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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2020-03375

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical retirement for Post-Traumatic Stress Disorder (PTSD) at a disability rating of 100 percent.
2. He be given back-pay as an Air Force retired captain (O-3) from 13 Aug 73 to the present.

APPLICANT'S CONTENTIONS

He is suffering from mental (PTSD) and physical problems as a result of his incarceration in six different communist prison camps over a five-year period during the Vietnam War. He resigned from the United States Air Force (USAF) because he believed his disabilities did not qualify him to be a fully functioning warrior. The delay in filing his application was due to ignorance. He did not realize he could apply for this back-retirement and is in great need of the funds.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force captain (O-3).

On 2 Jun 64, DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, indicates the applicant was honorably discharged from the USAF Academy after serving 3 years, 11 months, and 6 days of active service.

Dated 26 Dec 67, DD Form 1300, *Report of Casualty*, indicates the applicant was reported missing in action in *Work-Product* on 20 Dec 67 stating sufficient evidence was received on 22 Dec 67 to warrant placing him in a captured status.

Dated 16 Mar 73, DD Form 1300, indicates the applicant was returned to military control on 14 Mar 73 at *Work-Product*.

On 29 Mar 73, the applicant submitted a request for resignation to return to civilian life with an effective date of 29 Jun 73.

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On 25 Jun 73, the applicant's resignation was approved and Special Order [Work-Product] was published indicating the applicant would be honorably discharged effective 31 Aug 73.

On 10 Aug 73, the applicant submitted another request for resignation effective immediately which was approved and Special Order [Work-Product] was published indicating the applicant would be honorably discharged, effective 13 Aug 73.

On 13 Aug 73, DD Form 214 indicates the applicant was honorably discharged in the grade of captain (O-3) after serving 9 years, 2 months, and 11 days of active service. His reason and authority for discharge was AFR 36-12, *Officer Personnel, Administrative Separation of Commissioned Officers and Warrant Officers*, separation designation number (SDN) 502, paragraph 16c which denotes "Resignation – Completion of Required Service."

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits D, F and I.

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?

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

On 14 Jan 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds sufficient evidence to partially grant a medical retirement with a minimum disability rating of 50 percent under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 9411 for PTSD. There is ample objective evidence in the applicant's records to substantiate his experiences of being shot down twice in 1967, with the latter event, resulting in the applicant being captured and held as a Prisoner of War (POW) *Work-Product* for more than five years from 1967 to 1973. There is evidence in the applicant's service treatment records of physical injuries he sustained from being beaten and witness statements attesting to the horrific experiences he endured while in captivity. He also provided detailed and lengthy accounts of his experiences as a POW to the Department of Veterans Affairs (DVA). Thus, there is no doubt of the authenticity of the traumatic experiences he witnessed and experienced during his time in service. His experiences are not in question but rather, whether the residual mental health effects of his traumatic experiences impacted his overall functioning causing early career termination of a medical discharge. The evidence presented in the applicant's service treatment records would not support this notion; however, the Psychological Advisor does not concur with the information documented in his records. His service treatment records consistently proclaimed he was qualified for continued military duties, but there is subtle information cited in his records hinting otherwise. First and foremost, one must consider the time of which the records were written: 1973. Recordkeeping and documentation, especially military records, have changed drastically through the years, in addition to our understanding of mental health. His records were unremarkable for any reported or observed mental health issues by the applicant and his providers, but the reports do not appear to be conclusive. When the applicant was released from the POW prison camp and returned to the United States, he received, almost immediately, multiple medical evaluations to include a mental health evaluation at the USAF Hospital at *Work-Product*. The applicant received only one mental health evaluation during service. The evaluation was performed on 22 Mar 73, about a week after his release from imprisonment stating there is no evidence of severe psychotic process, severe incapacitating neurotic process, or severe character behavior disorder.

