



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-01730

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His separation authority, separation code, and narrative reason for discharge be changed to reflect he was medically retired for his unfitting condition of Major Depressive Disorder (MDD).

APPLICANT'S CONTENTIONS

He believes he was misdiagnosed with adjustment disorder because of the overlapping symptoms of adjustment disorder and MDD over a short period of time. Due to the severity of his symptoms, he was referred to a civilian psychiatric hospital who diagnosed him with MDD. Afterwards, he was discharged from the Air Force for what they had diagnosed as a personality disorder. He believes if they had continued to monitor his condition after discharge from the Air Force, which was what they considered to be causing the adjustment disorder, they would have updated their diagnosis to MDD, and he would have received a medical discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 27 Aug 18, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.11.2 for a personality disorder or mental disorder not constituting a physical disability, document provided by the applicant. The specific reasons for the action were:

- a. On 8 Jun 18, a Letter of Counseling (LOC), provided by the applicant, indicates he was verbally counseled on how he was not fulfilling his duties due to his mental state. The letter further goes on to state if his mental illness does not improve, he may be administratively discharged.
- b. Dated 27 Jul 18, a Mental Health Evaluation memorandum, provided by the applicant, indicates he was evaluated on 24 Jul 18 noting he was diagnosed, based on the current Diagnostic and Statistical Manual (DSM), with adjustment disorder with depressed mood.

AFBCMR Docket Number BC-2019-01730

Work-Product

Work-Product

and other specified personality disorder. It is further noted, his disorders were so severe that his ability to function in the military environment was significantly impaired and did not meet the retention standards for continued service. He was assessed and found he did not meet diagnostic criteria for any other condition which would require referral to a Medical Evaluation Board (MEB).

On 30 Aug 18, the applicant responded to the administrative discharge notification, document provided by the applicant. In his response, he stated he disagreed with the recommendation to administratively discharge him and felt he should instead be recommended for a MEB for his diagnosis of MDD and further states he was not receiving adequate treatment from the Holloman Air Force Base Mental Health Clinic.

On 20 Sep 18, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of airman first class (E-3) after serving one year, three months, and eight days of active duty. He was discharged, with a narrative reason for separation of "Condition, Not a Disability."

On 21 Sep 18, according to a Department of Veterans Affairs (DVA) Rating Decision Memorandum, dated 6 Nov 18, provided by the applicant, he was granted service connection for MDD, with unspecified anxiety disorder (claimed as major depression) with a disability rating of 70 percent.

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

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 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 30 Jan 20, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

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. Section 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. Section 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 30 May 24, the Board staff provided the applicant a copy of the liberal consideration supplemental guidance (Exhibit L) and on 20 Jun 24, the applicant responded, through counsel, stating he understood liberal consideration will not apply in his case; however, as discussed

previously, he served his country honorably but suffered from MDD because of the overwhelming and unmanageable additional responsibilities which rendered him unfit for continued service. He should have been evaluated for his MDD and medically retired instead of misdiagnosing him with a personality disorder, ignoring the previous diagnosis for MDD, and failing to refer him to Integrated Disability Evaluation System (IDES) processing. His misdiagnosis of a personality disorder was the sole basis for his administrative separation. As further evidence, the applicant provided an FBI report which shows no criminal history.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to warrant the desired change of the record. He was given a diagnosis of MDD, which is considered an unfitting condition, but this was not the diagnosis that was the primary cause of his discharge. Receiving this diagnosis does not automatically make the condition unfitting as treatment and other factors are considered when a condition would be elevated to unfitting, which was not reflected in the applicant's records. He does not have any unfitting mental health condition that could meet the criteria for a medical separation. He does, however, have an unsuiting personality disorder characterized by traits of lack of motivation, opposition to attempts by others to intervene, poor social relationships, and even his own negative viewpoint of "self." His personality traits were incompatible with the rigors of military service causing his poor adjustment and occupational problems. The applicant was also given a diagnosis of adjustment disorder with depressed mood in service. There was multiple documentation stating the applicant reported having difficulties adjusting to the military and its lifestyle causing him to feel depressed and having suicidal thoughts. His mental health decompensated rather quickly necessitating two inpatient psychiatric hospitalizations for higher level of care in a short period of time suggesting his symptoms were rather acute. Therefore, his adjustment disorder with depressed mood with an acute specifier appeared to be appropriate and would be considered unsuiting for military service, which is also an administrative non-compensable discharge from the service. As a result, there is no error found in his diagnoses given by his military providers.

