

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02998

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to change his Separation Code and Narrative Reason for Separation from "resignation" to "medical retirement."

APPLICANT'S CONTENTIONS

He is requesting the change due to the disability he acquired during active duty, which rendered him unable to continue serving. The Separation Code and Narrative Reason for Separation are inappropriate due to the fact that he was diagnosed with severe anxiety and mental health issues during his active duty service, which significantly hindered his ability to function effectively and conform behaviors to the expectations of a military environment. Additionally, the Department of Veterans Affairs (DVA) confirmed his mental health issue is chronic adjustment disorder with anxiety following his discharge. It is assessed as service-connected, with a 100 percent permanent and total disability rating, effective 13 Apr 21. This aligns with his discharge date of 12 Apr 21 as his mental health condition continued to deteriorate after the date of discharge. Therefore, according to the Kurta Memorandum, it is imperative that his DD Form 214 should reflect his medical retirement due to permanent service-connected disability.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force second lieutenant (O-1).

On 19 Nov 20, in a memorandum, Subject: *Letter in Support of Early Separation for [applicant]*, addressed to the applicant's commanding officer, a military licensed clinical social worker recommended the applicant be processed for early separation "because the mental health disorder is impacting the service member's ability to function effectively in the military environment."

On 12 Apr 21, according to DD Form 214, the applicant was furnished an honorable discharge, with Type of Separation: Resignation, Narrative Reason for Separation: Miscellaneous – General Reasons, Separation Code: FND [Miscellaneous – General Reasons], and credited with 10 months, 28 days active service.

On 13 Jul 23, according to a DVA Decision Review Officer Decision, provided by the applicant, evaluation of his chronic adjustment disorder with anxiety, which was currently 50 percent disabling, was increased to 100 percent, effective 13 Apr 21.

On 24 Jul 23, according to a DVA letter, provided by the applicant, evaluation of his chronic adjustment disorder with anxiety, which was currently 50 percent disabling, was increased to 100 percent, effective 13 Apr 21, and basic eligibility to Dependents' Educational Assistance based on permanent and total disability status was established from 13 Apr 21.

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

APPLICABLE AUTHORITY/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 20 Mar 24, 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.

- a. 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.

b. 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 3 Jun 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

AIR FORCE EVALUATION

AFRBA Psychological Advisor found insufficient evidence to support the applicant's request for the desired changes to his records.

A review of the applicant's available records finds the applicant did not have any unfitting mental health conditions that would support his request for a medical discharge/retirement. There are records and evidence he voluntarily sought mental health treatment services for having anxiety and depressed mood caused by stressors from his marital problems and his concerns for his father's health. The applicant being in the military and on active duty were reported to have exacerbated these issues because his wife felt isolated and did not have social support at his new duty station, and he was unable to care for his father due to distance because his father lived in China. He was given a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood by his therapist and psychiatrist as he began having problems adjusting to his stressors in Sep 20, about two months after he entered active duty service. He would receive brief mental health treatment services, primarily medication management, from Sep 20 to Dec 20. He benefitted from treatment and his service treatment notes reported his mood and sleep had improved with the use of psychotropic medications. While he was receiving treatment, he had requested an early discharge for humanitarian reasons in order to provide care to his ill father according to his service treatment records and from the letter by his mental health provider. His commander was reportedly supportive of him being discharged early for this reason. Once his discharge process began, his mood and symptoms were also reportedly improved in conjunction with treatment. On 1 Feb 21, he had requested termination of his mental health treatment because his stressors had resolved, and he had preferred his improvements be maintained without the use of medication. His treatment was terminated on this day and his adjustment disorder was reported to be resolved. It appeared with treatment and the impending removal of his situational stressor of being on active duty causing his family problems and stressors gradually being removed, his mood had also improved. The applicant's documented condition and clinical presentation would support his Adjustment Disorder with Mixed Anxiety and Depressed Mood was appropriate and valid.