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The Psychological Advisor opines this mental health evaluation report was too concise and was not comprehensive enough to capture his entire clinical presentation accurately. This evaluation was abnormally brief compared to the standard evaluation report at the time and presently, and especially for an individual who had just returned from being a POW for over five years. A POW returning in present time would receive a much more comprehensive evaluation over multiple days or encounters which may include psychological testing. The applicant's evaluation experience did not appear to be comparable to current practices. Furthermore, the report stated he was tortured, but his experience in captivity appeared to have been minimized by the applicant and/or the evaluator. The evaluator reported his faith made his time in captivity "tolerable" and implied he was mentally well and his mental health did not appear to have been affected by his experiences. The Psychological Advisor does not agree with the results of the report. It appeared the applicant leaned on his faith for basic survival and this behavior is distinct from his overall mental health functioning. He could still experience anxiety, depression, post-traumatic stress symptoms, etc, all the while maintaining his faith. The evaluator may have attempted to preserve and protect the integrity of the applicant at the time which was not beneficial to him in the foreseeable future. The applicant's mental health evaluation was contradicted by the submitted witness statements attesting to his experiences and functioning. These observations illustrated different narratives than his mental health evaluation and do not support his experiences of torture and confinement as minimal. In addition to the mental health evaluation, the applicant also denied having any mental health related issues on his Report of Medical History form dated on 28 Mar 73. The Psychological Advisor finds it difficult to believe that after years of imprisonment and torture he was not affected mentally or emotionally by his traumatic experiences in some shape or form.

Returning focus to the year of 1973, there was significant stigma surrounding mental health. This is especially relevant to the pilot community, which the applicant was a member, that having a mental health condition was and still is, an even greater stigma due to the assumed potential adverse career impact. This scenario could be one of the reasons for the minimization and underreporting of his mental health issues and the differences in reports found in his military records versus those reported to the DVA and from the observations detailed in his witness statements. The applicant's medical records indicated he was excused from flying for 12 months effective 14 Mar 73 according to the Report of Medical Examination document dated 28 Mar 73. The reason(s) for his excusal from flying was not annotated in his records. The applicant was placed on an H2 profile for hearing, but this profile would not result with removing a pilot from flying duties for one year. To be excused from flying or flying duties for a period of 12 months/one year is rather extensive, even in today's standards. It is usually in shorter increments such as 90 days with periodic re-assessments to determine appropriate disposition. This prolonged excusal from flying signified there was more likely than not, a mental health issue or some other unspecified condition was present at the time preventing him from engaging in flying duties. Despite this excusal from flying, he was still considered to be qualified for Flying Class II, worldwide qualified and no duty limiting conditions profile in place to match the excusal. The designation and documentation were not consistent and rather baffling, suggesting a possible procedural error was made by his medical providers. The evidence does point to the fact he was not able to fully perform the duties prescribed as a pilot. Another cryptic statement in his military records was from his commander from the time he was a POW stating he should not be placed in a fighting command or a flying command, except perhaps in air rescue. The applicant was not recommended for a fighting or flying command for reasons not clarified and again, would indicate

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he had a deficiency or issue of some sort that would not make him appropriate for a command position. It is possible the commander was referring to his mental health that had impaired his ability to fully function in the military.