The applicant filed a disability claim with the DVA for MDD and was granted a 70 percent disability rating. To understand the difference in the decisions between the military and the DVA, the military Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

The liberal consideration policy is applied to the applicant's request due to a contended mental health condition. The following are responses based on information presented in the records or lack thereof to the four pertinent questions in the policy:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge (administrative discharge for unsuiting mental health condition)?

No, the applicant does not have any unfitting mental health conditions that would meet criteria for the requested medical discharge. He was diagnosed with an adjustment disorder with depressed mood and other specified personality disorder by his military providers. These are considered unsuiting conditions and would meet criteria for administrative separation. There is no error found in his discharge processing.

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

No, there is insufficient evidence he had any unfitting mental health conditions. There is, however, sufficient documentation the applicant met criteria for unsuiting mental health conditions/diagnoses.

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

Since the applicant does not have any unfitting mental health condition, it is not possible to opine the condition excused or mitigated his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is no substantiated evidence the unfitting condition existed, it is not possible to determine if the condition outweighs the discharge.

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 30 Jan 20 for comment (Exhibit D), and the applicant replied on 1 Jun 22. In his response, the applicant contends he did not attempt to commit suicide by ingesting only five pills, but he intended to commit suicide by ingesting the whole bottle but stopped at five due to a strong fear of death. He insists on a medical discharge because of his diagnosis of MDD by a civilian provider and his perception that otherwise, he would have difficulty seeking treatment for his disability after discharge. His primary diagnosis is MDD and is still current. In support of his contention, he provides a statement from a medical provider.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor reviewed the applicant's rebuttal to the previous advisory and the newly submitted evidence and finds the information presented is still insufficient to support his request for a medical discharge. It is acknowledged the applicant was diagnosed with MDD

by a civilian psychiatrist during his second hospitalization stay; however, numerous civilian and military providers (at least four) to include from his first hospital stay and from his outpatient treatment assessed he had an Acute Adjustment Disorder. The civilian psychiatrist opined the applicant's reported depressed mood, sleep disturbance, decreased energy, decreased appetite, difficulty concentrating, and suicidal ideations are symptoms of MDD; however, these symptoms may also meet diagnostic criteria for other mental disorders to include adjustment disorder with depressed mood, which he was diagnosed with during service. A significant difference between these diagnoses was he had a situational stressor of adjusting to his work in the military that brought on his depressed mood and symptoms. His emotional distress and overall functioning decompensated quickly during a short period of time that warranted two inpatient psychiatric hospitalization treatments. He was given a specifier of "acute" to his adjustment disorder and this specifier would appropriately reflect his symptoms at the time of service. The applicant was also diagnosed with other specified personality disorder following his command directed evaluation. He was administered psychological testing to support and confirm his personality disorder diagnosis and the civilian psychiatrist stated the test results were not available for review. It is noteworthy the applicant did not submit his entire service treatment record but extracted entries from his records when he submitted his application to the AFBCMR and may have done the same with the civilian psychiatrist. Should this occur, the complete picture of his clinical presentation could not be formed. The burden of proof is placed on the applicant to obtain and submit information or records to support his request and contention. Just because the test results were not available for review, it does not invalidate the test results. In such cases, presumption of regularity would be applied that his personality disorder diagnosis was confirmed and supported by test results and as again, the burden of proof is placed on the applicant to demonstrate there was an error with his diagnosis or record. The applicant contended he did not believe he had or ever had a personality disorder because he was able to work full-time while simultaneously attending community college part-time and receiving accolades for his performance during his military career. There was no compelling evidence denoting he definitively does not have a personality disorder but was the contrary. His military records reflected he displayed and reported personality traits and was given a confirmed personality disorder diagnosis by psychological testing. The methodology employed by his military provider to derive at his personality disorder diagnosis was the most practical and robust procedure any of his providers, past or present, had ever used to confirm (or dispute) his disorder. There was no evidence his personality disorder was made in error. Therefore, the opinion rendered in the original mental health advisory remains unchanged.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Jan 23 for comment (Exhibit H), and the applicant replied on 21 Feb 23. In his response, the applicant contends he initially submitted his application with all of the relevant records available to him at the time, which did not include his C-file as he did not have it; however, he wanted to process his case as soon as possible. He finds it concerning the Psychological Advisor would misconstrue his intentions as malicious and would like to request which specific medical documents he failed to submit when submitting his service treatment records. He acknowledges he organized his medical records into

portions relevant to his mental health as a time- and cost-saving measure, as his medical records included irrelevant documents to his case such as dental and vision. Because the burden of proof is upon him, he must pay for psychiatrist and legal services out of pocket. He contends many of his symptoms can be attributed to MDD. In support of his contentions, he provides a statement from the same medical provider as in his initial rebuttal.

