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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02444

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His medical retirement for anxiety and depressive disorder, not otherwise specified (NOS) be changed to Post-Traumatic Stress Disorder (PTSD) with a 100 percent disability rating.
2. His PTSD be assessed as combat-related in order to qualify for compensation under the Combat-Related Special Compensation (CRSC) Act.
3. His unfitting medical condition of PTSD be found as combat-related, as a direct result of armed conflict as defined in 26 U.S.C. 104 combat related determination.
4. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to show the following:
 - a. Combat Skills Training (**No Board action needed, administratively corrected**).
 - b. Community College of the Air Force (CCAF) degree.
 - c. Air Force Special Experience Identifier (SEI) 475.
 - d. Survival, Evasion, Resistance, and Escape (SERE) Training (**No Board action needed, administratively corrected**).

APPLICANT'S CONTENTIONS

He was discriminated against and kicked out of the Air Force. He suffers from PTSD but did not receive the proper medical care for his condition. This unfitting condition was incurred in combat operations in Iraq and during combat expeditionary training. His Department of Veterans Affairs (DVA) records show he was diagnosed with combat-related PTSD between 2008 and 2010 which found him permanently and totally disabled.

The applicant's complete submission is at Exhibit A.

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CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
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STATEMENT OF FACTS

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

On 18 Oct 10, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for Anxiety Disorder (NOS).

On 22 Nov 10, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of Anxiety Disorder (NOS) and Depressive Disorder (NOS) with a disability compensation rating of 30 percent with a recommendation of "Temporary Retirement." His other condition of alcohol abuse, in remission was rated as Category III, conditions that are not separately unfitting and not compensable or ratable. Column F indicates no for combat related determination as defined in 26 U.S.C. 104. The Board noted the applicant's condition appeared to have originated after deployment to Iraq, however, the Board did not see evidence in the Narrative Summary to deem his condition combat related.

On 23 Nov 10, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings of the board and waived his right to a formal hearing.

Dated 1 Dec 10, Special Order Work-Product indicates the applicant was placed on the Temporary Disability Retired List (TDRL) in the grade of staff sergeant with a compensable percentage for physical disability of 30 percent, effective 24 Dec 10.

Dated 11 Jan 12, a AFPC/DPFDC letter indicates the applicant's CRSC claim was approved for his medical condition of irritable colon with a 10 percent rating but was denied compensation for all other disabilities.

On 30 Apr 12, AF Form 356, indicates the applicant was found unfit due to his medical condition of Anxiety Disorder (NOS) and Depressive Disorder (NOS) with a disability compensation rating of 30 percent with a recommendation of "Permanent Retirement." Column F indicates no for combat related determination as defined in 26 U.S.C. 104. The Board noted the applicant's condition appeared to have stabilized and would not likely change over the next several years.

On 11 May 12, *Action on the Findings and Recommended Disposition of the USAF Physical Evaluation Board*, indicates the applicant concurred with the findings of the Board.

Dated 16 May 12, Special Order Work-Product, indicates the applicant was removed from the TDRL and permanently disability retired in the grade of staff sergeant with a compensable percentage for physical disability of 30 percent, effective 5 Jun 12.

Dated 26 Aug 13, a AFPC/DPFDC letter indicates the applicant's CRSC claim was disapproved for his medical condition of anxiety disorder because no evidence was provided to confirm his

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disability was from instances of direct combat exposure such as direct exposure to gunfire or mortar attacks.

Dated 20 Sep 13, a AFPC/DPFDC letter indicates the applicant's CRSC claim was disapproved for his medical conditions of anxiety disorder and PTSD stating "there must be a definite, documented, causal relationship between the armed conflict or simulated armed conflict and the resulting disability. After reviewing your documentation we were unable to identify a combat-related event as the cause of your anxiety disorder. This lack of evidence prevents consideration under current CRSC criteria. If you have documentation confirming direct exposure to hostile fire or mortar attacks at the time of the event (such as performance report, decoration citation, line of duty determination, etc.), please submit for consideration." Additionally, the letter noted the applicant's PTSD was rated as not service connected by the DVA which makes it ineligible for consideration under CRSC.

Dated 1 Oct 14, a AFPC/DPFDC letter indicates the applicant's CRSC claim was disapproved for his medical conditions of anxiety disorder with major depression and PTSD stating "your claim and documentation received contained no definitive evidence to confirm this disability was the direct result of a combat-related event. When making combat-related determinations for PTSD, the Board looks for instances of direct exposure to a specific combat-related event placing your life at risk, such as direct exposure to gunfire or mortar attack, or surviving an aircraft crash. Documentation provided does not confirm you were directly exposed to a combat-related event (hostile fire). If you have documentation confirming exposure to hostile fire, please submit for reconsideration."

On 20 Apr 22, a DD Form 215, *Correction to DD Form 214*, was generated and sent to the applicant adding Combat Skills Training, Mar 2007 and SERE 100.2 Training, Apr 2007 to block 14 of the applicant's DD Form 214..