The applicant is requesting a medical retirement for PTSD. The applicant resigned his commission in Aug 73. The reason for his resignation was not documented in his military records; however, a letter from the applicant dated 24 Jul 20 stated he resigned from the USAF because he believed his disabilities did not qualify him to be a fully functioning warrior and he did not consider filing for medical retirement at the time. Based on witness statements, his military records, and indicators in his service treatment records, he most likely had an unfitting mental health condition at the time of discharge. As aforementioned previously, mental health was not well understood at the time of service and the understanding of mental health has evolved over time. PTSD did not become an official mental disorder until 1980, seven years after his discharge, with the introduction of the revised Diagnostic Statistical Manual (DSM) of Mental Disorder, Third Edition. The applicant was relieved from his military duties but resigned prior to the expiration of his excusal from flying. It was possible he was unable to tolerate the stressful military environment as he stated, considering his history and experiences. The thought of him returning to full active duty service may have triggered the resurgence of traumatic memories causing him significant distress and anxiety. His resignation was possibly a way he could avoid being reminded of his traumatic experiences. Avoidance is one of the hallmark symptoms of PTSD. Attention to the timeline of events is also important as the applicant resigned his commission five months after he returned from imprisonment. The applicant was adjusting from serious traumatic and situational stressors to acclimating to his new environment. Similarly, the stressors and the realization of returning to his previous military duties may have been too overwhelming for him to endure, aggravating his condition beyond the natural progression of the disease or illness. It appeared he made the decision to voluntarily resign his commission to receive the necessary relief from his emotional distress the only way he knew how at the time. Again, stigma of having or admitting to having any mental health issues may have prevented him from reporting his condition, which was commonly found in his peer group of Vietnam War veterans and the pilot community. The applicant's occupational history post-service as reported to the DVA discussed his difficulties maintaining various jobs due to his PTSD symptoms. His longest employment was 17 years as a commercial pilot that ended with him being terminated because of his extreme stress, not getting along with others, hypervigilance, and feeling extremely isolated and alienated by his environment. The timeline of this employment was not documented and it was uncertain if the employment occurred right after his discharge from service. He was able to be gainfully employed for this extended period of time but not without difficulties and subsequent employments were much shorter in duration. The applicant's post-service occupational history may be reflective of his functioning should he be retained on active duty service with the added stressors of the rigors of the military environment that may trigger and aggravate his traumatic stress.

The applicant is requesting a 100 percent disability rating for PTSD as he received this same rating from the DVA. However, the DVA assigned this rating to the applicant on 18 Mar 02, approximately 28 years post discharge. Due to the absence of detailed information regarding his actual symptoms during the snapshot in time of service and from his witness statements, the Psychological Advisor is unable to declare with certainty his symptoms that were reported to the DVA decades post discharge would be resembling or symmetrical at the time of discharge. His

condition of PTSD most likely progressed through time and is not necessarily reminiscent of his presentation in service. This is not an unusual occurrence. To remedy the situation, applying present standard operating procedures, which may be more favorable to the applicant, would be the most appropriate action. Should the applicant be processed through the Disability Evaluation System (DES), he would be placed on the Temporary Disability Retired List (TDRL) with a minimum rating of 50 percent, as this is common for mental health conditions. The temporary rating would be converted to a permanent retirement following re-evaluation at a later time.

The Psychological Advisor recommends the Board medically retire the applicant under VASRD code 9411 for PTSD with a minimum disability rating of 50 percent. This minimum 50 percent disability rating would provide the applicant with the medical retirement he desires, but not the requested 100 percent disability rating. However, the Board may choose to grant him the requested rating, if the Board finds this percentage appropriate. This decision is at the discretion and purview of the Board. For awareness since the applicant has been receiving a 100 percent disability rating from the DVA, the following is provided. 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 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.

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 was diagnosed with PTSD from the DVA caused by his traumatic experiences of being shot down twice and being a POW during the Vietnam War.
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records were not found to sufficiently document his mental health status at the time of evaluation upon his release from imprisonment. His service treatment records indicated he had no psychiatric conditions; however, the applicant's personal testimony, witness statements, reports in his military and medical records, and the nature of his traumatic experiences itself strongly suggest he had a mental health condition of PTSD during military service.
3. Does the condition or experience excuse or mitigate the discharge?
The applicant's personal testimony of the reason for his resignation was caused by his physical and mental disabilities were found to be compelling and was consistent to the timeline of events

in his military records. The Psychological Advisor finds sufficient evidence he had an unfitting mental health condition of PTSD caused by his experiences in Vietnam and was most likely the reason for resigning his commission, five months after returning as a POW. His mental health condition and experiences were found to cause, excuse, and mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since there is sufficient evidence the applicant had an unfitting mental health condition of PTSD at the time of discharge, he would meet criteria for a medical retirement for PTSD. This medical retirement discharge for his mental health condition caused by his military experiences would outweigh his original administrative discharge.