On 24 Jan 24, the applicant requested his case be closed, and the AFBCMR staff closed his case (Exhibit J). On 31 Jan 24, the applicant submitted another application to the AFBCMR. In his response, the applicant contends, through counsel, if he would have been properly diagnosed with MDD and processed through the IDCS he would have been found medically unfit with a disability rating of 70 percent. Since his discharge, he has not been diagnosed with a personality disorder by any mental health provider. His symptoms do not comport with the Diagnostic and Statistical Manual, 5th Edition (DSM-V) criteria for a personality disorder and are much better accounted for by his diagnosis of MDD and anxiety disorder. He had no history of mental health symptoms, diagnoses, learning problems, conduct problems, or trauma in childhood or adolescence. He showed no signs of mental health or “enduring” behavioral issues which “deviated markedly” from the expectations of the Air Force prior to the change in his workplace which dramatically increased his workload to overwhelming levels.

In Mar 18, he began to experience anxiety and depression due to a substantial increase in his workload. He felt overwhelmed and began to experience suicidal ideations and actions including cutting himself, overdosing on medication, and contemplating jumping off his dormitory balcony. He reported to the medical clinic and was hospitalized for inpatient treatment for seven days where he was diagnosed with MDD. When he was released from the hospital, he was placed on a limited duty profile. Upon discharge, his providers also added a provisional diagnosis of adjustment disorder and noted a “report of” a possible personality disorder but did not make an official diagnosis of personality disorder. They also noted they had spoken to his commander, who concurred he was not able to properly function in his customer service position. He was referred for ongoing therapy following his discharge from the hospital. He had several other hospital/clinic encounters due to his suicidal ideations. On 27 Jul 18, his command referred him to mental health for an evaluation in preparation for an administrative discharge. This evaluation only reported his prior diagnosis of adjustment and personality disorder and ignored his multiple diagnoses of MDD or anxiety disorder. Six days after his discharge, he filed a claim with the DVA which granted him a service-connected disability rating of 70 percent for MDD with unspecified anxiety disorder.

The applicant’s complete responses are at Exhibits I and K.

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 and recommendation of the AFRBA Psychological

Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Although the applicant was diagnosed with MDD by a military mental health provider, his diagnosis was changed to adjustment disorder after further evaluation. The Board noted his contention a civilian psychiatrist alleged his diagnosis was downgraded to prevent him from receiving a medical separation; however, the Board finds no evidence to support this allegation. The Board finds the applicant did not have any unfitting mental health conditions during service that would meet criteria for the requested medical discharge. He had a condition that was unsuited for military service, adjustment disorder and personality disorder, due to his situational stressor of adjusting to his work in the military that brought on his depressed mood. The applicant did not seek mental health treatment until a year after leaving the service due to feeling overwhelmed by school and tasks he needed to complete and further evidence shows his depression had improved which leads the Board to believe he no longer struggled to adapt to the military; therefore, finding his diagnosis of adjustment disorder and personality disorder while in the service a correct diagnosis. Additionally, the Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at or near the time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Lastly, based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, stating boards 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; the Board finds the applicant's request for a medical retirement to be considered under liberal consideration is not warranted. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2019-01730 in Executive Session on 12 Sep 24:

Work-Product

Panel Chair

Work-Product

Panel Member

Panel Member

AFBCMR Docket Number BC-2019-01730

Work-Product

Work-Product

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 Jan 19.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 30 Jan 20.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Jan 20.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 30 Jan 20.
- Exhibit F: Applicant's Response, dated 1 Jun 22.
- Exhibit G: Advisory Opinion, AFRBA Psychological Advisor, dated 18 Jan 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Jan 23.
- Exhibit I: Applicant's Response, dated 21 Feb 23.
- Exhibit J: Letter, SAF/MRBC, Case Closure per Applicant's Request, dated 31 Jan 24.
- Exhibit K: Applicant's Response to Reopen Case, dated 31 Jan 24.
- Exhibit L: Letter, SAF/MRBC, w/atch (Liberal Consideration Supplemental Guidance), dated 30 May 24.
- Exhibit M: Applicant's Response to Supplemental Guidance w/ FBI Report, dated 20 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.

9/20/2024

Work-Product

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

AFBCMR Docket Number BC-2019-01730

Work-Product