



Work-Product

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**SECOND ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2019-04638-3

Work-Product

**COUNSEL:** Work-Product

**HEARING REQUESTED:** YES

**APPLICANT’S REQUEST**

The Board reconsider his request for a medical retirement. If the Board denies his request for a medical retirement, the Board reconsider his request for a regular 20-year retirement.

**RESUME OF THE CASE**

On 12 Aug 20, the Board considered and denied his request for a medical retirement and reimbursement for the accrued leave he lost, medical insurance premiums, and medical costs incurred since his discharge; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board concurred with the findings and recommendation of the AFRBA Psychological Advisor. It was noted, according to the Defense Finance and Accounting Service (DFAS) and DFAS records, the applicant did not lose any leave. The AFRBA Psychological advisory opinion dated 9 Mar 20 found no evidence the applicant suffered from Post-Traumatic Stress Disorder (PTSD) or other mental health conditions at the time of military service. There were symptoms reported in Jan 10 but no subsequent recurrence of the symptoms were reported in follow-up assessments and during the Command Directed Evaluation (CDE). He was never assessed for PTSD and was never given a diagnosis of PTSD while in service. Liberal consideration was applied to the applicant’s request due to a contended mental health condition, however; there was no substantiated evidence that a condition existed; therefore, it was not possible to opine if the condition or experience mitigated or outweighed the discharge.

On 21 Jun 23 and 14 Jul 23, the Board reconsidered and denied his request to be returned to duty, be paid all back pay, benefits, and allowances to include unpaid leave, and be medically evaluated and processed through the Disability Evaluation System (DES). However, the Board did find the applicant was eligible to be paid 1.5 days of excess leave. After reviewing all Exhibits, the report provided by the Court remand order, and the applicant’s new evidence, rebuttals, and additional advisories, the Board remained unconvinced the evidence presented demonstrated an error or injustice. The Board concurred with the rationale of the AFRBA Psychological Advisor and found a preponderance of the evidence did not substantiate the applicant’s contentions. The Board found no evidence to support he had any potentially unfitting mental health conditions to include PTSD that would meet the criteria for a medical separation. The mere existence of a medical/mental

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health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to any mental health condition. A Service member shall be considered unfit when the evidence establishes the member, due to a disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. The Board took note of the applicant's Department of Veterans Affairs (DVA) disability ratings; however, 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 the time of separation and not based on post-service progression of disease or injury. The Board applied liberal consideration to the evidence submitted by the applicant; however, it was not sufficient to grant the applicant's request. Specifically, the Board noted the AFRBA Psychological advisory opinion dated 9 Mar 20 found there was insufficient substantiated evidence a condition existed at the time of the applicant's military service, and therefore, it was not possible to opine if the condition or experience mitigated or outweighed the discharge. The Board noted the eyewitness statements and post-service health records provided by the applicant; however, the results of his Command Directed Evaluation (CDE) indicated no PTSD diagnosis, no imminent safety concerns, and no duty limitations or restrictions. This examination was conducted during his alleged "Do Not Arm" restriction but the CDE did not indicate a need for duty limitations or restrictions nor was there evidence in his record his unit put him on a "Do Not Arm" restriction. Furthermore, the Board found no evidence from his commander or medical providers which indicated his mental health condition interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating resulting in a medical separation.

Furthermore, the Board found the preponderance of evidence failed to establish any error or injustice with respect to the applicant's Active Guard and Reserve (AGR) appeal. Legally, in the absence of evidence to the contrary, the Board was authorized to rely upon the presumption of regularity that attaches to agency action, which includes appeal cancellations for AGR positions. To challenge this presumption and demonstrate an error or injustice, the applicant must provide sufficient objective evidence. In this case, the applicant failed to overcome this presumption and failed to prove an error or injustice. The only evidence the applicant provided of an alleged error or injustice related to his AGR appeal was the emails between himself and the Mission Support Group Commander and the email from ARPC notifying him of his cancelled appeal. This evidence was insufficient on its own to overcome the presumption of regularity or establish by a preponderance an error or injustice. Furthermore, his evidence was undermined by objective evidence available. Contrary to the applicant's claims, the available evidence demonstrated it was his own actions that caused the cancellation of his AGR appeal and not unilateral command action taken without consent. In particular, his appeal became moot due to a retraining request, as confirmed by an email dated 6 May 16, from ARPC. This email informed the applicant his appeal was cancelled months ago at the beginning of his health screening when he notified his unit of his intention to no longer work in his current position. The Board found no evidence the applicant reinitiated his appeal following his request for retraining, nor did the record demonstrate he rescinded his retraining request. The request for retraining, promoted by his desire to switch to another career field and concerns about his safety in his unit, made it more likely than not, the