The applicant had been given service-connection for Chronic Adjustment Disorder with Anxiety by the DVA shortly after his discharge from service. Although this condition appeared to be similar to the condition he had in service, there is a significant difference. The applicant did not have a chronic adjustment disorder, but he had an acute adjustment disorder. According to the current Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), an acute specifier is used to indicate the persistence of symptoms for less than six months whereas a chronic specifier is used for six months or longer. The applicant's symptoms had improved and resolved within six months, three months from Sep 20 to Dec 20 to be more precise, when he first began to experience anxiety and depressive symptoms caused by adjusting to his situational stressors. There is no evidence his anxiety and depressive symptoms from an adjustment disorder had lasted longer than six months during his military service. His symptoms had returned after his discharge from the Air Force; however, the causes and triggers of his

symptoms were slightly different. He continued to have marital problems after service and his wife refused to attend marriage counseling which may have exacerbated or aggravated his anxiety and depression. He reported feeling depressed and lonely because he had no friends, worked alone from home, and had financial problems. He reported his anxiety had increased since he was discharged from the military. At the time the applicant was discharged from the military, his anxiety and depression had resolved and thus, his mental health condition was not chronic at the time. His symptoms recurred after service caused by various factors but also caused and triggered by his post-service stressors. His marital problems did exist during service but were not caused by his military duties. Being in the service caused his marital problems because of being in a new environment, but his actual work as a cybersecurity officer did not cause his anxiety, depression, or marital problems. It appeared from his DVA treatment records his condition became chronic after service as again, there is no evidence his condition was chronic during service. Moreover, the DVA had provided an explanation for his 100 percent rating for his Chronic Adjustment Disorder with Anxiety condition citing he had anxiety, chronic sleep impairment, depressed mood, difficulty in adapting to a work-like setting, stressful circumstances, and work, difficulty in establishing and maintaining effective work and social relationships, disturbances of motivation and mood, forgetting directions, names, and recent events, inability to establish and maintain effective relationships, mild memory loss, occupational and social impairment with reduced reliability and productivity, suicidal ideation, and suspiciousness. With the exception of anxiety, depressed mood, and adapting to stressful circumstances, there is no evidence or records he experienced the remaining listed symptoms and problems during service. The majority and remaining symptoms appeared to have occurred or began after his military service and these remaining symptoms most likely caused him to receive the "chronic" specifier or made his condition chronic. An acute adjustment disorder is an unsuiting mental health condition for continued military service and meets the criteria for an administrative discharge, which he had received but for a different reason. A chronic adjustment disorder is an unfitting condition and may meet the criteria for a medical discharge. To reiterate, he did not have this latter chronic condition during service and more likely than not, had developed this condition or specifier after service.

The applicant did not have any potentially unfitting mental health condition during service that would meet the criteria for a referral to the Medical Evaluation Board (MEB) for a possible medical discharge. He had an unsuiting and not unfitting mental health condition. He was placed on a temporary Duty Limiting Condition (DLC) profile to restrict his worldwide mobility and access to firearms because he was newly prescribed trials of psychotropic medications, Prozac and Remeron. It is standard operating procedure to place a service member on a DLC profile when new medications are prescribed because of their effects on the member's functioning and judgment, just like how Remeron caused him to have difficulties with motivation and performance because of its sedating effects. The purpose of his DLC profile was to augment his safety while he acclimated to his new medications. He was never placed on a permanent DLC profile or S4 profile. Despite being placed on a temporary DLC profile, he was consistently determined to be fit for continued military service by his treating psychiatrist. The applicant received a fitness for duty evaluation by his Primary Care Manager (PCM) for Palace Chase/Palace Front (PC/PF) on 6 Apr 21 because he wanted to transfer to the Air National Guard (ANG). From this evaluation, he was reported to not have any disqualifying or unfitting mental health condition diagnosis. He did have an S2 (not S4) psychiatric profile, but this signified he was worldwide qualified and his mental health condition presented low risk for any impairment to his duties, and he was medically cleared for PC/PF. Since he was medically cleared for PC/PF, this also represented he was fit for duty to meet the accession standards to enter/transfer into the ANG. His PCM acknowledged he had a mental health condition of an Adjustment Disorder with Mixed Anxiety and Depressed Mood during service, but this condition was resolved per his psychiatrist's report. The applicant was evaluated by his PCM again the following day for his Separation History and Physical Examination (SHPE). His psychiatric examination was assessed to be normal; he did not have any medical conditions that required a

medical hold, and he was cleared for separation. His reports to his PCM were consistent with his report to his psychiatrist that his condition/symptoms had been resolved and he did not have a mental health condition including chronic condition at the time of his discharge from active duty service with the Air Force.

Finally for awareness since the applicant was granted service-connection from the DVA for his mental health condition: The military's Disability Evaluation System, 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 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 of 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.