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

APPLICABLE AUTHORITY/GUIDANCE

Per AFI 36-3202, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*, and the DD Form 214, Total Force Personnel Services Delivery (TFPSD) Guide, SEIs are not annotated on a member's DD Form 214.

DoDI 1332.18, *Disability Evaluation System (DES)*, Appendix 5 to Enclosure 3, "Combat Related" covers injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A disability is considered combat-related if it makes the member unfit or contributes to unfitness and the preponderance of evidence shows it was incurred under any of the following circumstances; as a direct result of armed conflict; while engaged in hazardous service; under conditions simulating war; or caused by an instrumentality of war. Armed conflict is defined as a war, expedition, occupation of an area or territory, battle,

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skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which service members are engaged with a hostile or belligerent nation, faction, force, or terrorist.

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 7 Apr 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the applicant's request for CRSC finding no evidence of an error or injustice. The purpose of his request is to qualify for monetary benefits authorized under the CRSC program in accordance with Public Law 107-314 and Office of the Under Secretary of Defense guidance. Specifically, he is requesting that his anxiety disorder w/major depressive disorder and PTSD w/chronic sleep impairment be re-evaluated and approved under CRSC. He submitted three claims between 2013 and 2014. Each claim was disapproved because the evidence provided did not confirm his disability was incurred as a direct result of Armed Conflict, Hazardous Service, Simulation of War or an Instrument of War. The applicant contends his disabilities were due to day/night live fire exercises, explosions, simulated raids, and traumatic experiences while deployed to Iraq. He has not provided new evidence to support his CRSC claims. The fact that a member incurred the disability during a period of war, while serving in an area of armed conflict, and/or while participating in combat operations is not sufficient by itself to support a combat-related determination per 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B Chapter 6. When making combat-related determinations, the Board looks for definite, documented, causal relationship between the armed conflict and the resulting disability.

The complete advisory opinion is at Exhibit C.

AFPC/DPFDC recommends denying the applicant's request for his unfit disability, which disqualified him for military service, be identified as combat-related and incurred while in a combat zone. The applicant was found unfit by the IPEB and placed on the TDRL effective 10 Dec 10. His unfit condition was deemed non-combat related. The AF Form 356, dated 10 Nov 10, states the applicant's condition appears to have originated after a deployment to Iraq. However, the board does not see evidence in the Narrative Summary to deem his condition combat related. On 23 Nov 10, the applicant signed the AF Form 1180 concurring with the IPEB's findings and recommendation. He waived his right to appeal the board's decision. On 30 Apr 12, the IPEB reviewed his TDRL reexamination report and concluded that his unfit condition had stabilized and applied a final disability rating of 30 percent. The applicant concurred with the board's decision and signed the AF Form 1180 on 11 May 12. Once again, the applicant elected to waive his right to appeal the board's final decision.

The complete advisory opinion is at Exhibit D.

AFPC/DP2SSR recommends denying the applicant's request to have his CCAF degree added to his DD Form 214. The DD Form 214 is a snapshot of an individual's military service and is not designed to be an all-encompassing document noting every aspect of the military career. Furthermore, in accordance with AFI 36-3202, Item #14, Military Education is for formal training schools (i.e. basic military training and technical training) listed in the Air Education and Training Command catalog. CCAF is not part of the catalog and falls into the category of civilian university

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education. Therefore, it is not included on the DD Form 214. Service members can provide their graduation diploma as proof of completion to any agency requiring this information.

The complete advisory opinion is at Exhibit E.

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. Addressing his request for a correction of his diagnosis, the applicant was evaluated by multiple duly qualified mental health providers, civilian, military, and DVA, during service and there were discrepancies noted with his mental disorder diagnosis. His civilian provider, psychological test evaluator, and evaluator at Lackland AFB diagnosed him with PTSD; however, his DVA providers and the Chief of Mental Health Services reported he did not have PTSD. When the applicant began mental health treatment, his civilian provider and psychological testing evaluator reported his symptoms included having intrusive thoughts, memories, and nightmares, avoided remembering his traumatic experiences, pronounced hypervigilance, sleep difficulties, and self-medicated with alcohol. His Narrative Summary for his MEB however, reported he had symptoms of anxiety, mood disturbances, increased alcohol use and deterioration of relationships and job effectiveness. He was not reported to have more classic symptoms of PTSD as reported during his psychological testing. His DVA treatment records disputing his PTSD diagnosis during service were not available for review, but a note from his DVA provider dated 24 Sep 10 stated he was evaluated by two different licensed professionals and was assessed to not have PTSD but anxiety disorder not otherwise specified (NOS).