appeal was no longer necessary, and cancellation was not improper. The appeal cancellation was consistent with the regulations in place as retraining necessitates applying for a new AGR position which would render the appeal of his current position moot. Additionally, this conclusion was supported by the evidence demonstrating he was advised to apply for AGR positions for which he was qualified following his request for retraining per the email dated 6 May 16, from ARPC. AFI 36-2132, paragraph 2.3.2, does not state retraining requests are guaranteed, but are considered on a case-by-case basis. Therefore, the Board concluded the applicant presented insufficient evidence that under the circumstances his command actions amounted to an error or injustice.

The Board likewise found no error or injustice with respect to his use of leave. The evidence demonstrated the applicant was given ample time to schedule and utilize his leave as he was not released from the AGR program until 31 May 16. Per AFI 36-3003, *Military Leave Program*, both management and members share responsibility in managing leave balances throughout the fiscal year. In providing leave, Congress intended for members to use their leave as it accrues. Congress provides for payment of accrued leave when members are unable to use their leave because of military necessity. However, Congress did not intend for members to accrue large leave balances expressly for payment of accrued leave. Members who are unable to use leave due to military necessity may accumulate a maximum of 60 days by the end of a fiscal year. Title 37, U.S.C., section 501, is the authority for payment for accrued leave upon reenlistment, retirement, separation under honorable conditions, or death and limits payment of accrued leave to 60 days in a military career. The Board found no evidence to suggest the applicant could not use his leave because of military necessity and it is the applicant's responsibility to gain access to myPay, the military pay website, prior to separation. However, the Board did find the applicant's allowable leave payment was not maximized; therefore, the applicant was awarded another 1.5 days of compensation for his leave.

Lastly, the Board found the preponderance of evidence did not support the applicant's contention he was denied a separation physical or transition assistance. Per AFI 48-123, *Medical Examinations and Standards*, dated 5 Nov 13, paragraphs 7.5.2 and 7.5.3, physical examinations may be accepted between 90 days and up to 12 months prior to the scheduled date of separation from active duty to which the applicant was provided a preventive health assessment within this timeframe. Additionally, the Board felt the applicant was provided transition assistance as evident on his signed DD Form 2648-1 acknowledging he understood the transition benefits and services available to assist him in his transition. The applicant did indicate he was waiting for legal but the Board felt it was the applicant's responsibility to follow through with this request.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Records of Proceedings at Exhibits F and O.

On 13 Feb 25, the court remanded the applicant's case to the AFBCMR pursuant to Rule 52.2 of the Rules of the Court of Federal Claims in lieu of an answer to Plaintiff's Complaint, instructing the AFBCMR to evaluate his claim his PTSD rendered him unfit to perform the duties of his office, grade, rank, or rating which would have made him eligible for a medical retirement. Additionally, the Court found his AGR appeal cancellation was in violation of Air Force instructions and

instructed the AFBCMR to conduct an AGR appeal board. In conducting its review, the Board shall further its proceedings consistent with this opinion:

1. Reconsider whether the applicant had service-related PTSD at the time he was separated from the AGR, consistent with this opinion and the principles of liberal consideration described in the court order and in the Kurta Memo; and
2. Reconsider whether the applicant was fit to perform the duties of his office, grade, rank, or rating because of service-connected PTSD at the time he was separated from the AGR, as consistent with this opinion and the principles of liberal consideration as described in the court order. The order stated correction boards are required to give liberal consideration to disability claims that are based on service-connected PTSD and found the AFBCMR referred to the guidance only indirectly and in passing simply asserting liberal consideration was applied, without explaining how, or referring to the specific standards and principles set forth in the memoranda, was neither sufficient nor helpful.

Furthermore, the AFBCMR shall also ensure all medical records discussed by its psychological advisors, including the 2010 PDHA and the 2012 and 2013 self-assessments, are included in the administrative record and considered on remand.

