

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00187

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Medical Evaluation Board (MEB) and informal Physical Evaluation Board (IPEB) records be amended to reflect a diagnosis of Post-Traumatic Stress Disorder (PTSD) instead of Personality Disorder, Not Otherwise Specified (NOS).

APPLICANT'S CONTENTIONS

In Jun 05, while serving on active duty, a civilian psychiatrist diagnosed the applicant with PTSD. His flight commander and military psychiatrist were informed of his PTSD diagnosis in treatment updates prior to a Command Directed Evaluation (CDE) on 9 Aug 05. Although his military psychiatrist noted in the Summary for the MEB that the applicant saw a civilian psychiatrist, he did not include a PTSD diagnosis; therefore, rather than the correct diagnosis of PTSD being included in his CDE, Personality Disorder, NOS was recorded and then submitted to the MEB and IPEB.

A diagnosis of PTSD required a disability rating of not less than 50 percent and required the applicant be placed on the Temporary Disability Retired List (TDRL). His military psychiatrist intentionally omitted this diagnosis from consideration for the MEB and IPEB in light of Title 10, United States Code § 1216a (10 USC § 1216a) and the Veterans Affairs Schedule for Rating Disabilities (VASRD) at Title 38, Code of Federal Regulations § 4.129 (38 CFR § 4.129). The IPEB would have been required to apply VASRD § 4.129 to the applicant's disability rating for PTSD because the following criteria were met: (1) the mental disorder developed while in the service; (2) the mental disorder was the result of a highly stressful event; and (3) the mental disorder was severe enough to bring about separation from active military service. Not being placed on the TDRL violated federal administrative law. His disability was not the result of willful neglect, intentional misconduct, or unauthorized absence. Rather, it was incurred while the applicant was entitled to basic pay and was the proximate result of performance of active duty.

The applicant's PTSD diagnosis was also not available for his Department of Veterans Affairs (DVA) Compensation and Pension (C&P) examination provider, on 29 Nov 05, as annotated in her final C&P examination report. Upon review, the Phoenix DVA Regional Office included a 9 Sep 05 letter from his civilian psychiatrist as evidence in evaluation for his disability rating. However, the DVA also erred by never including the diagnosis of PTSD in the applicant's decision letter, nor did the DVA order a C&P examination specific for PTSD.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman first class (E-3).

On 23 Aug 05, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Depression, NOS; Obsessive Compulsive Disorder (OCD); and Personality Disorder, NOS. The conditions were incurred while entitled to basic pay, were Line of Duty (LOD); and did not Exist Prior to Service (EPTS). The applicant was referred to the PEB.

On 30 Aug 05, 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:

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:

- Depression, NOS, associated with OCD, EPTS, without Permanent Service Aggravation, Social and Industrial Adaptability Impairment, Definite; Incurred while entitled to basic pay: No; Line of Duty: N/A; Proximate Result of Performing Military Duty: N/A; Disability Rating: 30 percent – N/A; VASRD Code: 9434.

- Category III – Conditions That Are Not Separately Unfitting And Not Compensable Or Ratable:

- Personality Disorder, NOS

The IPEB recommended the applicant be discharged under other than Chapter 61, 10 USC (EPTS).

On 1 Sep 05, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived his right to a formal PEB hearing. On that same day, according to an AFPC/DPPD memorandum, Subject: Physical Evaluation, the Secretary of the Air Force directed the applicant be separated from active service for physical disability due to a condition that EPTS. The applicant is not entitled to any benefits under the provisions of Chapter 61, 10 USC.

On 16 Sep 05, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Disability, EPTS, PEB, and was credited with 1 year, 7 months, and 13 days active service.

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

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a change to his MEB/IPEB findings.

There is insufficient evidence to suggest the applicant had PTSD during his time in the military or at discharge. The applicant mentioned on his application to the Air Force Board for Correction of Military Records (AFBCMR) that he was diagnosed with PTSD by a civilian psychiatrist in Jun 05. The applicant did not submit this document, nor does it appear to be available in any of his records. The evaluator who completed his C&P examination on 12 Dec 23 noted the records from the civilian psychiatrist were reviewed and "indicate the veteran was exhibiting OCD symptoms, trauma-based symptoms, depression, disorder eating behaviors, and Borderline Personality Disorder tendencies." There is no mention the applicant was diagnosed with PTSD. The evaluator who completed the C&P examination on 12 Dec 23 evaluated the applicant for PTSD and determined he did not meet the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for PTSD. While the applicant contends a

C&P evaluation was never completed specifically for PTSD, this evaluation clearly identified as an “*Initial Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire*.”

The applicant indicated his commander and the evaluator who completed his CDE were aware of his PTSD diagnosis prior to the CDE on 9 Aug 05. There is no evidence the applicant was diagnosed with PTSD prior to his CDE or that his commander or psychiatric examiner knew of a PTSD diagnosis from a civilian provider prior to his discharge from the military.

There is ample evidence to support the conclusion the applicant’s mental health conditions were EPTS. Records indicate his depression and OCD have been present for ten years, well before his military service. Evaluations also conclude his mental health conditions were not permanently aggravated by his military service. There is also evidence to support it was not the applicant’s depression or OCD that accounted for his primary difficulties in the military. It was his mental health issue of having a Personality Disorder, NOS that accounted for the principal impact of his problems. The applicant’s PEB noted his Personality Disorder is likely responsible for the impairment in his emotional and occupational functioning. His Summary of his MEB noted, “It is clear that the symptoms of the Personality Disorder, NOS have caused disruptions in his workplace and militarily inappropriate behavior.”