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 26 Jan 22 for comment (Exhibit E), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed an additional advisory opinion because the previous advisory opinion erroneously applied liberal consideration to a fitness determination; therefore, this additional advisory opinion was accomplished to properly address the quantitative evidence of the traumatic experiences the applicant endured as a POW without applying liberal consideration. As such, this advisor reviewed all available records and finds sufficient evidence to support a medical retirement with a minimum rating of 50 percent under VASRD code 9411 for PTSD. The additional advisory opinion did not apply liberal consideration; however, all the other information contained in the initial advisory opinion dated 5 Aug 21, remains unchanged and is summarized as noted in the advisory opinions.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

On 4 Apr 23, the Board sent a copy of the additional advisory opinion to the applicant for comment (Exhibit G). On the same date, the applicant responded requesting the Board proceed with his case without further comment.

The applicant's response is at Exhibit H.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed an additional advisory opinion because new evidence in the applicant's military records was discovered that was not available when the two previous advisories were written. This additional advisory opinion was accomplished to properly address this new evidence; regardless, the recommendation remains unchanged finding sufficient

evidence to support a medical retirement with a minimum disability rating of 50 percent under VASRD code 9411 for PTSD.

In the original and revised advisories, the Psychological Advisor stated the applicant had resigned his commission and the reason was not documented in his military records. However, the new set of records revealed there were two reasons for his resignation. The first reason provided in his tender of resignation letter dated 29 Mar 73 was he wanted to return to civilian life. This explanation is compelling especially since it was well documented he was a POW in Vietnam for more than five years and the letter was written and submitted 15 days after he was released (14 Mar 73) from POW confinement/prison camp. After such an arduous ordeal and experience as a POW for several years, it is comprehensible his desire to return to civilian life would be elevated. He requested his release date to be 29 Jun 73 and later extended it to 31 Aug 73 for unknown reasons. The applicant then withdrew his resignation on 2 Jul 73, opting to stay in the military and make the Air Force his career. He resigned again on 10 Aug 73 and this time, he decided he did not want to make the Air Force a career and stated he gained employment with [REDACTED] *Work-Product* as reasons for his resignation. He requested his discharge date to be 13 Aug 73 which was his official discharge date.

The applicant, in his letter addressed to Senator McSally submitted as part of his application to the AFBCMR, claimed he was offered a medical retirement effective immediately after he was interviewed and received medical examinations for two weeks when he returned from prison camp. He explained he refused the offer and would try to return to active duty in the USAF instead. He did try but after transferring to another base and some four months later, he realized he could no longer be a fully effective active duty warrior due to his disabilities. He resigned his commission on 13 Aug 73 and did not apply or pursue the 100 percent disability retirement at that time because he was only 30 years old. There are no records to corroborate the applicant's claim he was offered a medical retirement from the Air Force but then again, his available records are also limited and so his report is not implausible. His explanation for his resignation; however, was consistent to his military records. As he stated, he tried to make the Air Force a career, which was reflected in his reason when he rescinded his tender of resignation in Jul 73. A month later he resigned his commission again because he did not wish to make the Air Force his career and found employment in the civilian sector. He contended he could no longer be a fully effective active duty warrior due to his disabilities. The applicant submitted several personal testimonies to his congressional representatives and to the DVA attached to his petition detailing his experiences as a POW and the physical and mental injuries he sustained from his experiences. It was also discussed in the original and revised advisories the effects of his traumatic experiences on his physical and mental well-being. Thus, it not unreasonable to deduce he had developed emotional distress, mental limitations, or mental disabilities because of his traumatic experiences as a POW affecting his ability to function effectively in the military as he explained.

