

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00074

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His honorable discharge be upgraded to a medical retirement based on an unfitting condition of depression.

APPLICANT'S CONTENTIONS

The Air Force failed to refer him to the Disability Evaluation System (DES) and administratively separated him with a personality disorder without benefits. His records show symptoms of depression and he now receives compensation from the Department of Veterans Affairs (DVA) for his service-connected disability of Major Depression with Insomnia disorder.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 6 Jul 71, DD Form 4, *Enlistment Contract – Armed Forces of the United States*, indicates the applicant enlisted in the Air Force for four years.

On 13 Aug 71, the applicant was evaluated psychiatrically by the Mental Hygiene Service of the Department of Psychiatry and was recommended for administrative separation. His condition or diagnosis was "Emotionally unstable personality manifested by drug dependency, flashbacks, acting out, violent behavior, low stress tolerance and a history of poor adjustment."

On 17 Aug 71, the applicant's commander recommended the applicant be discharged from the Air Force, under, AFM 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency, and Hardship*, paragraph 3-8q. The specific reasons for the action were:

- a. Inadaptability to military life, immaturity, and poor performance.
- b. Emotional unstable personality.

On 19 Aug 71, the discharge authority agreed with the commander and directed the applicant be discharged with an honorable service characterization.

On 25 Aug 71, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received an honorable discharge. The reason and authority is listed as "AFM 39-10, PARA 3-8Q, COG; ATCR 39-2 & LACKLAND TC FORM 42, 19 AUG 71, (SDN 41G)" and Reenlistment code is "RE-2." He was credited with 25 days of total active service.

On 12 Feb 75, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) to change his reenlistment (RE) code so he can reenlist in a branch of the service. He stated when he previously joined the Air Force after high school he was too young and immature, it was his first time being away from home and he was easily influenced by the wrong people.

On 28 Mar 75, the AFDRB concluded that a change in the type or nature of the discharge was not warranted and denied his application and he remained ineligible to enlist.

Dated 25 Sep 19, a DVA Summary of Benefits memo provided by the applicant, indicates he was awarded service-connection for major depressive disorder and insomnia disorder, with an evaluation of 70 percent.

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

APPLICABLE GUIDANCE/AUTHORITY

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

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

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. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFBCMR 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. During the applicant's very brief time in service, he demonstrated having continuous difficulties adjusting to the structure and demands of a military environment. His leadership attempted to provide to him rehabilitative approaches to repair his behaviors, but he was unresponsive to these efforts. During one of these efforts of sending him to the Motivation Unit, the applicant eloped and was AWOL, causing him to be referred to a special court-martial and being placed in pre-trial confinement. The applicant was referred twice to the mental health clinic for an evaluation and both times, he was found to have difficulties adapting to the military, was immature, and had family problems causing his behaviors. The Training Officer's report also reported the same information that his depression was caused by his family problems and his behaviors were intentional to prove a point to his family members. The applicant was found to have an unsuiting personality disorder, specified as emotionally unstable personality from his mental health evaluation. Unsuiting conditions result with a non-compensable administrative discharge, which he appropriately received. There was no evidence he had any unfitting mental health conditions, to include depression that would meet criteria to be referred to the Medical Evaluation Board (MEB) or DES. He was never placed on a duty limiting conditions profile for his mental health, and he was never deemed not worldwide qualified due to his mental health condition. The applicant's contended condition of depression was found to have existed prior to service (EPTS) and there was no evidence his military duties aggravated his pre-existing condition. This condition, in addition to his inability to adapt to the military, immaturity, and poor performance caused his discharge from service.

For awareness since the applicant has been receiving service-connected compensation from the DVA for his mental health condition: the military's DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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 VA, 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 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 VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

The psychological advisor opines liberal consideration is not required to be applied to the applicant’s request because his condition was found to be EPTS and not aggravated by his military service according to policy guidance. The Board applied liberal consideration to his request, the following are answers to the four questions from 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 contends he should have received a medical discharge for depression.
2. Did the condition exist or experience occur during military service?
There is evidence the applicant experienced depression in service caused by family problems, but this condition was found to be EPTS. There is also evidence he had an unsuiting mental health condition of a personality disorder identified as emotionally unstable personality following a command referred mental health evaluation during military service.
3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence the applicant had any unfitting mental health conditions to include depression during service that would have met eligibility for a referral to the DES and medical discharge/retirement. His condition of depression was found to have been EPTS with no service aggravation that was substantiated and supported by his post service DVA evaluation and records. He was discharged for having an unsuiting personality disorder and this condition was also supported by his DVA records. Therefore, his condition or experience does not mitigate his discharge.
4. Does the condition or experience outweighs the discharge?
Since there is no evidence he had any unfitting mental health conditions, his condition or experience also does not outweigh his original administrative discharge.

The complete advisory opinion is at Exhibit C.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Jan 22 for comment (Exhibit D), and the applicant replied on 31 Jan 22. In his response, the applicant disagrees with the psychological advisor and contends the psychological advisor is making a medical conclusion on the etiology and natural progress of the disability. Such a conclusion must be supported with independent medical evidence. The applicant provides medical documentation, various articles on personality disorders and depression, and the minutes from a 2010 formal hearing before the Committee of Veterans’ Affairs-U.S House of Representatives regarding “Personality Disorder Discharges: Impact on Veterans’ Benefits.

The applicant’s complete response is at Exhibit E.

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 AFBCMR Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant was found to have an unsuited personality disorder, specified as emotionally unstable personality from his mental health evaluation. Unsuited conditions result with a non-compensable administrative discharge, which he appropriately received. There was no evidence he had any unfitting mental health conditions, to include depression, that would meet criteria to be referred to the MEB or DES. Also, the Board is satisfied that the application of liberal consideration does not warrant relief. Finally, 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, 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-2021-00074 in Executive Session on 24 Mar 22 and 3 Oct 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 17 Nov 20.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFBCMR Psychological Advisor, dated 10 Jan 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Jan 22.
Exhibit E: Applicant's Response, w/atchs, dated 31 Jan 22.
Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 31 Aug 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.