



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-02405

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His discharge with severance pay (DWSP) be changed to a medical retirement.

APPLICANT'S CONTENTIONS

He suffers from Post-Traumatic Stress Disorder (PTSD) and has been rated at 70 percent disabled by the Department of Veterans Affairs (DVA). If the Informal Physical Evaluation Board (IPEB) had rated his condition of PTSD, he would have received a rating in excess of 30 percent and would have been medically retired.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve first lieutenant (O-2).

On 7 Oct 02, AF Form 618, *Medical Board Report*, provided by the applicant, indicates the applicant was referred to the IPEB for anxiety disorder, not otherwise specified (NOS).

On 5 Nov 02, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, provided by the applicant, indicates the applicant was found unfit due to his medical condition of anxiety disorder, NOS and social and mild industrial adaptability impairment with a disability compensation rating of 10 percent with a recommendation of "DWSP."

On 13 Nov 02, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, provided by the applicant, indicates the applicant disagreed with the findings of the board and requested a formal hearing.

On 2 May 03, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of first lieutenant (O-2) after serving three years, seven months, and eight days of active duty. He was discharged, with a narrative reason for separation of "Disability, Severance Pay."

**AFBCMR Docket Number BC-2020-02405
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

CUI//SP-MIL/SP-PRVCY

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and 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 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining

CUI//SP-MIL//SP-PRVCY

whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 31 Mar 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application. The applicant was medically discharged with severance pay with a disability rating of 10 percent due to a diagnosis of anxiety that rendered him unfit for continued service. Since discharge, the applicant has been diagnosed with PTSD with a DVA disability rating of 70 percent. No documentation of either the diagnosis or the rating have been provided by the applicant. DoDI 1332.18, *Disability Evaluation System*, Appendix 6 to Enclosure 3, paragraph 1c states Secretaries of the Military Departments, except as stated in paragraphs 1a and b of this appendix, have the authority to make all determinations in accordance with this instruction regarding unfitness, disability percentage, and entitlement to disability severance and retired pay. When an individual undergoes the Disability Evaluation System (DES) and it results in progression from Fitness for Duty Evaluation to MEB then Informal PEB, this includes a DVA rating for the unfitting condition. In this instance, the unfitting condition was anxiety. It was DVA disability rated at 10 percent. The threshold for medical retirement is a disability rating of 30 percent either separately or collectively. Once the DES process is completed and finalized, the adjudication stands. There is no provision for an increase in disability rating after the conclusion of the DES process. Increases in disability rating or additional diagnoses are a matter between the applicant and the DVA.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. This is the applicant's second petition to the AFBCMR. For his previous petition, he requested to have his diagnoses of anxiety disorder, NOS and narcissistic personality traits be removed from his records in order to allow him to be eligible to return to active duty or be allowed to enter into the Reserve or Air National Guard. As part of this petition he received a medical advisory dated on 17 May 04 detailing his condition, treatment, and PEB process to include the rationale for his rating. There was ample evidence in his records reflecting he had an unfitting condition of anxiety disorder, NOS caused by his occupational stress during service resulting with his medical discharge. The applicant was never diagnosed with PTSD and never met diagnostic criteria for PTSD during service. PTSD is an anxiety disorder and his documented symptoms of feeling down, helpless, panicky or anxiety better aligned to the diagnosis and condition of anxiety disorder, NOS and not PTSD. He did not display or reported having any classic PTSD symptoms (i.e. traumatic experiences, avoidance, hypervigilance, exaggerated startled responses, nightmares, etc.) that would yield this diagnosis. A Compensation and Pension (C&P) exam completed by the DVA about a couple of years post discharge, also found he did not meet diagnostic criteria for PTSD, and the evaluator continued to find his mental health condition/symptoms had minimal or mild impairment to his functioning. His prognosis was also designated as good. The C&P exam results

CUI//SP-MIL/SP-PRVCY

in conjunction with his military records would support that his 10 percent rating was appropriate based on reported mild symptoms impacting his overall functioning. The applicant was given service connected compensation from the DVA for unspecified anxiety disorder (claimed as PTSD) effective on 23 Sep 15, which was 12 years post discharge. The rationale for his PTSD diagnosis was not provided in the submitted documents, but it is also imperative to acknowledge he received compensation for unspecified anxiety disorder, which is the same as anxiety disorder, NOS, the condition for which he was found unfitting for service.

For awareness between the differences in disability ratings between the military and the DVA, 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 "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

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

The applicant requests an increase of his disability rating to be eligible for a medical retirement.

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

The applicant's mental health condition of anxiety disorder, NOS was found unfitting for continued military service causing his discharge. There was no evidence his condition of PTSD, diagnosed several years post discharge, had existed during military service.

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

The applicant's condition of anxiety disorder, NOS was the cause of his discharge and there was no evidence of any error with this diagnosis. The valuation of a 10 percent rating for this unfitting condition was also found to be appropriate based on the documented symptom severity and degree of impairment to his functioning at the snapshot in time of service. There was no error or injustice identified with this rating, and his condition would not excuse or mitigate his discharge.

4. Does the condition or experience outweighs the discharge?

Since his condition does not excuse or mitigate the discharge, it also does not outweigh his original discharge and would not provide him with a higher desired rating. The concluding 10 percent rating was consistent to his clinical presentation documented in his medical records at the snapshot in time of service.

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 23 Mar 22 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of the offices of primary responsibility and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes the applicant's contention that he suffers from PTSD rated by the DVA as 70 percent disabling which would have made him eligible for a medical retirement had the IPEB considered this ailment. However, the Board does not find the evidence presented sufficient to conclude that his mental health condition excuses, mitigates, or outweighs his original discharge desiring a higher disability rating of more than 10 percent. Therefore, the Board is satisfied that the application of liberal consideration does not warrant relief. Furthermore, the Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Accordingly, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-02405 in Executive Session on 25 May 22:

- Work-Product**, Panel Chair
- Work-Product**, Panel Member
- Work-Product**, Panel Member

CUI//SP-MIL/SP-PRVCY

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 May 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 22 Mar 22.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 22 Mar 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Mar 22.
- Exhibit F: Letter, SAF/MRBC to Applicant (Liberal Consideration), dated 31 Mar 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

3/17/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF