RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXX

DOCKET NUMBER: BC-2024-02551

COUNSEL: XXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record be amended to:

a. Grant a medical disability retirement at no less than 100 percent for Post-Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD), and Anxiety, or in the alternative;

b. Refer the applicant to the Legacy Disability Evaluation System (LDES)

c. Grant Combat-Related Special Compensation (CRSC) **(failed to exhaust lower administrative remedies)**

APPLICANT'S CONTENTIONS

According to counsel, the applicant joined the [State] Army National Guard as a pilot to serve his country during a time of war after 11 Sep 01. He entered active duty on 11 Jul 03[1]. In 2006, the applicant deployed to Iraq where he engaged in combat operations.

In 2011, the applicant started experiencing depression related to his mental health conditions and used alcohol to cope. As a result, on 19 May 20, the applicant showed up to work drunk. He was command-referred to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) and was evaluated soon afterward. His evaluation showed the applicant was positive for PTSD, MDD, and anxiety.

On 4 Jul 20, the applicant was cited for Driving While Intoxicated and was referred to University Behavioral Health (Work-P...) Denton, where he was treated for PTSD, chronic, from 15 Jul 20 to 24 Aug 20; alcohol use disorder (AUD); and MDD, recurrent episode, severe. According to the applicant's medical records at Work-P... Denton, he was depressed and anxious. He was also having nightmares. The applicant had significant combat trauma. He also felt hopeless and helpless. By the time the applicant was discharged on 24 Aug 20, his condition was stable, and he was prescribed BuSpar 15mg by mouth 3 times a day; Lexapro 20mg by mouth daily; Trazodone 200mg by mouth at bedtime; and Neurotin 600mg by mouth every 6 hours as needed for anxiety.

According to the Line of Duty (LOD) on 11 Dec 20, the applicant struggled with depression since 2011 and from trauma during a deployment in Iraq in 2006. Medical records show the applicant's condition never got better despite treatment. According to his Medical Group Mental Health Records from 12 Jan 21, the applicant's mental health provider met with his commander. According to the medical note, "[applicant's] commander reports that [applicant] has not been very reliable coming back to work, since he has not accomplished tasks when assigned. [Applicant's] commander says he has been intentionally keeping [applicant] assigned work light at this time."

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[1] According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered active duty with the Regular Air Force on 11 Jul 03 and was honorably discharged on 10 Apr 15.

The applicant was hired in 2014, and according to his hiring supervisor, he was fit for duty when initially hired. However, at some point, the applicant became broken and spiraled down. After multiple one-on-one sessions, the hiring supervisor noticed the applicant was visibly unable to sit still, unable to concentrate, unable to make eye contact, and unable to move past multiple things in his past. According to the hiring supervisor, he believed these conditions warrant the applicant unfit due to debilitating anxiety and erratic behavior. In the hiring supervisor's professional opinion, as his former Group Commander and his then Vice Wing Commander, the applicant was not fit for duty and would never be able to regain his fitness for duty.

Regretfully, the applicant's PTSD and secondary alcohol use contributed to misconduct. He was arrested for Driving Under the Influence (DUI) and was also under investigation for sexual harassment. The applicant's command punished him by issuing two General Officer Memorandums of Reprimand on 10 Nov 20 and 12 Jan 21. The applicant was also issued nonjudicial punishment (NJP) on 10 Dec 20 and was admonished on 6 Jul 20.

Despite knowing the applicant was struggling with PTSD, his commanding officer refused to refer him to a Medical Evaluation Board (MEB). The applicant voluntarily resigned on 23 Jul 21. His resignation was approved because the applicant was not under investigation, under sentence by a civil court, insane, in default with respect to public property or funds, under consideration for discharge for cause, or serving on an unexpired active duty service commitment, contract, or military service obligation.

The applicant continues to suffer from PTSD which has worsened since his discharge. According to the Department of Veterans Affairs (DVA), he is 100 percent disabled and added to the High Risk List, meaning he is at high risk of suicide.

In counsel's discussion, he contended the applicant's discharge from the [State] Air National Guard (ANG) is an error and injustice. He was forced under duress to resign his commission. Despite receiving in the line of duty (ILOD) determinations for his MDD, anxiety, and PTSD, the [State] National Guard went so far out of its way to deny the applicant from going through a medical board. He was in mental distress and his command ignored all the warning signs while doing the bare minimum to support him. Instead of referring the applicant to the MEB, his command punished him for his misconduct and forced him to resign under duress. Furthermore, the [State] ANG knew his disability was directly caused by his service. As a result of the many errors associated with this case, the applicant was improperly forced to resign. His PTSD rendered him unfit for duty, and the applicant should be medically retired at a rating of no less than 100 percent. To discharge the applicant, without DES referral, and under duress, was an error and injustice that only this Board can correct.

According to counsel, the applicant's diagnosis of PTSD would have grounded him because such a diagnosis does not meet the medical standards for flight. Counsel references Department of the Air Force Manual 48-123, *Medical Examinations and Standards*, and *Medical Standards Directory* (MSD) in support. The applicant's PTSD is a trauma-related condition listed in the MSD. His command was aware there was a problem as of 11 Dec 20 when an LOD was initiated. Even after treatment, the applicant continued to suffer from his PTSD symptoms which impaired his ability to think, contributing to alcohol use which lasted for months. The applicant's duties were limited as of Jan 21, which caused him to be grounded. The applicant was a pilot who could no longer fly due to his PTSD.

Further in counsel's discussion, he contented failure to refer the applicant to the MEB for an unfitting condition is a violation of Air Force Instruction (AFI)36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. The applicant was suffering from multiple unfitting mental health conditions that were caused by injuries that occurred while he was deployed to Iraq. Medical providers and the applicant's command were aware of the incidents and the effects

they had on the applicant's ability to perform his assigned duties. The failure to promptly refer the applicant to the appropriate medical board constitutes a breach of duty and is in direct violation of Air Force regulations.

The applicant regretfully used alcohol to cope with his PTSD, which as a pilot, constitutes an obvious risk to the health and safety of other service members. Therefore, the applicant should have been referred to the DES. According to the applicant's chain of command, he was not under investigation nor was he considered to be discharged for cause. While there were allegations of misconduct, the command saw fit to issue NJP and various letters reprimanding the applicant. No further action was ever taken. The command should have referred the applicant to the DES instead of accepting his resignation request on 14 Sep 21[2].

In addition, counsel contended the applicant's medical conditions qualify him for CRSC as his injuries were sustained in Iraq and were caused while engaged in hazardous service. Counsel detailed the requirements for CRSC in support. The applicant developed PTSD as a result of aerial flight combat missions as a pilot. Furthermore, the applicant's PTSD should be rated at 100 percent. Counsel provided the rating criteria from Title 38, Code of Federal Regulations, in support. At the time the applicant resigned, his PTSD grossly impaired his thought process, which caused grossly inappropriate behavior as evidenced by his alcohol abuse.

Counsel continued, contending the applicant should not have been discharged as he would have obtained sanctuary status in 38 days. The applicant would have obtained 18 years of service on 11 Jul 21. The fact that his command discharged him within a couple of days of obtaining sanctuary status is suspicious and an injustice to prevent the applicant from obtaining the much-needed medical treatment and benefits he needed. Counsel provided an excerpt from Title 10, United States Code § 12646 (10 USC § 12646) in support. It is reasonable to believe the applicant's command unjustly released him because they knew the clock was ticking before he reached sanctuary status. Instead of keeping the applicant on active duty status and giving him the benefit of the doubt, his command rushed his discharge so he could not obtain sanctuary status.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged [State] ANG lieutenant colonel (O-5).

On 10 Sep 14, according to AF IMT 2030, *USAF Drug and Alcohol Abuse Certificate*, the applicant signed his acknowledgement of the Air Force policy regarding drug and alcohol abuse.

On 15 Dec 14, according to AF IMT 1288 *Application for Ready Reserve Assignment*, the applicant was medically fit and cleared for duty.

