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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-02598

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His honorable discharge be changed to a medical retirement.

APPLICANT'S CONTENTIONS

The Air Force Reserve (AFR) failed to process his medical case in sufficient time. He deployed to both *Work-Product*. He waited for the AFR to process his paperwork for two years but was discharged before his Medical Evaluation Board (MEB) was accomplished. The Department of Veterans Affairs (DVA) has determined his medical conditions (Traumatic Brain Injury (TBI) post-traumatic stress disorder (PTSD), depression, headaches, migraines, a left ankle injury, knee problems, right elbow issues, anxiety disorder, nightmares, insomnia, trouble breathing while sleeping, asthma, irritable bowel syndrome (IBS), rashes, sweating profusely, and tinnitus) to be service-connected. These issues were all incurred while on active duty and most were not reported due to fear of reprisal from his chain of command.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Aug 03, 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 on 8 Oct 03 for a period of four years.

On 10 Feb 10, AF Form 910, *Enlisted Performance Report (AB thru TSgt)*, indicates the applicant received an Enlisted Performance Report (EPR) covering the period 17 Mar 09 through 8 Feb 10 with an overall performance assessment of "5" (Truly Among the Best), which indicated he met Air Force fitness standards.

On 1 Apr 10, DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant was released from active duty and transferred to the AFR. He was credited with 6 years, 5 months, and 24 days of active service.

On 2 Apr 10, AF IMT 1288, *Application for Ready Reserve Assignment*, indicates the applicant enlisted in the AFR.

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On 24 Mar 11, AF Form 910 indicates the applicant received an EPR covering the period 9 Feb 10 through 8 Feb 11 with an overall performance assessment of “5” (Truly Among the Best), which indicated he met Air Force fitness standards.

On 25 Sep 12, Reserve Order **Work-Product** shows the applicant was honorably discharged from the AFR.

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 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 3 May 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical retirement based on his mental health condition. During his active-duty service, he received brief mental health treatment from Jun to Jul 07 for anxiety and sleep problems, but these concerns predated both of his deployments. He received pre-deployment assessments after this brief iteration of treatment and was determined to be cleared for deployments both times indicating he was fit for duty and world-wide qualified (WWQ). After his return from deployment, there were no records stating he had any mental health concerns related to his deployment experiences. He was never diagnosed with PTSD during his active service and there were no records his mental

health condition interfered or impacted his military duties when he was on active-duty service. Further, he requested discharge from active-duty and be transferred to the AFR. There were no records to substantiate he was suffering from any mental health conditions, had emotional distress, or had impaired judgment at the time of his decision to transfer to the AFR. Shortly after he joined the AFR he initiated mental health treatment from the DVA on 14 Jun 10, two months post active-duty discharge. He was evaluated for PTSD and was found to have not met diagnostic criteria for PTSD at that time. He received therapy services from the Vet Center after the initial assessment and his DVA records were unremarkable for any exacerbations or aggravations of anxiety, depressive, PTSD symptoms, etc. during this treatment iteration. The applicant did not receive regular mental health treatment from the DVA until on or about 30 Sep 10 and treatment notes indicate he met the diagnostic criteria for PTSD and his PTSD symptoms were aggravated necessitating him to receive multiple levels of care/treatment for PTSD occurring after a motor vehicle accident (MVA). The applicant's condition and diagnosis of PTSD caused by his deployment experiences are not in question as there was ample evidence corroborating, he was diagnosed and has been extensively treated for his condition and experiences by the DVA. The question is whether this condition had elevated to potentially unfitting meeting criteria to be referred to the MEB for a medical discharge/retirement from the AFR. His records do not support this notion. The applicant's assertions he was diagnosed and treated with PTSD during his AFR time are correct, but his condition of PTSD was never reported to have interfered or impacted his ability to reasonably perform his AFR military duties in accordance with his office, grade, rank or rating. Furthermore, he was never placed on a duty limiting condition profile or deemed not WWQ due to his mental health condition. This cumulative, non-existent data reflects he did not meet requirements to be referred to the MEB. There were no records his MVA or PTSD condition was determined to be in the line of duty (ILOD) by the AFR, and his DVA records reflected and also found his MVA and PTSD condition were not ILOD and not service aggravated. The applicant contends his judgment was impaired by PTSD prior to apply for an MEB with the AFR. Regardless if his judgment was impaired at the time, the evidence in his objective treatment records again, do not support his mental health condition of PTSD was considered unfitting leading to career termination. For awareness since the applicant has been receiving service connected disability compensation from the DVA. The military's Disability Evaluation System, 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 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.