The applicant's oscillating decision regarding his decision to stay in the Air Force was also reflective of his mental functioning at the time of service. It is reminded the applicant was discharged from the Air Force five months after he returned as a POW. It takes time for an individual to adjust to a new environment and surroundings and typically would take an average of about six months and sometimes more to adjust to a new environment according to the DSM of Mental Disorders. An individual may experience anxiety, depression, emotional disturbances, etc,

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in response to the situational stressor while adjusting to the new environment. He had apparent difficulties making decisions as evidenced by his Officer Effectiveness Reports (OERs) for when he was a POW which were completed after his release. One of his reports stated he should be allowed to continue his education especially towards aeronautical engineering and graduate level mathematics, another report suggested he should be considered for instructor duty at the United States Air Force Academy or Air University, and another and different report suggested he enter the mathematical or technical field. These recommendations were most likely made from the applicant's input about his desired career trajectory. Additionally, his mental health evaluation performed after his release revealed he informed the examiner he wanted to go to medical school, his first resignation letter stated he wanted to return to civilian life, his withdrawal letter stated he wanted to make the Air Force his career, and his second resignation letter stated he did not want to make the Air Force his career and received employment with an airline company presumably to be a commercial pilot. These are various and different professions indicating he was uncertain with his career path and may also exhibit his confusion and thought disorganization. His decision was also impaired as the applicant in hindsight stated his decision was a major mistake and he did not understand the ramifications of his decision. The applicant was unable to tolerate the stressors and re-adjustment to the military resulting with his ultimate decision to resign his commission possibly out of desperation to remove himself from his stressors. If he stayed in the Air Force, he most likely would not be as effective as he projected and may have resulted in early career termination via mental, physical, or poor performance issues. He stated his age was also a factor in his decision. He was 30 years old at the time and most 30 year-olds do not contemplate retirement at that age. It is even more difficult to accept one has a disability at the age of 30 and he probably thought and felt he was still capable of working. His lack or limited insight into his own mental capabilities and severity of his condition were impaired.

A DVA Decision Rating letter dated 18 Mar 02 discussed the applicant's post military adjustment. The DVA reported, upon his return to the United States, he went to work in different occupations and his lengthiest employment was 17 years as a pilot for the airlines. He was finally let go at that job because of his extreme stress, difficulties getting along with people, hypervigilance, and feeling extremely isolated and alienated from his environment. His hearing loss exacerbated his difficulties on the job as he was unable to communicate with co-pilots and controllers, would get criticized frequently, and had to hide his hearing loss in order to keep his job. Throughout the late 1980s and the 1990s, he kept losing jobs and in 1995, he became completely unemployed and was taken care of by family members. He eventually took up speaking engagements to support his family but these jobs dissipated due to COVID-19. He had been diagnosed and service-connected by the DVA for chronic severe PTSD from his experiences as a POW and this condition was determined to be very debilitating. It could be assumed that because the applicant was a pilot for 17 years after his discharge from the Air Force, he was fit for duty and may continue to perform his duties as a pilot in the military. The Psychological Advisor does not agree with this assumption. There are many service members determined to be unfit for military service and they would resume practicing their same profession performed in the military in the civilian sector after their medical discharge. These professions may be high intellectually functioning professions to include practicing as physicians, attorneys, engineers, police officers, pilots, etc. Medically retired individuals may also procure successful employment and careers post-discharge and/or have gainful and meaningful employment after medical discharge. There is a significant difference between performing one's job in the military versus in the civilian sector. Should the applicant

