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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01913

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His narrative reason for separation of "Non-Retention on Active Duty" be changed to reflect a Medical Retirement" based on his post-traumatic stress disorder (PTSD) and sleep apnea.
2. Consider the following conditions for medical retirement:
 - a. Fractured Right Ankle
 - b. Right Quadricep Tear
 - c. Lower Back Pain
 - d. Tinnitus

APPLICANT'S CONTENTIONS

He was separated involuntary when he should have been medically retired. PTSD and sleep apnea were present while he was in service but went undiagnosed and untreated. He complained of sleep issues but did not receive a sleep study or psychiatric evaluation. Since leaving the service, the Department of Veteran's Affairs (DVA) has awarded him compensation for PTSD and sleep apnea. In addition, he wants his tinnitus, fractured right ankle, right quadriceps tear and lower back pain conditions considered for his medical retirement request. Further, his ankle, quadriceps injury and PTSD contributed to his weight gain.

In support of his request, the applicant provides service treatment records, personnel records and DVA Rating Decision memos.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 20 Jan 04, according to the applicant's DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, he enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 18 May 04 for a period of four years.

On 20 Mar 13, according to the applicant's AF Form 418, *Selective Reenlistment Program (SRP) Consideration for Airmen in the Regular Air Force/Air Force Reserve*, he was not selected for reenlistment. The applicant's commander states "The member has had multiple fitness failures which resulted in control roster action...In the best interest of the United States Air Force, I do not

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recommend the member for reenlistment, and request that the member's date of separation be accelerated according to PSDM 13-14, *FY 13 Enlisted DOS Rollback Program...*”

On 20 Apr 13, HQ AFPC/DPSOR memo indicates the medical provider determined a Medical Evaluation or Physical Evaluation Board (MEB/PEB) was not required in conjunction with the applicant's separation processing.

On 31 May 13, according to the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, he received an honorable discharge. His narrative reason for separation is “Non-Retention on Active Duty” and he was credited with 9 years and 13 days of total active service.

Dated 14 Aug 14, a DVA Rating Decision memo provided by the applicant, indicates he was awarded service-connection for degenerative disc disease, lumbar spine (claimed as back condition, lower back) with an evaluation of 20 percent; right thigh strain (claimed as right leg condition, upper thigh) with an evaluation of 10 percent; and right healed avulsion fracture, lateral malleolus with residuals (claimed as right ankle condition) with an evaluation of 10 percent. All effective 1 Jun 13.

Dated 13 Jun 18, a DVA Rating Decision memo provided by the applicant, indicates he was awarded service-connection for obstructive sleep apnea (OSA) with an evaluation of 50 percent effective 5 Aug 15.

Dated 30 Oct 18, a DVA Rating Decision memo provided by the applicant, indicates he was awarded service-connection for PTSD (claimed as insomnia), with an evaluation of 50 percent and tinnitus with an evaluation of 10 percent effective 26 Aug 18

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:

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- 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 4 Feb 22, 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 insufficient evidence to support the applicant's request for the desired changes to his record. There were no records supporting the applicant received any mental health evaluations, diagnosis, or treatment during service. He was evaluated multiple times by his primary care manager, had completed at least two physical health assessments (PHA), and received a separation physical during service, all yielding no reports of any complaints of mental health symptoms, issues, or difficulties. Next, the applicant claimed his sleep issues caused his weight gain resulting in his fitness test failures and not being retained in the service. There was evidence he had complaints of sleep issues in service; however, his PHA in March 2011 indicates the applicant denied his sleep issues were getting worse or had caused him any difficulties. He completed another PHA in May 2012 and did not mention any sleep difficulties at all and lastly, his April 2013 separation physical indicated he had no sleep disturbances. Giving the applicant the benefit of the doubt, it was possible he had sleep issues in service that may cause his weight gain, there is still insufficient evidence to support his request for a medical retirement. There was no evidence his sleep issues had elevated to potentially unfitting in the service meeting criteria for a medical retirement or discharge as desired. For awareness, the military's disability evaluation system (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" in 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 of 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. An exhaustive review of the available records finds no error or injustice with his discharge process from service.

The Board may elect to apply liberal consideration to the applicant's request due to the contention of a mental health condition (PTSD). The following are responses based on information presented in the records 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 had impaired judgment, sleep issues, and disturbances in motivation and mood, which were symptoms of PTSD during service. He believed his sleep issues caused his weight gain resulting with his fitness test failures and being non-retainable in the service.

