

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXX

DOCKET NUMBER: BC-2021-00029

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His "Uncharacterized" Entry Level Separation (ELS) be upgraded to an honorable discharge.
2. He be found unfit for military service due to his physical disability.
3. The medical condition of anxiety and major depressive disorder, be found in the line of duty (ILOD) with a 30 percent disability rating.

APPLICANT'S CONTENTIONS

He was diagnosed with anxiety and depression in basic military training (BMT) that evolved into a diagnosis of Multiple Sclerosis (MS) in 2015. He was experiencing symptoms of anxiety and depression and this led to his ELS. After he informed his command and the Aerospace Medicine Squadron (AMDS) of this, he was told he could produce documentation and request a waiver. Upon providing the documentation, no waiver was completed and his was discharged without going through the Disability Evaluation System (DES) process.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

Dated 13 Jun 03, AF Form 4008, *Request and Authorization for Initial Active Duty Training/Nonprior Service*, states the applicant will attend BMT on 15 Jul 03 for approximately 51 days under Reserve Order number [Work-Product].

Dated 4 Nov 03, AF Form 4008, states the applicant will attend technical school on 5 Dec 03 for approximately 72 days under Reserve Order number [Work-Product].

On 4 Dec 03, AF Form 973, *Request and Authorization for Change of Administrative Orders*, indicates Reserve Order Number [Work-Product] was revoked with the following remarks; "the applicant will not attend tech school at this time and was given a profile 4."

On 17 Mar 05, Reserve Order XXXXX, indicates the applicant was honorably discharged and received an ELS without characterization of service.

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

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 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 12 Apr 21, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

According to AFI 36-3208, *Administrative Separation of Airmen*, incorporating changes through 8 Jun 17, paragraph 1.18, the types of service characterization are as follows:

Honorable. The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

Under Honorable Conditions (General). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial.

Entry Level Separation. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless:

- A service characterization of under other than honorable conditions is authorized under the reason for discharge and is warranted by the circumstances of the case; or
- The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

AIR FORCE EVALUATION

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. The applicant contends he was diagnosed with anxiety and depression in BMT that evolved into a diagnosis of MS in 2015. No mental health records were submitted during the applicant's time in service and the narrative reason for the applicant's discharge is unknown. However, the applicant reported he was experiencing significant, performance impairing, anxiety, and depression during his time in BMT. The applicant completed BMT, and because he selected the split training option, returned home prior to attending technical school, at which time he sought further mental health treatment. The applicant was placed on a profile 4 for "major depression

vs situational depression” and was requested by the AMDS to provide further documentation of his diagnosis and treatment in order for AMDS to request a participation waiver. There is no evidence and the applicant did not submit records indicating he provided the necessary records to process the participation waiver. The characterization of the applicant’s service was deemed uncharacterized as the applicant did not complete the entry level status of 180 days of active service as detailed in AFI 36-3208, *Administrative Separation of Airmen*. At the “snapshot” in time of service, the applicant contends he was experiencing symptoms of anxiety and depression and this led to his ELS. The narrative reason for discharge is unknown; no records were submitted by the applicant to substantiate his claim that his anxiety and depression were what led to his ELS. This psychological advisor is unable to verify that the applicant’s ELS was due to a mental health condition; there are no records confirming a mental health condition caused the applicant’s ELS. Based on the records available for review, no errors were identified in the discharge processing. At the time of his discharge, there was no evidence the applicant had any unfitting mental health conditions, thus he was not referred to the Medical Evaluation Board for a medical discharge evaluation. The applicant submitted evidence that his symptoms were identified as MS 10 years post-discharge.

The military’s DES, can by law under Title 10, United States Code (U.S.C), only offer compensation for those service incurred diseases or injuries which specifically render a member unfit for continued active service and were the cause for career termination; and then only to the degree of impairment present at the “snapshot” in time of separation from service and not based on post-service progression of disease or injury. In contrast, the Department of Veterans Affairs (DVA), operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus to military service, without regard to its impact on a member’s fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran.

Liberal consideration is applied to the applicant’s request due to the contention of a mental health condition. The following responses are based on information provided in the record to the four pertinent questions in the policy:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he was discharged from the Air Force Reserve under ELS due to a depression and anxiety that originated in service. The applicant’s discharge order does not indicate he was discharged due to a mental health condition. The remarks state only: “Entry Level Separation without Character of Service.”
2. Did the condition exist, or experience occur during military service?
The applicant reported to the AMDS that he was seeking mental health treatment and taking antidepressant medications to treat a mental health condition upon completion of BMT prior to attending technical school.
3. Does the condition or experience excuse or mitigate the discharge?