On 10 Apr 15, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from the Regular Air Force, with narrative reason for separation of Intradepartmental Transfer, and was transferred to the [State] ANG.

On 10 Nov 20, according to an [State] ANG/CC memorandum, Subject: General Officer Memorandum of Reprimand (GOMOR), the applicant was reprimanded for:

- Investigation revealed on or about 4 Jul 20, [the applicant] drove while intoxicated in Fort Smith, Arkansas (AR). [The applicant] was stopped by an AR State Trooper who initiated

[2] The applicant's resignation request was found legally sufficient by HQ [State] ANG/SJA on 14 Sep 21.

field sobriety measures which he failed. [The applicant's] portable breathalyzer result was .24 and he refused to take the breathalyzer at the police station. [The applicant] entered a guilty plea on 21 Oct 20 and was sentenced to one day jail credit for one day served, a $990.00 fine, and was required to attend alcohol abuse treatment.

On 23 Mar 21, according to AF Form 348, *Line of Duty Determination*, dated 11 Dec 20, provided by the applicant, an LOD was initiated with a diagnosis of MDD, Anxiety, PTSD, AUD.

On 28 Apr 21, according to AF Form 707, *Officer Performance Report (Lt thru Col)*, for the period 11 Apr 20 through 10 Apr 21, the Rater Overall Assessment reflects:

- Reported to work under effects of alcohol, exhibited unprofessional appearance and behavior; received LOA
- Drove under influence of alcohol; civilian court conviction; rec'd GOMOR/UIF, removed from leadership position
- CDI substantiated 6 unprofessional r'ships, sexual harassment, abusive sexual contact to co-worker, received NJP

Ratee's Acknowledgement reflects "Member Not Available to Sign."

On 3 Jun 21, according to DD Form 214, the applicant was honorably discharged from the Air Force – ANGUS, with narrative reason for separation of Completion of Required Active Service, and he was credited with 17 years, 10 months, and 21 days active service.

On 23 Jul 21, according to an applicant memorandum, Subject: Tender of Resignation from Military Service, provided by the applicant, he voluntarily tendered his resignation from all military appointments held by him in accordance with AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*. The applicant acknowledged understanding, if the resignation is accepted, his separation will be effective 15 Oct 21. He knowingly and voluntarily waived sanctuary protection afforded by his length of service. The applicant acknowledged understanding, if this resignation is accepted, his separation may result in loss of medical benefits resulting from a pending Medical Evaluation Board.

On 15 Oct 21, according to NGB Form 22, *National Guard Report of Separation and Record of Service*, the applicant was honorably discharged, with Authority and Reason: AFI 36-3209, paragraph 2.46.1.7, Miscellaneous Reasons, and was credited with 18 years, 4 months, and 2 days total service for pay.

On 18 Jul 23, according to a DVA letter, provided by the applicant, his name was added to their High Risk List and a temporary flag has been placed on his chart.

On 17 Jan 24, according to a DVA summary of benefits letter, provided by the applicant, his combined service-connection evaluation is 100 percent, and he is considered to be totally and permanently disabled due solely to his service-connected disabilities, effective 22 Jul 22.

On 7 Feb 25, according to a letter from a Substance Abuse Professional and Mental Health Professional, Fort Smith Behavioral Health, provided by the applicant, he started his first treatment episode at that facility on 9 Sep 20 for the primary diagnosis of F10.20 AUD, Moderate and secondary diagnosis of F43.10 PTSD.

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

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
b. Did that condition exist/experience occur during military service?
c. Does that condition or experience actually excuse or mitigate the discharge?
d. Does that condition or experience outweigh the discharge?

On 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 USC § 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 USC § 1552(h)(l) 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 19 Dec 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for a medical disability retirement and CRSC for his mental health condition.