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

There was no evidence the applicant had any mental health conditions to include PTSD during service. There was evidence he reported having sleep difficulties during his PHA in March 2011 but denied his sleep issues had worsened or caused any difficulties to him.

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

There was no evidence the applicant had any unfitting mental health conditions to include PTSD or sleep issues during service. Therefore, his mental health conditions do not excuse or mitigate his discharge.

4. Does the condition or experience outweighs the discharge?

Since the applicant's mental health condition of PTSD, sleep issues/disturbances, etc. were never found to be unfitting for continued military service, his mental health conditions do not outweigh his original discharge and would support his request for a medical retirement for any mental health conditions.

The complete advisory opinion is at Exhibit D.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denial of the applicant's petition for a medical retirement, to include consideration of his cited musculoskeletal conditions, post-service diagnosis of PTSD, and OSA. The Medical Advisor acknowledges the applicant sustained several injuries during his military service, one which required brief hospitalization and others requiring relative short-term duty restrictions, for which he has since been assigned compensation by the DVA. However, in order to warrant a medical separation or retirement, there must be evidence a medical condition prevented the service member from carrying out his military duties. Specifically, Department of Defense Instruction 1332.38, "*Physical Disability Evaluation*," Enclosure 3, Part 3, "Standards For Determining Unfitness Due To Physical Disability Or Medical Disqualification," paragraph E3.P3.2.1, in effect at the time of the applicant's discharge reads: "A Service member shall be considered unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation." Other than the two Referral Enlisted Performance Reports received by the applicant, due to the Fitness Assessment failures, the applicant consistently performed his military duties in a satisfactory or excellent manner. Additionally, while the applicant has since been diagnosed with and receives compensation for OSA, which is commonly observed among obese individuals, the applicant's imbalance of energy expenditure and secondary elevated body mass index (BMI) were not caused by the OSA. Thus, even if diagnosed and treated for OSA with a continuous positive airway pressure (CPAP) device during military service, this condition would unlikely be a cause for career termination, in the treated state. Additionally, it would not automatically correct the imbalance of energy expenditure, which remained the key factor in resolution of any weight management or elevated BMI problems. On the other hand, operating under a different set of laws (Title 38, U.S.C.), the DVA is authorized to offer compensation for any medical condition(s) determined service-incurred, without regard to its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the narrative reason for separation. This is the reason why an individual can be separated for one reason and yet sometime thereafter receive a compensation from the DVA for one or more medical conditions that were determined service-connected, e.g., OSA and his delayed onset post-service diagnosis of PTSD but were not proven militarily unfitting at the time of release from military service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase

or decrease) as the level of impairment from a given service-connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 29 Aug 22 for comment (Exhibit F), and the applicant replied on 19 Sep 22. In the response, the applicant disagrees with the Psychological Advisor and contends he was diagnosed with severe sleep apnea and severe insomnia and had sleep issues while in the military that continued after military service. He eventually filed a DVA claim for insomnia which led to a PTSD diagnosis that is connected to military service. Further, although the advisory acknowledged his PTSD, he disagrees that it was not found unfitting. He had impaired judgment by not seeking medical attention for his back pain while in service and had a disturbance in motivation and mood which led to failed PT tests and an involuntary discharge. Also, the applicant disagrees with the Medical Advisor and contends his physical injuries added to his weight gain and his undiagnosed PTSD. Finally, physical fitness was a part of his duty; however, after working long hours along with sleep deprivation, it was difficult for him to be motivated.

The applicant's complete response is at Exhibit G.

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 and or recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the Board notes the applicant's contention he was diagnosed with PTSD while in service, there were no records supporting the applicant received any mental health evaluations, diagnosis, or treatment during service. Further, the Board acknowledges the applicant had several medical conditions during service; however, a service member shall be considered unfit when the evidence establishes the member, due to a physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Finally, the Board is satisfied liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence of a mental health condition in service, it does not excuse, mitigate, or outweigh his 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 the Department of the Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-01913 in Executive Session on 23 Feb 22 and 22 Mar 23:

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

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Apr 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 4 Feb 22.
- Exhibit D: Advisory Opinion, AFBCMR Psychological Advisor, dated 29 Jul 21.
- Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 11 Mar 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Aug 22.
- Exhibit G: Applicant’s Response, dated 19 Sep 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.

3/11/2024

Work-Product _____

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