



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-01796

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His reserve retirement be changed to a medical retirement.

APPLICANT'S CONTENTIONS

He had every intent on applying for a medical retirement, but his unit did not have the personnel capable of processing the request. Based on a total combined 50 percent disability and a 30 percent rating for unspecified trauma and stressor related Disorder (previously rated as unspecified anxiety disorder and depressive disorder) for four years prior to retirement, he should have been medically retired.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant was a retired Air Force Reserve (AFR) master sergeant (E-7) awaiting retired pay at age 60 at the time of application. He is currently over 60.

On 21 Apr 00, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the AFR for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 1 Aug 00 for a period of four years.

On 29 Feb 08, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was discharged from the Air Force under authority of AFI 36-3208, *Administrative Separation of Airmen*, with a narrative reason for separation of "Intradepartmental Transfer."

On 1 Mar 08, DD Form 4 indicates the applicant enlisted in the Air National Guard (ANG).

On 17 May 16, NGB Form 22, *Report of Separation and Record of Service*, indicates the applicant was honorably discharged under AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, and transferred to the AFR.

AFBCMR Docket Number BC-2021-01796
CUI//SP-MIL/SP-PRVCY

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On 18 May 16, DD Form 4 indicates the applicant enlisted in the AFR.

On 5 May 20, according to Reserve Order Work-Product dated 24 Apr 20, the applicant was assigned to the Retired Reserve List in the pay grade of E-7, eligible for retired pay except for attainment of eligibility age.

On 3 Nov 20, a HQ ARPC/DPTT memo informed the applicant he completed the required years of service under the provision of Title 10, United States Code (U.S.C.), Section 12731, and will be entitled to retired pay upon application, normally at age 60.

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

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 Post-Traumatic Stress Disorder (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 26 Aug 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application. The applicant cited Department of Veterans (DVA) disability ratings for both his individual as well as his combined medical conditions. He specifically noted his mental health condition rated at 30 percent and appeared to request the same rating should have been decided by the military, thus enabling him for a medical retirement. It remains paramount to brief the difference between the military and DVA disability evaluation system (DES). For awareness's sake, 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 or near the 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 medical advisor finds insufficient evidence to support the applicant's request to change his discharge to a medical retirement.

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 8 Feb 22 for comment (Exhibit D), and the applicant replied on 11 Feb 22. In his response, the applicant again contends he attempted to go before a review board prior to retirement but was told the personnel required was not available; however, it could be taken care of post-retirement. Additionally, the conditions referenced are not post-service and the ratings received were provided while serving. He provided his updated DVA ratings.

The applicant's complete response is at Exhibit E.

ADDITIONAL 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 change to his records. The Board received an advisory from the AFRBA Medical Advisor, dated 9 Dec 21, addressing the applicant's mental health condition. The mental health advisory serves as a supplementary advisory to the medical advisory and should be reviewed in conjunction with that advisory. The Psychological Advisor concurs with the opinion rendered by the Medical Advisor. A review of all available records found the applicant had received mental health treatment for anxiety, PTSD, and depression from non-military channels consisting of the DVA, Veteran's Center and civilian providers, coinciding with his time serving as a member of the ANG and AFR components. While his records indicated his mental health symptoms were related to his military service, his mental health condition was a prior service impairment. The applicant's triggering traumatic experience

occurred from his deployment to Iraq in 2007, during his active-duty service. He was able to satisfactorily complete his active-duty service obligation with an honorable character of service discharge and met accession standards into the ANG and AFR at two different times respectively. These events would signify he was fit for duty. Additionally, an application for a Ready Reserve Assignment initiated on 26 Oct 15 reporting all medical records were received and was recommended approval for his application to transfer to the Reserve. Again, this indicated he was determined fit for duty to be qualified to enter the AFR. There was no evidence in his records his military duty or experience with the AFR (his last service membership) aggravated his prior service impairment/condition. Additionally, since he was a Reservist, there was no In Line of Duty (ILOD), or Line of Duty (LOD) determination completed or approved for his mental health condition. Hypothetically, if he had received an approved ILOD for his mental health condition, there would still not be enough information to warrant a referral to a Medical Evaluation Board (MEB) and Disability Evaluation System (DES) for a possible medical discharge. There was no evidence in his medical records the applicant had informed his military providers of his mental health condition and treatment from the DVA and civilian providers. It is highly doubtful his military providers were informed because he most likely would have required a waiver for his psychotropic medication and an evaluation would be performed to determine his fitness for duty. Neither of these events had occurred and despite the non-existence of these information, a review of his DVA records found his mental health condition did not elevate to potentially unfitting to be processed through the MEB and DES.

The Board may consider applying liberal consideration to the applicant's request based on his contention of a mental health condition. 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 believed he should have received a medical retirement versus a reserve retirement because he received disability ratings from the DVA for unspecified trauma and stressor related disorder.

2. Did the condition exist or experience occur during military service?
There is evidence in the applicant's DVA treatment records he received treatment for unspecified trauma and stressor related disorder and PTSD caused by his deployment experiences to Iraq in 2007 aligning with his time as an ANG and AFR member.

3. Does the condition or experience excuse or mitigate the discharge?
There is no evidence his mental health condition to include unspecified trauma and stressor related disorder and PTSD had elevated to unfitting for continued military service and no records his mental health condition had interfered with his ability to perform his military duties. There is no evidence his prior service impairment sustained from active-duty service was aggravated by his military duties with the AFR, and there was no ILOD or LOD determination for his mental health condition. Therefore, his request for a medical discharge for his mental health condition could not be supported and his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition or experience does not excuse or mitigate his discharge, it also does not outweigh his original discharge of reserve retirement.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion and liberal consideration guidance to the applicant on 26 Aug 22 for comment (Exhibit G), and the applicant responded on 31 Aug 22. For his response, the applicant submitted an e-Benefits profile web page reflecting a "Total Combined Disability" rating of 100 percent.

The applicant's complete response is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application was 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 of the AFBCMR Medical Advisor and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board does not find any of the applicant's medical or mental health conditions at the time of his discharge unfitting. The mere existence of a medical or mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not severely degraded due to his medical or mental health conditions. The Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 not based medical conditions 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 to which the DVA can offer compensation. 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

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The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01796 in Executive Session on 18 Feb 22 and 22 Mar 23:

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

A majority of the panel voted against correcting the record finding the application untimely; however, *Work-Product* finds the applicant did file his application in a timely manner but still denied his request. The applicant was not released from the service until 5 May 20 and his application to the AFBCMR was dated 5 May 21, which is within the three-year requirement; therefore, the overall Board decision is deny-merit. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 5 May 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 9 Dec 21.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Feb 22.
- Exhibit E: Applicant's Response, dated 11 Feb 22.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Feb 22.
- Exhibit G: Notification of Advisory and Clarifying Guidance, Liberal Consideration to Applicant, dated 26 Aug 22.
- Exhibit H: Applicant's Response, dated 31 Aug 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

9/12/2024
[Redacted]
Board Operations Manager, AFBCMR
Signed by: [Redacted] *Work-Product*