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stay in the Air Force performing duties as a pilot, he still needs to perform his military duties such as readiness for conflict and war and being worldwide qualified (WWQ) and deployable. In 1973 when he returned as a POW and the year he was discharged, the war in Vietnam was still active and would be ongoing for another two years ending in 1975. Should he remain in the Air Force he may have been re-deployed to a combat zone, the same environment that caused his post-traumatic stressful experiences. This was highly unlikely but nevertheless possible particularly since the draft was enacted during this war era signifying the need for personnel. This was a reality for an Air Force pilot at that time and the applicant being re-deployed to a combat zone would likely re-traumatize him and may even have been more detrimental to his mental well-being and functioning. Notwithstanding the ongoing war in Vietnam at the time, there may have been other conflicts domestically or abroad, special duties, military trainings, and various military stressors he might have had to participate in, which he may have not been psychologically or mentally intact to be able to perform. Being a pilot in the civilian sector would not give him the same potential hazardous and dangerous experiences. As a civilian/commercial pilot he does not have to constantly worry about threats in the air from enemy combatants, flying into hostile territories, being shot down and captured, etc. Constantly seeing and working with service members in military uniforms may have also triggered him to experience emotional distress or re-experience his trauma. These two types of work environment, military and civilian, are distinctly different. Being unfit for military service does not equate to being unfit in the civilian sector. Moreover, the applicant gained employment with an airline company. It is not certain by the available records if he immediately began flying commercial airplanes, if there was a period he received training to allow him to transition to being a pilot, or if he performed other duties other than piloting for the airlines proceeding discharge. The applicant was never determined to be totally unemployable or disabled at the time of his discharge and rather, he was reported to be a highly intelligent individual and still capable of performing meaningful and intellectually stimulating tasks. His functioning and impairment at or near the time of his discharge would resemble the 50 percent rating the Psychological Advisor had previously proposed to the Board. He may have had difficulties balancing his occupational and psychological stressors causing him to have mild to moderate occupational and social functional impairments but again, he was not totally unemployable or disabled meeting criteria for a 100 percent rating. He received this latter rating from the DVA decades post-service reflecting his post-service progression of his condition of PTSD. His mental health condition decompensated post-service as he eventually was no longer able to work as a pilot and had difficulties maintaining steady employment in other industries. He did work for 17 years as a pilot but they were not without difficulties. He reported having hearing loss and hid this condition from others and he most likely hid his mental health condition as well to the military and to his civilian employers. His behaviors of hiding his condition(s) are not condoned, but he hid his condition probably for survival purposes. Other reasons could be shame and lack of insight. Many individuals find and procure jobs after being separated from the military either by administrative or medical discharge action. The applicant had a family to support and was trained and worked as a pilot throughout his early adult life and his military career. It is practical he would continue to choose working in this profession because of his extensive training and experiences in this field or industry. There is no requirement for the type of vocation one needs to perform in order to be declared unfit and receive a medical discharge/retirement. The focus should be on the service incurred diseases or injuries that rendered an individual unfit for continued active service and then for the degree of impairment of the unfit condition at the time of separation.

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The applicant's choice to work for the airlines as a pilot and the length of his employment following discharge should not be the primary factors to determine his fitness for duty. The applicant is in a different position in comparison to an individual who was processed traditionally through the Medical Evaluation Board (MEB) or DES. When an individual gets processed through the MEB/DES, the Physical Evaluation Board (PEB) does not have decades of post-service treatment records or employment activity information at their disposal to determine disposition. The PEB may have about three years of treatment records if the individual was placed on the TDRL for an unstable condition. Many times, the PEB may not recommend TDRL and provide a permanent rating/disposition for an individual without any post-service records and activities for consideration to determine final disposition. The applicant was never processed through the MEB or DES and was deprived of this opportunity and to use his post-service employment to determine his fitness for duty would be unfair, improper, and unjust. To reiterate from the previous advisories, 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. Fitness for duty is determined based on criteria delineated by policy and regulation. In order to be declared unfit for a mental health condition in accordance with policy, one needs to demonstrate the condition had interfered and/or impaired one's ability to reasonably perform military duties in accordance with one's office, grade, rank, or rating, the condition rendered the individual not WWQ or deployable, the condition caused duty limitations, and the severity of the condition caused safety concerns to the individual and/or others. Although the applicant's service treatment records are scant and the type of documentation employed at the applicant's time of service are not as comprehensive as today's standards of record keeping, there are clues in his records and from his personal testimony that would find him unfit. The facts that he was shot down twice, captured, was a POW for over five years and was tortured are clear indicators he incurred life-threatening and traumatic experiences in the line of his military duties causing him to develop PTSD. He was not able to fully perform duties as a pilot because his rater on his OERs commented his basic orientation was not towards the military and should circumstances require his recall to active duty, he should not be placed in a fighting or flying command. These were his duty limitations and impact to his military duties by his mental health condition. He was not WWQ or able to deploy to a combat zone again because of the risk of re-triggering his trauma which may have caused further harm. Lastly, his inability to focus, react, and orient himself to the military environment and mission and display of thought disorganization via his resignation letters resulting from emotional and mental trauma he endured from the time he was a POW, would create safety concerns to himself and his fellow service members. Therefore, there is sufficient evidence to determine the applicant was unfit for duty based on his mental health condition of PTSD.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