As demonstrated, these reported symptoms vastly differ. It appeared through his records, he was diagnosed with PTSD during the first few months of his mental health treatment and his diagnosis changed to anxiety disorder NOS later on by his DVA providers. There are many reasons for disparities in variances in diagnostic impressions among his providers and evaluators—some base upon variances in clinical presentation at a given time, different disclosures during a subsequent interview, clinical bias between equally competent providers, or legitimate differences due to new observations made over the longer period of care. Any of these reasons may be applicable to the applicant's situation. It is not unusual for mental health symptoms to fluctuate causing his diagnosis to change over time, and he was also in treatment for his mental health condition and substance abuse issues and his symptoms could wax and wane in response to treatment. PTSD is an anxiety disorder and many symptoms may overlap. His symptoms reported at the time of his MEB resembled closely to anxiety disorder NOS rather than PTSD. This former condition would again be reflected in his TDRL re-evaluation. The TDRL evaluator reported he endorsed significant symptoms of anxiety, insomnia, low frustration tolerance, decreased concentration, decreased energy, some feelings of helplessness but no significant depression and no suicidal ideation, some occasional nightmares and some avoidance issues, but he did not meet full criteria for PTSD. The Psychological Advisor finds his anxiety disorder NOS diagnosis and not PTSD also better represented his clinical presentation at the snapshot in time of his MEB process and TDRL re-evaluation. His diagnosis of anxiety disorder NOS was appropriate and valid. Regardless of which diagnosis he received, both are considered unfitting conditions and would result with the same outcome of his discharge.

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Addressing his request for an increased in disability rating from 30 percent to 100 percent, there was no evidence during the TDRL period his symptoms and degree of impairment of his condition on his overall functioning had worsen or decompensate that would warrant a higher rating. During the TDRL period, he had employment issues but these issues were no different than the issues he had prior to and entering TDRL. He also did not receive any continuous or regular mental health treatment during the TDRL period indicating his condition was not severe enough to him requiring treatment. The IPEB found his condition had stabilized and recommended he be permanently retired from service with a 30 percent rating. The Psychological Advisor concurs with the IPEB's findings and finds no error or injustice with his discharge. His condition was considered stable and again, no evidence was presented to indicate he should have received a higher rating because of the aforementioned reasons.

The applicant referred to the changes of his DVA disability rating as the reason for this request. For awareness, the military Disability Evaluation System (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 the "snapshot" 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 DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran.

Lastly, the applicant is requesting a permanent retirement. The applicant already received a permanent retirement because he received a final rating of 30 percent from the Air Force, which meets the required threshold of 30 percent or higher for a medical retirement. It appeared there was some confusion as his current DD Form 214 lists his narrative reason as "Temporary Disability." The applicant did not receive an updated DD Form 214 after he was removed from the TDRL as he did not incur additional time in service. He did however, received Special Order **Work-Product** dated on 16 May 12 informing him of his permanent disability. This document would supersede his DD Form 214. An updated DD Form 214 is not necessary, but the Board may decide to provide to him an updated document at his request.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in 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 requests a correction of his diagnosis to PTSD and increase his rating from 30 percent to 100 percent.
2. Did the condition exist or experience occur during military service?

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The applicant was diagnosed with PTSD when he began mental health treatment. Through time, he no longer met diagnostic criteria for PTSD but for anxiety disorder NOS. He was permanently retired from service with a 30 percent rating for anxiety disorder NOS.

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

There was no error identified with his diagnosis and his unfitting condition of anxiety disorder NOS was found to be appropriate and valid. There was no evidence the applicant's mental health condition and symptoms would warrant a higher rating than 30 percent based on his TDRL reevaluation. His condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his condition does not excuse or mitigate the discharge, it also does not outweigh his original discharge and would not provide him with a higher rating. The concluding 30 percent rating was consistent to his clinical presentation documented in his medical records during the TDRL period.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Apr 22 for comment (Exhibits F and I), and the applicant replied on 19 May 22. In his response, the applicant submitted additional medical documentation to support his claim.

The applicant's complete response is at Exhibit J.

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 recommendations of the offices of primary responsibility and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, there was no error identified with his diagnosis; his unfitting condition of anxiety disorder NOS was found to be appropriate and valid. There was no evidence the applicant's mental health condition and symptoms would warrant a higher rating than 30 percent based on his TDRL reevaluation. Additionally, the Board found no evidence to warrant a combat-related determination for PTSD or his other mental health conditions. The evidence provided did not confirm his disability was incurred as a direct result of Armed Conflict, Hazardous Service, Simulation of War or an Instrument of War. Furthermore, per AFI 36-3202 and the DD Form 214 TFPSD Guide, SEIs and civilian university education are not annotated on a member's DD Form 214. Therefore, aside from the administrative corrections to add Combat Skills Training, Mar 2007 and SERE 100.2 Training, Apr 2007 to block 14 of the applicant's DD Form 214, 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-2021-02444 in Executive Session on 11 May 22 and 5 Jul 22:

-  *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 17 Jul 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC (CRSC), w/atchs, dated 4 Feb 22.
- Exhibit D: Advisory Opinion, AFPC/DPFDC (TDRL), w/atchs, dated 4 Feb 22.
- Exhibit E: Advisory Opinion, AFPC/DP2SSR, dated 8 Feb 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Apr 22.
- Exhibit G: Letter (Liberal Consideration), SAF/MRBC to Applicant, dated 7 Apr 22.
- Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 11 Apr 22.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Apr 22.
- Exhibit J: Applicant’s Response, w/atchs, dated 19 May 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.

3/14/2023



Board Operations Manager, AFBCMR
Signed by: USAF