This advisory is limited to the applicant's mental health condition. A review of the applicant's available records partially corroborates the applicant's legal counsel's contentions. There is clear evidence and records the applicant was diagnosed and received mental health treatment for AUD, MDD, and PTSD during his time in service, specifically while he was a member of the [State] ANG. However, there is no evidence any of these conditions had elevated to potentially unfitting meeting the criteria to be referred to the MEB and inserted into the LDES or IDES [Integrated Disability Evaluation System] for a possible medical discharge. There are many reasons for this conclusion. The applicant was consistently reported to have developed PTSD from his combat deployment experiences in Iraq in 2006, and in 2011, he began to experience depression and drank to cope with his symptoms. There are no records he received any mental health treatment or mental disorder diagnosis during his time on active duty service in the Regular Air Force. He completed several annual flight/physical health assessments including after he returned from multiple deployments, and he made no complaints or reports of having any mental health issues including depressive or trauma/PTSD symptoms or alcohol issues. He may have experienced these symptoms or issues, but he never reported them. The applicant did have complaints of sleep issues, but he attributed them to having a baby and needing time to acclimate to this new situation. In 2006, when he was first exposed to his traumatic events, he was an active duty service member in the Regular Air Force, so his traumatic experiences and the development of his mental health condition from these experiences are considered a prior service condition (PSC), existed prior to service (EPTS) or PSI[3] (sic). This is supported by telephone consult (T-CON) notes, dated 11 Mar 21 and 17 Mar 21, written by a mental health provider, reporting the applicant's mental health condition for his LOD may qualify as PSI or related to a previous service time. When the applicant was in the process of being discharged from the Regular Air Force, he completed a Separation History and Physical Examination on 30 Mar 15 and was determined to be "fit to fly" or fit for duty. Thus, when the applicant officially transferred to the ANG, which was the day after he was discharged from active duty, he was fit for duty when he entered the ANG. The applicant successfully met the accession standards required to transfer to the ANG.

The applicant's mental health condition (alcohol issues) did not appear or become noticeable until he reported to work with a hangover on 19 May 20 and received a DUI a couple of months thereafter, on 4 Jul 20. When the applicant was evaluated by ADAPT following his first alcohol-related incident on 26 May 20, he reported his drinking issues were due to his increased stressors from his pending divorce, separation/distance from his son, financial problems due to having to

[3] Noted as "Prior Service Engagement."

pay for two households and legal fees, and work stressors due to COVID-19 mission procedures and social distancing. There was no mention of any traumatic deployment experiences. The applicant was not given any mental disorder diagnosis, contrary to his legal counsel's contentions that he was diagnosed with PTSD, MDD, and anxiety. The applicant was diagnosed with AUD, Moderate severity from his second ADAPT evaluation on 9 Jul 20. He was not diagnosed with PTSD and MDD until he entered and received residential/inpatient treatment at Work-P... Denton from 15 Jul 20 to 24 Aug 20. At this treatment facility, the applicant disclosed or thought about his past traumatic deployment experiences after he was triggered by another patient's timeline and in fact, the applicant reported he forgot his traumatic experience had happened and had not thought about it in 10 years, per notes dated 30 Jul 20. Despite this anomaly, the applicant was treated for PTSD, MDD, and AUD and benefitted from treatment. He was reported to have been cooperative and engaged with treatment and learned coping skills that resulted in decreased anxiety and depressive symptoms and feeling less hopeless and helpless per his discharge summary from Work-P..., dated 24 Aug 20. The applicant's symptoms had improved, and his condition was stable at the time of his discharge from Work-P.... He expressed to his psychiatrist at Work-P... and an ADAPT provider that he was grateful/thankful for this inpatient treatment. This information is contrary to his legal counsel's claim that the applicant's condition never got better despite treatment.

In addition to his residential treatment at Work-P..., the applicant received and completed the Partial Hospitalization Program (PHP) at Conway Behavioral Health from 24 Sep 20 (estimated) to 1 Dec 20 for continued treatment for his conditions of PTSD, MDD, and AUD at a lower level of care. His treatment progress at this facility was not as robust as when he was at Work-P... and this is because during this iteration of treatment, the applicant was under investigation for sexual harassment and misconduct which exacerbated his anxiety about his uncertain future within the military. The applicant was again cooperative and engaged in treatment and notes, dated 25 Nov 20, reported he was demonstrating improvement in coping and his mood. This is again contrary to his legal counsel's contention. The applicant successfully completed this PHP treatment at Conway. The applicant also received safety checks and supportive services from ADAPT and the Mental Health Clinic (MHC) on base following his discharge from these community treatment facilities. Treatment and encounter notes from ADAPT and the MHC repeatedly reported the applicant had improved overall with treatment, he was doing well, and his condition was stable which resulted in him being removed from the High Interest List (HIL) on 8 Jan 21.