Should the Board conclude the applicant was not fit to perform the duties of his office, grade, rank, or rating because of service-connected PTSD at the time he was separated from the AGR, it shall correct his records to reflect a disability retirement, effective 31 May 16. Should the Board conclude the applicant was fit to perform the duties of his office, grade, rank, or rating at the time he was separated from the AGR, it shall:

1. Correct the applicant's records to reflect that his appeal of the non-retention decision was not cancelled and is still pending; and
2. Devise and implement a process for resolving the applicant's appeal.

The court order is at Exhibit P.

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request he met the criteria for a medical retirement based on his mental health condition. Since the most recent mental health advisory, dated 7 Feb 23, and the applicant's last petition to the AFBCMR adjudicated by the Board in Jun 23 and July 23, updated and new guidance for liberal consideration involving fitness determination and medical retirement or separation requests was released on 4 Apr 24 and signed by the Acting Under Secretary of Defense, A.S. Vazirani. This memorandum, also known as the Vazirani Memorandum, specifically states it is DoD policy the application of liberal consideration does not apply to fitness determinations, 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 BCM/NRs are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge in accord with Doyon, 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. The guidance also states consistent with the Doyon court's interpretation of 10 U.S.C. Section 1552(h), BCM/NRs will apply liberal consideration to all applications where the applicant alleges combat- or military sexual trauma (MST)-related post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) potentially contributed to the circumstances resulting in severance from military service. However, any request for a medical retirement or separation necessarily asserts the existence of an error or injustice in the previous failure of the Service to discharge the individual for unfitness, rather than in the circumstances of individual's actual discharge or dismissal. As such, 10 U.S.C. Section 1552(h) cannot be read to require the application of liberal consideration to assess whether a qualifying PTSD or TBI condition potentially contributed to the circumstances resulting in a medical discharge which never occurred. Based on this updated guidance, liberal consideration is not required and cannot be applied to the applicant's request for a medical retirement, discharge, or separation. A copy of the Vazirani Memorandum is attached to this advisory for review. Prior to this guidance being released, liberal consideration, the Kurta Memorandum, was applied to the applicant's request, and it was determined his mental health condition did not cause or could excuse or mitigate his discharge to support his request for a medical retirement. There is no error or injustice identified with the applicant's discharge from the Air Force from a mental health perspective. The applicant's available military personnel records, service treatment records, and submitted records for review do not support his request for a medical retirement. As stated in the previous mental health advisories, there is no evidence or records the applicant had any unfitting mental health conditions, including PTSD, meeting the criteria for a medical retirement or discharge based on regulations of AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, and DoDI 1332.18, *Disability Evaluation System*, which govern fitness determination requirements. The information provided in the previous two advisories has not changed and should be reviewed again if necessary to address the applicant's request for a medical retirement and the reasons he did not meet this criterion. As remanded by the Court, attached to this advisory are all the medical records discussed in the previous advisories used and cited to support the opinions and conclusions rendered.

The complete advisory opinion is at Exhibit Q.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 8 May 25 for comment (Exhibit R) and the applicant replied on 5 Jun 25. In his response, the applicant contends, through counsel, the advisory opinion attempts to relitigate the court's opinion to apply liberal consideration stating liberal consideration does not apply to his request for a medical retirement, discharge, or separation. Not only did the court order the AFBCMR to apply liberal consideration but the AFBCMR applied liberal consideration to his previous case. There is also court precedence set in

*Doyon v. United States*, 58 F.4th 1235 (2023) which directs liberal consideration to be applied in such cases based on the Kurta Memorandum's guidance. The Court also recognized, had Congress intended to limit liberal consideration only to upgrading or modifying a service member's characterization of service, specific language would have been inserted; instead, Congress inserted language about the alternative circumstances resulting in the discharge. To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. Since the liberal consideration analysis applied to his case under *Doyon v. United States*, 58 F.4th 1235 (2023), the Vazirani memorandum that states it is consistent the *Doyon* decision, did not take it away. Even though the AFBCMR applied liberal consideration in his previous case, the court found the AFBCMR paid lip service to the liberal consideration in his case, but in practice, failed to do so. Furthermore, the advisory does not properly address the evidence which shows his chain of command decided it was not safe for him to be armed; that he could not perform his law enforcement duties, that his supervisors were concerned with his bizarre behavior, and the command directed evaluation found he exhibited bizarre patterns of behavior. The fact that he was not placed on a duty limiting condition profile or on the 'do not arm' list is not dispositive of whether his command viewed him as unfit to be armed and perform the duties of his office, rank, or rating.