An exhaustive review of the applicant's available records finds no error or injustice with the applicant's discharge from a mental health perspective. There is insufficient evidence to support his request for medical retirement, change to his narrative reason for separation, and change to his separation code based on his mental health condition because he did not have any unfitting mental health conditions including a chronic adjustment disorder that would meet the criteria for a referral to the MEB for a possible medical discharge. The applicant is requesting the Kurta Memorandum or liberal consideration be applied to his petition; however, fitness determination/medical discharge/medical retirement requests are not covered under this policy. Nevertheless, should the Board choose to apply liberal consideration to his request, the following are answers to the four questions from the Kurta Memorandum from the available records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

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

The applicant contends his separation code and narrative reason for separation are inappropriate because he was diagnosed with severe anxiety and mental health issues during his active duty service, which significantly hindered his ability to function effectively and conform to behaviors expected of the military environment.

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

The applicant received brief mental health treatment services, primarily medication management, from Sep 20 to Dec 20 for having anxiety and depressed mood caused by his marital problems and not being able to take care of his ill father. The applicant being in the military was reported to have exacerbated these issues because his wife felt isolated and did not have social support at his new duty station and he was unable to care for his father due to distance because his father lived in China. He was given a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood by his mental health providers. With mental health treatment and his impending early discharge for humanitarian reasons for hardship to help care for his father, his mood was reported to have improved and resolved by and at the time of his discharge from service. His clinical presentation, symptoms, and duration of his condition that formed his Adjustment Disorder diagnosis were assessed to be acute and not chronic. He was service-connected by the DVA for Chronic Adjustment Disorder with Anxiety after service. There is no evidence or records he had a chronic adjustment disorder during service. He had similar symptoms after service but was increased and aggravated by his post-service stressors, most likely causing his chronic adjustment disorder based on his DVA treatment records.

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

There is no evidence the applicant had any unfitting mental health conditions including a chronic adjustment disorder during service. He had an unsuited adjustment disorder, and this condition and specifier met the criteria for an administrative separation, which he had appropriately received for a different reason. He was placed on a temporary DLC for his mental health condition because of his newly prescribed psychotropic medications and no records he had a permanent profile. Despite being placed on a temporary DLC profile, he was consistently determined to be fit for continued military service by his treating psychiatrist. He was discharged from service because of hardship due to family illness per his service treatment records and there is no error or injustice identified with his discharge from a mental health perspective. The applicant's mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition does not excuse or mitigate his discharge, his mental health 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 20 Mar 24 for comment (Exhibit E), and the applicant replied on 8 Apr 24. In his response, the applicant expressed his gratitude for the advisory opinion that confirmed his anxiety issue and endorsed treatment during his active duty period; however, he contested the conclusion that his anxiety persisted for less than six months and he fully recovered before discharge from the military. His symptoms experienced a temporary alleviation during that time after taking Fluoxetine, Mirtazapine, and other prescribed medications, alongside a substantial intake of sleep aids to address insomnia. The advisory opinion did not take into consideration the influence of medication on his mental health. Moreover, he held a false belief that his anxiety would relieve upon leaving the military, which unfortunately did not materialize, leading to its persistent presence in his post-military life.

Per the applicant, it is crucial to consider he never had this mental health issue before joining the military, and it is difficult for him to manage and efficiently communicate his issues and symptoms to healthcare providers because he is facing the challenge of cultural conflict and language barriers as an immigrant. Consequently, the advisory's assertion of his full recovery from the mental issue, as of 1 Feb 21, is inaccurate, as he continued to grapple with anxiety after that time and struggled to articulate his experiences effectively. Finally, he provided a letter of support from an individual who had several conversations with him between Mar 21 and Apr 21, before his discharge, as evidence he still had negative thoughts related to his anxiety issue.

The applicant's complete response is at Exhibit F.

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. 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. There is no

evidence the applicant was diagnosed with an unfitting condition which would require referral to a MEB for a fitness for duty determination. His mental health service treatment records reflect a condition which may have been unsuiting at that time and could have led to his administrative separation had he not already been discharged due to his resignation. Additionally, a fitness for duty determination was conducted for PC/PF eligibility, and the applicant was medically cleared to transfer to the ANG as he was worldwide qualified. Further, the applicant was again evaluated during his SHPE, and his psychiatric examination was assessed to be normal, he did not have any medical conditions that required a medical hold, and he was cleared for separation. Finally, liberal consideration under the Kurta Memorandum was reviewed but not applied as fitness determination/medical discharge/medical retirement requests are not covered under this policy. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-02998 in Executive Session on 18 Jun 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, w/atchs, dated 9 Sep 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC (Liberal Consideration), atchs, dated 20 Mar 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 11 Mar 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Mar 24.
Exhibit F: Applicant's Response, w/atch, dated 8 Apr 24.
Exhibit G: Letter, SAF/MRBC (Liberal Consideration, Vazirani Memo), atch, 3 Jun 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