Since the applicant's mental health condition had improved and was stable, this demonstrated this mental health condition was not unfitting, and he did not meet the criteria to be referred to the MEB. He was placed on a temporary duty limiting condition (DLC) profile for his mental health condition, but his DLC profile never became permanent. The applicant was removed from profile once he was removed from the HIL due to improvement and stability. He was placed on Duty Not Including Flying/Duty Not Involving Controlling or grounded from flying because of his mental health condition, but this was only applicable to flying duties. The applicant may have been disqualified for flying duties due to his mental health condition, but he was never deemed unfitting for overall military service. His military mental health providers repeatedly assessed he was fit for military service. The applicant received individual psychotherapy from an off-base provider and while treatment records from this provider were unavailable for review, a T-CON note, dated 4 Mar 21, reported a military provider spoke with his off-base provider and it stated, "[Provider] recommends for pt. not to fly a plane to or to work in the capacity of working with planes. However, pt. may perform administrative duties and will not be affected by his mental health substantially to prevent him from doing administrative tasks." This statement revealed the applicant could perform administrative duties/tasks in the military. He could have cross-trained to another Air Force Specialty Code and remained in the military but not be a pilot or engage in flying duties. This is not an uncommon occurrence. The applicant's commander did report on 8 Jan 21 the applicant had not been very reliable in coming back to work and had not accomplished assigned tasks. This statement does not reflect or

confirm these behaviors were caused by his mental health condition because during this time, his condition had improved and there was a discussion of discharge. The applicant's commander did report he (the commander) had intentionally given the applicant a lighter load to give the applicant time for his appointments and self-care to ensure the applicant was doing well. The applicant may have taken advantage of this opportunity. It is not certain if he would have the same problems if he had re-classed and not been part of the flying community. The applicant's legal counsel alleged his commander refused to refer him to the MEB. This decision does not lie with his commander but with his military medical or mental health provider. His termination note reported the applicant did not meet the criteria to be referred to an MEB, so he was not referred to the MEB for this reason.

To reiterate, there is no evidence the applicant had any unfitting mental health conditions resulting in early career termination. The applicant had voluntarily resigned from his commission because he wanted to pursue other opportunities within the civilian sector, concentrate on his family, and continue recovery. It is also reminded the applicant had received significant disciplinary actions for serious misconduct including substantiated six unprofessional relationships, engaging in sexual harassment, and abusive contact with a coworker. There is no evidence the applicant's mental health condition caused these substantiated misconducts and even if it was possible his mental health condition caused these misconducts, his mental health condition does not excuse or mitigate these behaviors because they are serious misconducts.

Since the applicant was with the ANG, he would require an LOD determination for a compensable/ratable medical discharge, retirement, or disability. Also, since his mental health condition was a PSC or EPTS, he would need to demonstrate his PSC or EPTS mental health condition was permanently aggravated by his military duties with the ANG. There is no evidence the applicant's PSC or EPTS (EPTS to ANG) condition was permanently aggravated by his military duties with the ANG. The applicant's service treatment records reported his alcohol issues were triggered and worsened by his marital problems, which were a personal problem and not related to his military duties or service. There is also no evidence he was approved for a LOD determination, particularly for In Line of Duty (ILOD)-EPTS Service Aggravated (SA) [ILOD-EPTS SA] for his PSC of PTSD, MDD, or AUD. AUD is an unsuiting condition so it would not meet the criteria for a referral to the MEB or a compensable medical discharge. An LOD was initiated on 23 Mar 21 by a military mental health provider with the intent to extend his orders so the applicant could complete his treatment. It was not initiated so the applicant could qualify for an MEB or compensable/ratable medical discharge. An investigation into the applicant's injury, condition, or experience was never completed and his LOD never received final approval from an approving authority. Thus, the applicant did not have an approved LOD for his mental health condition. Since the applicant was in the ANG, and without the completion and favorable LOD determination, he would not receive the desired compensable/ratable medical discharge even if he had an unfitting mental health condition. The applicant would receive a non-compensable or 0 percent rating for his unfitting mental health condition if he had an unfitting condition without the LOD determination.