As there was clear and unmistakable evidence that showed his mental health condition had existed prior to service and had not been permanently aggravated by his service, the PEB recommended the applicant be separated without benefits. The applicant concurred with the PEB’s finding and waived a reconsideration of his ratings.

The applicant submitted a document, dated 28 Mar 24, that shows he paid for medications used to treat PTSD 24 years after his military discharge. The document does not include when, or even if, a diagnosis of PTSD was made. Instead, it only stipulates the medications are used to treat PTSD. Additionally, even if the applicant was diagnosed with PTSD, it does not detail the etiology of symptoms, which may have originated before his military service (history of abuse) or from an event that occurred after his military service. While the applicant check-marked DADT [Don’t Ask, Don’t Tell] on his application, there is insufficient evidence to suggest the applicant was separated from the military based on this policy.

The complete advisory opinion is at Exhibit C.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Jul 24 for comment (Exhibit D), and the applicant replied on 7 Aug 24. In his response, the applicant addressed statements within the advisory opinion that referenced non-availability of records. According to the applicant, he mailed medical records and other evidence to the Physical Disability Board of Review in error; however, via email, was assured the records were received, on-site, and would be delivered to the AFBCMR upon receipt of his application. The applicant further references email communications with AFBCMR Workflow regarding his requests for case status and receipt of the advisory opinion for his review and comment.

In response to the advisory opinion noting there is no mention in the C&P examination of the applicant being diagnosed with PTSD, the applicant contended his earlier diagnosis of PTSD by his civilian psychiatrist was omitted and the diagnosis was modified to reflect trauma-based symptoms which altered the severity and clinical manifestations of his symptoms in 2005. He further contended there was a second intentional diagnosis omission when his current mental health diagnosis of Unspecified Trauma and Stressor Related Disorder was issued on 12 Dec 23. The applicant stated he terminated his care with this provider due to lack of trust in the provider’s clinical integrity and competence.

The applicant also notes upon receipt of his initial PTSD disability benefits questionnaire, via a Freedom of Information Act request, he also received a document titled, "Exam Scheduling Request Clarification Response" which contained multiple errors regarding his case and symptoms. The applicant further stated C&P examinations may be inadequate due to unqualified examiners or if the examiner does not explain the evidence they relied upon or principles and methods they used to perform their analysis.

The advisory opinion noted there was no evidence the applicant was diagnosed with PTSD prior to his CDE, or that his commander and psychiatric examiner knew of a PTSD diagnosis prior to his military discharge. According to the applicant, the civilian psychiatrist noted in his 2005 letter that he previously communicated with the commander and psychiatric examiner regarding the applicant's diagnoses and treatment.

The applicant further responds to the advisory opinion statements regarding his mental health conditions being EPTS, and not aggravated by military service, with records indicating the applicant's depression and OCD were present for 10 years, well before his military service. Per the applicant, he objects to the IPEB documentation's use of the words "may be" regarding the impact his Personality Disorder had on his impairment, and states the IPEB documentation contradicts itself regarding whether his condition "is" or "may be" permanent. The applicant also cites the MEB documentation where it stated the diagnosis of depression did not exist prior to enlistment. Finally, per the applicant, since 2005, five independent mental health providers have confirmed his PTSD diagnosis. Additionally, the applicant offers in support of his contention of service-aggravation information regarding disciplinary actions taken against his military supervisor for creating a toxic work environment as well as a character reference from a co-worker citing the military supervisor as being a toxic leader.

Regarding his diagnosis of Personality Disorder, NOS, the applicant provided a Vietnam Veterans of America article "Casting Troops Aside: The United States Military's Illegal Personality Disorder Discharge Problem", to dispute the validity of this diagnosis. The applicant provided multiple references in support of his contentions, to include, but not limited to the Secretary of Defense memorandum, Subject: Supplemental Guidance to Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Hagel Memo); Principal Deputy Under Secretary of Defense memorandum, Subject: Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) (Carson Memo); National Defense Authorization Act of Fiscal Year 2017, Air Force Instruction 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*; 10 USC § 1201; 10 USC § 1216a; and 38 CFR § 4.129.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
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 finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant was diagnosed with PTSD during

military service. Further, according to a DVA *Initial Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire*, dated 14 Dec 23, and completed in conjunction with the applicant's C&P examination, the applicant's symptoms do not meet the diagnostic criteria for PTSD under DSM-5. The applicant's contention that the DVA erred in not including his PTSD diagnosis in his rating decision is outside the AFBCMR authority and is contradicted by the previous evidence. Additionally, while the applicant checked DADT on his application to the AFBCMR, the applicant was not discharged under the DADT policy, and he did not discuss how this policy was relevant to his request. Therefore, the board recommends against correcting the applicant's records.

4. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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, paragraph 2.1, considered Docket Number BC-2024-00187 in Executive Session on 16 Oct 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 Jan 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 19 Jun 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jul 24.
Exhibit E: Applicant's Response, w/atchs, dated 7 Aug 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.

X

Board Operations Manager, AFBCMR