Because there is no evidence the applicant's ELS was due to a mental health condition, it does not outweigh the discharge. There is no evidence the applicant had any unfitting mental health conditions at the time of his discharge.

4. Does the condition or experience outweigh the discharge?

The applicant received an ELS discharge. The narrative reason for discharge is not known. There were no errors identified in the discharge processing based on the available information provided by the applicant for review, and therefore does not outweigh the discharge.

The complete advisory opinion is at Exhibit D.

The AFBCMR Medical Advisor recommends denying the applicant's request to upgrade his discharged based on his medical condition, MS finding insufficient evidence to support the request. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was insufficient to support his contention that his discharge was either improper or inequitable. MS is a chronic disease affecting the central nervous system of the body. It occurs when the immune system attacks nerve fibers and their surrounding coverings within the brain and spinal cord. The condition is quite unpredictable and can affect individuals in different manners. Because of its variability, a definitive diagnosis is difficult to achieve due to the necessity of ruling out other diagnostic causes for symptoms that are often common, minor or essentially insignificant. Specifically, its diagnosis is definitive by radiographic studies such as in magnetic resonance imaging (MRI). In this particular case, although a foot drop as well as urine and or fecal incontinence combined with fatigue is indeed embarrassing and anxiety provoking by themselves, they too could be involved in early MS. However, such symptoms could have been a result of the basic training environment of increased heat (south Texas), fatigue, and dietary changes. According to the applicant, such symptoms initially improved and again returned even after BMT. This medical advisor finds it hard to understand that the actual MS diagnosis (made in 2015) was three years prior to the 2018 MRI as seen and reported in the submitted medical documentation. Having no proof of occurrence as reported, no immediate (or soon thereafter) evaluations and or treatments in ruling out other medical or environmental factors in the initiation of his 2003 symptoms, this medical advisor finds in opposition to the DVA provider who in 2020 (17 years after the claimed start of the disease), states a "more likely than not" was the start of MS. Medically speaking, the initial presentation, lack of appropriate work-up or differential diagnoses, and only a "few" areas of hyper-intensities on MRI years later which could be seen in other issues to include aging, low blood flow/pressure and even in states of emotional dysfunction, which was the main and unfitting mental health condition at the snapshot in time of BMT, gives great pause for this medical advisor to concur with the DVA provider's statement.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 Aug 21 for comment (Exhibit F), and the applicant replied on 15 Sep 21. In his response, the applicant contends both

the AFBCMR medical opinions did not take into consideration his complete medical history to which he has submitted his complete medical records. The applicant's complete response is at Exhibit G.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor reviewed and considered the information in the applicant's rebuttal statement and additional evidence submitted and found insufficient evidence to support the applicant's request for a change to his records. Of all the reviewed clinical documents, only the Independent Medical Examination (IME) report (Aug 21) opined that the applicant's self-described symptoms from the time in BMT (2003) was the "onset" of his MS. This opinion is in contrast with other documents and letters that note the symptoms of 2003 were a "relapse" of his condition (Neuro-immunology visit 15 Oct 19). In a letter to the Board, the applicant cited the following: "According to my Neurologist, the conditions in the BMT environment are perfect for causing an MS [relapse]. Stress, heat, lack of sleep, fatigue, close quarters with an entire flight of people, to name a few." The DVA Disability Benefits Questionnaire for MS dated 22 Apr 20, also opined that the symptoms experienced in 2003 were consistent with a MS relapse. Additionally, the opinion from the IME in mid-2021 was based partially on the statement of having no other medical explanations for the applicant's symptoms in 2003. That opinion is inaccurate for individual diagnoses were noted and listed throughout his time in the AFR and beyond. Such diagnoses included injury to his coccyx (extreme lower back), lumbar (low back) pain with radiculopathy, insomnia, chronic fatigue, and anxiety/stress. Given the nature and writings of the submitted documents, it is necessary to portray the difference in the terms of an "onset" of a condition versus a "relapse" and or "exacerbation" of a condition. The onset of a condition or illness is simply to say when the condition was first "incurred," which is often difficult to decipher. Exacerbation is medically defined as "an increase in the severity of a disease or in any of its signs or symptoms; whereas, a "relapse" is defined as "a *return* of a disease or illness after partial recovery from it." Although this medical advisor still gives great pause for a healthcare provider issuing a medical appropriate opinion for an individual's self-reported symptoms from nearly two decades ago, other documents, as well as the preponderance of evidence, heavily suggest that the time in BMT was a "relapse" of MS and therefore, this case can indeed be further assessed as existed prior to service (EPTS). Lastly, in regards to the applicant not achieving a waiver for Reserve drill status, the evidence remains void of additional documentation of his diagnosis and treatment in order to request a participation waiver. In the applicant's rebuttal, he did not submit any medical records from his time in active military service.