The applicant's mental health condition appeared to have worsened after his military service. His clinical presentation during and after service were different and this may be due to various factors. The applicant's post-service stressors may have played a pivotal role in the decompensation of his mental health condition. He was also diagnosed with Bipolar Disorder after service. There is no evidence the applicant had Bipolar Disorder or experienced a hypomanic or manic episode during service. It appeared the applicant developed this condition after his military service and the development of this condition most likely contributed to his decreased overall functioning as well.

For awareness, since the applicant had received service-connection from the DVA for his mental health condition, the military's DES, established to maintain a fit and vital fighting force, can by

law, under 10 USC, 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, 38 USC, 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 available records finds the applicant did not meet the criteria for a medical discharge, retirement, or disability for his mental health condition. He did not have any unfitting mental health conditions for a medical discharge. It is acknowledged a Clinical Psychologist, who had evaluated him after his military service, opined he was unfit for military service. It is uncertain if this evaluator assessed his entire service treatment records, and the psychological report indicated most of the information was obtained from the applicant. The applicant was inconsistent with some of his reporting and sometimes withheld information about his symptoms so the information provided should be considered with some caution. The objective service treatment records do not support the evaluator's opinion that the applicant's mental health condition was unfit for continued military service. Receiving mental health treatment and/or a mental disorder diagnosis does not automatically render a condition unfit. More markers and information are needed and required for a medical discharge, and the applicant did not have the necessary criteria for a medical discharge. Therefore, there is no error or injustice identified with his discharge from a mental health perspective, and his request for a medical discharge based on his mental health condition is not supported. Also, since he did not meet the criteria for a medical discharge, his request for CRSC is also not supported.

Finally, the applicant's legal counsel requested liberal consideration, citing the Hagel Memorandum, be applied to his request to grant him the requested relief. Liberal consideration is not applied to the applicant's request for a medical disability retirement because the updated clarifying guidance, the Vazirani Memorandum, published on 4 Apr 24, clearly states liberal consideration does not apply to fitness determinations, which includes medical discharge, disability, and retirement requests. Therefore, liberal consideration is not applied to his petition. The updated clarifying guidance also instructed a bifurcated review should be performed when a mental health condition, such as PTSD or TBI, potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change to the narrative reason is appropriate. Since the applicant already received an honorable character of service, a bifurcated review is not necessary.

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 19 Dec 24 for comment (Exhibit E), and the applicant replied on 16 Jan 25. In his response, counsel contended the advisory opinion should be disregarded because there is sufficient evidence the applicant's conditions were unfitting that the advisory opinion fails to rely on. Counsel also provided an additional letter of support and a written statement from the applicant.

As the advisory opinion admits, on 4 Mar 21, the applicant was recommended to not fly a plane or work in the capacity of working with planes. Although the T-CON states the applicant can perform administrative duties, the T-CON has no personal knowledge or direct supervision of the applicant. The truth of the matter is the applicant could not even complete administrative duties.

His flight commander stated the applicant "has not been very reliable coming back to work, since he has not accomplished tasks when assigned." Counsel reiterates his contention the flight commander states the applicant was not fit for duty and would never be able to regain his fitness for duty. Therefore, the applicant was not only unable to fly but was unable to complete administrative tasks, meaning if an MEB were triggered, he would have been found unfit for military service. The fact that an MEB was not triggered is an error resulting in an injustice.

