidence he was diagnosed with PTSD during or after military service. Additionally, his mental health diagnoses during service were not found to be unfitting. There is no evidence or record the applicant's mental health condition of PTSD had a direct impact or was a contributing factor to his misconduct and subsequent discharge. There are records reflecting his personality disorder may have caused some of his misconduct and while his personality disorder may explain his behaviors, this is an unsuiting condition for military service and does not excuse or mitigate his discharge. The applicant was reported to have sleep problems and depressive symptoms during service he attributed to his physical condition or back pain; however, no evidence of these problems or symptoms caused his numerous acts of misconduct, and thus, does not excuse or mitigate his discharge. While the applicant's physical diagnosis of low back pain, without corroborating physical findings, was found by the IPEB to be unfitting with a recommendation of DWSP and a 10 percent compensable rating, the applicant disagreed and, after seeking an independent review of the applicant's medical and mental health conditions, the FPEB recommended RTD. The applicant agreed with the findings and recommended disposition of the FPEB, consistent with his earlier stated desire to remain on active duty.

Regarding the applicant's subsequent administrative discharge and service characterization, 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. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-01790 in Executive Session on 22 Aug 24:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 16 Apr 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 Jul 23.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 7 Dec 23.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Dec 23.
Exhibit F: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 16 May 24.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 28 May 24.
Exhibit H: Applicant's Response, w/atchs, dated 15 Jun 24.
Exhibit I: Letter, SAF/MRBC, w/atchs (Updated Liberal Consideration Guidance), dated 5 Jul 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.

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Board Operations Manager, AFBCMR