The complete advisory opinion is at Exhibit H.

The AFBCMR Psychological Advisor reviewed and considered the information in the applicant's rebuttal statement and additional evidence submitted and found insufficient evidence to support the applicant's request for a change to his records. In view of the additional documents submitted by the applicant, the facts remain unchanged. On 4 Dec 03, the applicant presented to the Reserve Medical Unit for processing out to technical school. The applicant notified the AMDS he was "currently taking Lexapro for treatment of depression. Member is currently under the care of a Mental Health Professional and does not yet have a diagnosis (i.e.

major depression vs situational depression). Member was advised to provide documentation regarding treatment so a waiver could be requested from AFRC. Member was placed on a Profile 4, this date, in accordance with AFRC/SG guidance.” On 4 Dec 03, the applicant was placed in a “no pay no points” status awaiting clearance from AMDS. The applicant stated his anxiety and depression continued to get worse after BMT and although he selected the split training option, was discharged prior to attending technical school. The applicant was placed on a profile 4 for “major depression vs situational depression” and was requested by the AMDS to provide further documentation of his diagnosis and treatment in order for AMDS to request a participation waiver. There is no evidence and the applicant did not submit records indicating he provided the necessary records to the AMDS to process the participation waiver. The applicant did not submit any mental health records from his time in service with his rebuttal. The opinion rendered by this psychological advisor in the previous advisory remains unchanged. The characterization of the applicant’s service was appropriately deemed uncharacterized as the applicant did not complete the 180 days of service as detailed in AFI 36-3208.

The complete advisory opinion is at Exhibit I.

APPLICANT’S REVIEW OF ADDITIOANL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Oct 21 for comment (Exhibit J), and the applicant replied on 21 Oct 21. In his response, the applicant disagrees with the advisory opinions stating his discharge warrants unusual circumstances as the discharge was due to a disability and should be changed to honorable. He reported he was taking medication for anxiety and depression but was not given any type of evaluation. He submitted medical evidence that the symptoms he experienced during his military career were due to the progression of MS which started during BMT.

The applicant’s complete response is at Exhibit K.

FINDINGS AND CONCLUSION

1. The application is timely. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitations period established by 10 U.S.C. § 1552(b).
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 recommendations of both the AFBCMR Medical and Psychological Advisors and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The characterization of the applicant’s service was deemed uncharacterized as the applicant did not complete the entry level status of 180 days of active service as detailed in AFI 36-3208. No records were submitted by the applicant to substantiate his claim that his anxiety and depression were what led to his ELS and there are no records confirming a mental health condition caused the applicant’s ELS. The Board finds that the healthcare provider issuing a medical appropriate opinion for an individual’s self-reported

symptoms from the supposed start of MS nearly two decades ago, is questionable. Other documents, as well as the preponderance of evidence, heavily suggest that the applicant's time in BMT was a "relapse" of MS and therefore, can be further assessed as existed prior to service (EPTS). The Board finds no evidence that the applicant had any medical conditions that warranted processing through the Air Force DES at the time of the applicant's discharge. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

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

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-00029 in Executive Session on 20 Oct 21 and 7 Feb 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 9 Dec 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC (Liberal Consideration Guidance), dated 11 Feb 21.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 23 Mar 21.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 9 Aug 21.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Aug 21.
- Exhibit G: Applicant's Response, w/atchs, dated 15 Sep 21.
- Exhibit H: Advisory Opinion, AFBCMR Medical Advisor, dated 17 Oct 21.
- Exhibit I: Advisory Opinion, AFBCMR Psychological Advisor, dated 18 Oct 21.
- Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Oct 21.
- Exhibit K: Applicant's Response, dated 21 Oct 21.

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.

X

Board Operations Manager, AFBCMR