



Attorney-Client

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

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Attorney-Client

DOCKET NUMBER: BC-2021-02074-2

COUNSEL: *Attorney-Client*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board consider her request to grant her deceased husband a medical retirement.

RESUME OF THE CASE

The applicant is a former Air Force Reserve captain (O-3) who was involuntarily discharged for substandard performance under the weight management program on 16 Nov 84 with an honorable service characterization.

On 26 Apr 23, the Board considered and denied his request for a medical retirement; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. Both the AFRBA Psychological Advisor and the AFBCMR Medical Advisor provided advisories recommending a denial of the request.

The AFBCMR Medical Advisor found no physical disability that prevented or interfered with the deceased member's ability to reasonably carry out the duties of his office, grade, rank, or rating. There was no profile restrictions imposed to his duty or mobility, prohibiting the deceased member's worldwide qualification. Whether due to academic deficiency, secondary to permanent change of station (PCS) and occupational change (from Office of Special Investigation (OSI) Agent to Aircraft Maintenance), with resultant changes in lifestyle, and a resultant of vicious cycles of fitness failures with secondary unresolved weight gain, the deceased member was still held accountable to meet the requirements set forth in the Weight Management Program. The evidence reflects the deceased member's commander considered a possible medical basis for the failures, while awaiting the outcome of medical testing. Other than the brief statement by a mental health provider, attributing his weight to stress-related overeating, there was no evidence presented to warrant an unfit finding for a mental or physical disorder.

The AFRBA Psychological Advisor found the deceased member had not met the burden of proof to support his request for a medical retirement. He was deployed/stationed in Thailand in 1974

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when the bus accident occurred, which he had witnessed and was the basis of his trauma and diagnosis of post-traumatic stress disorder (PTSD) per his personal testimony and his provider's assessment. The deceased member's traumatic experience was not in question, however, there was no evidence he had PTSD or similar conditions during service. It appeared he developed or experienced a delayed onset of PTSD because he did not exhibit PTSD symptoms until decades post service causing him to meet diagnostic criteria for this condition at this later time; however, there was no nexus between his condition of PTSD and his discharge. There was evidence he was stressed and depressed caused by his family and occupational problems during service causing him to gain weight and he had difficulties losing weight that eventually led to his discharge for not meeting weight standards. There was no evidence his condition of PTSD had caused or impacted his weight issues. His depression, however, was a factor but was not the primary or sole reason for his eventual discharge. His depression (or any other mental health condition) was never determined to have elevated to potentially unfitting for him to be referred to the Medical Evaluation Board (MEB). His mental health evaluation report stated his depression was resolving and he did not have any mental disorder that would require medical action or medical discharge. Having a mental health condition or receiving a mental disorder diagnosis does not automatically render a condition as unfitting. More information is needed and required to determine unfitness for duty. The deceased member commissioned into the AFR indicating he met accession standards and was determined fit for duty. His prior service impairment of PTSD did not affect his ability to re-enter the service and there was no evidence his military duties with the AFR permanently aggravated his prior service impairment or pre-existing condition of PTSD. If his command had initiated a line of duty (LOD) determination action, the outcome would have yielded the finding of in line of duty (ILOD) and not service aggravated (NSA) or existed prior to service-NSA. This designation would not have resulted with a compensable medical discharge/retirement. The applicant has been receiving service-connected rating/compensation from the Department of Veterans Affairs (DVA) for PTSD with major depressive disorder (MDD). The military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., can 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 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.

Based on the guidance at the time, liberal consideration was applied to the deceased member's petition; however, no evidence was found to suggest his mental health condition due to his traumatic experience outweighed, mitigated or excused his discharge.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit I.

On 7 Aug 24, the applicant requested reconsideration of her husband's original request for a medical retirement. Again, contentions made through counsel state the deceased member should have been processed for a medical separation for his PTSD. He was discharged for substandard performance which was due to his PTSD and depression. His unfitting mental health condition caused him to binge eat and gain weight, making him unable to maintain weight standards. He was diagnosed with depression caused by his numerous years of service and deployments to include the serious train accident which killed multiple friends and which he was required to recover victims. He was diagnosed with PTSD by the DVA and was receiving disability benefits. He served honorably for over 17 years with no instances of misconduct and only experienced medical issues due to his unwavering service. In support of her consideration request, the applicant submitted the following new evidence, the death certificate for the deceased member.

The applicant's complete submission is at Exhibit J.

APPLICABLE AUTHORITY/GUIDANCE

On 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or traumatic brain injury (TBI) potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

The entire guidance can be found at Exhibit K.

APPLICANT'S REVIEW OF GUIDANCE

On 1 Jul 25, the applicant provided a response. In her response, the applicant contends, through counsel, the mental health advisory stated there was no evidence the deceased member had PTSD in service or that his depression elevated to potentially unfitting for MEB referral; however, evidence shows he was suffering from depression which caused him to gain weight which led to his discharge. The Kurta memorandum dictates the deceased member is entitled to a lenient review because of his PTSD and outlines the criteria that can be used as evidence when no formal diagnosed condition exists. Although he had no formal PTSD diagnosis while in the service, factors in the Kurta memorandum include the inability to conform to the expectations of a military environment. His significant weight gain qualifies as his inability to conform to standards and his PTSD likely caused or exacerbated his depression as much as his family and occupational issues. At the time of the deceased member's separation, the Air Force was not recognizing and treating PTSD symptoms he was displaying.

The applicant's complete response is at Exhibit L.

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 remains unconvinced the evidence presented demonstrates an error or injustice. Counsel contends the Kurta memorandum dictates the deceased member is entitled to a lenient review because of his PTSD. He was suffering from depression and undiagnosed PTSD which caused him to gain weight leading to his discharge; however, based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, liberal consideration does not apply to this request. The memorandum states boards should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised. Therefore, the Board finds the applicant's request for a medical retirement to be considered under liberal consideration is not warranted. The Board notes the applicant's contention the deceased member had undiagnosed PTSD and the service was not equipped to make a diagnosis at the time; however, medical evidence must be present to show the deceased member could not reasonably perform the duties of his office, grade, rank, or rating. Furthermore, the Board does not find any of the deceased member's medical or

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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 his 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 then only for the degree of impairment present at or near the time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Therefore, the Board recommends against correcting the deceased member'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 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-2021-02074-2 in Executive Session on 18 Jul 25:

Attorney-Client

Panel Chair

Attorney-Client

Panel Member

Attorney-Client

Panel Member

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

Exhibit I: Record of Proceedings, w/ Exhibits A-H, dated 26 Apr 23.

Exhibit J: Application, DD Form 149, w/atchs, dated 7 Aug 24.

Exhibit K: Letter, Supplemental Guidance, SAF/MRBC to Applicant, dated 30 May 25.

Exhibit L: Applicant's Response, dated 1 Jul 25.

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.

9/2/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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