The Board applied liberal consideration to his request. The following are answers to the four questions from the Kurta memorandum 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 his judgment was impaired due to suffering from PTSD from his deployment experiences from his active-duty service and was unable to apply for an MEB with the Reserve.

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

There is evidence the applicant had deployed to Iraq and Afghanistan and had traumatic and stressful experiences from these deployments occurring during his active-duty service. However,

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he was never diagnosed with PTSD and was declared fit for duty or WWQ multiple times during active-duty service. The applicant was not diagnosed with PTSD until 29 Nov 10, about seven months post discharge, caused by his deployment experiences. The time of this diagnosis coincided with his Reserve time.

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

The applicant's mental health condition of PTSD was found to be aggravated by an MVA occurring on 14 Sep 10. His military records reported the last time he was on duty was in August 2010, which predated his MVA, and so his MVA causing the aggravation of his condition of PTSD did not occur ILOD. There was no evidence his condition of PTSD was permanently aggravated by his Reserve military duties causing impairments to his ability to reasonably perform his military duties and meeting requirements to be referred to the MEB for a medical discharge/retirement. Even if his judgment was impaired by PTSD to apply for an MEB, there was still no evidence to support he should have been referred to the MEB due to the reasons that were discussed in this advisory. Therefore, his condition or experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant's mental health condition or experience does not excuse or mitigate his discharge, his condition also would not outweigh his original administrative discharge.

The complete advisory opinion is at Exhibit D.

AIR FORCE ADDITIONAL EVALUATION

The AFBCMR Medical Advisor opines there is insufficient evidence during the applicant's brief period of AFR service to indicate the applicant was unable to perform the duties of his office, grade, rank, or rating due to asthma, sinusitis, or insomnia during his period of active service; nor were they incurred during or permanently aggravated by subsequent AFR service to warrant universal ILOD findings during AFR service for any of his claimed medical conditions; notwithstanding the fact they have been recognized as service-connected by the DVA. The Medical Advisor has conducted a rereview of all available evidence, with a summary of his general care during his active service, with special focus upon his respiratory ailments and mental health care to follow. During the period of the applicant's active service, he experienced several episodes of care for a range of medical conditions; none which resulted in enduring restrictions to duty or mobility. The Medical Advisor found no documented objective service evidence of a TBI, neither its occurrence, its known overt manifestations at the time of occurrence, nor its recognized delayed manifestations during the applicant's active or Reserve service. Further, the applicant alone did not present with evidence or complaints during his active military service that warranted a Deployment Availability Working Group (DAWG) review, Medical Hold, or which would have prohibited transfer to the AFR hence, he was not referred for a MEB processing for any potentially unfitting medical conditions. Upon transfer to the AFR in 2010 and according to AFRC/SG his active-duty separation Report of Medical Assessment signed by him stated he had no illnesses or injuries limiting him in any way, that he had no questions or concerns about his health, and he did not have any conditions for which he intended to seek DVA disability. He listed acne, allergies, and headaches as medical conditions. As a traditional reservist, while performing in a duty status of 30 days or less, for a medical condition to have been considered eligible for processing through the DES as a compensable condition, it must be shown to have been incurred as a proximate result of [or permanently aggravated by] performing AFR service. Therefore, the MEB process and previous medical retirement expectations of the applicant, constituted a Planned Fitness for Duty Evaluation (PFDE); for one or more disqualifying non-duty related medical conditions. This fact is not to be confused with establishment of service-connection and compensation by the DVA,

based upon the nexus established between the applicant's post-service clinical presentations and diagnoses during his previous period of active service.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 16 Dec 22 for comment (Exhibit F), and the applicant replied on 12 Jan 23. In his response, the applicant appreciates the advisories were thorough in the timeline of events during his service; however, he contends there is some pertinent information missing that would give a more accurate picture of his medical history. The applicant provided clarification to some of the notes within the advisories and again requests a medical retirement so he can have access to the medical care he needs on his continued journey to mental and physical recovery.

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 AFBCMR Psychological Advisor and the AFRBA Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02598 in Executive Session on 11 May 22 and 26 Apr 23:

 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 9 Jul 21.

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Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 3 May 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, 5 May 22.

Exhibit E: Advisory Opinion, AFRBA Medical Advisor, 15 Dec 22.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Dec 22.

Exhibit G: Applicant's Response, w/atchs, dated 12 Jan 23.

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.

8/28/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF

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