On 7 Aug 23, the Board sent a copy of the additional advisory opinion to the applicant for comment (Exhibit G). On 8 Aug 23, the applicant responded by stating the additional advisory was well written and researched. Additionally, he explains the difficulties he had while performing his

civilian pilot duties. Of the 17 years as an airline pilot, 7 of those years he was laid-off and an additional 3 years he was on non-paid medical leave. Additionally, about three months per year he was on medical leave.

Because of his two ejections, the explosive artillery, and his treatment as a POW he suffered compression of his spinal column causing back and leg pain, hearing loss, and dental and joint pain. The only reason he was kept as a pilot was due to his POW experience. He also suffered other illnesses throughout his post-service years. After he left the airlines, he lost five jobs in four years and knew he could no longer hold a job and sought help from the DVA which rated him with a 230 percent disability, a combination of both physical and mental disabilities.

The applicant's response is at Exhibit J.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 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 substantiates the applicant's contentions in part. Specifically, the applicant provided numerous affidavits attesting to his experiences of being shot down twice in 1967, with the latter event, resulting with his being captured and held as a POW in North Vietnam for more than five years from 1967 to 1973. Additionally, there is evidence in the applicant's service treatment records of the physical injuries he sustained from being beaten and witness statements corroborating the horrific experiences he endured while in captivity. He also provided detailed and lengthy accounts of his treatment as a Prisoner of War (POW) and his Department of Veterans Affairs (DVA) rating, which is sufficient to justify granting the applicant's request for a medical retirement with a 50 percent disability rating. The Board's decision to grant him a medical retirement at a disability rating of 50 percent according to the Veterans Affairs Schedule for Rating Disabilities (VASRD) instead of 100 percent is based on the fact the applicant was able to be gainfully employed after separation. Therefore, the Board agrees with the rationale of the Psychological Advisor's assessment and finds there was sufficient evidence the applicant had an unfitting mental health condition of PTSD caused by his experiences in Vietnam which was most likely the reason for resigning his commission effective five months after returning as a POW. As per the governing statute for disability retirements (10 USC Section 1201(b)), which requires the use of the standard schedule of rating disabilities by the DVA at the time of determination and given that PTSD was not listed in the schedule used in 1973, relief is granted by the Board for a comparable medical condition (i.e., Anxiety Reaction). However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

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

- a. On 12 August 1973, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Anxiety Reaction, his condition was under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 9400; with a disability rating of 50 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was a direct result of armed conflict or caused by an instrumentality of war and was combat-related.
- b. On 13 August 1973, he was discharged from active duty and on 14 August 1973, he was permanently medically retired under 10 U.S.C. §1201, with a compensable percentage for physical disability of 50 percent.
- c. 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.

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in the 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-2020-03375 in Executive Session on 23 Feb 22, 5 Apr 23, and 22 Aug 23:

Work-Product [redacted] Panel Chair
Work-Product [redacted], Panel Member
Work-Product [redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 19 Aug 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 14 Jan 21.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 5 Aug 21.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 26 Jan 22.
- Exhibit F: Advisory opinion, AFRBA Psychological Advisor, dated 3 Apr 23.

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- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 4 Apr 23.
- Exhibit H: Applicant's Response, dated 4 Apr 23.
- Exhibit I: Advisory opinion, AFRBA Psychological Advisor, dated 25 Jul 23.
- Exhibit J: Notification of advisory, SAF/MRBC to applicant, dated 7 Aug 23.
- Exhibit K: Applicant's Response, dated 8 Aug 23.

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.

3/20/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: *Work-Product*