The applicant's complete response is at Exhibit S.

Based on the 11 Jul 25 Board decision which recommended denial of a medical retirement, the applicant and his counsel were sent an email requesting his AGR appeal package. The AGR appeal package was received and forwarded to ARPC to conduct an AGR appeal board based on the court order. On 11 Sep 25, the ARPC Commander approved the applicant's AGR appeal. On 12 Sep 25, this decision was sent to the applicant and his counsel (Exhibit V).

The applicant's complete submission and the response from ARPC are at Exhibits T and U.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. Although the Board remains unconvinced the evidence presented demonstrates an error or injustice regarding the applicant's request for a medical retirement, based on the ARPC decision regarding the applicant's AGR appeal, the Board finds in favor of the applicant granting him a 20-year regular retirement.

Firstly, 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 he should have been medically retired for PTSD or any other mental health condition. The Board notes the eyewitness statements and post-service health records provided by the applicant and gives the applicant the benefit of doubt he was put on an unofficial “Do Not Arm” restriction; however, the Board finds this was due to the applicant requesting he be removed from his AFSC duties because he felt unsafe which prompted the CDE. In this evaluation, no imminent safety concerns, and no duty limitations or restrictions were recommended. Additionally, the Board reviewed the applicant’s request for a medical retirement due to his contention his mental health condition rendered him unfit for service; however, based on the above reasoning, the Board does not find the preponderance of evidence supports this request. The Board finds no evidence the applicant had a mental health condition which qualified for DES processing under the regulations in effect at the time of the applicant’s discharge. DoDI 1332.18, *Disability Evaluation System*, Appendix 2 to Enclosure 3, paragraph 6, requires objective evidence in the record be cited to determine a Service member is unfit because of a disability, as distinguished from opinion, speculation, or conjecture. Doubt that cannot be resolved with evidence will be resolved in favor of the Service member’s fitness through the presumption the Service member desires to be found fit for duty. Determinations of unfitness are based on the preponderance of the objective evidence in the record. Furthermore, based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memorandum, 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. The Vazirani Memorandum was issued to clarify the DoD’s stance on the application of liberal consideration because of the precedent set in *Doyon v. United States*, 58 F.4th 1235 (2023). This clarifying guidance states it is DoD policy that liberal consideration does not apply to fitness determinations. While the BCM/NRs are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge in accord with *Doyon*, 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. Based on the above reasoning, the Board recommended denial of the applicant’s request for a medical retirement.

Secondly the Board, following the court order his AGR appeal of the non-retention decision was not cancelled, sent the case to APRC to hold an AGR Appeal Board. In this decision, the ARPC Commander reviewed the applicant’s appeal package and after considering the needs of the AFR and the “whole person” concept to include the factors listed in AFI 36-2132, V2, *Active Guard/Reserve (AGR Program)*, approved the applicant’s AGR appeal. Based on this decision, the Board recommends correcting the applicant’s records as indicated below.

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

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The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. He was not honorably discharged on 31 May 16 but instead his AGR order, Special Order *Work-Product* which terminated on 31 May 16, was extended to 31 Jul 18 to qualify for a regular 20-year retirement per Title 10 U.S.C. Section 9314, effective 1 Aug 18.
- b. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

### 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-2019-04638-3 in Executive Session on 11 Jul 25 and 23 Sep 25:

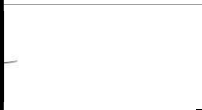
<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 12 Aug 20.
- Exhibit O: Addendum Record of Proceedings, w/ Exhibits G-N, 21 Jun 23 and 14 Jul 23.
- Exhibit P: Court Order, dated 13 Feb 25.
- Exhibit Q: Advisory Opinion, AFRBA Psychological Advisor, dated 7 May 25.
- Exhibit R: Notification of Advisory, SAF/MRBC to Applicant, dated 8 May 25.
- Exhibit S: Applicant's Response, dated 5 Jun 25.
- Exhibit T: Applicant's AGR Appeal Submission, received 5 Aug 25.
- Exhibit U: Appeal Decision Memorandum, ARPC/CC, dated 11 Sep 25.
- Exhibit V: Notification of Decision, SAF/MRBC to Applicant, dated 12 Sep 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.

9/27/2025

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Board Operations Manager, AFBCMR	
Signed by: USAF	

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