Although the advisory opinion refers to various instances where the applicant indicated he was feeling better, this was because he was in treatment focused completely on his recovery. As of 8 Jan 21, just months before his discharge, the applicant continued to endorse depression, sadness each day, lack of motivation, lack of energy, loss of appetite, severe insomnia, and lack of focus. The applicant also reported having nightmares two to four times per week, flashbacks once per week, avoiding situations that reminded him of trauma, avoiding thoughts about trauma, irritability, and feeling nervous in public places if in a large unknown group, especially if the group is loud. Counsel also reports the applicant said he struggled with panic several times per week since 2013. The applicant reported he improved overall since receiving treatment but continues to struggle with anxiety resulting from trauma. This demonstrates the applicant's PTSD, MDD, and anxiety were persistent and recurrent enough to render him unfit for duty and his condition imposed unreasonable requirements on the Air Force to keep him stable. A preponderance of the evidence supports the fact that the applicant was unfit for duty and the advisory opinion failed to recognize these facts.

Counsel further contended the applicant's injury was incurred during active duty and was aggravated while he was a member of the [State] ANG. The advisory opinion stated even if the applicant were found unfit, he would need to prove his injury was permanently aggravated by his military service in the ANG. This is not necessarily true. Title 10 offers compensation for injuries incurred ILOD and renders a military member unfit for military service. Here, the applicant incurred PTSD during a period of active duty service while deployed. His PTSD was aggravated when he divorced and had custody issues with his wife while on active duty orders. Whether his condition was aggravated due to life circumstance or through performing duties in the ANG is irrelevant because his PTSD was incurred during a qualifying duty status. The fact the LOD was never finished by the ANG is an error. However, because the applicant's PTSD was incurred during a period of active duty, it is presumed his PTSD would have made him eligible for a medical disability retirement.

Based on the symptoms endorsed, and which have clearly remained unresolved based on his DVA records, the applicant would not have been medically separated with severance but should have received a medical disability retirement. Counsel only applies to the Veterans Affairs Schedule for Rating Disabilities to assist the Board in determining the correct rating for the applicant and not to determine his fitness for duty. At the time the applicant was discharged, he demonstrated grossly inappropriate behavior, receiving NJP for alcohol abuse where a breathalyzer showed a .24 (an extremely high reading for blood alcohol content). He showed up to work drunk and was accused of sexual harassment. Counsel reiterated the applicant's symptoms noted in Jan 21.

Counsel concluded although the medical notes show there was improvement in the applicant's conditions, the Board should review these notes with caution and consider the applicant was not performing any duties, even administrative duties. The only duty the applicant performed was to show up to his medical appointments. This is why the applicant's condition showed some signs of improvement; however, he continued to suffer from PTSD symptoms and as soon as he was given the smallest administrative task, he was unreliable.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant did not exhaust 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. While there is evidence the applicant suffered from mental health conditions during service, his service treatment records show his mental health conditions improved with treatment and were stable, demonstrating they were not unfitting. There is no evidence the applicant had any unfitting mental health conditions which would result in early career termination. Further, although initiated, there is no finding of ILOD for any of the applicant's mental health conditions, a requirement for referral to an MEB and processing through the DES. Moreover, contrary to counsel's contention regarding the applicant's commander's refusal to refer him to an MEB, the decision to refer the applicant to an MEB lies with his military medical or mental health provider, not his commander. Liberal consideration was not applied in accordance with the Vazirani memorandum regarding fitness determinations.

Additionally, the military's DES, established to maintain a fit and vital fighting force, can by law, under 10 USC, 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, 38 USC, 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.

Finally, there is no evidence the applicant resigned his commission under duress. According to his memorandum, the applicant voluntarily resigned his commission because he wanted to pursue other opportunities within the civilian sector, concentrate on his family, and continue recovery. While doing so, he knowingly waived sanctuary protections and acknowledged the impact his voluntary resignation would have on any pending MEB actions. 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-2024-02551 in Executive Session on 16 Apr 25:

, 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 4 Jul 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 19 Dec 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Dec 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 19 Dec 24.
Exhibit F: Counsel's Response, w/atchs, dated 16 Jan 25.

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